



**INSPECTOR GENERAL  
AUSTRALIAN DEFENCE FORCE**

*Report for the period  
01 January to 31 December 2013*



## Inspector General Australian Defence Force MINUTE

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### **INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE ANNUAL REPORT FOR CALENDAR YEAR 2013**

**Reference:**

A. The *Defence Act 1903* section 110R

As required by reference A, I submit herewith my report for the period 01 January to 31 December 2013.

A handwritten signature in black ink, appearing to read 'Geoff Earley'.

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Inspector General ADF

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**INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE  
REPORT FOR THE PERIOD  
01 JANUARY TO 31 DECEMBER 2013**

**PREAMBLE**

The position of Inspector General Australian Defence Force (IGADF) is established under section 110B of the *Defence Act 1903 (the Act)*. The appointment of the IGADF is made by the Minister for Defence in accordance with section 110E of *the Act*.

Mr Geoff Earley, AM was appointed as the IGADF on 23 December 2005. He was reappointed for a further five years from 23 December 2010.

The functions of the IGADF are prescribed in section 110C of *the Act*:

- a. to inquire into or investigate matters concerning the military justice system;
- b. to conduct performance reviews of the military justice system, including internal audits, at times and in the manner IGADF considers appropriate;
- c. to advise on matters concerning the military justice system, including making recommendations for improvements;
- d. to promote military justice across the Australian Defence Force (ADF); and
- e. to do anything incidental or conducive to the performance of any of the preceding functions.

It is imperative that the requirements of military justice provide an acceptable and appropriate balance between the need to enforce and maintain a high level of order and discipline in the ADF on the one hand, and to ensure individual rights are protected on the other. A military justice system that is capable of achieving and maintaining this balance will ensure greater operational capability and success for the ADF. The ADF military justice system has four main components:

- the taking of discipline action under the *Defence Force Discipline Act (DFDA)* to enforce and maintain Service discipline;
- the imposition of administrative sanctions to correct individual behaviour and protect the reputation of the ADF;
- to conduct administrative inquiries to determine the facts of an incident or situation and make recommendations to remediate

systemic or individual failings to improve and enhance operational effectiveness; and

- the management of complaints to ensure systemic or individual failings are identified and remediated to improve and enhance operational effectiveness.

## OVERVIEW

As in recent years, matters affecting military justice in 2013 remained a focus of media and political scrutiny in Australia. This was in part caused by echoes from very public incidents—including the ADFA *Skype* incident of 2011 and the incidents onboard HMAS *Success* in 2009—drawing comparisons with 2013 media reports pertaining to individual conduct of current and former ADF members.

The stand-out themes affecting the ADF military justice narrative in 2013 included the attention given to cultural issues addressed in Defence's *Pathways to Change* policies, the ongoing work of the Human Rights Commission's examination of gender issues throughout the ADF, and the continuing speculation as to the future arrangements for ADF investigation, inquiry, review and redress of grievance processes arising from the finalisation of the Defence Rethinking Systems Review. More broadly, in the public domain, credit for dealing with the reportedly large numbers of cases of abuse within Defence over time exposed by the DLA Piper Report and the activities of the Defence Abuse Response Taskforce tended to be counterbalanced by continuing adverse media coverage of such cases resulting in further reputational impact for Defence.

For several years now I have remarked on the uncertain environment in which almost every aspect of the military justice system has had to operate whilst subject to a seemingly constant series of reviews, since 2005. This environment was unchanged in 2013. Uncertainty over the future of the court martial system and many of the long established processes for administrative inquiry, disciplinary systems, review and complaint handling remained unresolved at year's end. Notwithstanding this systemic uncertainty, empirical data collected by the OIGADF indicated that ADF units generally continued to implement the military justice system well and to comply with relevant law and policy, including enhanced equity and gender awareness in all three Services. It is to be hoped that the cycle of reviews will conclude in the coming year and an implementation program of useful improvements, that were recommended in many of the reviews, can commence.

During the reporting period IGADF received 61 inquiry submissions, which represented an increase of approximately 11 per cent compared with the number of submissions received in 2012. Despite the increase in 2013, inquiry submissions have remained relatively constant since IGADF's establishment in 2003, with a high of 79 in 2006 and a low of 35 in 2007.

IGADF also received 18 complaints against Service police. Ten complaints became the subject of IGADF investigations and eight complaints were referred back to Service police for further action. Of the ten complaints investigated, three complaints were substantiated and seven matters were still being investigated at the end of the reporting period.

IGADF also conducted military justice audits of 50 ADF units. This number represents approximately 10 per cent of all auditable ADF units. In three of those units (or six per cent of audited units) potential material deficiencies were identified. All units audited received outcome reports that included a number of recommendations and suggestions to enhance and improve military justice arrangements and practices. Those units in which material deficiencies were identified will be re-audited in 2014 to re-check compliance with military justice law and policy.

In all, a total of 779 recommendations and suggestions to improve military justice arrangements, practices and procedures were made during the audit program in 2013. The overwhelming majority of the recommendations and suggestions related to minor compliance or procedural issues. Experience has shown that if proper attention is given to these relatively minor issues affecting military justice arrangements in units, the incidence of more serious matters occurring is likely to be reduced.

During the conduct of audits 2716 ADF personnel, or approximately five per cent of ADF personnel, participated in focus group discussions raising the total number of focus group participants to 23 344 since the pilot program first commenced in 2004.

Participants in focus group discussions were invited to complete a short non-attributable military justice survey. Survey outcomes in 2013 indicate a stronger endorsement and confidence in the military justice system and the chain of command to take action to resolve military justice problems. There is also strong evidence to indicate that incremental cultural change occurred within the ADF during 2013.

The downward trend in summary trials and convictions reported in past years did not continue in 2013, with a small increase of three per cent and 11 per cent respectively. The number of summary trials increased from 1354 to 1403, while the number of convictions increased from 1684 to 1794. Despite this increase, the number of summary trials in the CY 2013 was well below the all time highs of 3406 and 4161, recorded in 2001 and 2002 respectively.

During 2013 there was a significant increase in minor disciplinary infringements which increased by 22 per cent to an all time high of 5383. Navy had a minor increase of 7 per cent, Army a moderate increase of 25 per cent and Air Force a substantial increase of 67 per cent. The increase is assessed as not being due to an increase in poor behaviour, but greater resolve by commanders to take action to deal with minor indiscretions following *Pathway to Change: Evolving Defence Culture 2012*.

During 2013 the time taken to investigate alleged offences at unit level averaged 24 calendar days and charges were brought to trial within an additional 22 days. As observed in previous years, this is well within the requirement in section 129D of the DFDA to commence a trial within 3 months following an accused person being charged with a service offence.

While this level of performance appears to conflict with perceptions recorded in focus group surveys, where 35 per cent of respondents believe investigations take too long and 30 per cent believe bringing matters to trial takes too long, the most likely explanation is that most survey respondents would not have had any direct experience with the disciplinary process and hence opinions are based largely on anecdotal evidence. This does not, however, mean those views should necessarily be discounted as they may also indicate an underlying perception by many ADF members that the disciplinary system is too complex and legalistic. The continuing systemic instability in the wider military justice system due to ongoing reviews and implementation delays in amending discipline law, policy, practices and procedures is also likely to be a factor in fuelling such perceptions. In order for confidence in the system to grow there is a need to ensure the system is easy to use and the law, policy, practices and procedures remain as stable as possible once the way forward has been agreed.

Disciplinary convictions where the misuse of alcohol was a contributing factor (excluding alcohol misuse on deployment) decreased by 17 per cent in 2013, varying the trend witnessed over the past four years. However, this was to some degree offset by a nine per cent increase in administrative sanctions for misuse of alcohol. The overall decrease in disciplinary or administrative action for alcohol related matters was likely the result of the emphasis given by commanders to alcohol abuse/misuse and alcohol-related antisocial behaviour following the introduction of *Pathway to Change: Evolving Defence Culture* of 2012.

Similarly, disciplinary convictions for alcohol related offences committed on deployment have also steadily decreased. Again this trend is probably the result of implementation of *Pathway to Change: Evolving Defence Culture* initiatives and the reduction in operational tempo during 2013.

The military justice audit focus group survey results for 2013 showed that respondents in Air Force had witnessed or experienced the highest rate of workplace bullying and harassment at 21 per cent, followed by Army at 19 per cent and Navy at 17 per cent. IGADF experience is that unacceptable behaviour rates appear to be higher where the military justice system is used least. This is likely to happen where alternative inappropriate methods (e.g. unlawful punishments or workplace harassment or bullying) are used to correct behaviour.

The reporting data shows that civil conviction rates have also been declining over the past three years despite some commentators indicating that ADF civil conviction rates have been increasing due to mental disorders associated with operational deployments.

During the reporting period IGADF also provided input to a number of military justice issues concerning the Re-thinking review, SeMPRO, the Complaints and Resolution Manual, the introduction of the Public Interest Disclosure Scheme and the review of a range of Defence Instructions.

In 2013 the OIGADF conducted 27 face to face courses and seminars at locations around Australia, attended by some 743 ADF members. Of those, the vast majority attended Inquiry Officer familiarisation training. A further 1058 undertook the IGADF online Inquiry Officer familiarisation course on *Campus*. Other practical training opportunities offered by IGADF included seminars on administrative sanctions, complaint handling, and undertaking quick assessments.

Based on all the evidence considered during the reporting period, IGADF remains generally satisfied with the overall health and effectiveness of the ADF's military justice system.

### **OFFICE STAFFING**

OIGADF is a joint military justice agency comprising both permanent and reserve military staff, and members of the APS. The majority of staff have considerable knowledge and experience of Service life and the military justice system and by necessity are predominantly of LTCOL (O5) rank/Executive Level 1 (EL1) or higher. The OIGADF is structured as follows:

- The executive, including the IGADF (a statutory officeholder), the deputy IGADF (O7 rank), and three support staff;
- The Directorate of Inquiries (DI) is directed by an O6 general service officer who is responsible to the IGADF to inquire into or conduct investigations into military justice related incidents or complaints. The DI comprises four permanent, eight Reserve and one APS assistant IGADF inquiry officers. The DI also has three senior NCO Service police personnel to inquire into or investigate allegations or complaints of professional misconduct against Service police;
- The Directorate of Military Justice Performance Review (DMJPR) is directed by an O6 legal officer who is responsible to IGADF for the conduct of military justice performance audits and the analysis of military justice statistics from military justice databases. The DMJPR comprises one permanent, three Reserve and four APS officers.
- The Directorate of Legal Review (DLR) is directed by an O5 legal officer who is responsible to IGADF for the conduct of legal reviews of IGADF inquiries and investigations, providing advisory opinions on military justice matters, and promoting military justice across the ADF through the conduct of military justice awareness training. The DLR comprises one other permanent legal officer and a number of Reserve legal officers who are periodically engaged to assist in the legal review of inquiries.

Given the role, functions and responsibilities of the IGADF it is important that mature individuals with broad military backgrounds and a sound knowledge of the military justice system and experience in military justice issues and are offered for posting to the OIGADF.

The support provided to OIGADF in terms of Reserve personnel from all three Services improved during the reporting period, with Reserve training day requirements being met directly by the single Services, and supplementation being provided when requested.

In 2013 the OIGADF added to the pool of available and experienced senior officers with one O7 Reserve legal officer undertaking duties for DI as an assistant inquiry officer and one O6 Reserve legal officer undertaking duties for DMJPR as an audit team leader.

## **ADMINISTRATION**

With continued emphasis on the need to ensure greater efficiency OIGADF implemented and maintained a number of cost saving measures and initiatives which have been outlined in previous reports. While those cost saving measures and initiatives have had some impact on the performance of the IGADF role, functions and responsibilities it is assessed that the financial benefits to Defence outweigh the effect on IGADF performance. However, with increased emphasis on individual conduct and behaviour outlined in *Pathway to Change: Evolving Defence Culture* of 2012 there is a need to ensure that IGADF remains a viable and effective oversight body to enable constant scrutiny and monitoring of the military justice system to ensure its health and effectiveness, and to examine and identify situations of military injustice in order to remedy them. While current resources and budgetary allocations have been sufficient to sustain current rates of effort across all OIGADF functions an increase in responsibilities or a requirement to meet significant surge demands would require additional supplementation..

## **SUBMISSIONS AND INQUIRIES**

The number of inquiry submissions received during the 2013 reporting period increased by approximately 11 per cent compared to 2012. However, it is not practical to quantify the overall inquiry effort by simply reviewing submission numbers. The size and duration of an inquiry can be influenced by many factors, including, but not limited to, the complexity of the complaint, time elapsed since the alleged incident, number of personnel involved, amount and availability of evidence, witness deployment, and external influences. During the reporting period, there was a trend toward an increase in the number of these factors in complaints being made, making inquiries significantly more complex and lengthy. In addition, IGADF responded to a number of requests from the Defence Abuse Response Task Force, the Commonwealth Ombudsman and through the Freedom of Information process. An enhanced IGADF training regime also conveys greater visibility of the IGADF complaint regime, allowing easier access to IGADF and a greater understanding of its specific roles and functions.

Complaints involving workplace friction between different elements of the integrated workforce, which give rise to additional legal and administrative complexity, were more in evidence. In line with this trend, there were a greater number of requests from Defence functional areas for advice on dealing with complex workplace complaints, and for IGADF to conduct independent inquiries into such complaints. Sensitive operational concerns were also a feature of certain matters referred to IGADF during 2013. The other relevant trend concerned certain matters involving the inappropriate use of information technology and social media, where such use could be seen to have a clearly defined workplace nexus.

### **The nature of IGADF Inquiries**

Conducting inquiries through OIGADF under the provisions of Part 7 of the Defence (Inquiry) Regulations accrues several benefits. The most significant of these is that such inquiries are conducted independently of the chain of command thus reducing the likelihood of allegations of undue command influence over outcomes. As with other formal ADF inquiries, the IGADF regulations ensure that IGADF inquiry officers and witnesses are protected against civil suit for actions arising in the course of their inquiry duties. IGADF inquiries also have recourse to coercive powers to require the cooperation of ADF witnesses (including Reservists on duty) to attend and answer all questions, other than in certain exempted circumstances. Given the permanent nature and statutory roles of the IGADF there is a strong case for expanding these powers to those available to an ADF Board of Inquiry. Although not a legislative provision per se, a consequential benefit arising from service with the OIGADF is that inquiry officers posted for duties with the IGADF are able to develop a greater degree of experience and expertise in this particular function than would be possible in most other areas of Defence.

It is a requirement that IGADF inquiry staff possess extensive general service experience within Defence, either through membership of the ADF or the Defence APS; this has been generally in the order of 20–40 years. As a result, the conduct of inquiries into more serious or complex matters has properly become a specialist skill set within OIGADF, where the technical and legal elements associated with the progression of an inquiry can be matched by a degree of pragmatism and experience. As part of its functions the OIGADF is able to maintain an overview of all aspects of the military justice system, which is informed by formal inquiries, unit military justice audits, professional standards investigations, conduct reporting data, and Administrative Inquiry tracking data. Thus the OIGADF is able to operate within a synergetic environment which facilitates the drawing together of linked issues and trends that greatly assist in the analysis of complex complaints and emerging trends.

These issues are important because from time to time speculation occurs as to whether it would be better, for reasons of perceived independence, if the IGADF were located wholly externally to the Defence environment. The clear experience of eleven years of operations under the current

arrangements has not supported this view. The so-called hybrid arrangements for the IGADF whereby the office remains within the wider compass of the Defence Organisation although it is physically located outside of it and is legislatively empowered to operate independently of the chain of command, has proven to be a significant advantage in fulfilling IGADF's statutory role and functions. These advantages not only contribute to establishing confidence in clients that the role of the IGADF can be undertaken independently but, importantly, also allows direct access to data systems, personnel, units and current policy. It is unlikely that similar levels of access could as readily be made available to an external agency.

### Submission history

To the end of the reporting period six hundred and sixty-two submissions have been received since OIGADF was first established in 2003, an average of 60 submissions per year. As shown in the table below, 61 new submissions were received in 2013. Fifty-one of these submissions were resolved during that same period.

