

Review of Australian Defence Force Redress of Grievance System 2004

**A JOINT REPORT BY THE DEPARTMENT OF DEFENCE
AND THE OFFICE OF THE COMMONWEALTH OMBUDSMAN**

April 2005

Report by the Commonwealth Ombudsman Prof. John McMillan under the *Ombudsman Act 1976*

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Australian Government

**Review of the ADF Redress
of Grievance System
2004**

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Commonwealth Ombudsman**

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Produced by the **Department of Defence** and the **Commonwealth Ombudsman**, Canberra



Chief of Defence Force

Defence Force Ombudsman

Review of the ADF Redress of Grievance System - 2004

We are pleased to present the Joint Report of the Review into the ADF Redress of Grievance System. The Review has been completed in accordance with the Terms of Reference that you issued on 20 September 2004.

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27 January 2005

EXECUTIVE SUMMARY

Introduction

This Review seeks to improve complaint handling in Defence through building on existing complaint handling systems available to ADF members, and refining the relationships that Defence has with external complaint handling agencies.

A significant issue for this Review is that many recommendations of previous reviews have not been implemented, or have only been partially implemented. The Review recognises this is partly due to the need to amend legislation, which has not been pursued. While the Review supports, in principle, many of the recommendations made by previous reviews, in some cases it is not in absolute agreement with the wording used.

ADF members are encouraged to seek resolution of any complaint at the lowest possible level through the chain of command. Where a member is not satisfied with the outcome of these normal administrative processes, the member may seek further review through the formal grievance process. Access to the formal complaint system is through the submission of a Redress of Grievance (ROG) to the member's Commanding Officer (CO).

The Review measured the performance of the ROG system with respect to timeliness and found that while there has been significant improvement in recent years that the overall responsiveness is poor. Less than 400 ROGs are submitted annually at unit level, and those that are referred on to Service Chiefs is less than 190. 80% of ROGs at unit level are dealt within three to four months, whereas 80% of ROGs at Service Chief level take up to 8 months to complete. Too many ROGs are taking well over a year to finalise through all levels of the Defence system.

Key Themes

Benchmarking Defence's practices and policies informed the Review in identifying areas where Defence could enhance its complaint handling systems. The Review found that Defence does not have statements of expected performance and service delivery in complaint handling comparable with the evolving trends in best practice in the Australian community.

Since 1997, new complaint-handling mechanisms have been made available to the ADF, including the Defence Equity Organisation (1997), Complaint Resolution Agency (CRA) (1997), the Army Fair Go Hotline (2001), the Defence Whistleblower Scheme (2002), the Directorate of Alternative Dispute Resolution and Conflict Management (2002) and Inspector General - ADF (2003). This rapid increase in complaint avenues has vastly added to the complexity of managing and administering complaints in Defence.

Very few complainants and managers appear to understand all of these avenues. Many of these processes have the mandate to examine similar issues, and some may result in executive action such as disciplinary proceedings or sanctions. The Review found that this myriad of systems is not only complex and somewhat bewildering to the user, it must also result in less than optimal use of resources and inefficiencies. The systems have grown in a piecemeal and ad hoc fashion. The current ROG system now lies uncertainly within a complex and poorly understood network of inter-linked processes and mechanisms that make up the military justice system.

The Review believes that the future role of CRA should be expanded to include leadership, direction and coordination of all of Defence's formal complaint handling systems. CRA should be given the clear authority to be the driving force and 'centre of excellence' in complaint handling/resolution and neutral evaluation for Defence. Developing CRA into such an expanded role will require fundamental changes to the coordination of complaint handling across Defence, CRA resourcing and organisational design. Review discussions with both CDF and the Ombudsman confirmed that, from their perspectives, Defence has the opportunity to create a best practice model in complaint handling and resolution.

An examination of the processes and methods mandated by each of the various Defence complaint handling agencies reveals that their products and enterprises are often similar or complementary. In spite of this, there is no shared database of information, and frequently a lack of communication about common cases and methods. There is no overarching policy that explains to potential complainants which mechanisms are best suited to resolving their grievance. This tribal approach to complaint handling is divisive and unhelpful for both the Defence organisation and its people.

The Review found that a common information system for complaint management must be developed. This system should have the ability to provide information in a form that will support Defence wide reporting including information required by the Inspector General (ADF).

The Review found that DEO, Army Fair Go Hotline, Army Land Command Sensitive and Unacceptable Behaviour Resolution and Incident Management Section, Directorate of Alternative Dispute Resolution and Conflict Management, Navy's Sexual Offence Support Persons program and any new initiatives in complaint management should be managed centrally with a view to ensuring that their operations are complementary. Where feasible, these agencies should be co-located under the same group. Where they cannot be co-located, they should be made responsive to the head of the new CRA.

The Review found that delays in resolving ROGs stem from two areas: the delay between receiving the complaint and allocating cases to case/investigating officers (both at CRA and at unit level), and the delays in obtaining necessary information from other sources. Identifying the exact cause of these delays, is however, made difficult by the lack of relevant management information.

The Review believes an enhanced process of preliminary assessment by CRA would assist to clarify the issues to be determined, the relevant guidelines/instructions and policy. This process should be a 'neutral evaluation' of the case to assess the information, documentation and investigation required to progress the case.

CRA's role needs to be expanded to measure, monitor, and report the total time taken in addressing each complaint. The Review believes that the CDF and Service Chiefs should be provided with information that reveals a full picture of the time taken to resolve an individual complaint, not a snapshot of what is occurring in subcomponents of the system. DFO could assist this process and apply complementary performance measures within its own operations to add further value to CRA reporting. Defence and DFO must be able to compare 'apples with apples' when perceptions of time taken to address a complaint are in question.

