



**INSPECTOR-GENERAL  
OF THE  
AUSTRALIAN DEFENCE FORCE  
ANNUAL REPORT**

*01 July 2015 to 30 June 2016*

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ISSN 2207–6050 (Print)  
ISSN 2207–6069 (Online)

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## Inspector-General of the Australian Defence Force

**Senator the Hon Marise Payne**  
**Minister for Defence**  
Parliament House  
CANBERRA ACT 2600

Dear Minister

As the Inspector-General of the Australian Defence Force I am pleased to submit a Report on the operations of the Office of the Inspector-General of the Australian Defence Force for the period 01 July 2015 to 30 June 2016.

This report is submitted to you for tabling in Parliament under the provisions of the *Defence Act 1903*, Section 110R.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J.M. Gaynor', with a long, sweeping flourish at the end.

**JM Gaynor, CSC**  
Inspector-General of the Australian Defence Force

23 March 2017



## CONTENTS

PREAMBLE .....	1
OVERVIEW .....	2
STAFFING AND RESOURCES .....	3
DIRECTORATE OF INQUIRIES AND INVESTIGATIONS .....	5
Submissions .....	6
Service Police Professional Standards.....	7
DIRECTORATE OF MILITARY JUSTICE PERFORMANCE REVIEW.....	7
Audit function.....	7
Military Justice Performance Audit Program .....	9
Focus Group survey outcomes.....	10
DIRECTORATE OF SELECT INCIDENT REVIEW .....	12
DIRECTORATE OF MILITARY REDRESS AND REVIEW.....	13
DIRECTORATE OF LEGAL REVIEW.....	14
VISITS AND OTHER ACTIVITIES .....	15
Meetings with international counterparts and military justice briefings .....	15
Attendances at conferences .....	15
Military justice seminars and training.....	15
CONCLUSION.....	16
GLOSSARY OF ACRONYMS AND ABBREVIATIONS .....	17
ANNEX A – MILITARY JUSTICE STATISTICS .....	18
Discipline statistics.....	18
Alcohol conviction statistics .....	19
Discipline infringement statistics.....	19
Administrative sanctions statistics .....	19
Administrative inquiries statistics.....	20
Civil conviction statistics .....	20



**INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE**  
**REPORT FOR THE PERIOD**  
**01 JULY 2015 TO 30 JUNE 2016**

**PREAMBLE**

The position of Inspector-General of the 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.

The inaugural IGADF, Mr Geoff Earley, AM commenced duties on 13 January 2003. His term of office ended on 21 December 2015.

After Mr Earley's term of office ended, Brigadier James Gaynor, CSC—who had been the Deputy IGADF since February 2013—acted as the IGADF for the remainder of the reporting period.

The functions of the IGADF prescribed by section 110C of the Act include:

- a. inquiring into or investigating matters concerning the military justice system;
- b. conducting performance reviews of the military justice system, including internal audits, at times and in the manner IGADF considers appropriate;
- c. advising on matters concerning the military justice system, including making recommendations for improvements;
- d. promoting military justice values across the Australian Defence Force (ADF);
- e. if directed by the Minister or the Chief of the Defence Force (CDF) to do so – inquiring into or investigating a matter concerning the Defence Force; and
- f. doing anything incidental or conducive to the performance of the IGADF's other functions.

In addition, regulations may prescribe other functions for the IGADF, including inquiring into or investigating:

- a. complaints made by members of the Defence Force about a decision, act or omission in relation to the member's service; and
- b. deaths of members of the Defence Force that appear to have arisen out of, or in the course of, the member's service.

At the end of the reporting period no regulations had yet been made to prescribe these specific functions for the IGADF, but administrative arrangements have been in place since 01 July 2014 under which the IGADF reviews those matters on behalf of the chain of command.

As was emphasised in last year's report, military justice requires an 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 appropriate protection for individual rights on the other. The ADF's operational capability depends on a military justice system that is capable of achieving and maintaining this balance.

The ADF military justice system has four main components:

- a. the taking of disciplinary action under the *Defence Force Discipline Act 1982* (DFDA) to enforce and maintain Service discipline;
- b. the imposition of administrative sanctions to correct individual behaviour and/or protect the reputation of the ADF;
- c. the conduct of administrative inquiries and investigations to establish the facts of an occurrence and make recommendations to remediate systemic or individual failings to improve and enhance operational effectiveness; and
- d. the handling and management of complaints by Service members to ensure systemic or individual failings are identified and remediated to improve and enhance operational effectiveness.

Prior to the establishment of the position of IGADF in 2003, there existed no centralised, dedicated oversight mechanism within the ADF to monitor and inquire into military justice related issues and alleged failures. The Office of the IGADF has provided this important capability over the past 13 years and will continue to do so, as an effective and fair military justice system is a vital element of ADF operational effectiveness.

## **OVERVIEW**

The operating tempo in the Office of the IGADF remained relatively high in FY2015-16. Over the reporting period the Office of the IGADF conducted investigations and inquiries into submissions concerning the military justice system, conducted military justice performance audits, reviewed and processed Redress of Grievance (ROG) applications made by military members and investigated and inquired into service-related deaths.

During the reporting period IGADF received 69 inquiry submissions, an increase of approximately 10 per cent on the previous period. In recent years the trend has been that submissions disclose issues of greater complexity than in previous years, and this continued in FY2015-16. IGADF resolved 58 submissions by way of inquiry, assessment or review in FY2015-16.