Calendar year	Open at start of CY	New submissions	Resolved	Open at end of CY
2003	0	76	23	53
2004	53	50	53	50
2005	50	68	51	67
2006	67	79	94	52
2007	52	35	54	33
2008	33	47	52	28
2009	28	52	52	28
2010	28	64	67	25
2011	25	78	70	33
2012	33	53	61	25
2013	25	61	67	19
<b>Total</b>	-	<b>663</b>	<b>644</b>	-

### Service Police Professional Standards

In January 2013, the professional standards investigations capability, previously located within ADFIS Headquarters was transferred to OIGADF. The transfer of responsibility was desirable to ensure that the conduct of investigations into allegations of serious breaches of the Service Police Code of Conduct was seen to be undertaken independently of the ADFIS and Service Police functions.

Over the reporting period IGADF received 18 complaints against Service police. Ten complaints became the subject of IGADF investigations and

eight complaints were referred back to Service police for further action. Of the ten complaints investigated, three complaints were substantiated and seven matters were still being investigated at the end of the reporting period.

## **MILITARY JUSTICE PERFORMANCE REVIEW**

### **Audit function**

The military justice audit function was a key recommendation of the Burchett inquiry into military justice in the ADF. In his report, Mr Burchett argued that there was an ongoing need to monitor the military justice system at unit level by way of ongoing audit aimed at exposing military justice issues before they escalate into significant problems. CDF agreed with the recommendation and the office of the IGADF was established with the following audit function, which can be found in section 110C of *the Act*:

*to conduct performance reviews of the military justice system, including internal audits, at the times and in the manner the Inspector-General ADF considers appropriate and to advise on matters concerning the military justice system, including making recommendations for improvements.*

DMJPR conducts military justice audits of about 50 ADF units per annum, which represents approximately 10 per cent of all ADF units per calendar year. The aim of the audit program is to confirm that relevant personnel in ADF units are aware of and apply extant laws and policies pertaining to the administration of military justice, and that ADF units have in place the necessary procedures and practices for effective delivery of military justice. In this context, military justice is to be construed as including all matters concerning Service discipline, the conduct of quick assessments and administrative inquiries, administrative sanctions, and complaint handling. Units are encouraged to conduct self-analysis and to remedy or rectify identified deficiencies or shortcomings prior to scheduled audits.

The underlying audit philosophy is to examine a sample of available records in order to verify and confirm good practice, identify lapses and failures in the delivery and administration of military justice at unit level, and to offer remedial assistance, recommendations and suggestions to the command team where and when appropriate. An overall assessment is provided following the audit which may identify material deficiencies, compliance breaches or areas for improvement in the military justice arrangements within the unit. Material deficiencies are those shortcomings that involve serious non-compliance with military justice legal requirements, while compliance breaches involve non-compliance with legal procedural requirements or non-compliance with military justice policy. Recommendations are made where a unit is not complying with military justice legal or policy requirements. It is mandatory for units to implement recommendations, because units are required to comply with military justice law and policy. Suggestions—on the other hand—are not mandated by military justice law or policy, but represent good practice drawn from IGADF

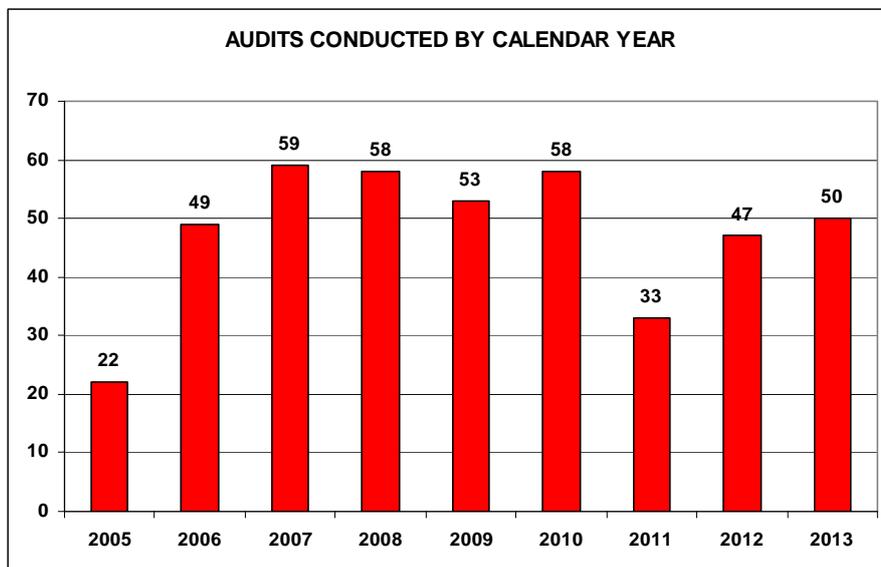
experience. As a consequence, units have discretion to implement suggestions.

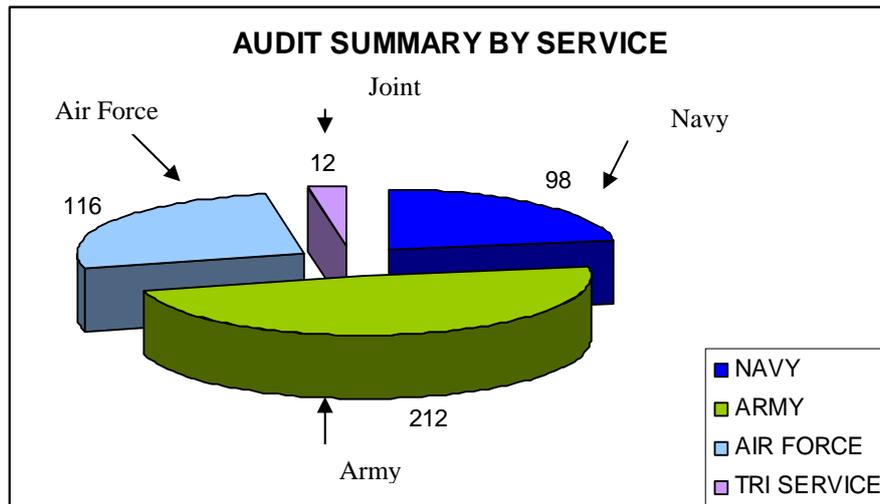
Although the resultant audit report is disseminated to a units' superior headquarters—up to Service or Deputy Service Chief—the audit process should be viewed as positive and 'value-adding', rather than negative or critical. This concept is explained to unit commanders, emphasising that the audit horizon is predominantly the previous 12 months, and acknowledging that significant personnel changes have most likely occurred during this time and that any identified military justice issue or lapse may not be attributable to the incumbent command team.

In order to ensure that IGADF's military justice audit process and resultant audit reports are given credibility and due consideration and weight, audits are conducted as closely as practicable to *Australian Standards on Assurance Engagements (ASAE)*, as promulgated in the following series of documents:

- *ASAE 3000 Assurance Engagements Other than Audits or Reviews of Historical Financial Information.*
- *ASAE 3100 Compliance Engagements.*
- *ASAE 3500 Performance Engagements.*

Since the military justice audit program was first introduced in 2004, a total of 438 audits have been conducted to end CY2013. It should be noted that this figure includes units that have been audited more than once. The graph and chart below illustrates audits conducted by service since 2005.





### Audit procedures

The audit process involves the following three phases:

- **Pre-audit phase**

- Unit information is obtained from military justice agencies and databases concerning military justice activity occurring in the unit over the past 12 months (the review period):
  - Values Behaviours and Resolutions (VBR) for ROGs and unacceptable behaviour complaints.
  - ADFIS and Service police for notifiable incidents and investigations under the DFDA.
  - IGADF Directorate of Inquiries for military justice submissions.
  - Hot issues briefs.
  - Conduct Reporting and Tracking System (CRTS) for civil convictions, discipline and adverse administrative action.
  - ADFAITS for administrative inquiries.
  - AIMS for information on the management of Army incidents.

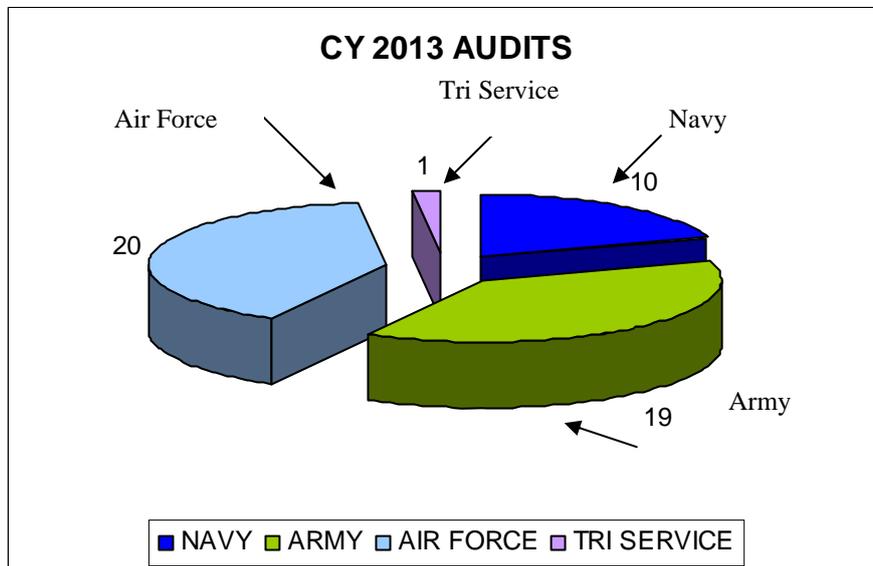
- **Audit phase**
  - Audit personnel provide a brief to the unit on the role, function and responsibilities of IGADF to monitor the military justice system across the ADF.
  - The command team provides a brief on military justice arrangements and military justice action that has occurred in the unit during the review period.
  - Discussions are held with the command group to seek their views on military justice arrangements and issues within the unit, and generally to inform the command group of the issues to be addressed during focus group discussions with unit personnel. These discussions also provide the command group with an opportunity to ask focus group facilitators to raise specific questions concerning military justice issues during focus group discussions with unit personnel.
  - Focus group discussions (grouped by rank and gender when appropriate) are held and a military justice survey conducted. The discussions and survey concentrate on the opinion and perceptions of participants about the administration and management of military justice within the unit.
  - Audit personnel conduct spot check reviews of records and procedures for discipline and administrative action undertaken during the review period.
  - Audit personnel hold discussions with key unit personnel responsible for military justice.
  - Audit personnel hold discussions with some of the key support personnel responsible for providing military justice advice and guidance to the unit.
  - Audit personnel conduct a briefing to discuss the findings and outcomes of the audit.
  - Audit personnel provide interim outcomes and findings of the audit to the command group during an exit brief.
  
- **Post-audit phase**
  - Within eight weeks following the conduct of the audit, a written report advising the final outcome of the audit, together with recommendations and suggestions for remediation of identified

military justice deficiencies or shortcomings is provided to the audited unit and their superior headquarters.

### Military justice performance audit program

In 2013 IGADF audited 50 ADF units. In three of those units (or six per cent of audited units) potential material deficiencies were identified. The result of all audits was that units were provided with a number of recommendations and suggestions to enhance and improve military justice arrangements and practices. Those units in which material deficiencies were identified will be re-audited in 2014 to re-check compliance with military justice law and policy.

A total of 779 recommendations and suggestions to improve military justice arrangements, practices and procedures were made in 2013. The overwhelming majority of the recommendations and suggestions related to minor compliance or procedural issues in audited units' military justice arrangements and practices. A breakdown by Service of units audited in CY2013 is illustrated below.



### Discipline spot check

The main focus of the discipline spot check is the disciplinary arrangements within the audited unit. An ADF legal officer with at least five years experience in dealing with issues concerning the military discipline system is appointed to conduct this part of the audit. In conducting the discipline spot check, close liaison is maintained with key unit discipline administrators (i.e. RSM/CSM for Army units, ADMINO/WOD/SQNWOFF for Air Force units and NPCs for Navy units). The discipline spot check focuses on such things as DFDA appointments and authorisations, DFDA investigations, release from custody, promulgation of arrangements for drill,

the Discipline Officer scheme, the training of prosecuting and defending officers, the conduct of summary proceedings, PMKeyS CRTS reporting, the administration of detention centres, recording of civil convictions, the reporting of notifiable incidents and legal support. Outcomes and findings of the discipline spot checks in CY2013 were as follows:

**DFDA appointments and authorisations.** The overwhelming majority of audited units had raised DFDA appointments and authorisations and they were generally current and complete. Audited units should ensure a legal officer reviews all DFDA appointments and authorisations once raised to ensure compliance with legal and policy requirements.

**DFDA investigations.** Unit discipline investigations were generally timely and concise. Audited units were aware of their requirement through the Navy divisional system, CA Directive 27/09 of 07 Jul 09 or CAF Directive 04/06 of 24 Aug 06 respectively to manage and provide welfare support to individuals who were involved in a disciplinary investigation.

**Release from custody.** Audited units were aware of and generally complied with the requirements of section 97 of the DFDA and the CDF authorisation in chapter 16 of ADFP 06.1.1 *Discipline Law Manual* volume 1 (4<sup>th</sup> ed) of 07 Oct 09 concerning the release from custody of a person charged with a service offence and the conditions and restrictions that may be imposed on persons being released from custody.

**Promulgation of arrangements for drill.** Audited units were aware of and generally complied with the requirements of *Defence Force (Consequences of Punishment) Rules 1986*. Those units were also aware that the order of dress for the punishment of extra drill was dress of the day.

**Discipline Officer scheme.** Audited units had authorised discipline officers and relevant officers in unit standing orders. However, units frequently failed to inform relevant officers of their authorisations or failed to adequately train them to issue infringements. Most audited units maintained an infringement register. However, discipline officers often failed to prepare monthly reports to be inspected by the CO IAW section 169GA of the DFDA and units often failed to prepare six monthly statistical returns IAW para 5.72 of ADFP 06.1.1 *Discipline Law Manual* volume 3 (4<sup>th</sup> ed) of 07 Oct 09. Most audited units ensured that expired infringement notices, including any identifying details, were properly removed from the infringement register.

**Prosecuting and defending officers.** The number, appointment, selection, experience, training and competence of prosecuting and defending officers was generally satisfactory. However, there continues to be a considerable disparity between the ability and experience of NPC who prosecute and their defending officer counterparts who are generally not subject matter experts. Some audited units were unaware that while prosecuting officers can be appointed to perform their disciplinary role, a member has the right to select their own defending officer.

**Summary proceedings.** The majority of summary proceedings reviewed by the discipline auditors were found to have been conducted IAW proper disciplinary processes, practices and procedures. Some audited units, particularly Air Force and Reserve units, should consider giving greater consideration to using the discipline system to enforce and maintain service discipline, particularly when the facts of a case support the elements of an offence. It is noted that the decision by these units not to use the discipline system is sometimes due to a lack of currency of key disciplinary personnel in the discipline system rather than a choice not to use the system.

**PMKeyS Conduct Reporting and Tracking System (CRTS) reporting.** Most audited units were aware of and generally complied with the requirements of DI(G) ADMIN 10–8 *Conduct Reporting and Tracking System* of 10 Jul 08 to record disciplinary proceedings, civil convictions and administrative sanctions. However, PMKeyS CRTS user certificates of compliance were not always current and complete.

**Detention centres.** Audited units who were responsible for the administration of a detention centre were aware of and generally complied with the requirements of DI(G) PERS 45–3 *Australian Defence Force Detention Centres* of 07 Feb 02.

**Civil convictions.** Audited units were aware of and generally complied with the requirements of DI(G) PERS 55–4 *Reporting, recording and dealing with Civil Offences, Service and Civil Convictions and Diversionary Programs* of 16 Jan 12. However, audited units often failed to place a PD052 form (Record of Conviction) on the convicted member's conduct record after being notified of a civil conviction. Key unit personnel responsible for discipline were generally aware of the requirements in respect of spent convictions.

**Notifiable incidents.** Audited units were aware of and generally complied with the requirements of DI(G) ADMIN 45–2 *The reporting and management of notifiable incidents* of 26 Mar 10. Notifiable incidents were being properly reported to the Service police or other Defence investigative agencies when they occurred. Most audited units maintained a notifiable incidents register.