The Review concluded that the stress placed on Defence agencies and the DFO by last minute ROG submissions is unacceptable and not conducive to good management of not only the ROG in question, but effective administration. Therefore, it took the view it would be desirable to include in the Defence Instructions strict timelines for ROGs to be lodged, well in advance of an advised termination date. The establishment of such time limits would still allow the complainant adequate time to provide a considered response to the proposed termination.

The Review considers an improved case prioritisation approach driven by an objective assessment of 'impact' would provide a more transparent and valid basis for managing the CRA case list. The real and immediate impact on the complainant should be given greater weighting.

Many ADF personnel conducting administrative investigations in Defence have received little relevant training, having only been provided with a meagre introduction. The Review believes that there is a need for coordination of training in administrative investigations across all of those ADF courses that currently include elements of investigation and administrative law. The Defence Education and Training Development Branch within Defence Personnel Executive is well placed to provide oversight and guidance on the minimum standards required for this activity to assure that investigation training is adequate. Defence would benefit from an analysis of training needs to determine the required standard for investigating officers at different levels of professional development.

Using the Initial Advice to CRA approach suggested in this Review, COs at unit level would be required to formally certify that they, and the nominated investigating officer, have at least read and are familiar with the relevant Defence manual and guidelines, and that the investigation will be carried out in accordance with requirements. Online training/familiarisation would greatly extend Defence's capability in this area. The Review also proposes a more interventionist approach being taken by CRA, where in selected cases it might choose to undertake the investigation or nominate the investigating officer.

Immediate action is required to reduce the existing backlog of cases held by CRA. Unless this is done forthwith, the package of recommendations made by the Review (as might be accepted) will not realise their full potential. Options including the secondment of suitable case officers from elsewhere and engagement on short-term contract of experienced staff should be applied to resolve all outstanding ROGs. The Directorate of Alternative Dispute Resolution and Director CRA should examine each case on the unallocated case list to determine if alternative resolution might be an option for speedy and effective closure.

The Review proposes the development of a sub-unit of CRA in another State, for example Sydney and/or the South-East corner of Queensland. This would provide additional case capacity and enhance the recruitment pool for CRA staffing.

At the time of writing, there are around 40 ROG cases awaiting allocation to case officers, some of which will not be allocated for six months. This backlog creates additional stress for CRA staff and complainants. Earlier reviews have suggested that the crux of the problem is staffing, rather than funding. CRA has the financial resources to employ adequate staff, but the Services have not always provided suitable personnel on an ongoing basis. Director, CRA must be given the flexibility to employ enough of the right personnel, at the right time.

The Review believes that an improved understanding of Defence's 'strategic' principles underpinning complaint handling would assist both complainants and staff, and avoid delays and wasted effort. The level of review and extent of investigations undertaken in a ROG can be assessed based on contents of the ROG itself, precedent in dealing with similar issues, lessons learned from previous cases and feedback from senior officers regarding the extent of briefing material they require in such cases. The absence of a plain-English guide to complaint handling in Defence also leads to uncertainty and potential duplication, due to a lack of clarity of roles for the various agencies involved.

Delays occurring within the Defence ROG system arising from referral of cases for legal advice are an area of controversy. The frequency of such referrals and nature of the advice sought can colour a perception of how well the process works, and how well it serves the best interests of Defence and complainants. Views expressed to the Review by DFO staff confirmed their belief that 'awaiting legal advice' was cited as a frequent reason for delay.

On the available evidence, the Review believes that although differing perceptions will arise over the need to refer a case for legal advice, taken alone, the practice does not represent a systemic failure in the current ROG process. Nevertheless, as the concern exists the Director CRA should closely monitor and report trends in this area.

In recent times adjustments have been made within both CRA and DFO that have enhanced interaction and the level of understanding that exists between staff. Such activity is to be encouraged. Several interviewees expressed a view that where differences did arise, it was often the result of failure to communicate the reason for a request and relevance to the matter under investigation. A DFO/CRA memorandum of understanding, or similar service level agreement should be developed to optimise cooperative practices and policies between these agencies.

The Review believes that Defence should establish complaint-handling principles that encompass the entire complaint environment. Such principles should inform and facilitate a holistic complaint resolution approach, which would include a Defence Grievance Handling Charter and enhanced service by Defence complaint handling agencies.

Conclusion

Defence has devoted considerable effort to providing improved avenues of complaint in recent years. The formal Redress of Grievance system is now one of a range of options. The creation of an independent Inspector General of the ADF with responsibilities for reporting on the health of the military justice system including complaint handling is improving governance. The Redress of Grievance System, whilst the oldest formal complaint system available to military members, still retains its place of importance among the newer avenues of complaint. The Review has sought to identify practical solutions to complex problems. Its recommendations should be considered as a reform package with each component part playing an important role in the overall outcome. Piecemeal implementation would compromise the overall effectiveness of the reform package. The recommendations of this Review are intended to be practical and achievable, facilitating the empowerment of CRA and the improvement of complaint handling in Defence. Implementation would also be enhanced by DFO involvement in monitoring progress and providing feedback.

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BACKGROUND

Introduction

The Australian Defence Force (ADF) Redress of Grievance (ROG) system has been the subject of a number of reviews in recent years, both within Defence and by external bodies. Despite changes intended to improve the process, Defence and the Defence Force Ombudsman (DFO) continue to have concerns about the level of dissatisfaction of ADF members in relation to the time taken to finalise complaints and general concerns about quality.

Background

In mid 2000 both Defence and the Ombudsman agreed that there would be merit in examining possible changes that would go beyond the scope of the Australian National Audit Office (ANAO) audit. A joint Defence/Defence Force Ombudsman review team was appointed and in September 2000 the team submitted a report on the structural, resource and cultural impediments to the effective and efficient operation of the ROG system. The report made 24 recommendations, most of which were agreed and implemented with the reissue of Defence Instruction (General) Personnel 34-1, Redress of Grievance – Tri-Service procedures, in August 2001.