In addition to these IGADF submissions, IGADF reviewed 41 Service Police professional standards matters. Of these, 28 became the subject of IGADF investigations and four were referred back to Service Police for further action.

IGADF conducted 41 ADF military justice unit audits representing approximately 10 per cent of all auditable ADF units. In two of those units, potential material deficiencies were identified. These units will be re-audited in approximately 12 months. In all, 391 recommendations and 530 suggestions to improve military justice arrangements, practices and procedures were made during FY2015–16. The overwhelming majority of the recommendations and suggestions related to minor compliance or procedural issues.

During the conduct of military justice unit audits, 2492 ADF personnel participated in focus group discussions raising the total number of focus group participants to 29 779 since the program first commenced in 2004. Focus group survey outcomes in FY2015–16 indicate a stronger endorsement and confidence in the military justice system and the chain of command to take action to resolve military justice problems.

Over the course of the reporting period the IGADF initiated 41 reviews of deaths in service of ADF members. The IGADF established four formal inquiries into ADF member deaths.

During the reporting period, 392 new applications for ROG were received. Similarly there were 392 ROG finalised during the same period. The Office of the IGADF provided input for the proposed changes to Part 15 of the *Defence Force Regulations 1952* which, in essence, are designed to streamline and simplify the current multi-layered ROG process into one single layer of formal internal review to be conducted by the IGADF.

From all information available to the Office of IGADF, it is evident that the standard of discipline and appropriate support for individual rights across the ADF have remained relatively healthy. However, efforts at legislative and policy reform of the system have had only modest results in recent years with some aspects of the system requiring reform as a priority. These include the dated investigative provisions in Part VI of the DFDA and the system of elections at summary level for trial by courts martial or Defence Force magistrate.

## **STAFFING AND RESOURCES**

The staff of the Office of IGADF comprises multidisciplinary teams of permanent and Reserve military personnel, and Australian Public Service employees who have knowledge and experience of Service life and the military justice system. To support the IGADF in the performance of their statutory roles and functions, the office is staffed predominantly by personnel of Lieutenant Colonel (O5) rank / Executive Level 1 (EL1) or higher. The Office of IGADF is structured as follows:

- a. The Executive comprises IGADF (a statutory officeholder), the Deputy IGADF (a legal officer of O7 rank), and five administrative support staff. For six months of the reporting period, after Mr Geoff Earley's appointment as IGADF ended, the Deputy IGADF acted as the IGADF, supported by the Director of Military Redress and Review who performed duties as Acting Deputy IGADF.
- b. The Directorate of Inquiries and Investigations, led by an O6 General Service Officer, is responsible to the IGADF to inquire into or conduct investigations into military justice incidents or complaints. The Director of Inquiries comprises seven permanent military, four Reserve personnel and one Australian Public Service member. This staffing includes three (E9) Service Police personnel to provide necessary skill-sets to inquire into or investigate allegations or complaints of breaches of professional standards by Service Police.
- c. The Directorate of Military Justice Performance Review (DMJPR), led by an O6 legal officer, is responsible to IGADF for the conduct of military justice performance audits, the collection and analysis of military justice statistics from military justice databases and other sources, and the management of IGADF and wider military justice information systems. DMJPR staff comprises two permanent military members and four Australian Public Service employees. DMJPR military justice unit audit teams are supplemented by part-time Reserve legal and General Service Officers as required.
- d. The Directorate of Legal Review (DLR), led by an O5 legal officer, is responsible to IGADF to conduct legal reviews of IGADF inquiries and investigations, provide advice on military justice matters, and promote military justice values across the ADF through the conduct of military justice awareness and familiarisation seminars. The DLR comprises two permanent military legal officers, supplemented as required by Reserve legal officers.
- e. The Directorate of Select Incident Review (DSIR), led by an O6 legal officer, is responsible to IGADF for the coordination and management of inquiries into deaths of ADF members and other serious incidents. DSIR comprises five permanent military personnel and one Australian Public Service employee. The work of the Directorate is supplemented by ADF Reserve officers as required.
- f. The Directorate of Military Redress and Review (DMRR), led by an EL2 Australian Public Service employee, is responsible to IGADF for the management of the formal grievance and complaint processes and the preparation of review briefs referred for final decision by CDF and Service Chiefs. DMRR comprises six military personnel and four Australian Public Service employees, including one legal officer. DMRR is supplemented heavily by ADF Reserve members on a continuing basis.

Reserve support provided to the Office of IGADF is an indispensable resource in meeting capability output. During FY2015–16 each of the three Services provided sufficient Reserve resources, sometimes in response to short notice requests, to assist the Office of IGADF to meet varying requirements.

Having previously occupied two separate sites since the expansion of the IGADF's roles and responsibilities in July 2014, the Office of IGADF collocated in office premises at Brindabella Business Park, at Canberra Airport in November 2015. This allowed the full complement of the Office of IGADF to be collocated in the one building for the first time since the Office took on the additional responsibilities associated with Select Incident Review and ROGs. The facilities have been a positive factor in the formation of the Office of IGADF as a single, cohesive office.

Current resources and budgetary allocations have been sufficient to sustain rates of effort across the Office of IGADF. Some outsourcing of administrative and legal support services has occurred during FY2015–16, however the costs of meeting these assistance measures have been absorbed within current budgetary allocations.