**Legal support.** The provision of legal support to the chain of command and individuals is generally satisfactory and does not give rise to conflicts of interest.

#### **Administrative spot check**

The administrative system spot check focuses on the conduct of Quick Assessments (QA), administrative inquiries; equity and diversity; unacceptable behaviour; management of sexual misconduct including sexual offences; administrative sanctions; involuntary discharges; redress of grievance; suicidal episodes; alcohol testing and prohibited substance

testing; and other arrangements concerning the military justice administrative system. The administrative system audit is conducted by an ADF officer with at least five years experience in dealing with issues concerning the military justice administrative system. In conducting the administrative system spot check, the auditor maintains close liaison with unit staff responsible for the administrative system.

The administrative system spot check is normally conducted with one or more of the following unit personnel: Navy – XO, supply officer, personnel officer, senior writer; Army – ADJT, personnel officer, administrative officer or chief clerk; Air Force – administration officer or chief clerk. An Initial interview with these individuals provides valuable information concerning the administrative practices adopted by the unit.

While there are common requirements for all Services, each Service has different processes, practices and procedures for dealing with administrative action. Outcomes and findings of the administrative spot-checks in CY2013 were as follows:

- **QAs.** Audited units were generally aware of and complied with the requirements of DI(G) ADMIN 67–2 *Quick Assessments* of 07 Aug 07 and most QAs were completed competently and in a timely manner. However, on occasions the QA officer would not merely identify basic facts, but would establish facts by making an assessment of the information obtained and subsequently make adverse findings. The effect was that the QA would become a quick inquiry rather than a means of identifying the best way to deal with a situation. The majority of QAs were retained on an appropriate unit file or recorded in a central location on *Objective*. The majority of audited units maintained a QA register that generally complied with the guidance provided at enclosure 1 to CDF Directive 04/2010 *Interim arrangements—quick assessments and administrative inquiries* of 23 Apr 10. However, the QA registers often did not contain details of CO-directed outcomes and the date of implementation of agreed recommendations.
- **Administrative inquiries.** Audited units were aware of and generally complied with the requirements of ADFP 06.1.4 *Administrative Inquiries Manual* of Jun 06, CDF Directive 04/2010 *Interim arrangements—quick assessments and administrative inquiries* of 23 Apr 10 and DI(G) ADMIN 65–1 *Administrative Inquiry Tracking* of 04 Jul 06. Procedural fairness requirements were nearly always met. However, sometimes appointing officers failed to prepare a decision and implementation plan following the completion of the administrative inquiry or failed to notify witnesses of the outcome of the inquiry.
- **IGADF familiarisation courses.** It was pleasing to see that a number of suitable personnel within audited units had completed the IGADF Inquiry Officer familiarisation course. However, audited units should ensure that suitable individuals also undertake the IGADF

administrative sanctions familiarisation course and the IGADF complaint handling familiarisation course.

- **Equity and diversity.** Audited units were aware of and generally complied with the requirements of DI(G) PERS 35–7 *Defence Equity Adviser Network* of 09 May 03 and DI(G) PERS 50–1 *Equity and diversity in the Australian Defence Force* of 18 Oct 01. Audited units are also working hard to ensure their members complete annual mandatory workplace behaviour training. Most audited units had access to or had appointed a senior equity advisor and had appointed equity advisers of mixed rank and gender. Contact details of the base equity adviser network and the 1800 DEFENCE telephone number are normally promulgated on unit notice boards.
- **Unacceptable behaviour.** Audited units are aware of and generally complied with the requirements of DI(G) PERS 35–3 *Management and reporting of unacceptable behaviour* of 28 Jun 09 and *Pathway to Change: Evolving Defence Culture* of 2012. All complaints were generally dealt with in a prompt, fair and impartial manner. Audited units managed unacceptable behaviour complaints IAW the checklist at annex H of DI(G) PERS 35–3 *Management and reporting of unacceptable behaviour* of 28 Jun 09. The vast majority of unacceptable behaviour complaints were reported to VBR Branch. A corporate file was normally created for each unacceptable behaviour complaint IAW para 43 of DI(G) PERS 35–3 *Management and reporting of unacceptable behaviour* of 28 Jun 09. Apart from a few exceptions, audited units transferred relevant documents concerning the management of all unacceptable behaviour complaints to members' gaining units when the members were posted IAW para 44 of DI(G) PERS 35–3 *Management and reporting of unacceptable behaviour* of 28 Jun 09.
- **Sexual misconduct including sexual offences.** Audited units were aware of and generally complied with the requirements of DI(G) PERS 35–4 *Reporting and management of sexual misconduct including sexual offences* of 28 Aug 13. All unrestricted reports of sexual misconduct, including sexual offences, were immediately reported to ADFIS and SeMPRO IAW paras 44–47 of DI(G) PERS 35–4 *Reporting and management of sexual misconduct including sexual offences* of 28 Aug 13. Victims, complainants and alleged offenders were treated fairly and provided with appropriate support and were allocated case managers and provided with monthly reports on progress concerning their respective cases IAW para 69e of DI(G) PERS 35–4 *Reporting and management of sexual misconduct including sexual offences* of 28 Aug 13.
- **Administrative sanctions.** Audited units were aware of and generally complied with the requirements of DI(G) PERS 35–6 *Formal Warnings and Censures in the Australian Defence Force* of 16 Jul 10, DI(AF) PERS 4–19 *Administrative Sanctions in the Royal Australian Air Force* of 15 Oct 07, DI(G) ADMIN 60–1 *Australian Defence Force*

*Separation administration procedures* of 11 Oct 02, DI(G) PERS 03–4 *Termination of service in the Australian Defence Force* of 25 Jul 11, and *Australian Book of Reference 10 – Sailors Career Management Manual* of 28 Jun 04 respectively. The overwhelming majority of all administrative sanctions had been properly processed and the principles of procedural fairness had been met. Records of administrative sanctions were properly maintained, administrative sanctions were normally recorded on PMKeyS CRTS and relevant career management agencies were informed of the imposition of the administrative sanctions.

- **Involuntary discharges.** The processing of involuntary discharges was generally good. Most involuntary discharges had been properly processed and the principles of procedural fairness had been met. Records of involuntary discharges were being properly maintained and recorded on PMKeyS CRTS.
- **Redress of grievance (ROG).** Audited units were aware of and generally complied with the requirements of DI(G) PERS 34–1 *Redress of Grievance—Tri-Service procedures* of 08 Sep 10. Unit processing of the respective cases was IAW the checklist provided in the Defence Instruction. Separate corporate files were normally raised for each redress. Complainants were generally provided with regular written updates on the progress of their grievances. Audited units normally confirmed with the complainant that he or she was satisfied with the outcome of his or her ROG IAW para 26 of Annex C to DI(G) PERS 34–1 *Redress of Grievance—Tri-Service procedures* of 08 Sep 10. The Complaints Resolution Agency was normally being kept informed of the progress of ROGs.
- **Suicidal episodes.** Audited units were aware of and generally complied with the requirements of DI(G) PERS 16–26 *Management of a suicidal episode in the Australian Defence Force* of 31 May 13. While not mandatory, units should develop a standing instruction or directive on the management of suicide or self-harm episodes, which details local arrangements and contacts.
- **Alcohol testing.** Audited units were aware of and generally complied with the requirements of DI(G) PERS 15–1 *Misuse of Alcohol in the Defence Force* of 24 Oct 80, DI(G) PERS 15–4 *Alcohol testing in the Australian Defence Force* of 14 Nov 03, DI(N) PERS 31–9 *Management of alcohol and the prevention and management of alcohol abuse in the Royal Australian Navy* of 16 Apr 02, DI(N) PERS 31–51 *Alcohol testing in the Royal Australian Navy* of 12 Dec 03, DI(A) PERS 66–1 *Alcohol use and the management of alcohol misuse in the Army* of 18 Jul 94, DI(A) PERS 66–7 *Alcohol Testing in the Australian Army* of 31 May 06, CA Directive 07/06 *Alcohol Testing in the Army* of 1 Jun 06, DI(AF) PERS 04–14 *The use and abuse of alcohol in the RAAF* 21 Aug 92, and DI(AF) PERS 04–25 *Alcohol testing in the Air Force* of 21 Aug 92 respectively. Alcohol testing arrangements were generally satisfactory and audited units had

achieved the annual testing target of 10 per cent of unit strength. Alcohol testing was normally conducted randomly across all ranks and alcohol testing results had been entered in PMKeyS. Safety critical areas had normally been promulgated. However, units should ensure alcohol testing is conducted more frequently of smaller numbers to increase its deterrent effect.

- **Prohibited Substance Testing (PST).** Audited units were aware of and generally complied with the requirements of DI(G) PERS 15–5 *Management of the use or involvement with prohibited substances in the Australian Defence Force* of 03 Apr 11, DI(N) PERS 13–1 *Illegal use of drugs and drug education in the Royal Australian Navy* of 29 Jun 05, and CA Directive 44/13 *Prohibited substance testing program* of 06 Sep 13 respectively. PST arrangements are generally satisfactory and audited units had achieved the annual testing target of 25 per cent of unit strength. PST was conducted randomly across all ranks. PST results were recorded on PMkeyS. However, units should ensure PST is conducted more frequently in smaller numbers to increase its deterrent effect.

### **Focus group discussions**

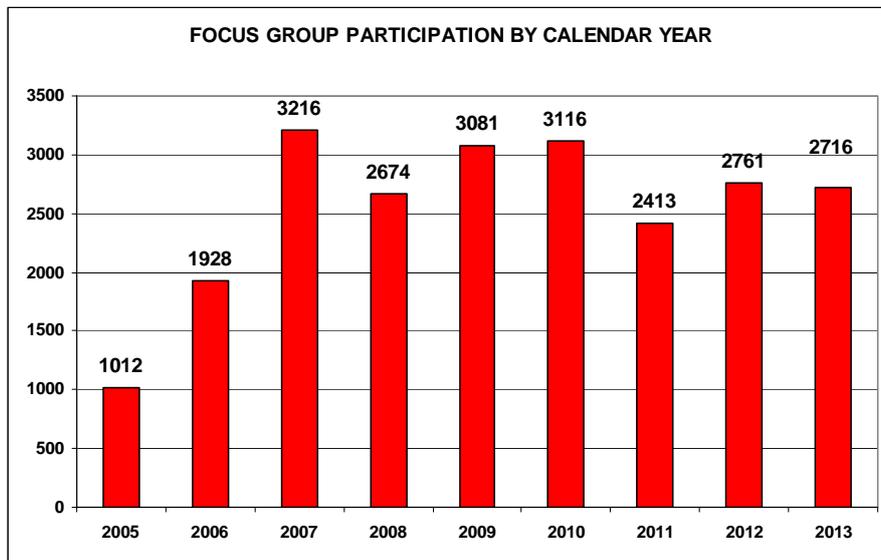
Focus group discussions and analysis of survey responses were useful indicators of the effectiveness of the ADF's military justice system within units. Given most participants are not complainants; their perceptions provide a valid alternate view to that of persons whose perceived adverse experiences with the military justice system are sometimes extrapolated to portray a generalised picture of the system that is not necessarily accurate. Focus group discussions were grouped by rank and gender when appropriate. To encourage open and candid comment, the following information is provided to participants prior to focus group discussions:

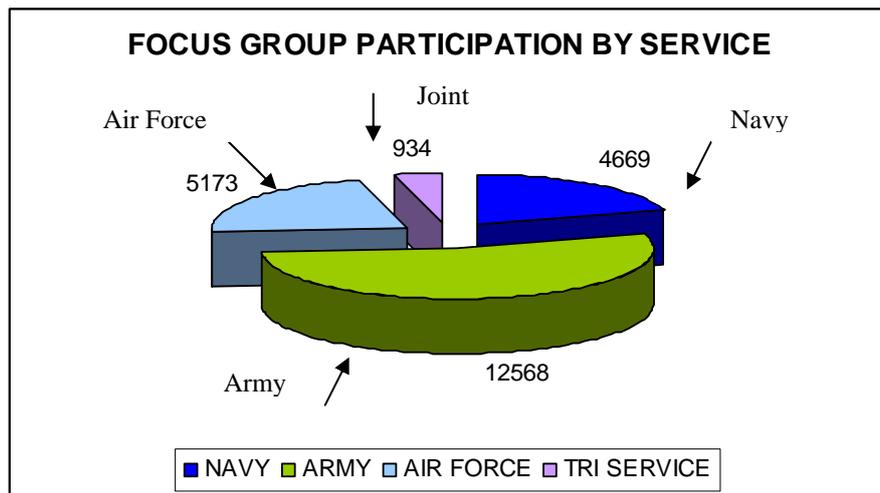
- The context of focus group discussions as part of the audit program (including the fact that focus groups are routine, are conducted by rank and that over 23 000 ADF personnel have participated since 2004) is explained.
- That the information being sought during focus group discussions and completion of the military justice survey is information concerning the military justice system in the unit over the past 12 months.
- That participation in focus group discussions and completion of the military justice survey is encouraged, but entirely voluntary. It is explained to participants that while they are encouraged to do so, there is no obligation to take part in either and if they choose not to participate there will be no detriment to their career for deciding not to participate.
- That comments will be treated anonymously and will not be reported back to the CO or chain of command in such a way

that it would be possible to identify any focus group participant. Participants are requested not to repeat comments of other participants outside the focus group in order to ensure anonymity and confidentiality.

- An exception is explained that if participants raise an issue that is a notifiable incident (see *DI(G)PERS 45-2 Reporting and management of notifiable incidents*) or public interest disclosure (see *Public Interest Disclosure Act 2013*) the matter may have to be reported to the chain of command for appropriate action to be taken to deal with the situation.
- Another exception is explained that for safety reasons any discussion concerning actual or intended self-harm will need to be reported to the chain of command to enable appropriate action to be taken.
- That focus group facilitators can be approached at the conclusion of the focus group discussion or participants can contact IGADF on 1800 688 042 or email IGADF at [ig.adf@defence.gov.au](mailto:ig.adf@defence.gov.au) if participants would like to raise or discuss issues of concern in private.

In 2013, 2716 ADF personnel, or approximately five per cent of ADF personnel, participated in focus group discussions raising the total number of focus group participants to 23 344 since the pilot program first commenced in 2004. The charts below are illustrative.





### Focus group discussion outcomes

Focus group discussion outcomes for CY2013 are set out below. Experience has shown that IGADF audit focus group responses in some areas have traditionally been more positive than similar questions put in online surveys. This may be due to a greater level of explanation about military justice terminology being given to participants in face to face focus group discussion than is possible within online approaches.

- **Peer group discipline.** The vast majority of participants reported that constructive criticism or feedback was provided to peers to correct their behaviour, performance or standards. Participants believed that such criticism or feedback was both productive and healthy.
- **Corrective training.** Many participants advised that corrective training was given to remediate deficiencies in individual behaviour, performance and standards. As a general rule, participants understood the need to ensure that any corrective training should relate to the deficiency in behaviour, performance or standards that was to be remediated, that any corrective training given should not be excessive in relation to the deficiency to be remediated, and that group training should not be given to remediate individual deficiencies. Supervisors would normally give a person an opportunity to explain themselves prior to giving corrective training. However, it would be beneficial if all units raised a corrective training register to monitor the corrective training system. ADF wide policy guidance on the administration and application of corrective training is long overdue and is expected to be introduced in 2014.
- **Discipline training.** Many participants in Air Force and reserve units stated they did not believe they had received an appropriate level of DFDA training to perform their disciplinary function. Some participants who stated they did not have adequate training to perform their

disciplinary role advised they knew who to contact or where to obtain information to assist them to perform that role. Most participants stated that *just in time* training was preferable to *continuation training* where the incidence of disciplinary action within a unit was low. IGADF made a number of suggestions to conduct general DFDA training to inform personnel of their basic rights and responsibilities under the DFDA and to conduct specialised DFDA training to train relevant personnel to perform their DFDA roles, functions and responsibilities.