At the Senate inquiry into the effectiveness of Australia's military justice system (to be referred to as the Senate inquiry 2004 from this point), the Chief of Defence Force (CDF) acknowledged criticism of the handling of some redress of grievance investigations, even though significant improvement has been achieved in recent years.

CDF stated: "We will continue to look for ways to improve standards and timeliness. The time taken to deal with some complaints and grievances is still longer than I would like." and "I have had discussions with the Defence Force Ombudsman about conducting a joint review of the redress process to identify further improvements. He and I have decided to proceed."

The Defence Force Ombudsman highlighted in his submissions to the Senate Inquiry his concerns about the level of dissatisfaction of ADF members in relation to the processing of complaints, particularly the time taken to finalise complaints. This suggests that scope remains to improve the ROG system. The Ombudsman, in his submission, stated that "I recently met with the CDF and departmental secretary to discuss problems inherent in the current system. I am pleased to advise that we are discussing options for jointly reviewing current processes to identify reasons for the current problems and identify options for improvement."

The Senate inquiry had not published its findings at the time of finalising this report.

Aim of Review

The aim of this Review is to identify deficiencies in the ROG system and make recommendations to refine the process to better meet the needs of members and the ADF. The Terms of Reference are listed at Annex A, and include:

- actions required to implement a responsive and effective ROG system for the ADF, including performance measures for assessing the timeliness of the ROG process;
- the levels of investigation and review provided by the ROG process;
- the scope and nature of complaints;
- the adequacy of complaint investigation and review;
- the nature and extent of legal advice throughout the process;
- oversight of, and accountability within, the process;
- circumstances under which executive action should be suspended;
- the impact of concurrent complaints made to the Defence Force Ombudsman, the Human Rights and Equal Opportunity Commission or any other external body;
- the nature of, and working relationships between, Defence's complaint handling agencies, including the Complaint Resolution Agency, Inspector General ADF, Inspector General Defence and the Special Financial Claims Directorate; and
- the nature of working arrangements between Defence and Defence Force Ombudsman staff.

The Review was also tasked to look at broader Australian community standards for responsiveness to complaints and draw conclusions as to their appropriateness to Defence, and whether they might provide useful benchmarks for Defence's ROG process.

Composition of the Review Team

The Review team comprised the following members:

BRIG John Cox AM (Retd.) (Part Time)	Defence
Mr William Stoll APM (Part time)	Consultant to the Office of the Commonwealth Ombudsman
Ms Glenda Barton (Full time)	Office of the Commonwealth Ombudsman
Mr Richard Dittler (Full time)	Defence

Timeframe for Review and Reporting Arrangements

The Review commenced on 13 September 2004 and was completed on 11 December 2004. The Review team reported to a Steering Committee comprising the Deputy Ombudsman Mr Ron Brent, Senior Assistant Ombudsman (Defence) Ms Mary Durkin, HDPE Rear Admiral Brian Adams AO, RAN and FASPERS Mr Peter Sharp. Contact with the Steering Committee took the form of regular discussion with individual members throughout the period of the Review and the presentation of a draft report in early December 2004.

PREVIOUS REVIEWS

There have been numerous reviews in relation to the ROG system. In order to provide context for readers, each review has been summarised below.

October 2003 – Foreign Affairs, Defence and Trade References Committee – Inquiry into the Effectiveness of Australia’s Military Justice System

This inquiry examines matters that include: the provision of impartial, rigorous and fair outcomes, mechanisms to improve the transparency and public accountability of military justice procedures, and inquiries into the reasons for peacetime deaths in the ADF. It also considers allegations of mistreatment of ADF personnel; administrative action versus disciplinary action against members of the ADF; allegations of drug abuse by ADF members and the impact of Government initiatives to improve the military justice system.

Director CRA gave evidence to the inquiry. In particular questions related to; the impartiality and independence of CRA, issues with timeliness in resolving ROG complaints and the standards of investigation. DFO evidence raised issues of investigation standards, referral for legal advice and timeliness.

The Committee has not delivered its report to date.

July 2001 – Report of an Inquiry into Military Justice in the Australian Defence Force – Mr J C S Burchett QC

This Review was much broader than an examination of the ROG system. It looked at the issue of whether a culture of systemic avoidance of due disciplinary processes existed in the ADF and whether or not any irregularities in the administration of military justice required corrective action. The Review also assessed the management of allegations arising in connection with 3 RAR; referral of matters for action by appropriate ADF command or management authorities and investigation under the *Defence Force Discipline Act 1984* or by appropriate Commonwealth or State authorities. The Review identified the need for and the role and functions of an Inspector General of the ADF.

September 2000 – Review of the Australian Defence Force (ADF) Redress of Grievance (ROG) System – Defence Personnel Executive

The aim of this Review was to assess the ROG system to ascertain what structural, resource and cultural impediments there were to its effective and efficient operation. The Review suggested an improved ROG system for the ADF, which supported the command function in the contemporary environment and made recommendations on actions required to implement that system. The Review noted there had already been wide consultation in the context of the audit completed by the ANAO, including interviews with some 50 members. Recommendations that required changes to Defence legislation were not implemented.

1999 – Redress of Grievances (ROG) in the Australian Defence Force – (ANAO)

The objective of the audit was to ascertain whether the ROG system could be refined to improve the efficiency and timeliness of processing of complaints without reducing the equity and transparency of the current system.

The audit proceeded by examining particular AROG (Application for Redress of Grievance) cases and general complaint issues according to the audit criteria. The Complaint Resolution Agency (CRA) and the ANAO selected a number of cases for audit purposes. ANAO interviewed members who were involved in processing ROGs at unit level or who had lodged a ROG. Officers of CRA and DFO were also interviewed.

ANAO made 14 recommendations aimed at improving the efficiency and effectiveness of the current ROG system. The Department agreed to all of the recommendations, although with six recommendations agreement was qualified.