## **DIRECTORATE OF INQUIRIES AND INVESTIGATIONS**

The majority of IGADF inquiries and investigations staff have many years' experience either in the full- or part-time ADF or in the Australian Public Service. This enables them to bring a great deal of experience and expertise in inquiry-related tasking.

During the reporting period IGADF inquiries and investigations were conducted under the provisions of Part 7 of the Defence (Inquiry) Regulations 1985. This makes IGADF inquiries different from single Service or other ADF administrative inquiries, noting these are conducted under Part 6 of the Defence (Inquiry) Regulations. This very important difference provides several benefits, the most significant of which is that IGADF inquiries are conducted independently of the chain of command reducing the likelihood of allegations of undue command influence over outcomes.

During the reporting period IGADF inquiries had 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. As with other formal ADF inquiries, IGADF inquiry officers and witnesses are protected against civil suit for actions arising in the course of their inquiry duties.

An IGADF inquiry into aspects of the military justice system can make findings and recommendations in relation to whether an alleged injustice has been substantiated. The scope of IGADF recommendations can include suggested improvements to the military justice system.

The IGADF inquiry and investigation functions include the following responsibilities:

- a. at the direction of the Minister for Defence or CDF, to inquire into or investigate matters concerning the ADF;
- b. otherwise, to inquire into or investigate matters concerning the military justice system; and
- c. to inquire into or investigate breaches of the Service Police Code of Conduct by Service Police members.

The IGADF provides an avenue for complaints about military justice where chain of command considerations may discourage, or other factors may preclude, recourse to normal avenues of complaint.

IGADF's primary challenge with respect to inquiries and investigations is the maintenance of sufficient numbers of suitably qualified and experienced staff, including part-time staff, to achieve IGADF's mission and objectives in a reasonable and timely manner.

### **Submissions**

A submission is a complaint or concern expressed by a member of the ADF or member of the public received by, or referred to, the IGADF. A decision on what action is to be taken in relation to a submission is made by the IGADF. Additionally, each of the Services may refer matters affecting the military justice system to IGADF for inquiry independent of the ordinary chain of command.

The number of inquiry submissions received during the reporting period was 69, an increase of approximately 10 per cent over FY2014-15. Of these submissions, approximately 30 per cent, similar to earlier years, proceeded to full inquiry. The main subjects of those submissions included: abuse of authority; abuse of process; avoidance of due process; harassment; and inappropriate behaviour.

The 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, the number of personnel involved, involvement of other functional areas, the amount and availability of evidence and location of witnesses.

During the reporting period 51 submissions were finalised as a result of IGADF inquiry or assessment. Of these, in 14 cases (28 per cent), the complaints were found by IGADF to have been wholly or partly substantiated.

## **Service Police Professional Standards**

The IGADF's Professional Standards investigative capability enables the review of allegations of serious breaches of the Service Police Code of Conduct to be conducted independently of the Australian Defence Force Investigative Service (ADFIS) and other Service Police functions.

CDF Directive 14/2014 *Service Police Professional Standards: A Code of Conduct and Management of Complaints Against Service Police* of 05 November 2014, provides that the reporting of all complaints regarding Service Police must be referred to IGADF. This Directive replaced the previous code of conduct Directive CDF 15/2008, and continues the implementation of key recommendations 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 their duty and personal behaviour.

Over the reporting period IGADF reviewed 41 complaints against Service Police, of which 28 became the subject of further IGADF inquiry or investigation.

## **DIRECTORATE OF MILITARY JUSTICE PERFORMANCE REVIEW**

### **Audit function**

Each year, IGADF aims to conduct up to 50 military justice performance audits at units of the ADF. The purpose of these audits is to assess whether units are complying with and implementing military justice law and policy and to identify areas for improvement in arrangements for effective delivery of military justice at unit level.

The genesis of the audit program lies in the 2001 *Burchett* inquiry into military justice in the ADF<sup>1</sup>. One of the key recommendations of the Burchett report of July 2001 was the appointment of a Military Inspector-General, among whose functions Burchett envisaged a '*rolling audit by means of spot checks*'. The first substantive audits were conducted in 2004, and when the IGADF became a statutory office in 2005 the audit function was set out in section 110C of the Defence Act in the following way:

*....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.*

IGADF military justice performance audits therefore look at how the military justice system operates at unit level in both its disciplinary and its administrative branches.

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<sup>1</sup> J Burchett QC, *Report of an Inquiry into Military Justice in the Australian Defence Force* of July 2001

Audit methods have been aligned as closely as possible with the relevant Australian standards for assurance engagements, namely:

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

Audit team members conduct a series of spot-checks of unit disciplinary and administrative military justice records which are supplemented by discussions with key personnel responsible for military justice in the unit, and with key support personnel such as chaplains and health professionals.

Audit team members also conduct discussions with representative groups of unit personnel. Groups are divided according to worn rank and, in some audits, according to gender. The purpose of focus groups is to report on participants' anecdotal perceptions of the implementation of military justice law and policy in the audited unit.