- **Discipline investigations.** Participants were generally unaware or unsure about their rights and responsibilities under the DFDA. However, participants were reasonably confident they would be informed about their rights and responsibilities if they were the subject of a disciplinary investigation. Most participants were confident they would not be pressured to give up their rights during the conduct of an investigation.
- **Discipline Officer scheme.** Participants were generally aware of the Discipline Officer scheme. Focus group facilitators noted that while relevant officers within the audited units had been authorised to issue infringement notices, most of those individuals who had been authorised were not informed of their appointment or had not received adequate training to perform their role.
- **Summary proceedings.** Most participants believed they would be treated fairly and impartially if they were the subject of a summary proceeding. The majority of participants did not believe they would be encouraged or pressured to plead guilty and most participants believed they would be presumed innocent until proven guilty.
- **QAs.** Participants were generally aware of the purpose of a quick assessment to identify basic facts and make a recommendation to the CO about how to deal with a situation. Most participants were aware that findings should not be made against individuals during the conduct of a quick assessment. Most participants were confident they would be treated fairly and impartially if they were the subject of a quick assessment. The idea that a QA should not be used as a de facto mini inquiry must however continue to be emphasised.
- **Administrative inquiries.** Most participants were aware of the purpose of an administrative inquiry to establish facts and to potentially make adverse findings against individuals. Most participants were confident they would be afforded procedural fairness if potentially adverse findings were to be made against them. Participants were also confident their chain of command would provide support to both the complainant and any respondent, that they would receive timely and adequate feedback and that they would be treated fairly and impartially if they were the subject of an administrative inquiry.

- **Administrative sanctions.** Participants were aware of the purpose of an administrative sanction to correct the conduct, behaviour or standards of an individual or to protect the reputation of the ADF. Most participants were confident they would be afforded procedural fairness before a decision was made to impose an administrative sanction against them. Participants were also confident they would be treated fairly and impartially if an administrative sanction was to be imposed on them and that any decision-maker would fairly consider any response made by them and make an impartial decision whether to impose an administrative sanction.
- **Complaint handling.** Participants generally had a good understanding of their complaint avenues both within and external to the unit. The overwhelming majority of participants were aware of the Defence policy to resolve complaints at the lowest level and through the chain of command in the first instance, where possible. Participants also had a good understanding of the methods within Defence to resolve complaints. Participants stated that while they believed the chain of command would be disappointed if they made a complaint to an external complaint handling agency they did not believe they would be the subject of retaliation or retribution from the chain of command for doing so. Participants did not believe they would be inappropriately discouraged from making a complaint and were confident the chain of command would provide support to both the complainant and any respondent during the complaint handling process. Most participants had confidence in the chain of command to resolve complaints.
- **Workplace bullying and harassment.** Participants were confident the chain of command would not avoid the military justice system and use unacceptable or inappropriate methods to maintain and enforce discipline. Participants also understood the difference between workplace bullying and harassment and the right of commanders, managers and supervisors to give appropriate orders and directions. Participants did not believe they would be the subject of retaliation or retribution if they made a complaint of workplace bullying or harassment. Participants were confident that commanders, managers and supervisors would take appropriate action to deal with complaints or incidents of workplace bullying or harassment. Participants were not aware of the existence of any initiation ceremonies used to degrade, assault or otherwise humiliate individuals.
- **Equity and diversity.** The majority of participants were not aware of any detrimental or preferential treatment of individuals based on rank, gender, race, religion, category, trade, sexual orientation or sexual preference. Participants said they were not aware of individuals being ostracised, segregated or not otherwise included because of any perceived or actual differences. Participants stated that all individuals are supported and mentored to perform their roles and responsibilities. Participants said that the unit provided appropriate opportunities to access flexible working arrangements.

- **Sexual misconduct including sexual offences.** Participants were confident the chain of command would take appropriate action if they became aware of an incident or complaint of sexual misconduct including sexual offences.
- **Unhealthy *macho* culture.** Most participants indicated they were not aware of the existence of an unhealthy *macho* culture where persons with dominant personality types bullied or harassed other individuals.
- **Culture of silence and mutual protection.** Most participants indicated they were not aware of a culture of silence and mutual protection where persons with dominant personality types ensure that incidents of unacceptable or inappropriate behaviour are covered up and not reported to the chain of command.
- **Anti-social behaviour.** The overwhelming majority of participants indicated they were not aware of the existence of a culture of anti-social behaviour occurring either on or off base.
- **Alcohol testing.** A large number of participants indicated they had been alcohol tested during the review period. They stated that alcohol testing was conducted randomly across all ranks and that they could not predict when alcohol testing was to be conducted. The majority of participants were aware of the safety critical areas within the unit.
- **Prohibited substance testing.** A large percentage of participants indicated they had been drug tested during the review period. Participants stated that prohibited substance testing was conducted randomly across all ranks. They also said they could not predict when prohibited substance testing was to be conducted. The majority of participants said they would report an individual if they were aware that person was using illegal substances, others said they would approach the member first and inform them that if they did not self report they would report them. Most participants said they would definitely report a member if safety was an issue.
- **Social media.** The overwhelming majority of participants indicated they were aware of the requirements in DI(G) ADMIN 08–2 *Use of social media by Defence personnel* of 16 Jan 13.
- **Medical rehabilitation.** Participants said that members undergoing medical rehabilitation or psychological treatment are treated fairly and well supported by the chain of command. Most participants said that injured personnel are not encouraged or persuaded to work beyond their medical restrictions. Participants also indicated that injured personnel might be the subject of banter, but they were not generally ostracised by their peers. Participants indicated that it was better to retain injured personnel within the unit and provided those individuals had a good attitude and worked within their restrictions they were respected.

- **Legal advice.** The majority of participants knew how to obtain legal advice if required.
- **Morale.** Most participants stated that morale in the unit was good. However, in those units where morale was poor there were good reasons why this may have been the case, including excessive workloads, restructures, a lack of human or other resources. No participants raised the fact that poor morale was due to military justice problems.

### **Military justice survey outcomes**

It should be noted that the military justice survey was designed primarily as a management tool for IGADF to assess, over time, emerging changes in perceptions aggregated by Service. At individual unit level survey results can only be interpreted as diagnostic information deserving further study wherever response rates diverge significantly from Service averages. Results of the CY2013 military justice survey were compared with the results in CY2012 and the following outcomes were revealed:

#### **Positives**

- A greater percentage of participants than in CY2012 believed the DFDA was an effective tool for the maintenance and enforcement of service discipline.
- A greater percentage of participants than in CY2012 believed they had received adequate training to discharge their DFDA responsibilities.
- A greater percentage of participants than in CY2012 believed the complexity of the DFDA does not discourage individuals from laying charges.
- A greater percentage of participants than in CY2012 believed that processes involved in trying offences do not take too long.
- A greater percentage of participants than in CY2012 believed that disciplinary processes in their unit were fairly and consistently applied.
- A smaller percentage of participants than in CY2012 believed that members are pressured or encouraged to plead guilty during disciplinary proceedings.
- A greater percentage of participants than in CY2012 believed that members found guilty were in fact guilty.

- A greater percentage of participants than in CY2012 understood the concept of procedural fairness.
- A greater percentage of participants than in CY2012 believed that members subject to adverse administrative action are treated fairly.
- A smaller percentage of participants than in CY2012 believed that adverse administrative action takes too long.
- A greater percentage of participants than in CY2012 were aware of the avenues of complaint available to them.
- A greater percentage of participants than in CY2012 knew how to lodge an application for redress of grievance.
- A greater percentage of participants than in CY2012 believed the chain of command would support them if they approached a complaint hotline.
- A greater percentage of participants than in CY2012 believed that complaints made to the chain of command are dealt with fairly and impartially (Note: 96 per cent of participants believed complaints made to the chain of command would be dealt with fairly and impartially).
- A smaller percentage of participants than in CY2012 had witnessed or experienced workplace bullying or harassment (Note: only 15 per cent of participants indicated they had witnessed or experienced workplace bullying or harassment. Down five per cent since CY2012).
- A greater percentage of participants than in CY2012 knew how to obtain advice or information about unacceptable behaviour.
- A greater percentage of participants than in CY2012 believed that appropriate action would be taken if they reported an incident of unacceptable behaviour (Note: 97 per cent of participants believed appropriate action would be taken if they reported an incident of unacceptable behaviour).
- A greater percentage of participants than in CY2012 believed all ranks are treated equitably under the military justice system.
- A greater percentage of participants than in CY2012 believed that both genders are treated equitably under the military justice system (Note: 96 per cent of participants believed both genders are treated equitably. Comments from focus group discussions revealed that supervisors, managers and commanders tend to be more lenient with females when it comes to taking action to correct their behaviour, conduct or standards).

- A smaller percentage of participants than in CY2012 believed their working hours were excessive.
- A greater percentage of participants than in CY2012 believed personality conflicts are well managed.
- A greater percentage of participants than in CY2012 believed members with personal problems are well managed.
- A greater percentage of participants than in CY2012 were proud to be a member of their unit.
- A greater percentage of participants than in CY2012 believed that morale in their unit was good.
- A greater percentage of participants than in CY2012 had confidence in their officers, warrant officers and senior non-commissioned officers.
- A greater percentage of participants than in CY2012 are satisfied with unit administration.
- A greater percentage of participants than in CY2012 believed the alcohol testing program is effective in reducing abuse or misuse.
- A greater percentage of participants than in CY2012 believed drug testing is an effective deterrent.
- A greater percentage of participants than in CY2012 believed that support to families while a member was deployed was good.
- A smaller percentage of participants than in CY2012 believed that the duration and frequency of exercises and deployments was having a negative impact on their private and family life.
- A smaller percentage of participants than in CY2012 believe they lack the equipment required to perform well on operations.

### **Negatives**

- A greater percentage of participants than in CY2012 believed the processes involved in investigating offences takes too long (Note: 35 per cent of participants indicated that processes involved in investigating offences takes too long).
- A greater percentage of participants than in CY2012 believed redresses of grievance are not resolved promptly (Note: 14 per cent of participants indicated that redresses of grievance are not resolved promptly).

- A greater percentage of participants than in CY2012 believed their workload was excessive (Note: 27 per cent of participants believed their workload was excessive).
- A greater percentage of participants than in CY2012 believed there were insufficient people to perform the work required (Note: 43 per cent of participants believed there were insufficient people to perform the work required).

Survey outcomes indicate a stronger endorsement and confidence in the military justice system and the chain of command to take action to resolve military justice problems. There is also strong evidence to indicate that incremental cultural change is occurring within the ADF.

### **Continuous improvement**

Following the introduction of the Defence *Pathway to Change—Evolving Defence Culture* of 2012, IGADF had the opportunity towards the end of 2013 to review the military justice survey and focus group discussion questions used during the audit process. The survey and those questions have since been amended to better reflect the issues identified in *Pathway to Change: Evolving Defence Culture*, including in particular, the introduction of SeMPRO, the focus on sexual misconduct including sexual offences, issues dealing with workplace bullying and harassment, equity and diversity and the introduction of the *Public Interest Disclose Scheme* for 2014.

### **Online military justice attitude survey**

Part of the IGADF's role includes monitoring the health and effectiveness of the ADF military justice system with a view to identifying and examining any shortcomings and recommending improvements. In addition to data gathered by the IGADF unit military justice audit program, the IGADF also sponsors an online Military Justice Attitude Survey (MJAS), which was first launched in 2011.

This survey, however, was not conducted in 2013 due to conflicting schedules with the *Whole of Defence 2013 Unacceptable Behaviour Survey*. IGADF took the opportunity to evolve the questions administered on the MJAS to better reflect the issues identified in *Pathway to Change - Evolving Defence Culture*, including in particular, the introduction of the SeMPRO hotline, the focus on sexual assault, misconduct and abuse, issues dealing with workplace bullying and harassment and equity and diversity.

An application seeking approval to amend the questions on the MJAS was submitted to the Australian Defence Health Research Ethics Committee (ADHREC) on 01 November 2013 for inclusion and consideration at ADHREC's final meeting of the year which was held on 02 December 2013. The intent is to conduct the annual MJAS in early 2014.

The information collected from surveys such as the annual MJAS provides a critical and valuable opportunity to have a significant portion of the ADF community's perceptions and opinions recorded so that current policies, processes, practices and procedures may be reviewed and modified wherever it is deemed necessary and appropriate.

### **Own motion review**

During 2013 OIGADF was also able to conduct an own motion review into the Defence Equity and Diversity (E&D) program. The genesis of the E&D own motion review stemmed from the conduct of an IGADF 2011 review into the *Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction*, which was one of the cultural reviews undertaken in response to the Skype incident. Among other things the Complaints Review examined unacceptable behaviour in Defence and found that;

- a. only one-third of individuals who had made an unacceptable behaviour complaint had been provided sufficient support to deal with the affects of that behaviour on them or the stress and anxiety associated with the inquiry into or investigation of that behaviour;
- b. only one-half of individuals who were named as respondents in complaints of unacceptable behaviour were provided with sufficient support to deal with the stress and anxiety associated with the inquiry into or investigation of their alleged behaviour; and
- c. there were a number of policy inconsistencies concerning the resolution of incidents at the lowest possible level using the chain of command in the first instance and the imposition of initial administrative action following a complaint. This initial administrative action included such things as administrative suspension from duty or removal from office or locality pending the outcomes of an inquiry or investigation.

As a consequence of these findings IGADF decided to conduct an own motion review of the Defence E&D program, particularly in relation to the role and function of Equity Advisers.. In order to assess the effectiveness of the program, the review was conducted in the following three phases:

- a. assess the efficiency and effectiveness of:
  - (1) equity adviser (EA) policy, practices and procedures,
  - (2) EA training, education and development, and
  - (3) annual mandatory training.

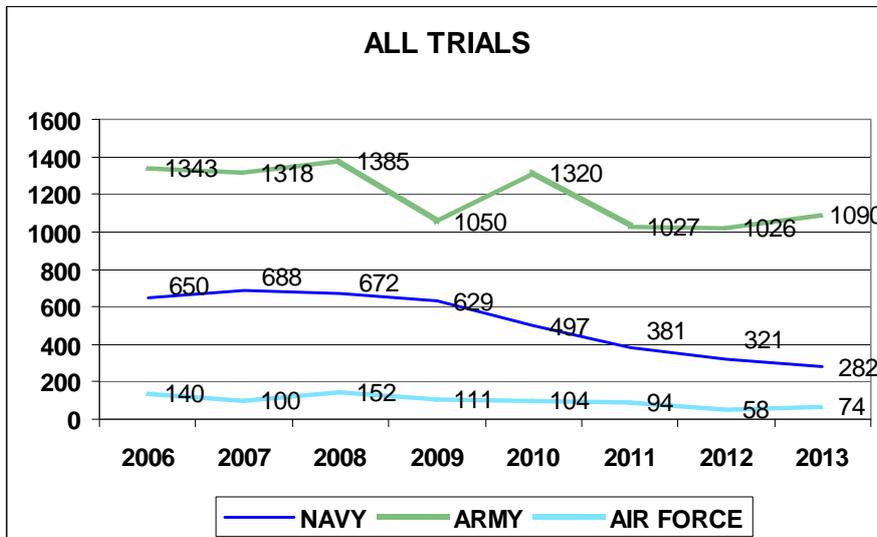
- b. assess the appropriateness of the current approach to EA training and education and mandatory training; and
- c. compare the ADF's EA and mandatory training with similar programs in selected industries and countries.