June 1999 – Military Justice Procedures in the Australian Defence Force – Joint Standing Committee on Foreign Affairs, Defence and Trade

The Senate referred the issue of Australia's military justice system, to the Joint Standing Committee on Foreign Affairs, Defence and Trade, in November 1997. The Terms of Reference authorised the Committee to examine the adequacy and appropriateness of the existing legislative framework and, the procedures for the conduct of military inquiries and ADF disciplinary processes. The Committee examined the existing legislation, policies and framework of the system of military justice employed by the ADF and evaluated their effectiveness and relevance.

January 1998 – Own motion investigation into how the Australian Defence Force (ADF) responds to allegations of serious incidents and offences – Review of Practices and Procedures – Report of the Commonwealth Defence Force Ombudsman pursuant to section 35A of the *Ombudsman Act 1976*

The purpose of the investigation was to determine the adequacy of the ADF response to allegations arising from an incident at a Defence base, whether the individuals involved were fairly and appropriately dealt with; and if there were any deficiencies in the policy and administration applicable to cases of this kind. The Review focused on the systemic issues arising from the way the ADF responded to serious incidents and offences, particularly sexual offences and provided recommendations for administrative measures and/or management processes. A number of ADF investigations of serious incidents were reviewed.

The ADF accepted the majority of the recommendations. A comprehensive draft manual titled Administrative Inquiries and Investigations in the ADF was developed. This manual incorporated many of the recommendations.

Conclusion

A significant issue for this Review is that many recommendations of previous reviews have not been implemented, or have only been partially implemented. The Review recognises this is partly due to the need to amend legislation, which has not been pursued. While the Review supports, in principle, many of the recommendations made by previous reviews, in some cases it is not in absolute agreement with the wording used.

The following table presents recommendations that remain unactioned from previous reviews, which this Review supports. Where the Review does not agree, comments are added in square brackets.

Recommendations:

- 1. That, for the purposes of the ROG provisions of the Defence Force Regulations, ‘service’ be defined as service in the permanent or active reserve forces**
Report of the Australian Defence Force (ADF) Redress of Grievance (ROG) System, Defence Personnel Executive September 2000.
- 2. That the scope of matters about which a member can submit a grievance be changed to “any decision, act or omission relating to a member’s service that is considered or perceived to be adverse or detrimental to the member and which is capable of being redressed by a member of the ADF or civilian employee of the Department of Defence”. As a pre requisite to submitting a grievance, a member must have attempted to resolve their problem by other means through the normal chain of command and such efforts must be documented in the grievance**
Report of the Australian Defence Force (ADF) Redress of Grievance (ROG) System, Defence Personnel Executive September 2000.
- 3. That, in order to avoid duplication of effort, action in relation to a ROG should be terminated where the member has applied to have the action reviewed by a Court or Tribunal or has referred the matter to an external review body (eg HREOC, DFO) that opts to investigate the complaint**
Report of the Australian Defence Force (ADF) Redress of Grievance (ROG) System Defence Personnel Executive September 2000.

[The Review suggests that the word ‘terminated’ should be replaced with the phrase ‘suspended pending outcome’]

- 4. That complaints of the following types be excluded/prohibited from the ROG system:**
 - **Complaints regarding a process which seek to anticipate a decision that hasn’t yet been made**
 - **Complaints against the assessments, ratings or gradings in performance evaluation reports except where the member can demonstrate that there were serious defects in the evaluation process**
 - **General complaints against the merits of Defence policies***Report of the Australian Defence Force (ADF) Redress of Grievance (ROG) System, Defence Personnel Executive September 2000.*

[This Review believes that the first category (*Complaints regarding a process..*) is not an issue. Views differed on the acceptability of the second category (*Complaints against assessments...*); this is discussed in the section ‘Excluding some complaint categories from the ROG process’. The third category is fully supported.]

cont...

5. That, where a CO does not have the authority to grant the redress sought in a ROG, after having explored direct means of obtaining possible resolution, the CO should refer the ROG and any associated documentation gathered at unit level to the CRA for investigation and referral to a senior level redress delegate

Report of the Australian Defence Force (ADF) Redress of Grievance (ROG) System, Defence Personnel Executive September 2000.

6. That members should be required to submit a ROG no later than 6 months after the occurrence of the issue raised in the grievance, or the day the member knew, or ought reasonably to have known, that the offending decision, act or omission in question occurred. A redress delegate should have the discretion to accept a complaint that is 'out of time' in exceptional circumstances but only if the redress delegate can foresee some tangible benefit or value in doing so

Report of the Australian Defence Force (ADF) Redress of Grievance (ROG) System, Defence Personnel Executive September 2000.

[The Review would prefer 6 months, but notes that a period of 12 months is allowed regarding complaints to the Ombudsman under the *Ombudsman Act 1976 (Cth)*]

7. In order to overcome the long-standing staffing problems within the Military Redress Section of the CRA, the Service Chiefs should undertake to:

- Ensure that personnel posted to permanent positions within the CRA have the requisite skills and abilities to perform the duties of their position;
- Endeavour to provide relief manning where permanent positions within CRA are expected to be vacant for more than 2 months; and
- Formulate agreements for the ongoing provision of adequate Reserve manpower to the CRA

Report of the Australian Defence Force (ADF) Redress of Grievance (ROG) System, Defence Personnel Executive September 2000.

REVIEW METHODOLOGY

The Review sought to avoid duplication of the work undertaken by previous reviews. By using earlier reviews as the starting point, the Review was able to critically evaluate the current complaint-environment in Defence.

The Review methodology is summarised at Table 1. Work commenced in mid- September 2004, and established lines of inquiry relating to benchmarking and quantitative analysis of CRA cases. This examination and analysis included reviewing existing internal (Defence) and external standards relating to complaint handling. The standards were compared with current performance within Defence for handling ROG complaints.