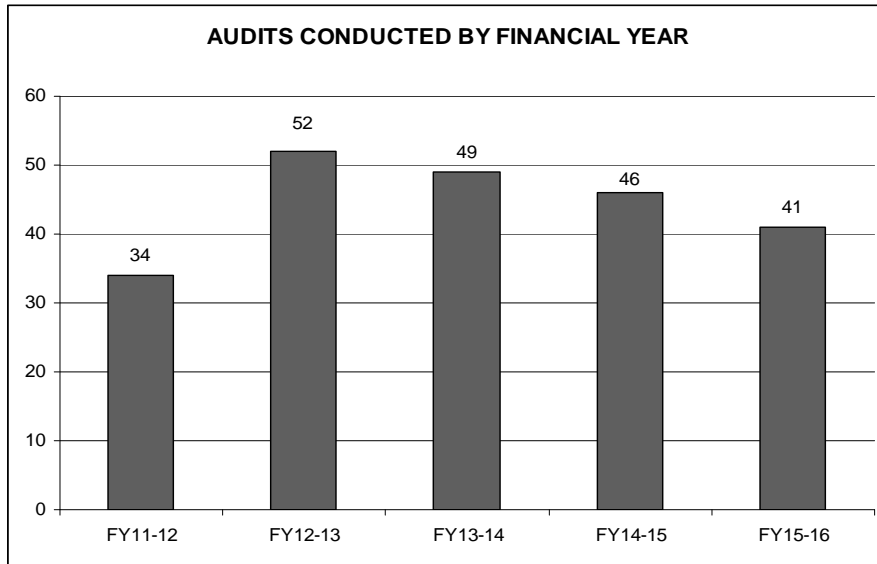
The outcome of each military justice performance audit is a report which makes an assessment against specific criteria of the quality of military justice delivery in the relevant unit, as well as recommendations and suggestions for improvement. Recommendations relate to actions required to be carried out at unit level by law or by Defence policy. Suggestions made in an audit report represent good practice based on IGADF experience, although not required to be implemented by law or policy.

Most audit findings are limited to minor compliance breaches, but from time to time audit teams identify more significant breaches ('material deficiencies') which necessitate a re-audit of the relevant unit within approximately 12 months of the primary audit.

Benefits for the ADF delivered by the IGADF audit program include:

- a. unit-initiated rectification of military justice processes and practices which the prospect of an IGADF audit may encourage;
- b. improvements to unit military justice delivery implemented during audits or as a result of audit recommendations or suggestions;
- c. the possibility that an audit might provide early warning of unit-specific issues with potential military justice impacts;
- d. the promotion of military justice values among unit commanders and staff who are accountable for military justice in their unit and among unit personnel who take part in focus group discussions; and
- e. mitigation of strategic risk by means of an assurance process in which units are audited on a periodic basis.

Since the military justice audit program was first introduced in 2004 and until 30 June 2016, a total of 548 (Army 271, Navy 121, Air Force 142, Joint Services 14) audits have been conducted. This figure includes units that have been audited more than once. A decline in the number of audits conducted from the high point in FY2012–13 is attributed to gradual expansion of the scope of military justice performance audits, and variations between each audit due to unit diversity and the impact of operational commitments on some units. The graph below illustrates audits conducted since FY2011–12.



### **Military Justice Performance Audit Program**

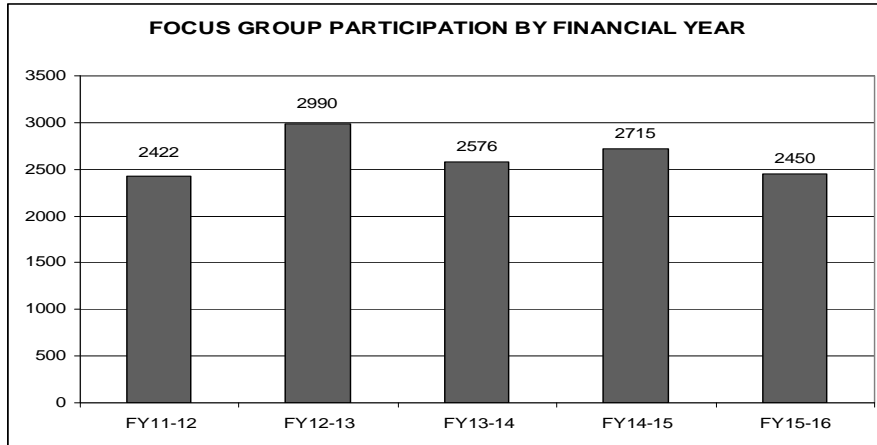
During the reporting period, the Directorate of MJPR audited 41 ADF units (Army 22, Navy 7 and Air Force 12). In two of these units (or about five per cent of audited units) material deficiencies were identified. During the reporting period IGADF made 391 recommendations and 530 suggestions to improve military justice arrangements, practices and procedures.

Among the common suggestions that IGADF makes through the audit program is for units to conduct general DFDA training to inform personnel of their basic rights and responsibilities under the DFDA, and to conduct specialised DFDA training to equip relevant personnel to perform their DFDA roles, functions and responsibilities.

During the reporting period, IGADF identified inherent risks for units where the DFDA is seldom employed or has ceased to be a visible part of how the unit operates. Unit personnel, including commanders, may lack familiarity with how to conduct or participate in proceedings, increasing the risk of failure in more serious cases if unit-level disciplinary action becomes inevitable. The prospect of taking even minor disciplinary action may start to

loom as a significant threshold to cross, leading to a reluctance to take disciplinary action even when it is appropriate. These factors may have implications for the range of options available to commanders, the response options open to Non-Commissioned Officers, and the discipline of the unit. General awareness of the disciplinary system may also decline, impeding the future performance and career development of individual members.