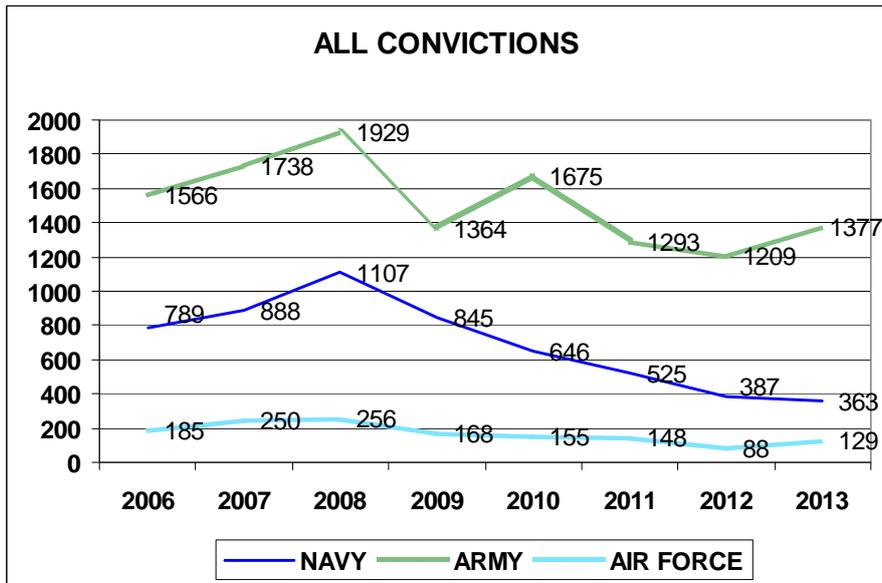
The review was ongoing at the end of the reporting period with the aim of completion by the end of FY2014.

**Military discipline statistics and analysis**

The relatively low offending rates witnessed over the past two years continued in 2013. Combined trials for all three Services have remained relatively steady over the last three years with 1502 in 2011, 1405 in 2012 and 1446 in 2013. Combined convictions for the three Services followed a similar trend with 1966 in 2011, 1684 in 2012 and 1869 in 2013. Overall the number of trials increased by almost three per cent, while convictions increased by almost 11 per cent.

IGADF continues to observe improvements in the quality of discipline data being reported and subsequently captured in PMKeyS Conduct Recording and Tracking System (CRTS). The timely and accurate recording of this information allows IGADF to provide statistical data and analysis to command about discipline trends, including recommendations to enhance or improve the discipline system or to respond to media enquiries. Recent trial and conviction trends are illustrated below.





The downward trend in summary trials and convictions reported in past years did not continue in 2013, with a small increase of three per cent and 11 per cent respectively. The number of summary trials increased from 1354 to 1403, while the number of convictions increased from 1684 to 1794. Despite this increase, the number of summary trials in the CY 2013 was well below the all time highs of 3406 and 4161, recorded in 2001 and 2002 respectively.

During 2013 there was a significant increase of 22% in minor disciplinary infringements reaching an all time high of 5383. Navy had a minor increase of 7 per cent, Army a moderate increase of 25 per cent and Air Force a substantial increase of 67 per cent. The increase is assessed as not being due to an increase in poor behaviour, but greater resolve by commanders to take action to deal with minor indiscretions following *Pathway to Change: Evolving Defence Culture 2012*.

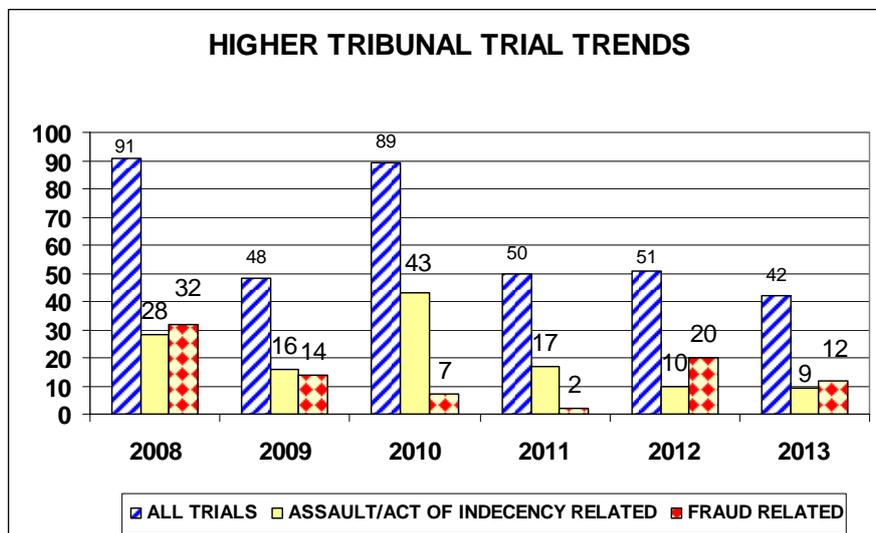
The time taken to investigate alleged offences at unit level averaged 24 calendar days and charges were brought to trial within an additional 22 days. As observed in previous years, this is well within the requirement in section 129D of the DFDA to commence a trial within three months following an accused person being charged with a service offence. While this level of performance appears to conflict with perceptions recorded in focus group surveys, where 35 per cent of respondents believe investigations take too long and 30 per cent believe bringing matters to trial takes too long, the most likely explanation is that most focus group respondents would not have had any direct experience with the disciplinary process and hence their opinions are likely to be based largely on anecdotal evidence. This does not, however, mean those views should necessarily be discounted as they may also indicate an underlying perception by many ADF members that the disciplinary system is too

complex and legalistic. Additionally, such perceptions may also be influenced by years of ongoing uncertainty in the future of the discipline system due to constant review and projected amendments to discipline law, policy, practices and procedures. In order for confidence in the system to grow there is a need to ensure the system is easy to use and the law, policy, practices and procedures remain as stable as possible once the way forward has been agreed.

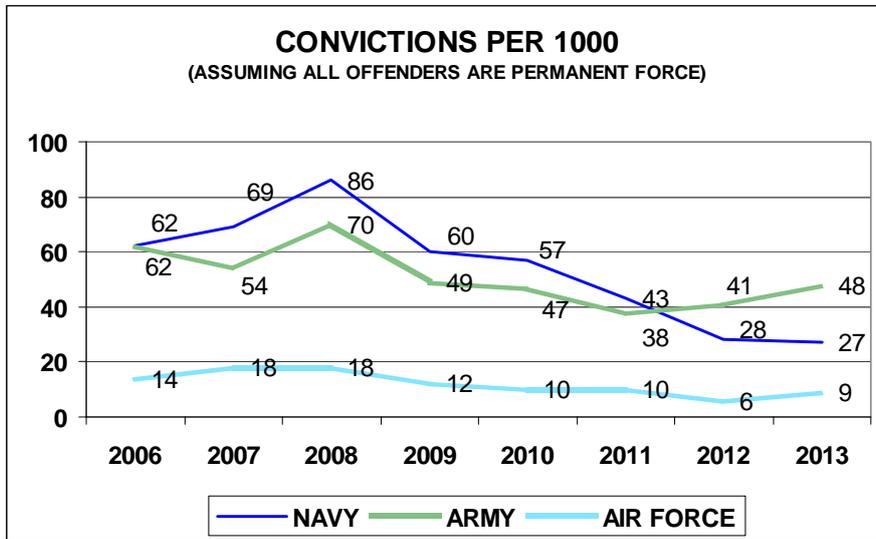
As in previous years, absence offences, insubordinate conduct, disobeying a lawful command, failing to comply with a general order, assault and acts of indecency, weapon offences and prejudicial conduct formed the majority of convictions as illustrated in the table below.

Offence	2009	2010	2011	2012	2013
Absence from duty/without leave	549	548	357	311	320
Insubordinate conduct	132	114	114	112	84
Disobeying a lawful command	188	200	141	127	138
Failing to comply with a general order	620	633	547	470	517
Assault and acts of indecency	106	122	84	71	45
Weapon discharge	208	219	184	180	205
Prejudicial conduct	247	288	237	221	241
<b>Total</b>	<b>2050</b>	<b>2124</b>	<b>1664</b>	<b>1492</b>	<b>1550</b>
<b>Percentage of all convictions</b>	<b>86</b>	<b>86</b>	<b>85</b>	<b>89</b>	<b>86</b>

The number of Defence Force Magistrate (DFM) trials and courts martial declined to 42 in 2013, the lowest level recorded in the past seven years. In 2012 fraud replaced assault and acts of indecency as the most common offences for the first time in three years. This was again the trend in 2013, with fraud accounting for 12 trials and assaults and acts of indecency accounting for nine trials. Recent trends are illustrated below.

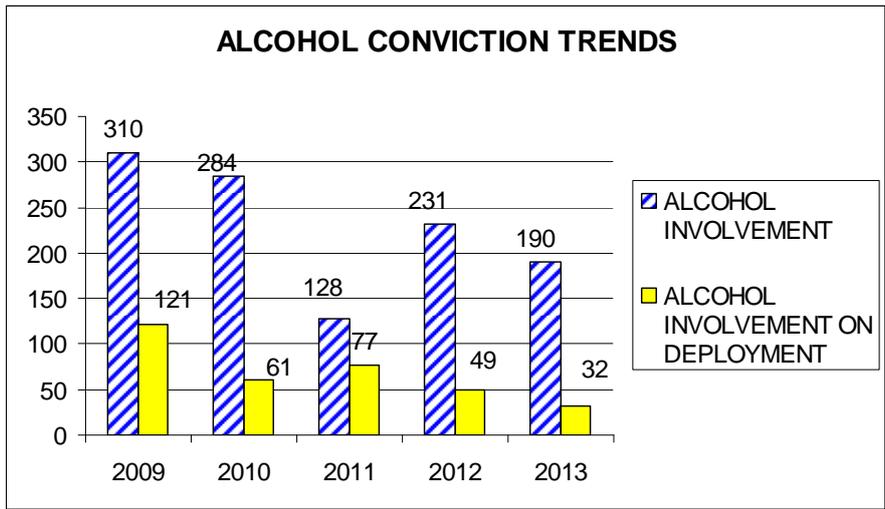


In 2013 the conviction rates per 1000 permanent members increased for Army and Air Force, while Navy figures slightly decreased. These trends are shown below.

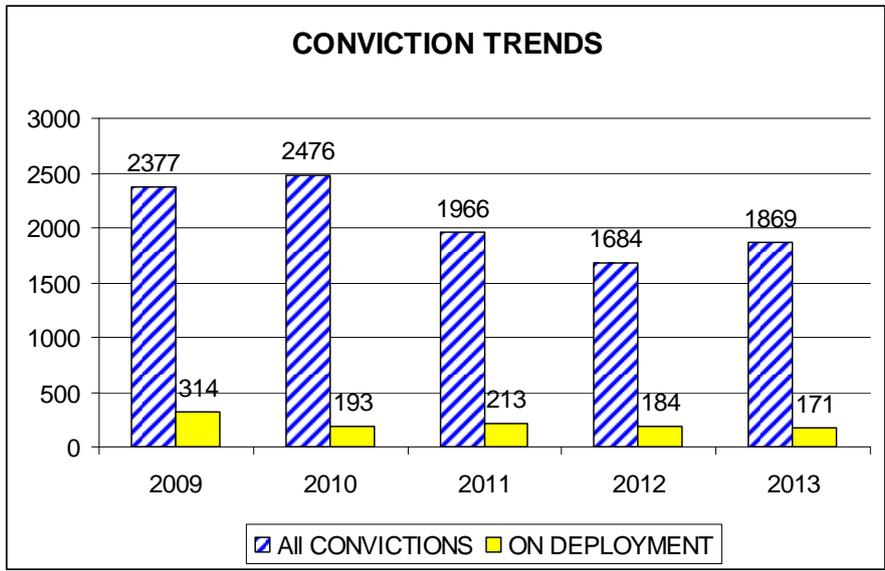


Disciplinary convictions where the misuse of alcohol was a contributing factor (excluding alcohol misuse on deployment) decreased by 17 per cent in 2013, varying the trend witnessed over the past four years. However, this was to some degree offset by a nine per cent increase in administrative sanctions for misuse of alcohol. The overall decrease in disciplinary or administrative action was likely the result of the emphasis given to alcohol abuse/misuse and alcohol related antisocial behaviour by commanders following the introduction of *Pathway to Change: Evolving Defence Culture* of 2012.

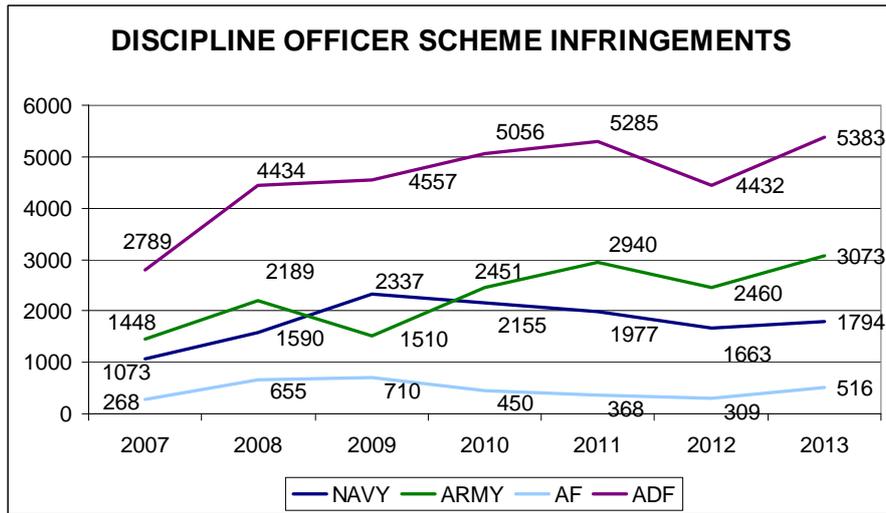
Disciplinary convictions for alcohol related offences committed on deployment have also steadily decreased. Again this trend is likely to have been influenced by implementation of *Pathway to Change: Evolving Defence Culture* of 2012 and the reduction in operational tempo during 2013. Alcohol related conviction trends are shown below.



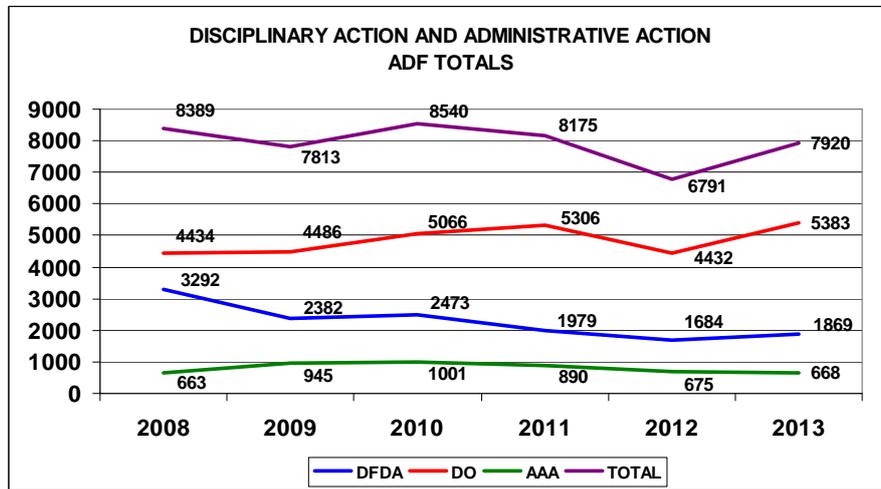
In 2013 the percentage of deployment related convictions decreased compared with overall conviction rates, which is most likely due to the reduction in operational tempo.



The 16 per cent decrease in disciplinary infringements witnessed in 2012 was reversed in 2013 with an increase of almost 22 per cent. Air Force dominated the reversal with 67 per cent, followed by Army with 25 per cent and then Navy with 7 per cent. Total infringements reached 5383 in 2013. One plausible explanation for the significant increase in Air Force infringement numbers could be a change in approach amongst Air Force units to lessen the use of Records of Conversations as a formal sanction for minor offences and instead use the discipline officer scheme. The graph below illustrates long term trends.



The number of summary convictions, discipline officer infringements and administrative sanctions is illustrated below.



The fairness and transparency of the discipline system was evident in 2013 with one hundred and forty-nine charges resulting in a not guilty finding at the summary level and a further 46 were quashed on review. At the higher tribunal level, 42 trials were conducted and 22 accused persons pleaded not guilty to some or all of the charges against them. Of those persons who pleaded not guilty all were subsequently found not guilty or had the charges against them dismissed. The belief expressed by some people that members are encouraged or are pressured to plead guilty or that persons found guilty are not in fact guilty was not reflected in the military justice survey results.