Using information from CRA and Ombudsman’s databases, the Review analysed the timeliness of ROG resolution through the use of cumulative percentage distribution (CPD) graphs, showing the proportion of cases resolved relative to the time taken to finalise.

The Review agreed on six problematic cases from each of the last three years (2002, 2003, 2004), known to both CRA and the DFO staff. A desktop review of these cases was undertaken to identify issues and illustrate common problems. This exercise confirmed that critical issues for the Review were: timeliness, quality of investigation at unit level, processing of ROGs at CRA, and difficulties processing matters where Service Chiefs did not hold the delegation to decide the redress.

The Review conducted interviews and received written submissions. All ADF members were invited to provide written submissions. This was promulgated by a DEFGRAM. A preparatory questionnaire was circulated and is at Annex B. The list of people interviewed is at Annex C. It was not practical or required under the Terms of Reference for the Review to interview individual complainants about their cases. However, from the fourteen written submissions made to the Review, five were submitted by complainants. All submissions provided were considered by the Review, and many offered valuable insight into the ROG process.

The Review team met with the Steering Committee on four separate occasions. Progress was reported and the Steering Committee provided guidance on the progress of the Review.

Table 1: Review Methodology

ACTION	TIME ALLOCATED	TARGET DATE
Identify benchmarks/standards for complaint handling	4 days	24 Sep
Compare ADF Redress of Grievance to national/international standards ⇒ Identify issues	1 week	1 Oct
Examine issues and link to submissions and interview list	2 weeks	15 Oct
Conduct interviews and analyse submissions	2 weeks	29 Oct
Prioritise issues and conduct targeted research ⇒ Generate options	2 weeks	12 Nov
Analyse options ⇒ determine recommendations	2 weeks	29 Nov
Draft report To Steering Committee		Early Dec

BENCHMARKING COMPLAINT SYSTEMS

The Review noted that comparison between Australian agencies and international systems and standards is difficult. This is primarily due to the use of different measurement techniques and differences between the nature, formality and complexity of different organisational processes. In examining large corporations such as Coles Myer and BHP, the Review noted that few of these private-sector organisations reported or publicised detailed information from their complaint handling systems. Public accountability inherent in public-sector organisations demands that Government departments exercise transparency in their handling of complaints.

The Review considered complaint handling in the national defence forces of Canada, the United Kingdom, New Zealand and the United States. Their respective complaint avenues have developed to suit the size, nature and culture of their organisations, and are not necessarily suited to close comparison with ADF systems. For example, members of the various services of the United States armed forces may submit an application for redress through Article 138 of the Uniform Code of Military Justice. Such applications are ultimately subject to judicial review. These applications cannot be validly compared with ROGs in the ADF due to differences between legislation and the manner of resolution.

Public sector organisations in Australia also have a wide variety of mechanisms and standards for dealing with complaints. Australian organisations and schemes examined by the Review included the Banking and Financial Services Ombudsman and the Social Security Appeals Tribunal. Whilst these entities have well established complaint-handling mechanisms, comparison between their published statistics and those in Defence are difficult due to different processes and terminology. Best practice used by these organisations has been summarised at the end of this segment under the heading 'Elements Common to Good Practice in Australian Complaint-Handling'.

The 2003/2004 Annual Report of the Commonwealth Ombudsman stated that

Benchmarking is a common problem for all Ombudsmen in Australia, in both the public and private sectors...one dimension of this challenge is to ensure consistency in data entry...If [statistics] are to convey an accurate picture, there must be an equally sophisticated system for recording and interpreting them.¹

An organisation which defines advice-line calls as 'complaints' will measure a much higher incidence of complaints than an organisation that requires formal written processes to lodge a grievance.

In the context of the Review, it was useful to examine the two primary external complaint handling agencies that have regular contact with Defence/CRA. These are the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission (HREOC).

¹ From Commonwealth Ombudsman Annual Report 2003/2004, p101

Extracts from the Commonwealth Ombudsman Annual Report for 2003/2004 and HREOC Annual Report for 2002/2003 are summarised below. In the case of the Commonwealth Ombudsman, only the output closest in nature to the work carried out by CRA is presented.

Commonwealth Ombudsman Performance Measures

- Commonwealth Ombudsman²: performance consists of two outputs – ‘provision of a complaint management service for government’, and ‘provision of advice to government to improve public administration’. Only the key performance indicators in relation to the complaint management function are presented below:

GOAL/PERFORMANCE INDICATORS	OUTCOME/ACHIEVEMENTS
1. Quality: Feedback from clients and stakeholders on satisfaction with service delivery, timeliness and outcomes.	Achievement: Client satisfaction survey in 2004 found overall 65% of complainants were satisfied with service delivery, 73% were satisfied with timeliness in complaint handling and 56% were satisfied with outcomes
2. Quantity: Number of complaints received in accordance with long term trends is expected to be around 20,000, the number of other approaches from the public expected to be around 15,000.	Achievement: Commonwealth Ombudsman received 17,496 complaints nationally and 9036 other approaches
3. Quantity: Number of complaint issues finalised approximately 22,000. 2002/2003 stated goal was 85% completion within 12 months and 65% completion within one month of receipt. ³	Achievement: Commonwealth Ombudsman finalised 19,639 complaints. The proportion of investigated complaints finalised within one month was 69%, slightly better than 2002/2003 (65%).
4. Quantity: Number of complaint issues investigated and finalised around 6,500.	Achievement: Commonwealth Ombudsman investigated and finalised 5910 complaint issues

Complaints made to the DFO within the category of interest to the Review totalled 354, the composition of which was 205 (Army), 79 (Royal Australian Air Force), 68 (Royal Australian Navy) and 2 (Australian Defence Force Academy). A proportion of these complaints would be referred back to Defence for resolution before being investigated by the DFO. The Review also noted that not all of these matters are ROGs.