During the reporting period, 2492 ADF personnel (Army 1587, Navy 429 and Air Force 476), or approximately five per cent of permanent ADF personnel, participated in focus group discussions raising the total number of focus group participants to 29 779 (Army 16 450, Navy 5994, Air Force 6261 and Joint Service 1074) since the program first commenced in 2004.



### Focus Group survey outcomes

In addition to conducting focus group discussions concerning military justice issues in units, IGADF audit teams administer a written survey among focus group participants. The outcomes from these written surveys will confirm, or vary, the anecdotal feedback on issues discussed in plenary. Survey results for each unit are compared with survey averages for the previous year in order to help benchmark the unit on military justice delivery. Survey results help IGADF to assess, over time, emerging changes in perceptions; and may assist the chain of command to identify issues wherever response rates diverge significantly from Service averages. Among other things, the responses to survey questions asked of focus group participants during the reporting period showed that:

- a. 76 per cent of participants were aware of their rights and obligations under the discipline system (an increase of three per cent when compared with the previous reporting period);
- b. 79 per cent of participants believed their unit would treat them fairly and impartially if they were the subject of an administrative inquiry



(an increase of one per cent when compared with the previous reporting period);

- c. 74 per cent of participants believed their unit would fairly consider any response made by the member before imposing an administrative sanction against them (an increase of one per cent when compared with the previous reporting period);
- d. 81 per cent of participants had confidence in their chain of command to resolve complaints (an increase of one per cent when compared with the previous reporting period);
- e. 66 per cent of participants believed their unit maintained a balance between the rights of complainants and the rights of respondents (the same as the previous reporting period);
- f. 18 per cent of participants believed they had experienced unacceptable behaviour at their unit (a decrease of two per cent when compared with the previous reporting period);
- g. 88 per cent of participants knew where to obtain advice or information on unacceptable behaviour (a decrease of one per cent when compared with the previous reporting period);
- h. 77 per cent of participants believed individuals were not ostracised, segregated or excluded because of perceived differences (an increase of six per cent when compared with the previous reporting period);
- i. 93 per cent of participants believed their unit would take appropriate action if they became aware of an incident or complaint of sexual misconduct, including a sexual offence (the same as the previous reporting period);
- j. 70 per cent of participants believed their unit provided appropriate opportunities to access flexible working arrangements (a decrease of one per cent when compared with the previous reporting period);
- k. 95 per cent of participants were aware of their responsibilities concerning the use of social media (a decrease of one per cent when compared with the previous reporting period); and
- l. 9 per cent of participants believed there was a culture of anti-social behaviour in their unit (a decrease of two per cent when compared with the previous reporting period).

These figures generally suggest ADF members' continued endorsement of, and confidence in, the military justice system and in the chain of command to take action to resolve military justice problems. The figures also provide evidence indicating that incremental cultural change is continuing across the ADF.

Monitoring the health and effectiveness of the military justice system in the ADF is not an end in itself. Monitoring is carried out with a view to identifying, examining and proposing remedies for military justice failures and shortcomings. While IGADF military justice audits are a primary means of monitoring effectiveness, monitoring includes collecting information from a broad range of sources and analysing trends, perceptions and specific instances of failure. IGADF staff access multiple information sources, both internal and external to the Office of IGADF.

Information tracking systems sponsored by IGADF comprise the ADF Administrative Inquiries Tracking System (ADFAITS) and the Conduct Recording and Tracking System (CRTS). ADFAITS is the primary ADF-wide management tool for the capture of information concerning administrative inquiries, while CRTS tracks the conduct records of all Service members. During the reporting period 60 administrative inquiries were recorded on ADFAITS (Army 37, Navy 20 and Air Force 3). IGADF continues to observe improvements in the quality of discipline data being reported.

During the reporting period IGADF provided statistics and analysis for inclusion in Defence reporting. A synopsis of some of the key military justice statistics for the reporting period is contained in Annex A.

#### **DIRECTORATE OF SELECT INCIDENT REVIEW**

DSIR conducts reviews of deaths in service (which include suicides and combat-related deaths) of ADF members. Where, on review, it appears that a member's death may have arisen out of or in the course of their service, an inquiry will usually be conducted.

The purpose of IGADF reviews of, and inquiries into, deaths in service is to determine the facts and circumstances surrounding a member's death and to assess the extent to which the death arose out of or in the course of the member's service. A related purpose, where relevant, is to identify systemic flaws to prevent recurrence of any factors which may have led to a member's death.

CDF Directive No 15/15 *Reporting of Deaths of ADF Members and Support to IGADF and CDF Appointed Inquiries* mandates that Service Chiefs and the Chief of Joint Operations report the death of an ADF member promptly to the IGADF and provide information to assist in the IGADF review. During the reporting period, the Services and Joint Operations Command complied with the requirements of that Directive.

When conducting reviews and inquiries, IGADF staff liaise closely with ADFIS and through ADFIS with the Australian Federal Police, and with State and Territory Police and respective Coroners. Staff also liaise with other Defence stakeholders including Joint Health Command, Service Headquarters, the Defence Community Organisation and, in the case of operational matters, Headquarters Joint Operations Command.

The IGADF, in consultation with the Office of CDF and representatives of the Service Chiefs, has further developed the practice of engaging with families of deceased ADF members in connection with IGADF reviews and inquiries.