## **CRTS Reporting**

Timely, complete and accurate data capture continues to be essential for IGADF and the ADF as a whole. Despite considerable improvement in recent years, delays were again experienced in 2013 particularly in the capture of matters dealt with by higher tribunals by the accused person's unit. By the end of the reporting period 17 per cent of higher tribunal outcomes had not been entered into CRTS.

## **Adverse administrative action statistics and analysis**

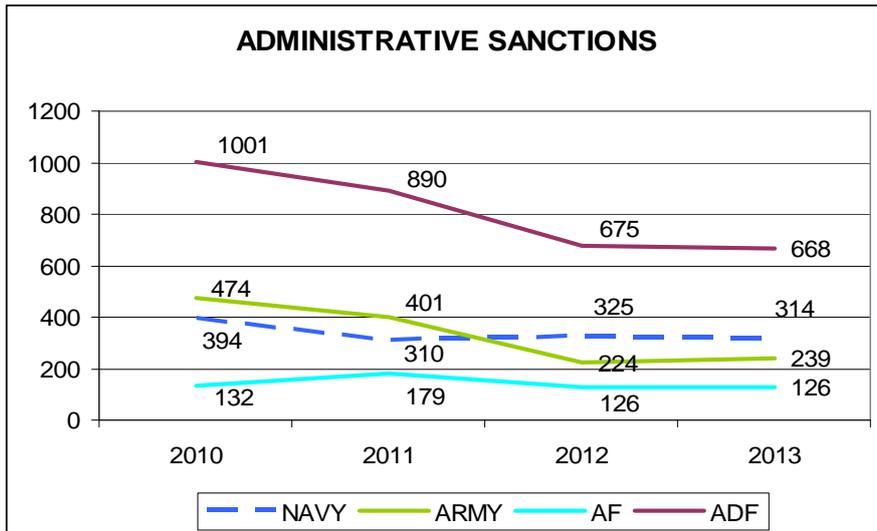
While formal disciplinary action is the usual means whereby alleged offences in contravention of the DFDA are investigated and tried, adverse administrative action is designed to correct inappropriate or unacceptable behaviour, performance or standards or to protect the reputation of the ADF by terminating the services of a member who has behaved in such a way that their retention is no longer in the interests of the ADF or by application of other administrative sanctions. These responses to misconduct are complementary and share a number of common characteristics, including that they:

- both have an adverse impact on an ADF member's career;
- both require that impartiality and fairness be afforded to ADF members whose careers may potentially be adversely affected by the outcome;
- both are intended to ensure the maintenance of proper conduct, behaviour, performance and standards which is important for operational effectiveness; and
- both may be applied independently.

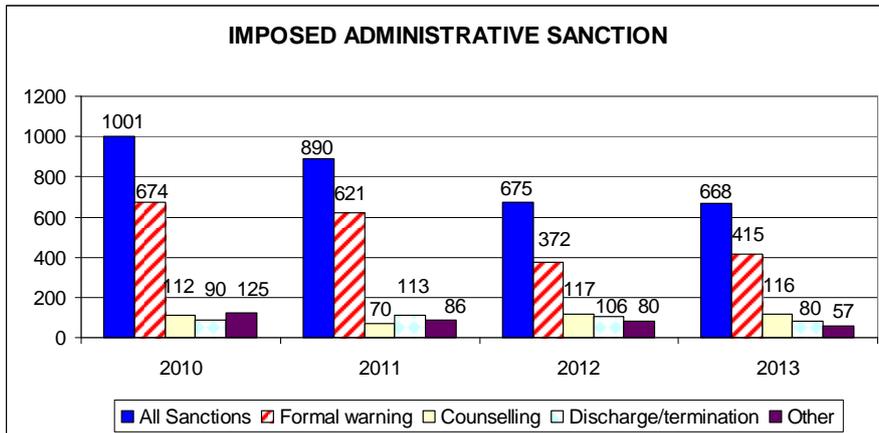
Adverse administrative action includes, but is not limited to formal warnings, censures, termination of service, reduction in rank, removal from an appointment or locality, denial or delay of promotion or revocation of provisional promotion, loss of security clearance and change of employment category.

Like other elements of the administrative system, effective adverse administrative action procedures requires good record-keeping practices and the expertise of experienced administrative officers, personnel officers and legal officers if successful challenges to outcomes are to be avoided

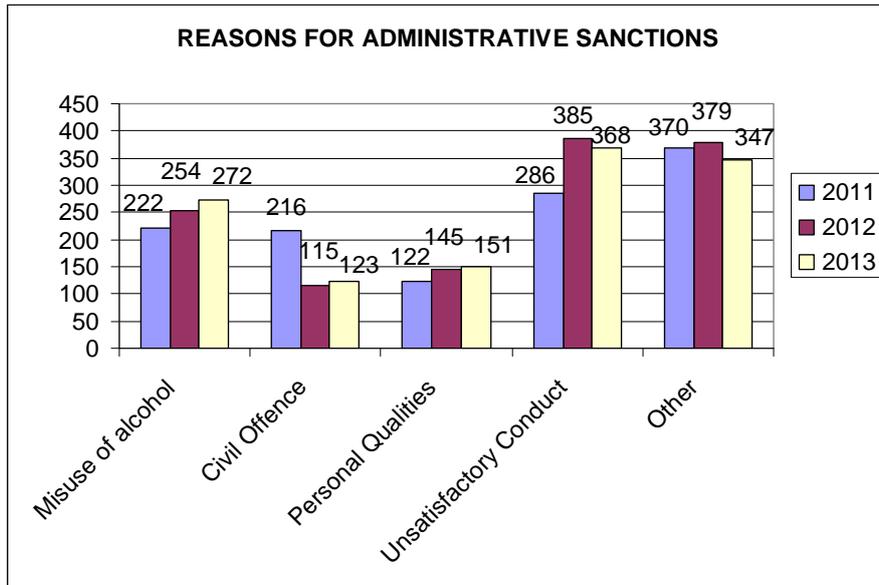
The reduction in the use of adverse administrative action seen since 2010 ceased in 2013 with rates being comparable to that of 2012.



Of the 668 sanctions imposed, formal warnings 415 (62 per cent), counselling 116 (17 per cent) and terminations 80 (12 per cent) continue to be the most common.



The main reasons for the imposition of administrative sanctions continued to be for unsatisfactory conduct (29 per cent) and the misuse of alcohol (21 per cent) or an increase of approximately nine per cent which slightly offset the decrease in disciplinary action taken for the misuse of alcohol.



PMKeyS CRTS data confirms that the notice to show cause statement of reasons process continues to be uniformly followed. This supports focus group survey results which indicate that only four per cent of respondents believe that ADF members subject to adverse administrative action are treated unfairly.

#### Administrative inquiries statistics and analysis

IGADF sponsors the ADF Administrative Inquiries Tracking System (ADFAITS) as the primary ADF-wide management tool for the capture of information concerning administrative inquiries. IGADF continues to monitor and develop ADFAITS to ensure that the system satisfies user requirements and provides a repository of information regarding administrative inquiries conducted across the ADF. ADFAITS is currently tracking data of varying quality and completeness associated with inquiries as shown in the table below.

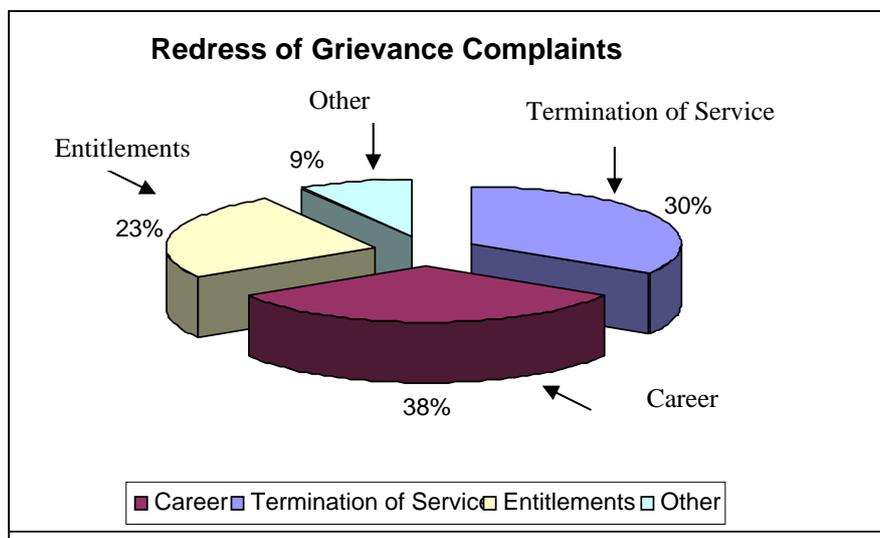
	CDF and Joint units/commands	Navy	Army	Air Force
<b>Inquiry Officer Inquiry</b>	<b>79</b>	<b>156</b>	<b>120</b>	<b>55</b>
<b>Board of Inquiry</b>	<b>9</b>	<b>3</b>	<b>-</b>	<b>-</b>
<b>Commission of Inquiry</b>	<b>28</b>	<b>-</b>	<b>1</b>	<b>-</b>
<b>Total</b>	<b>116</b>	<b>159</b>	<b>121</b>	<b>55</b>

The project to install ADAITS on the Defence Secret Network (DSN) was due to occur in 2013, but has been delayed until 2014 due to complications within CIOG.

### Complaint handling statistics and analysis

The right for members to submit complaints about matters affecting their service is longstanding. According to the 2013 IGADF military justice survey 68 per cent of respondents expressed confidence that complaints made to the chain of command would be treated fairly and impartially.

There were 430 redresses of grievance (ROG) processed in 2013, 310 ROGs were received at unit level and a further 120 were received for staffing to Service Chiefs and CDF. In keeping with the trend of the past three years, the main subjects of complaint in 2013 were career (38 per cent), termination of service (30 per cent), and entitlements (23 per cent).



In 2013 there were 491 ROGs finalised, 347 at unit level and a further 144 at Service Chief or CDF level. Forty-eight per cent of ROGs finalised at unit level were deemed to have no merit and 56 per cent of unit level ROGs were resolved within 90 days.

Only 15 per cent of ROGs referred to the CDF and Service Chiefs were finalised within 90 days. However 64 per cent took longer than six months to be resolved. Similar to recent trends over the past three years, this number is outside the 80 per cent benchmark of cases to be completed within six months of referral. Despite these delays, only 14 per cent of ADF members surveyed as part of IGADF audits expressed the view that ROGs are not resolved promptly. The 90 day benchmark was intended to provide a measure of predictable closure for claimants and demonstrate a systemic determination by Defence to finalise personnel complaints in a timely

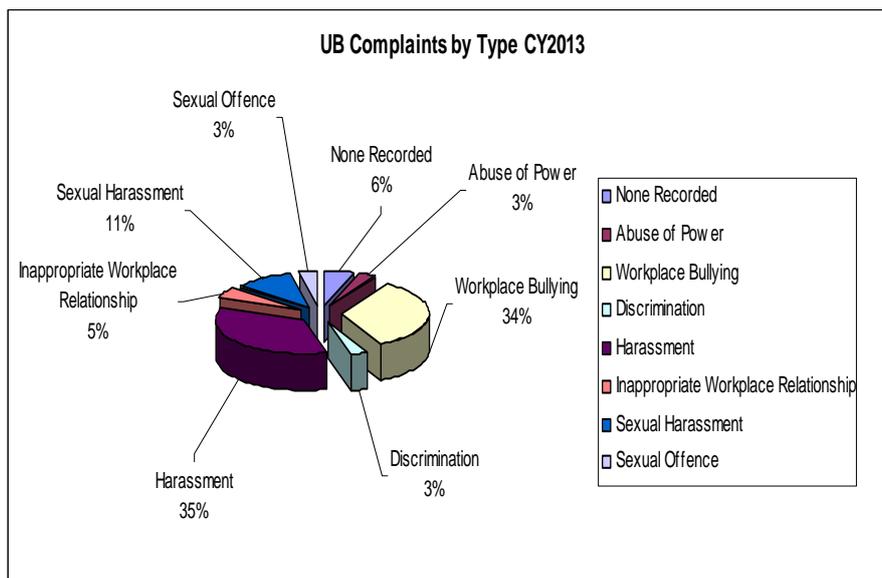
manner. The ability of Defence to action complaints in a timely manner is often taken to be an indicator of the health of the wider military justice system.

Overall for 2013, there was a one per cent increase in the number of complaints received and a two per cent increase in the number of ROGs finalised compared with 2012.

### Unacceptable behaviour statistics and analysis

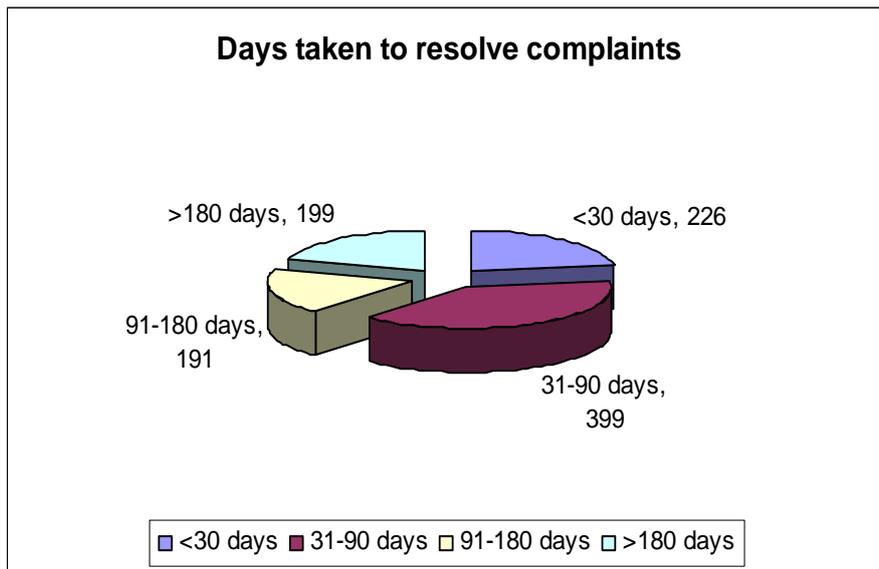
*Defence Instruction (General) PERS 35-3 Management and reporting of unacceptable behaviour* of 28 June 2009 sets out Defence's policy on unacceptable behaviour in the workplace and provides procedures for the management, resolution and reporting of unacceptable behaviour complaints.

There were 299 unacceptable behaviour complaints outstanding at the beginning of the reporting period. A further 829 complaints were submitted during 2013. Of those 829 complaints, 665 (80 per cent) identified an ADF member as the respondent; the remaining 164 complaints identified a Defence APS employee or contractor as the respondent. The most common cause for complaint continued to be harassment (31 per cent) and workplace bullying (33 per cent), which together account for approximately two-thirds of all complaints. The number of sexual harassment complaints recorded for 2013 accounted for almost seven per cent of all complaints. This number has remained fairly consistent over the past four years.



There were 1015 unacceptable behaviour complaints finalised during 2013. Of these, 344 (34 per cent) were related to workplace bullying, a further 330 (33 per cent) related to workplace harassment and 57 (six per cent) related to sexual harassment.

The chart below provides a breakdown of the time taken to resolve the 1015 unacceptable behaviour complaints finalised in 2013. Of those complaints 226 (22 per cent) were resolved in less than 30 days and an additional 399 (39 per cent) within three months. A further 191 (19 per cent) were resolved in less than six months. The remaining 199 (20 per cent) took longer than six months to be resolved. A total of 113 complaints were pending resolution at the end of 2013, a decrease of almost 75 per cent compared with 2012.