² From **Commonwealth Ombudsman Annual Report 2003/2004**, p15-21

³ From the **Commonwealth Ombudsman Annual Report 2003/2004**, p16.

Human Rights and Equal Opportunity Commission Performance Measures

The HREOC Annual Report for 2003/2004 had not been published at the time of writing. In 2002–03⁴, HREOC published the following performance information in its annual report:

GOAL/PERFORMANCE INDICATOR	OUTCOME/ACHIEVEMENT
Quantity: Not published	1,236 complaints were received
Quantity: Not published	1,308 complaints were finalised
Quantity: 30 percent of finalised complaints to be conciliated	32% of finalised complaints were conciliated
Quantity: 80 percent of complaints to be finalised within 12 months of the date of receipt	84% of complaints were finalised within 12 months of lodgment
Quantity: Not published	9,486 telephone/post/email/TTY/in person enquiries were received through the Complaint Information Service
Quality: Not published	84% of parties were satisfied with the service they received and 50 percent rated the service they received as 'very good' or 'excellent'

Later in this report, comments are made concerning CRA being a centre of excellence in complaint handling and resolution. In this regard, there are useful parallels with HREOCs work to educate the community about relevant law and the complaint process, as well as providing training in investigation and conciliation. In 2002–03:

- Approximately 172 organisations throughout all states and territories attended information sessions on the law and the complaint handling process run by HREOC;
- 70 liaison/information sessions were undertaken by the HREOC Complaint Information/Indigenous Liaison Officer;
- Seven specialist investigation and/or conciliation skills training courses were conducted for staff from State and Territory Equal Opportunity Commissions, government and non-government agencies; and
- 12 skills training courses in administrative investigation were conducted for public servants through the Australian Public Service Commission.

The Defence community would benefit from CRA, assisted by other areas of Defence and external agencies, taking on a wider education and awareness role.

⁴ From the **Human Rights and Equal Opportunity Commission Annual Report 2002/2003**, at www.hreoc.gov.au/annrep02_03/chap2.html

Elements Common to Good Practice in Australian Complaint Handling

From this desktop review of leading complaint handling agencies and standards in Australia⁵, the following general characteristics were identified as common to good practice in complaint handling:

- Widespread training/education activities for employees and complaint handling staff members
- Accessible to employees at all levels of the organisation
- Widely-publicised performance indicators and ‘code of practice’
- Clearly identified and publicised goals for timely complaint resolution (usually 100% resolution of complaints within 12 months of lodgement)
- Formal integration of Alternative Dispute Resolution (ADR) into complaint processes
- Conduct and publication of customer satisfaction surveys on complaint handling
- Mechanisms for quickly transferring a complaint to a delegate who is able to make a determination and provide a resolution

Benchmarking Defence’s practices and policies against this background informed the Review in identifying areas where Defence could enhance its complaint handling systems. The Review found that Defence does not have statements of expected performance and service delivery in complaint handling comparable with the evolving trends in best practice in the Australian community.

⁵ These measures also form part of the Commonwealth Ombudsman’s recommendations in **A Good Practice Guide for Effective Complaint Handling**. P9 and the principles in the Australian Standard on Complaint Handling (AS 4269 – 1995).

COMPLAINT HANDLING IN DEFENCE

Evolution in Defence Complaint Handling

The ROG process was the only formal avenue of complaint available to ADF members up until the early 1990's. In the last ten years, new attitudes to complaint handling have developed, along with increased expectations of ADF members and the community. As a result of this change, there are now up to five different avenues available to members of the ADF for making a complaint. These avenues vary enormously in nature, formality, process and possible outcomes.

Since 1997, new complaint-handling mechanisms have been made available to the ADF, including the Defence Equity Organisation (1997), Complaint Resolution Agency (1997), the Army Fair Go Hotline (2001), the Defence Whistleblower Scheme (2002), the Directorate of Alternative Dispute Resolution and Conflict Management (2002) and Inspector General - ADF (2003). This rapid increase in complaint avenues has vastly added to the complexity of managing and administering complaints in Defence.

Very few complainants and managers appear to understand all of these avenues. Many of these processes have the mandate to examine similar issues, and some may result in executive action such as disciplinary proceedings or sanctions. The Review found that this myriad of systems is not only complex and somewhat bewildering to the user, it must also result in less than optimal use of resources and inefficiencies. The systems have grown in a piecemeal and ad hoc fashion.

Australia's Military Justice System

The purpose, scope and expectations of the military justice system are not well understood by many Defence personnel. Many would mistakenly equate it solely with the operation of the *Defence Force Discipline Act 1984*. CDF, General Cosgrove stated to the recent Senate Inquiry 2004 that

..we must better explain what the military justice system is, and what its limits are. We must make sure that Service people – and in many cases their families – are provided with all the appropriate information and support they need, both in the immediate aftermath of a traumatic event and later.⁶

The current ROG system now lies uncertainly within a complex and poorly understood network of interlinked processes and mechanisms that make up the military justice system. These mechanisms are all well intentioned, but are compromised by their lack of cohesion and the extent to which ADF people understand them. This larger issue should be kept in mind in discussion concerning the effectiveness of the current ROG system.

Staff members involved in each of the complaint handling agencies are networking across major organisational boundaries in an ad hoc manner. A Defence-wide view on managing all

⁶ From transcript of the Senate Inquiry of the Effectiveness of Australia's Military Justice System, Friday 6 August 2004.

of the resources across Defence-wide complaint activities cannot be easily achieved under the current arrangements. The Review noted that in the ‘dispersed’ environment, there is a danger that its work could lead to sub optimisation of the ROG system. Fixing and optimising the ROG system will not address other problems with complaint handling in Defence. The Review believes that Defence must take a more strategic approach to the design and integration of its complaint handling.