During the reporting period, the role of the IGADF in inquiring into the circumstances of deaths in service was formalised by amendment to the *Defence Act 1903*.

The total number of deaths of ADF members reported to IGADF during the reporting period was 42. IGADF conducted four formal inquiries into service deaths, and the total number of deaths under review at IGADF (including from previous years) was 47.

The CDF did not establish any Commissions of Inquiry (COIs) during the reporting period, although one Commission of Inquiry remained suspended pending the outcome of separate civilian legal proceedings.

## **DIRECTORATE OF MILITARY REDRESS AND REVIEW**

The ROG process is the legislated process by which ADF members can notify their senior commanders about grievances arising out of their service. Decisions which can be the subject of a ROG include terminations of service, entitlement decisions and other career-related decisions. The ROG system should normally be used only after an ADF member has attempted to resolve their grievance informally, including by using their chain of command.

IGADF is responsible for ADF grievance policy and for the review, independently of the chain of command, of grievances referred to Service Chiefs and, in certain cases, to the CDF.

During the reporting period, IGADF staff continued to refine systems aimed at reducing the time taken to process ROG applications and to improve the quality of ROG decision-making. Those systems—including the provision of procedural guidance to unit commanders, increased consultation with ROG applicants, and an increased pool of case officers—continued to have a positive impact on ROG timelines and outcomes.

Despite these measures, the extraordinary increase in the number of ROG applications received in CY 2014 resulted in an accumulation of ROG casework during the reporting period. In June 2016, it was recognised that external resources would be required to assist in dealing with that accumulation, and action was commenced to obtain those resources.

In addition, during the reporting period IGADF was consulted as part of proposed legislative amendments to streamline and simplify the existing multi-layered grievance-handling process into a single layer of internal review.

### **Unit-level ROGs**

During FY2015–16, 392 ROGs were lodged by ADF members. In keeping with the trends of the past four years, the main subjects of complaint in FY2015–16 were career (44 per cent), termination of service (22 per cent), and entitlements (18 per cent).

### **Referral of ROGs**

During FY2015–16, 89 ROGs were referred to Service Chiefs and five to CDF.

### **Decisions and outcomes**

ROG decision outcomes are categorised under six headings: 'complaint not reviewable'; 'withdrawn by member'; 'administrative resolution'; 'no merit'; 'some merit' (partially upheld); and 'has merit' (fully upheld).

During the reporting period, six ROGs (Navy 3, Army 1 and Air Force 2) were decided at the CDF level. Of those, five were found to have no merit while the remaining ROG was found to be not reviewable.

A further 106 ROGs (Navy 24, Army 61 and Air Force 21) were decided at the Service Chief level. Of those, 68 were found to have no merit, nine were withdrawn by the applicants and four were not reviewable. Of the remaining 25, 10 had some merit while 14 were determined to have merit, and one was resolved administratively outside of the ROG process. Almost 23 per cent of ROGs referred to Service Chiefs were found to have at least some merit.

Overall, the number of ROG applications submitted (392) in FY2015–16 was comparable to the number submitted (393) during the previous financial year.

### **DIRECTORATE OF LEGAL REVIEW**

During the reporting period the IGADF continued to be consulted and to provide input to the development or amendment to Defence policies relevant to military justice.

IGADF contributed to the review of intended amendments to the *Defence Act 1903* and the Defence (Inquiry) Regulations, and provided input on a proposed IGADF Regulation to legislate IGADF's role in the conduct of inquiries into Service-related deaths and ROG reviews.

## **VISITS AND OTHER ACTIVITIES**

### **Meetings with international counterparts and military justice briefings**

Throughout the reporting period the Office of IGADF hosted a number of foreign delegations including military justice officials from:

- a. the Singapore Ministry of Defence Chief Military Prosecutor and Head of Military Law team;
- b. the Turkish Military Law branch; and
- c. the Canadian Court Martial Comprehensive Review team.

The delegations were briefed on the roles and responsibilities of the IGADF in relation to military justice, in particular Service discipline and also on administrative law practices and processes as well as the ROG process.

International visitors such as those above provide excellent opportunities to liaise with other agencies and authorities with oversight responsibilities for military justice arrangements in Armed Services with similar military justice and personnel issues to those of the ADF.

It is positive to note that ADF policies and practices for discipline, sanctions, inquiries, investigations and complaint-handling compare favourably with those in use by international counterparts and in some cases appear to be at the forefront of innovative thinking in addressing areas of common concern.

### **Attendances at conferences**

In October 2015, the then-IGADF accepted an invitation to attend the 7<sup>th</sup> International Conference of Ombuds Institutions for the Armed Force held in Prague, Czech Republic. The conference covered items such as: the right to complain, conducting interviews and accessing information, making conclusions, recommendations, reporting and follow-up, conducting effective investigations, and the role of Ombuds Institutions for the Armed Forces in Democratic Societies. The conference was attended by many armed forces ombudsmen and Inspector-General agencies from around the world.

### **Military justice seminars and training**

In December 2015, responsibility for the conduct of the Inquiry Officer Training Course, the base competency course for ADF members conducting inquiries in Defence, transferred from IGADF to the Military Law Centre as an element of the *Re-thinking Systems Review* implementation.