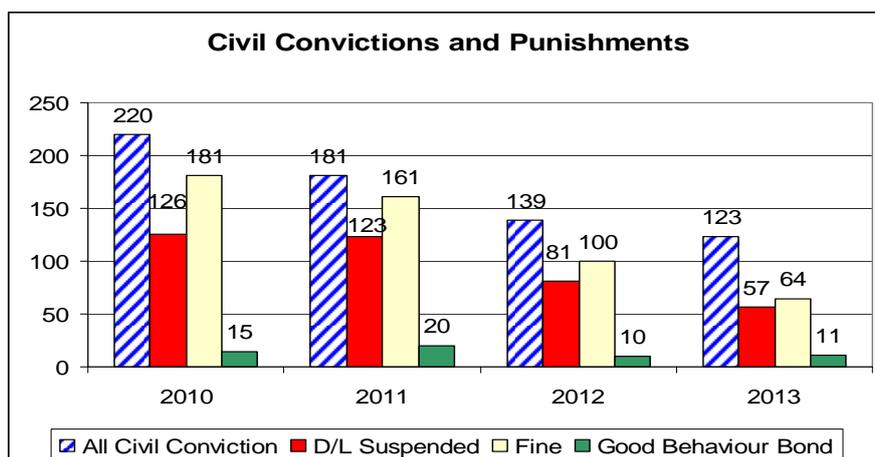
The military justice survey results for 2013 showed that respondents in Air Force had witnessed or experienced the highest rate of workplace bullying and harassment at 21 per cent, followed by Army at 19 per cent and Navy at 17 per cent. IGADF experience is that unacceptable behaviour rates are highest where the military justice system is used least. The IGADF focus group survey result averages over the past three years indicate that workplace bullying and harassment is more likely to occur where less use is made of formal disciplinary or administrative action to deal with unsatisfactory behaviour or misconduct. Survey result averages indicate that perceptions of workplace bullying and harassment appear to be more prevalent in the following regions.

Area Location	Respondents who witnessed and or experienced workplace bullying and or harassment
Amberley	37 per cent
Jervis Bay	36 per cent
Cerberus	34 per cent
Richmond	33 per cent
Sydney CBD	27 per cent
Melbourne CBD	26 per cent
Wagga	25 per cent
Tindal	24 per cent
Townsville/Cairns	23 per cent
Perth	21 per cent
Darwin	20 per cent
Adelaide	20 per cent
Brisbane	19 per cent
Newcastle/Singleton/Tamworth	16 per cent
Hobart	14 per cent
Pilbara	14 per cent
Canberra	14 per cent
Holsworthy	13 per cent
Victoria Region	11 per cent
Toowoomba/Oakey	8 per cent

### Civil Conviction statistics and analysis

Civil conviction rates have been declining over the past three years despite some commentators indicating that ADF civil conviction rates have been increasing due to mental disorders associated with operational deployments.

In relation to punishments imposed by a civil authority, fines 64 (46 per cent) and loss/suspension of drivers licence 57 (41 per cent) remain the most common.



## **ADVISORY FUNCTION**

A primary function of IGADF is to advise on matters concerning the military justice system, including making recommendations for enhancements and improvements. IGADF fulfils this function in the following ways:

- IGADF will often identify systemic weaknesses, flaws or defects in Defence practices, policies and procedures that come to attention as a result of inquiries or military justice audits. These may form the subject of recommendations for improvement to the CDF, Service Chiefs and other appropriate organisations, agencies and authorities within Defence
- By providing input on current or proposed policies, practices or procedures concerning military justice or the operation of the military justice system.
- By providing advice on how best to deal with incidents involving military justice or the operation of the military justice system.
- By providing advice on the procedures involved in or the appropriate way to deal with investigations, prosecutions, summary proceedings, inquiries, sanctions, redresses of grievance and other complaints.
- By participating as a member on a number of advisory boards, committees and working groups concerning military justice and the operation of the military justice system, including the Military Justice Coordination Committee and the Australian Defence Force Investigative Service (ADFIS) Governance Board.
- By acting as a conduit for submissions on means to enhance and improve military justice or the operation of the military justice system.

Specific matters on which IGADF provided advice or opinion in 2013 included submissions in relation to the Re-thinking Investigation, Inquiry, Review and Audit Systems in Defence project, ongoing advice and support in relation to establishment of the SeMPRO, and input to policy documents such as the Complaints and Resolution Manual and the review of a number of Defence Instructions.

## **PROMOTIONAL AND DEVELOPMENT FUNCTION**

To assist with the military justice promotional and developmental aspects of IGADF's functions, a number of training courses/seminars have been developed that address specific aspects of the military justice system. Demand for these training opportunities has remained high. In addition to the long running one-day Inquiry Officer familiarisation course and the two day advanced Inquiry Officer course, IGADF sponsored seminars on Administrative Sanctions, Complaint Handling, and Legal Review of Administrative Inquiries, are also offered for the benefit of permanent and reserve members. Some of these training opportunities are now available online on CAMPUS. Presenters are largely drawn from OIGADF staff

members with up-to-date knowledge and practical experience of these matters.

In 2013, OIGADF conducted 27 training courses at locations around Australia, with some 743 members completing training. Of these, the vast majority attended Inquiry Officer training. A further 1058 undertook the Inquiry Officer familiarisation course on *Campus*. The table below shows a breakdown of attendees across the five courses for 2013.

<b>Title</b>	<b>Number of courses</b>	<b>Number of attendees</b>	<b>Average %</b>
<b>Inquiry Officer</b>	<b>18</b>	<b>601</b>	<b>81</b>
<b>Advanced Inquiry Officer</b>	<b>3</b>	<b>21</b>	<b>3</b>
<b>Legal review of administrative inquiries</b>	<b>1</b>	<b>2</b>	<b>0.5</b>
<b>Administrative sanctions</b>	<b>2</b>	<b>50</b>	<b>6.5</b>
<b>Complaint handling</b>	<b>3</b>	<b>69</b>	<b>9</b>
<b>Total</b>	<b>27</b>	<b>743</b>	<b>100</b>

In addition to the training opportunities outlined above, IGADF and OIGADF staff also presented at pre-command courses, reserve legal panel training nights, graduate development programs and legal officer LTM2 and LTM3 courses for tertiary level competencies.

## **NON-STATUTORY MILITARY JUSTICE ENTITIES**

### **Defence Investigative Capability**

Implementation, modification and ongoing review of the 2006 audit of the Australian Defence Force Investigative Capability Report (*Whiddett/Adams Report*)<sup>1</sup> and the outcomes of the Street/Fisher Review continued during the reporting period under the direction of the Provost Marshal ADF (PMADF).

Table 8 summarises investigator staffing levels at the end of the reporting period with in Service Police.

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<sup>1</sup> Report of an audit of the ADF Investigative Capability July 2006

	ADFIS <sup>2</sup>	NAVY <sup>3</sup>	ARMY <sup>4</sup>	AIR FORCE
<b>Authorised</b>	<b>140</b>	<b>26</b>	<b>77</b>	<b>43<sup>5</sup></b>
<b>Actual</b>	<b>75</b>	<b>18</b>	<b>73</b>	<b>31</b>

The Service Police Central Records Office (SPCRO) integrates the investigation records of ADFIS and single Service Police organisations into a single unit. The Defence Policing and Security Management System (DPSMS) is SPCRO's [Defence's] information technology-based case management system. Under Inspector General - Defence sponsorship, the system's owner, DPSMS underwent major updates during 2013.

	REFERRALS/INVESTIGATIONS		BOEs SUBMITTED	
	# COMPLETED	AVERAGE DURATION	TO UNIT	TO DMP
		(calendar days) (referral to submission of BOE/report)		
ADFIS	531	94	350	44
NAVY	459	70	38	2
ARMY	413	135	39	0
AIR FORCE	61	40	36	0

Note: OP JARRAH (Jedi Council and related matters) covered 210 INV.

### Table 9– Case summary

#### Service Police Code of Conduct

On 26 October 2008 CDF issued Directive 15/2008, which was a code of conduct for Service police, including instructions on how to manage complaints of professional misconduct. This directive implemented a key recommendation of the 2005 Senate Foreign Affairs Defence and Trade References Committee's report on *The effectiveness of Australia's military justice system* to develop a common professional standard for Service Police for the performance of duty and personal behaviour.

<sup>2</sup> Positions where primary employment is conduct of investigations as opposed to staff/HQ positions filled by an investigator.

<sup>3</sup> Navy has an allocation of 215 Police Coxswains (NPC) of which 182 is filled, excluding the 26 positions transferred to ADFIS. These 182 NPCs serve in ships and shore establishments where the conduct of minor investigations is just part of their assigned duties.

<sup>4</sup> Chief of Army directive 33/08 dated 10 Dec 08 created a Domestic Police Unit (DPU). DPU is a General Duties police capability, whose responsibilities include Minor Criminal Investigations. In 2013, DPU establishment was 121 personnel, 71 Permanent and 50 Army Reserve positions located at 12 bases. DPU is currently manned with 108 personnel, 69 Permanent and 39 Reserve members. 58 Permanent and 30 Reserve members are Service Police Investigation Course (SPIC) qualified.

<sup>5</sup> On 04 Jul 13, the RAAF Security Police mustering disbanded and two separate musters were created (Air Force Police (AFPOL) and Air Force Security). AFPOL comprises 82 personnel (inclusive of AFPOL members employed within ADFIS and Defence Police Training Centre, Holsworthy). All AFPOL base personnel employed outside of the ADFIS are investigator trained and qualified to a minimum Cert IV level (Service Police Investigation Course (SPIC)). Under the revised mustering requirements, AFPOL personnel will post in/out of the ADFIS, with all members eventually being ADF Investigator Course (ADFIC) trained. AFPOL is currently in a 2-3 year transition period to achieve full capability.

The 2008 code of conduct was an important first step in creating and enforcing a common standard of professional behaviour within the military policing agencies. Because behaviour management processes must evolve if they are to remain consistent with contemporary organisational practice and structure, it was understood that revisions to the code of conduct would be necessary over time. A revised code of conduct has been under development since 2011. The revised code of conduct will be more tailored to the functions currently undertaken by Service police and will include a definition of professional misconduct against which code of conduct breaches will be measured.

In January 2013 the Service Police Professional Standards Cell was relocated from ADFIS Headquarters to the OIGADF to provide a clearer separation between the investigation of alleged breaches of the Service Police Code of Conduct and the ADFIS and Service Police operating environment. This move has proven to be successful in meeting the need to demonstrate a greater sense of independence in the investigation of allegations of professional misconduct.

### **Directorate of Defence Counsel Services (DDCS)**

Established in May 2006, DDCS is a key element of military justice reform. Its creation flows from recommendations made by the Senate Foreign Affairs, Defence and Trade References Committee in its 2005 report.

The Director Defence Counsel Services (DDCS) is the principal advocate for the rights of serving Australian Defence Force members to be tried by courts martial or DFM under the DFDA, as well as those members identified as potentially affected persons in administrative inquiries conducted under the Defence (Inquiry) Regulations. The latter also includes assistance to the appointed representative of deceased members.

As directed by COSC in December 2012, flowing from recommendations made by the Moon/Weber Review into ADF Legal Services, a number of changes have been made to the structure and reporting lines of DCS over the past year. Three permanent RAN legal officer positions, whose duties require them to solely provide legal support for RAN personnel, now report directly to DCS rather than their previous technical control reporting line of Fleet Headquarters, therefore averting potential conflicts of interest for Fleet Legal Officers. It is expected that in 2014 DCS will transition its own chain of command to report directly to the Chief Operating Officer (COO). This move is intended to directly improve the perception of independence of DCS by removing it from under the direct command of the Director General Australian Defence Force Legal Service (DGADFLS), and Defence Legal in general, and also avert potential conflicts of interest for senior Defence legal officers responsible for oversight of DCS.

It is noted however that the changes in reporting arrangements for DCS are intended as interim measures, pending statutory reform as part of the Military Court of Australia if that court is established. With the proroguing of

Parliament prior to the last election, legislative proposals in relation to the Military Court of Australia have lapsed and as yet, no alternative proposals have been forthcoming. In the meantime, DDCS, while enjoying day-to-day independence and autonomy, does not enjoy the same level of independence from the chain of command as other key military justice appointments established under statutory provisions.

DDCS performs a number of additional DFDA functions:

- Ensuring entitled ADF members have the opportunity to select counsel of their choosing when appearing before DFMs and courts martial.
- Securing witnesses and documents required by accused at trials. This function includes identifying and locating prospective witnesses, obtaining summonses from the Registrar, arranging service of summonses and the movement of witnesses to trial venues and paying witness expenses.
- In accordance with section 101F of the DFDA, maintaining the list of legal officers who are willing to assist at short notice ADF personnel who are in custody in respect of Service offences.

In addition to exercising these formal delegations, DDCS also contributes to the development of legal policy and legislation in the area of military justice. Unlike other contributors to these debates, DDCS is an advocate for accused persons generally, and acts in a quasi-solicitor role in respect of accused persons, potentially affected persons, representatives of deceased members, defending officers and representing counsel.

Since its creation in 2006, DDCS has been able to develop, implement and refine procedures which contribute to the effective and efficient discharge of its functions. Over the past 12 months there has been a noticeable increase in ad hoc tasking of the Directorate to support complex legal assistance matters for members, primarily where a number of members require support across diverse geographic locations. Considerable benefit has arisen from DCS involvement in these matters through strategic oversight and coordination in the management of responses. Despite increasing demands on its resources the Directorate has been able to discharge its responsibilities in a timely fashion while maintaining the high levels of service expected by its clients.

In 2013, DDCS engaged 54 counsel to represent 52 ADF members facing trial by courts martial or DFM. An additional 30 ADF legal officers assisted in the representation of these ADF members in a mentoring/developmental role. Ten counsel representing were appointed to represent nine potentially affected persons in relation to three Commissions of Inquiry, of which two Commissions will not conclude until 2014. Eighty-three Reserve legal officers were tasked to provide legal assistance to 81 ADF members.

## **OTHER MATTERS**

### **The *Re-thinking* Review – Draft Report on Stage B**

The draft report on Stage B (i.e. the Model Development stage) of the *Re-thinking* review was delivered to key stakeholders in late December 2012, seeking comment on the four phases of the project and various proposed models for reform of the system and requesting key stakeholders nominate a preferred model.

While the intent of the project was to identify new ways of approaching administrative inquiries, reviews and audits, the approaches identified in the draft Stage B report did not, in the view of IGADF, appear to provide a convincing argument to demonstrate that any of the proposed models would serve the purpose of the ADF and Defence anymore effectively than would result from implementing recommendations that had previously been made to improve the existing system.

By the end of the reporting period the final report of the Re-thinking review had been submitted to the Chiefs of Service Committee (COSC) for consideration in early 2014.

### **Sexual Misconduct Reporting and Prevention Office**

Following initiatives first introduced by the United States Armed Services, the SeMPRO was launched on 23 July 2013 to take an expressly victim-focused approach to the management of sexual misconduct in Defence – primarily focusing on providing sensitive, timely and ongoing support to victims reporting sexual misconduct through their recovery and return to full health.

In addition, the SeMPRO provides advice to commanders and managers of persons affected by sexual misconduct to assist them in appropriately managing incidents.

### **Defence Abuse Response Taskforce – Terms of Reference and First Interim Report**

The following terms of reference for the Defence Abuse Response Taskforce (DART) were released on 21 January 2013:

- a. assess the findings of the DLA Piper review and subsequent material gathered concerning complaints of sexual and other forms of abuse by Defence personnel.
- b. including in the assessment, the 24 ADFA case noted by DLA Piper and allegations into physical violence and bullying at HMAS *Leeuwin*.

- c. determine, in close consultation with those who have made complaints, appropriate actions in response to those complaints.
- d. gather any additional information relevant to consideration of the handling of particular allegations.
- e. take account of the rights and interests of alleged victims, accused persons and other parties.
- f. liaise with Minister for Defence, CDF and Secretary for Defence on any implications of its work for Defence's *Pathways to Change* or other reviews into Defence culture.
- g. report to the Attorney-General and Minister for Defence every three months on its progress, issues arising and funding.
- h. report to the Attorney-General and Minister for Defence by October 2013 on whether the taskforce should continue beyond the initial 12 month period; and
- i. to advise whether a Royal Commission would be warranted.

On 14 March 2013, the Minister for Defence tabled the first interim report of the DART before parliament, stating the Taskforce had been established, held meetings with stakeholders and established processes and practices for the proper operation of the office. The Taskforce Chair also recommended that the Taskforce be extended to the end of May 2014.

The second interim report by the DART was tabled before parliament three months later on 20 June 2013. The report indicated that the Taskforce had received a total of 3251 enquiries by the deadline of 31 May 2013. Of these it was estimated the Taskforce would assess around 2410.