The ADF ROG System

ADF members are encouraged to seek resolution of any complaint at the lowest possible level through the chain of command. Where a member is not satisfied with the outcome of these normal administrative processes, the member may seek further review through the formal grievance process. Access to the formal complaint system is through the submission of a (ROG) to the member’s Commanding Officer (CO).

The current ADF ROG System is mandated by Part XV of the Defence Force Regulations and explained in DI(G) PERS 34-1 – *Redress of Grievance – Tri-Service Procedures*. For ease of reference, this Defence Instruction (less its annexes) is included at Annex D. The policy states that a member may complain to his or her CO about any matter relating to their military service. The CO must investigate the complaint, or cause it to be investigated without delay and notify the member of the outcome of that investigation.

If the complainant remains dissatisfied with the outcome of his or her CO’s investigation, the member has the right to have his or her complaint referred to their Service Chief who has the same obligations as the CO to investigate and notify the member of an outcome. Requests for referral of a ROG to a Service Chief are to be in writing and should be submitted to the CO within 28 days of receipt of the notification of the CO’s decision on the ROG.

All Service Chiefs have appointed delegates at senior officer (Major General and Brigadier equivalent) levels to assist them in reviewing applications for ROGs. The provision of recommendations and documentation to the Service Chief is carried out by CRA.

If an officer or warrant officer remains dissatisfied with the outcome of the decision of his or her Service Chief, he or she may request a review of the complaint by the CDF.

The Current Role of CRA

CRA is established under a joint directive issued by CDF and the Secretary to ensure impartiality in the investigation, review and handling of complaints. The current Joint Directive 2/2003 was signed on 4 August 2003. It includes that the Director CRA must:

- Ensure impartiality in the investigation and handling of complaints
- Provide advice on complaint handling
- Investigate and propose responses to ROGs referred by ADF members to the Service Chiefs and CDF
- Monitor the progress of ROGs at unit level⁷

⁷ Joint Directive 2/2003 is available on the CRA Defence intranet website at <http://defweb.cbr.defence.gov.au/dpecra/Default.htm>

CRA maintains a database of all complaints submitted. A new database was introduced in September 2004. On receipt of initial advice from a CO that a unit level ROG has been received, the complaint is entered on the database and progress is monitored by CRA until it is finalised. CRA only becomes involved with a ROG where it is referred to a Service Chief .

On receipt of a ROG, CRA assesses it for completeness. Those that are correctly compiled will be allocated a priority and placed on a waiting list for allocation to a case officer. A case officer is an ADF officer or a member of the Australian Public Service (APS), appointed by the Director of CRA, to prepare a brief for decision by the appropriate Service Chief or their delegate. The brief covers:

- The history of the case and basis of the redress sought;
- Details of inquiries/investigations carried out by the case officer;
- Details of previous decisions on the ROG;
- Additional material submitted by the member or obtained by the case officer;
- Analysis/discussion of the evidence; and
- Recommendations to the Service Chief or delegate on whether the ROG should be upheld

In the course of its review, CRA has access to all documents and personnel reasonably required for the investigation. Access is authorised through the Joint Directive.

The Future Role of CRA

DI(G) PERS 34-1 and the *Joint Directive 2/2003* provide for CRA to be a place of impartial investigation as well as review. CRAs focus has been on the review process and not on impartial investigation. In selected cases it might be possible, and preferable for CRA to take on responsibility for investigation at an earlier stage of the process. This would involve preparation of a brief to the Service Chief or an independent decision maker. For example, cases where the CO does not have the authority to change the decision could be processed with a brief to the Service Chief (or CDF).

The Review believes that the future role of CRA should be expanded to include leadership, direction and coordination. The joint directive gives CRA the clear authority to be the driving force and 'centre of excellence' in complaint handling/resolution and neutral evaluation. The joint directive would require little change to enable CRA to reach its full potential in this regard. Developing CRA into such an expanded role will require fundamental changes to the coordination of complaint handling across Defence, CRA resourcing and organisational design. Review discussions with both CDF and the Ombudsman confirmed that, from their individual perspectives, Defence has the opportunity to create a best practice model in complaint handling and resolution.

CRAs future activities could include the establishment of minimum competency standards for complaint handling staff, coordination of resources to meet changing complaint numbers, and the integration of Defence's complaint recording databases. Another possible function would be to coordinate the complaint handling work force to manage areas of increasing demand. Such a business unit would probably command the need for a Director-General or AS-level manager. IG(ADF) would retain the independent management audit function of complaint handling within Defence.

Organisation of Complaint Handling Agencies in Defence

Presently, there is a choice between complaint handling agencies in Defence and the mechanisms they offer. It is essential that this choice is made as clear as possible and that the agencies also have clearly defined roles and responsibilities.

Although the processes managed by these different agencies differ and some have determinative powers, they share a common role: the handling of Defence complaints. It is interesting to note that the Complaint Resolution Agency does not actually resolve complaints in the true sense. Rather, it has adopted the role of desktop review and coordination of certain complaint processes. CRAs title implies that it has an interest in the entire continuum of complaint, not just the administration of particular processes. This is a duty that it does not currently perform.

In his most recent Annual Report, the Commonwealth Ombudsman emphasised

*..the importance of ensuring that review mechanisms are well structured and integrated with other decision making in the agency.*⁸

The different complaint, advice and support mechanisms within Defence are not coordinated or managed by a common area. They report in different ways to different committees and delegates. There is little or no integration or coordination of their activities.

The agencies differ primarily in whether they are rights-based or interest-based. Rights-based methods are concerned with determining the facts of individual grievances, and are fundamentally about the validation of allegations through formal processes. Interest-based methods primarily seek to address individual interests through the restoration of relationships, and are not tied to particular formal processes. Interest-based methods are also not punitive in nature, but often address the underlying emotions and reactions of complainants. Such methods are usually less expensive than their rights-based counterparts.