In 2016, to assist this transition, IGADF provided legal and other expert personnel to provide guidance on and help with course content. IGADF staff also assisted in the delivery of the course in March and June. IGADF

continues to be responsible for the delivery of training to ADF legal officers for the certification of their competency to conduct legal reviews of inquiries.

During the reporting period, IGADF staff also conducted Military Justice Forums at Defence bases in Brisbane and Darwin to promote military justice values and to inform relevant ADF personnel of developments in military justice policy and processes.

In addition, the IGADF and staff responded to numerous requests to present on the role of the IGADF and current military justice topics to various Defence audiences, including postgraduate military law courses and command courses.

## **CONCLUSION**

The reality and the perception of the independence of the statutory office of the IGADF from the chain of command is of critical importance to its credibility and successful operation as an impartial monitoring and regulatory agency for the ADF. The office of IGADF provides an independent overview from which the operation of each of the elements of the ADF military justice system may be observed and assessed to gauge the overall health and effectiveness of the military justice system.

While the existing military discipline system supports the maintenance and enforcement of service discipline, efforts at legislative and policy reform of the system have had only modest results in recent years with some aspects of the system requiring reform as a priority. The investigative provisions in Part VI of the DFDA and the system of elections for trial by courts martial or Defence Force magistrate, which are required to be provided at the summary trial level, are examples of where such reforms of the law and policy guidance aimed at assisting those who conduct summary level trials are needed.

As stated in previous reports, a fair and effective military justice system continues to remain a vital element of ADF operational effectiveness. The work of the Office of the IGADF provides a unique vantage point from which the operation of each of the elements of the ADF military justice system may be observed.

### **Annex:**

#### **A. Military Justice Statistics**

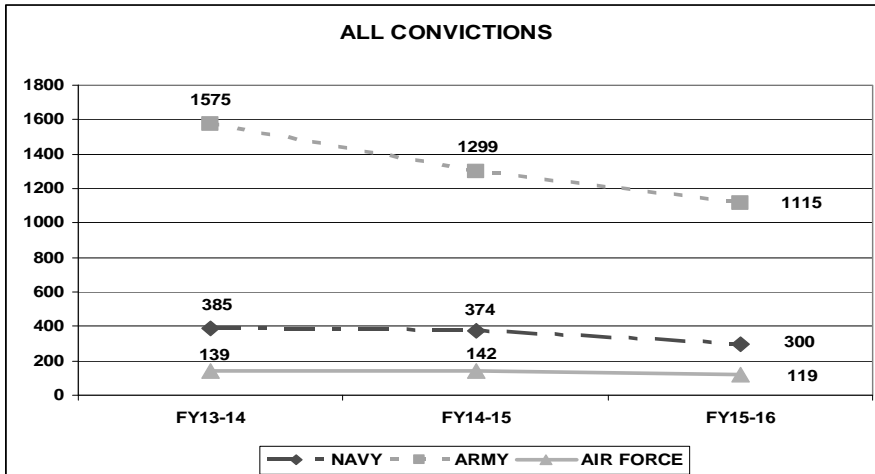
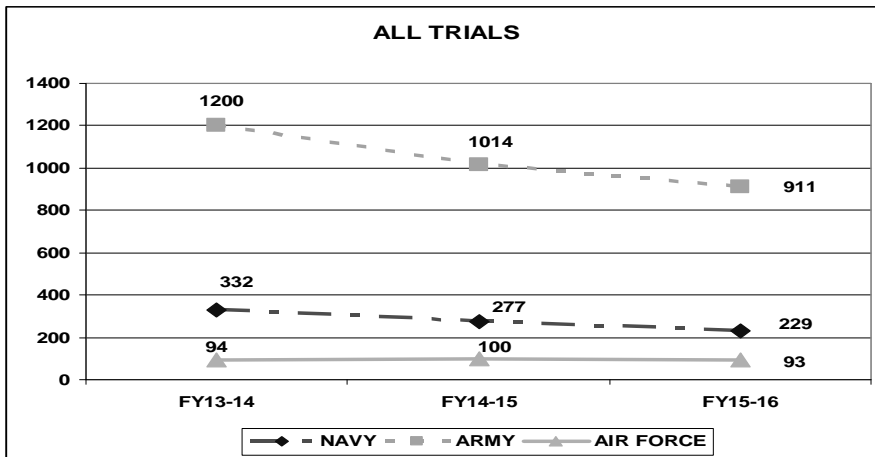
## GLOSSARY OF ACRONYMS AND ABBREVIATIONS

Australian Defence Force	ADF
ADF Administrative Inquiry Tracking System	ADFAITS
ADF Investigative Service	ADFIS
Australian Standards on Assurance Engagements	ASAE
Chief of the Defence Force	CDF
Commission of Inquiry	COI
Conduct Reporting and Tracking System	CRTS
<i>Defence Force Discipline Act 1982</i>	DFDA
Directorate of Legal Review	DLR
Directorate of Military Justice Performance Review	DMJPR
Directorate of Military Redress Review	DMRR
Directorate of Select Incident Review	DSIR
Executive Level 1	EL1
Inspector-General of the Australian Defence Force	IGADF
Officer Level 5 (referring to a LTCOL or equivalent)	O5
Officer Level 6 (referring to a COL or equivalent)	O6
Redress of Grievance	ROG
<i>Defence Act 1903</i>	the Act

### MILITARY JUSTICE STATISTICS

#### Discipline statistics

The overall offending rates across the three Services over the past three financial years have gradually decreased. Trials (courts martial, Defence Force magistrate trials and summary trials) for FY2013–14 totalled 1626, whilst 1391 were recorded in FY2014–15 and 1233 in FY2015–16. The number of convictions across the three Services has followed a somewhat similar trend over the same period with 2099 in FY2013–14, 1815 in FY2014–15 and 1534 in FY2015–16. Overall the number of trials decreased by about 11 per cent, while the number of convictions decreased by around 15 per cent. Recent trial and conviction trends are illustrated below.