An emerging issue for various agencies arising from the work of the DART is the disparity between the criterion of 'plausibility' used by the DART to determine the substance of complaints made to it and the civil standard of 'balance of probabilities' used by other agencies when determining liability for compensation and other purposes.

### **Proposed Defence Instruction on Corrective Training**

Following recent inquiries conducted by the IGADF and submissions received by the CDF Commission of Inquiry cell, it was suggested there should be closer monitoring of alleged instances of unlawful punishments being used in the ADF to determine whether the problem was systemic.

The issue of unlawful punishments occurring in the ADF has been a long standing concern and was highlighted in the *Burchett Inquiry, Report of an Inquiry into Military Justice in the Australian Defence Force*, conducted in 2001, which recommended that the use of any lawful corrective training

should be regulated through a Defence-wide policy. By 2007 these recommendations were accepted by the Chiefs of Service Committee.

During the reporting period a Defence-wide draft policy on corrective training was developed after a lengthy collaboration between Defence Legal and People Capability. The proposed policy is intended to provide clarity on the distinction between corrective training and what is considered an unlawful punishment whilst providing a principles-based approach to allow units to adapt the corrective training requirements to their particular needs.

By the end of the reporting period, the proposed policy was in the final stages of stakeholder review.

### ***Public Interest Disclosure (PID) Act 2013 – IGADF Aspects***

In November 2013 IGADF was alerted to the *Public Interest Disclosure Act 2013* (PID Act) and its imminent release on 15 January 2014. Proposed arrangements for implementation of the PID Act within Defence raised an issue of how these arrangements would apply to the IGADF without impacting adversely on the independence associated with the statutory appointment.

The appointment of IGADF as a prescribed authority under Section 72(1)(p) of the Act was recommended by IGADF as the most useful way forward to preserve the independence of role of the IGADF whilst at the same time accommodating the requirements of the PID Act. At the end of the reporting period this option was still under consideration.

More generally, it is noted that Defence, and the ADF in particular, as institutions, are already well placed in terms of established processes and procedures to meet the objectives of the PID Act.

### **2013 Unacceptable Behaviour Surveys**

The Directorate of Strategic People Research administered a suite of Unacceptable Behaviour Surveys across Defence between August and October 2013. The results of the surveys were briefly analysed in four reports with a further, more detailed, analysis planned for early 2014.

While an extraordinary amount of work and analysis had been completed by the end of 2013 in relation to conducting the surveys and completing the reports, IGADF identified some areas for further consideration. These related to definitions, categories and examples used throughout the survey to describe the meaning of certain words and phrases, for example;

- a. The report includes sexual assaults as unacceptable behaviour, however sexual assaults are not included as a form of unacceptable behaviour under DI(G) PERS 35–3 *Management and Reporting of unacceptable behaviour* and as such are covered under DI(G)

PERS 35–4 *Reporting and management of sexual misconduct including sexual offences*. This is to ensure that sexual assaults are not dealt with as unacceptable behaviour, but as more serious offences. In this regard the nomenclature of the surveys could be misleading and could more properly have been described as unacceptable behaviour and sexual assault surveys

- b. DI(G) PERS 35–3 *Management and Reporting of unacceptable behaviour* provides for only six categories of unacceptable behaviour, while the surveys provide for 13 categories of unacceptable behaviour; and,
- c. The examples provided to explain the 13 categories of unacceptable behaviour in the surveys arguably are too subjective in that they do not provide for, or explain, behaviour that might be legitimate or reasonable administrative action to allow for more objective responses. In this regard DI(G) PERS 35–3 *Management and Reporting of unacceptable behaviour* provides context by informing the member of the importance of distinguishing between a person reasonably exercising their legitimate authority at work and an instance of bullying or harassment. Including;
  - (1) Objective and constructive feedback, counselling or advice about work-related behaviour and performance, given in a manner that is neither humiliating nor threatening;
  - (2) Expressing differences of opinion in a respectful manner;
  - (3) Legitimate or reasonable management directions, decisions or actions, such as transfers, postings, work or task requirements, and recruitment selections; and
  - (4) Making a complaint about another person's conduct in a proper and reasonable way.

The use of the definition of bullying in the survey allowed for subjective responses to be made about the types of behaviour that might constitute bullying by only defining the first paragraph of DI(G) PERS 35–3 *Management and Reporting of unacceptable behaviour*. The survey did not include the second paragraph, which provides that bullying may comprise a combination of behaviours including unwarranted criticism, insults, spreading malicious rumours, deliberately withholding information or resources and influencing others to exclude or isolate the targeted person or persons.<sup>6</sup>

The results of the surveys showed that approximately 42 per cent of ADF personnel who participated suggested they had been subjected to unacceptable behaviour during the review period, which was described as

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<sup>6</sup> DI(G) PERS 35–3 *Management and Reporting of unacceptable behaviour* of 28 June 2009.

being the past 12 months. Interestingly, the figure of 42 per cent is inconsistent with survey results from military justice audits undertaken by IGADF for the purpose of scrutinising the military justice system. Participants in IGADF military justice audit focus groups and surveys are informed about the definitions contained in DI(G) PERS 35–3 *Management and Reporting of unacceptable behaviour*, including behaviour that may be described as legitimate actions or tough training.

Of the 2716 ADF participants who completed an IGADF military justice unit audit survey an average of 15 per cent suggested they had witnessed or experienced workplace bullying or harassment in their unit. While these figures do not include all unacceptable behaviour as defined in DI(G) PERS 35–3 they indicate that the result of the surveys may be impacted due to the areas of concern described above.

IGADF recommended to Workforce Planning Branch that consideration be given to reviewing the surveys with these concerns in mind and to revising future surveys to ensure a more complete and comprehensive definition of unacceptable behaviour is contextualised for more objective responses.

#### **DI(G) PERS 35–4 Reporting and management of sexual misconduct including sexual offences—Stakeholder Review**

IGADF was invited to provide comment and stakeholder review on the draft rewrite of DI(G) PERS 35–4 *Reporting and management of sexual misconduct including sexual offences*. IGADF noted that the policy was a reasonable attempt in difficult circumstances to give effect to the intention to implement a restricted reporting regime while taking into account practical and legal challenges of doing this in the Australian context. Overall the policy was adapted to take into account the IGADF's recommendation in the 2011 cultural review into the *Management of Incidents and Complaints in Defence including Civilian and Military Jurisdictions*, to ensure that a central policy document be used to describe both the policy and procedural issues to deal with sexual misconduct. The importance of providing a clear and concise interim policy document to assist complainants, commanders and managers was also highlighted.

#### **Amendment to Regulation 63 of the Defence (Inquiry) Regulations 1985**

The Defence (Inquiry) Amendment Regulation 2013 commenced on 18 June 2013 with the intent to amend regulation 63 of the Defence (Inquiry) Regulations 1985, which deals with the disclosure of information and documents relating to inquiries conducted under those Regulations. Regulation 63 authorises the disclosure of inquiry information and documents in the performance of duties and stipulates what constitutes the performance of duties as directed by the Minister. For the majority of cases where an appointing officer or another Defence member wishes to disclose information or documents for an inquiry, Ministerial authorisation will no longer be required.

## **Fair Work Amendment Bill – 2013**

The Fair Work Amendment Bill was introduced in early 2013 for the purpose of amending the Fair Work Act 2009. The amendments include a new anti-bullying provision allowing for workers who are being bullied in the workplace to apply to the Fair Work Commission (FWC) for an order to stop the bullying. If satisfied that the worker has or is likely to continue to be bullied, FWC is authorised to make an appropriate order to prevent that from occurring. All matters are to be opened within 14 days ensuring early intervention to help stop bullying behaviour in the workplace and the subsequent negative impacts on employees' health and wellbeing.

The definition of worker in the Fair Work Amendment Bill does not include a member of the ADF. However, the provisions do apply to APS employees and other individuals who work with members of the ADF. The fact that ADF members are excluded from claiming relief does not mean ADF members are excluded from the reach of the anti-bullying measures in the Fair Work Amendment Bill. In this regard, the ADF and an ADF member will be bound by an anti-bullying order made by the FWC in relation to any claim for relief by an APS employee or other person working with an ADF member. Contravening such an order may result in a pecuniary penalty being imposed. Nothing in the new anti-bullying measures requires or permits a person to take, or to refrain from taking, any action if the taking of the action, or the refraining from taking the actions would be, or could reasonably be expected to be prejudicial to Australia's defence or Australia's national security. Additionally, under section 789FJ, CDF may, by legislative instrument with the approval of the Minister, declare that all or specified provisions of the new anti-bullying measures introduced by the Fair Work Amendment Bill do not apply in relation to a specified activity. No declarations are anticipated to be made by CDF at this stage.

## **Key Performance Indicator Reports**

Towards the end of 2013 the Registrar of Military Justice (RMJ) designed a monthly report detailing the position of matters that are proceeding to trial by Courts Martial (CM) or Defence Force Magistrate (DFM). The report includes the number of referrals received, the number of matters listed for trial, the number of matters completed and a self-rated performance mechanism against key performance indicators (KPI). KPI's used are:

- a. within two weeks of receiving a referral 90 per cent of matters are to be listed for trial;
- b. within three months of receiving a referral 80 per cent of proceedings are to have commenced (except referrals received in November and December); and
- c. 95 per cent of all requests will be actioned within the timeframe specified or within 28 days if no specific timeframe is specified.

The reports are designed to provide insight and visibility to matters that proceed to trial by a DFM or CM.

KPI reports such as these produced by RMJ have been recommended to all military justice entities numerous times over the years by IGADF as an important management tool to assist in monitoring the performance and effectiveness of the military discipline system.

### **Chief of Army Directive 21/13**

Following actions taken by the Chief of Army (CA) in relation to Army members involved in the *Jedi Council* incident, the CA released a directive outlining the values and standards of behaviour that are expected of members of the Army.

CA directed that Army personnel embrace cultural change as outlined in *Pathway to Change - Evolving Defence Culture* of 2012 by abiding by the following principles:

- a. actively promote equity, diversity and inclusion within Army;
- b. respect members of the opposite sex and report any sexual misconduct or other abuse;
- c. tolerate individuals from different cultures, or religious beliefs and sexual orientations;
- d. ensure the organisation is free from discrimination and racist behaviour in all forms, including in social media; and
- e. not engage in offensive, belittling, abusive or threatening behaviour.

### **ADFA Skype Incident Trial**

In August 2013 the trial of the two cadets at the centre of the ADFA *Skype* incident commenced in the ACT Supreme Court more than two years after the incident occurred. Both cadets were found guilty of using a carriage service in an offensive way and received 12 month good behaviour orders. The service of both members was subsequently terminated.

### **Proposal for a Military Court of Australia**

The passing of the *Military Court of Australia Bill 2012* and the *Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012* to establish a Military Court of Australia have been delayed following a Senate committee hearing. In the light of the delay a new bill to continue the current interim system of courts martial and DFM was subsequently introduced.

## **Military justice media coverage**

During the 2013 reporting period a number of military justice related matters received significant media coverage, with adverse reputational connotations for the ADF. These matters included:

- the trial and conviction of ADF members linked to the ADFA *Skype* incident;
- the Jedi Council investigation and subsequent dismissal of Army members involved;
- allegations of bastardisation onboard HMAS *Ballarat*;
- allegations of 'hazing' rituals at ADFA;
- the conviction of a Naval sailor for assault and theft of fire-arms onboard HMAS *Bathurst*;
- the falsification of documents relating to Afghan prisoners by an Army Officer;
- allegations of prisoner mutilation against ADF members in Afghanistan;
- sexual assault trial and conviction of a cadet at the Royal Military Collage – Duntroon;
- the quashed conviction of a Naval officer for fraud offences;
- allegations and conviction of sexual assault at ADFA;
- allegations of bullying at 8<sup>th</sup>/7<sup>th</sup> Battalion – Ballarat;
- misuse of social media, ADF members being linked to racist and sexist *Facebook* pages; and
- Sexual assault allegations against a female crew member of HMAS *Sheehan*.

Two other media articles relating to military justice were identified during the reporting period and warrant special mention. The articles relate to sexual offences at ADFA and civilian universities, desertion in the military since 2003 and detention rates in the ADF.

The first article highlighted the fact that female students were more than twice as likely to be the subject of sexual assault or harassment at a civilian university than at ADFA. The finding was based on surveys conducted by the Sex Discrimination Commissioner, Elizabeth Broderick, which were

conducted during a review into treatment of females at ADFA. The results showed that 27 per cent of female students believed they had experienced some form of sexual harassment or assault within the previous 12 months, whilst surveys conducted by the National Union of Students showed 67 per cent of females at civilian universities had experienced some sort of sexual harassment or assault.

In early 2013 the IGADF was tasked with supplying DFDA discipline statistics in response to a freedom of information request. The data provided included convictions for absence without leave (AWOL) which is found in section 24 of the DFDA for a 10 year period from 2003 to 2012. The subsequent media article implied that all 5215 AWOL offences identified were ADF members charged with desertion. The article was inaccurate to the extent that it implied AWOL offences amounted to desertion. Desertion is in fact a separate offence under section 22 of the DFDA and provides that a defence member is guilty of an offence if the member:

- a. is on active service or has been warned for active service; and
- b. without leave, and with the intention of avoiding that service, departs from, or does not attend at, his or her place of duty.

## **CONCLUSION**

The results of IGADF monitoring activities and military justice information analysis are pleasing and there is empirical evidence to suggest that the cultural change program which was introduced through *Pathway to Change* in 2012 is making a difference. Overall the total number of disciplinary matters increased and administrative matters remained relatively constant over the reporting period. Additionally, there was a decrease in civil convictions, alcohol-related incidents and perceptions that individuals were the subject of workplace bullying and harassment.

Based on all the available evidence considered during the reporting period, IGADF remains satisfied with the overall health and effectiveness of the ADF's military justice system. However, like most complex systems or structures, the military justice system will continue to require regular maintenance and periodic amendment to ensure it continues to function effectively. In this respect continuous improvement is best achieved through evolutionary rather than revolutionary change,

## GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Australian Defence Health Research Ethics Committee	ADHREC
Australian Defence Force	ADF
Australian Defence Force Academy	ADFA
ADF Administrative Inquiry Tracking System	ADFAITS
ADF Investigative Service	ADFIS
Army Incident Management System	AIMS
Australian Public Service	APS
Australian Standards on Assurance Engagements	ASAE
Chief of Army	CA
Chief of the Defence Force	CDF
Chief Operating Officer	COO
Chiefs of Service Committee	COSC
Conduct Reporting and Tracking System	CRTS
Defence Abuse Response Taskforce	DART
Defence Annual Report	DAR
<i>Defence Force Discipline Act 1982</i>	DFDA
Defence Force Magistrate	DFM
Director General Australian Defence Force legal Service	DGADFLS
Defence Instructions (General)	DI(G)
Defence Policing and Security Management System	DPSMS
Defence Restricted Network	DRN
Defence Secret Network	DSN
Director of Military Prosecutions	DMP
Directorate of Defence Counsel Services	DDCS
Directorate of Strategic Personnel Policy Research	DSPPR
Domestic Police Unit	DPU
Executive Level 1	EL1
Fair Work Commission	FWC
Headquarters Joint Operations Command	HQJOC
Inspector General Australian Defence Force	IGADF
Major or equivalent	MAJ(E)
Office of the Director of Military Prosecutions	ODMP
Office of the Inspector General ADF	OIGADF
Officer level 5 (referring to a LTCOL or equivalent)	O5
Officer level 6 (referring to a GPCAPT or equivalent)	O6
Prohibited Substance Testing Program	PSTP
Provost Marshal of the Australian Defence Force	PMADF
Redress of Grievance	ROG
Registrar of Military Justice	RMJ
Senate Foreign Affairs, Defence and Trade Committee	SFADTC
Senate Standing Committee on Foreign Affairs, Defence and Trade	SSCFADT
Service Police Central Records Office	SPCRO
Sexual Misconduct Reporting and Prevention Office	SeMPRO
Defence's e-Learning system	<i>Campus</i>
<i>The Defence Act 1903</i>	<i>the Act</i>