The number of Defence Force Magistrate (DFM) trials and courts martial decreased by about two per cent from 42 in FY2014–15 to 41 in FY2015–16.

Summary trial trends during the reporting period were very similar to FY2014–15, with summary trials and convictions decreasing by about 11 per cent and 15 per cent respectively. The number of summary trials decreased from 1349 to 1192 (Navy 217, Army 886 and Air Force 89), while the number of convictions decreased from 1689 to 1433 (Navy 283, Army 1038 and Air Force 112).

The fairness and transparency of the discipline system was evident throughout the reporting period with 65 charges resulting in a not guilty finding at the summary level and a further 42 being quashed on review. At the higher tribunal level, 20 accused persons pleaded not guilty to some or all of the charges against them. Of those persons who pleaded not guilty, 11 were subsequently found not guilty of all or some of the charges against them, or had the charges against them dismissed.

### **Alcohol conviction statistics**

Disciplinary convictions where the misuse of alcohol was a contributing factor (excluding alcohol misuse on deployment) totalled 118. The three Services accounted for: Navy 27, Army 66 and Air Force 25.

Disciplinary convictions on deployment where the misuse of alcohol was a contributing factor totalled 32. Navy accounted for nine, whilst Army accounted for 15 and Air Force eight.

### **Discipline infringement statistics**

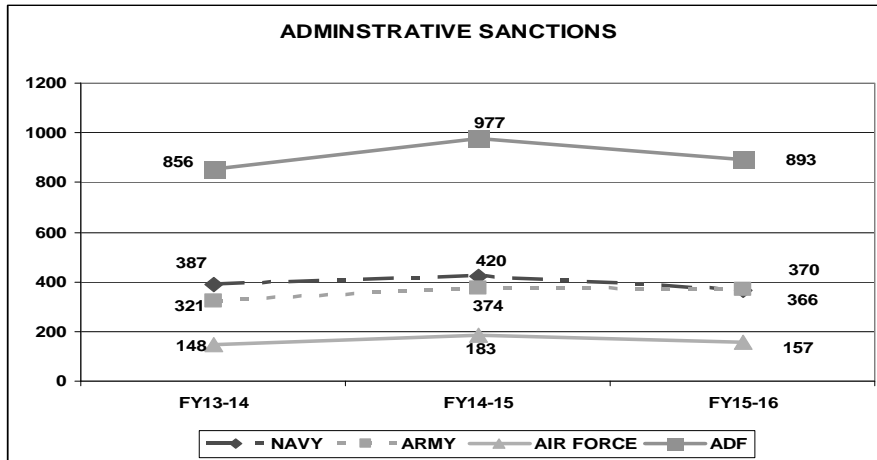
During the reporting period 5118 disciplinary infringements were recorded, an overall increase of almost four per cent from the 4931 recorded in FY2014–15. Army witnessed an increase of 10 per cent from 2754 in FY2014–15 to 3034 in FY15–16, followed by Air Force with a minor increase of two per cent from 455 in FY2014–15 to 466 in FY2015–16. Navy, however, experienced a decrease of around six per cent from 1722 in FY2014–15 to 1618 in FY2015–16.

### **Administrative sanctions statistics**

While formal disciplinary action is the usual means whereby alleged offences under 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.

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.

The use of adverse administrative action over the past three financial years has fluctuated from 856 in FY2013–14, 977 in FY2014–15 to 893 in FY2015–16. Of the 893 sanctions recorded during the reporting period, Navy accounted for 366, Army 370 and Air Force 157.



Of the 893 sanctions imposed during the reporting period, formal warnings 409 (46 per cent), counselling 243 (27 per cent) and terminations 118 (13 per cent) continue to be the most common. The remaining 123 (14 per cent) comprise sanctions including reduction in rank, suspension from duty, administrative posting and formal counselling. Records of Conversation are not formally classified as an administrative sanction and are therefore not included in the statistics.

The main reasons for the imposition of administrative sanctions continue to be for unsatisfactory conduct (33 per cent), the misuse of alcohol (17 per cent) and for physical fitness test failure (14 per cent).

### Administrative inquiries statistics

ADFAITS tracks data associated with statutory inquiries. Data entry is made at unit and formation level. ADFAITS does not record more informal inquiry mechanisms such as 'Fact Finding' activities or, previously, Quick Assessments. Sixty Inquiry Officer Inquiries (20 Navy, 37 Army and 3 Air Force) were recorded on ADFAITS during the reporting period. No Boards of Inquiry or Commissions of Inquiry were recorded on ADFAITS during the reporting period.

### Civil conviction statistics

ADF member civil conviction rates have been gradually declining over the past three financial years with a high of 113 in FY2013–14 to 101 in FY2015–16. Of the 119 punishments imposed by a civil authority, almost all were monetary fines (51 per cent) and loss or suspension of driver's licence (42 per cent).