An examination of the processes and methods mandated by each of these agencies (see Table 2 below), reveals that their products and enterprises are often similar or even complementary. In spite of this, there is no shared database of information, and frequently a lack of communication about common cases and methods. There is also no overarching policy that explains to potential complainants which mechanisms are best suited to resolving their grievance. This tribal approach to complaint handling is divisive and unhelpful for both the Defence organisation and its people.

⁸ From the Commonwealth Ombudsman Annual Report 2003/2004, p87

Table 2: Defence Complaint handling agencies

ORGANISATION	FUNCTION	MECHANISMS	JURISDICTION	PROMOTIONAL TOOLS
Complaint Resolution Agency	Merits-review	Redress of Grievance (ADF), Review of Actions (APS), DFO Complaints, HREOC complaints, Privacy Complaints, training	‘Matters affecting service’ (ADF) and reviewable actions under the Public Service Act	Brochures, intranet website, training programs
Defence Equity Organisation	Support, education, oversight	Unacceptable behaviour complaints, training, Equity Adviser Network, Defence Equity Advice Line, Referral to chain of command	Harassment, sexual harassment, sexual offences, bullying, discrimination	Brochures, guides, cards, posters, internet/intranet website, training programs, online learning program, promotional events
IG ADF	Military justice system audit. Investigations	Internal audit and review, Defence Whistleblower Scheme	Military justice system, anonymous complaints, complaints against chain of command	Intranet website, brochures
IG DEFENCE	Fraud investigation, Whistleblower investigation	Fraud matters, Defence Whistleblower Scheme	Anonymous complaints, fraud matters	Intranet website, brochures
Sensitive and Unacceptable Behaviour Resolution and Incident Management Section	Co-ordination of Army Land command complaints	Referral to Chain of command	Army Land Command complaints	Land Command Directive
Army Fair Go Hotline	Support, oversight	Referral to Chain of command	All Army complaints	Intranet website, cards, articles in Service newspapers
Directorate of Alternative Dispute Resolution and Conflict Management	Education, alternative dispute resolution	Mediation, workplace conferences, training	All complaints/workplace conflict situations	Pamphlets, DVDs, posters, intranet website

In the current system, a complainant can simultaneously access several of these agencies/mechanisms. In some cases, this can be beneficial; for example, an ADF person who has made a complaint of harassment against their supervisor (agency: DEO), can also ask for mediation to take place (agency: DADRCM), and then submit a ROG (agency: CRA) if they are still dissatisfied with the outcome. In this instance, the range of services and mechanisms is complementary but not counterproductive.

However, it is equally possible for a complainant to use the agencies/mechanisms in such a way that their combined operations inhibit effective resolution. For example, an Army complainant can access the Fair Go Hotline and make allegations of harassment against their CO. They can simultaneously submit a ROG and a harassment complaint. Because they can technically make a harassment complaint to the next step in the chain of command, this will go to a higher step in the chain of command, which may not be aware that a ROG has also been lodged, unless the soldier reveals this information. The soldier could then make an anonymous complaint to the Defence Whistleblower Scheme and withhold the information that he or she has also made complaints through other avenues.

In the scenario above, it is possible that these processes will run simultaneously for some time, and produce mutually incompatible outcomes such as conflicting recommendations and contradictory decisions by different delegates. In such circumstances, because there is no unified approach to complaint resolution, it is likely that the complaint will take much longer to resolve, or in fact never be resolved to anyone's satisfaction.

Although it is not the Review's intention to suggest that people maliciously use Defence's complaints system to further their cause, the Review found anecdotal evidence to indicate that the simultaneous use of multiple complaint mechanisms is relatively common. Such 'forum shopping' can highlight the deficiencies in the coordination of Defence's complaint handling. For its part, Defence can also do more to clarify the role of each complaint agency, so that complainants may choose the avenue most suited to their grievance. People have a right to complaint, and a system that does not guide individuals in the right direction will result in complainants trying to access all options.

In considering the functions of various complaints areas, there is a need for some of them to be independent from the chain of command in the organisation. For example, the Joint Directive 2/2003 governing CRAs operation requires DCRA to report directly to the CDF and the Secretary. Similarly, IG(ADF) and IG(Defence) have a clear requirement to be independent from the rest of the organisation. However, agencies such as DEO, the Fair Go Hotline, Sensitive Unacceptable Behaviour Resolution and Incident Management Section (SUBRIMS) and the Directorate of Alternative Resolution and Conflict Management (DADRCM) would benefit from belonging to the same functional area, under the management of a person at an appropriate rank-level. Similarly, the introduction of a common case tracking system or database would benefit all of these agencies by creating an awareness of individual cases and the collective environment. It would also create economies of scale in the management of assets such as software packages and investigators.

Coordinated management of these areas would improve Defence's ability to effectively manage complaints. IG(ADF) already has a strategic management system which includes data from each of the agencies above. The Justice and Discipline Health and Effectiveness (JADHE) program considers data from all of Defence's complaint areas to produce a snapshot of Defence's handling of complaints. The enhanced application of such a system would boost Defence's visibility of complaint issues across the organisation.

Interview/Submission Comments:

CAPT M: *'..[Defence complaints agencies] operate together on a limited basis. The success is dependent upon the personalities of the staff involved as well as the knowledge level of the staff in the various areas. Development of a 'partnership' style relationship between the agencies forming what may be described as a 'virtual' integrated conflict and complaints management system within the organisation would be a valuable next step forward...'*

LTCOL T: *'The vast amount of policy guidance contained in [Defence Instructions] needs rationalisation if for nothing else to simplify and remove inconsistencies and conflicts. A comprehensive personnel management manual... rather than several hundred DI seems to be a prudent development. Admittedly this would be a large task to accomplish. An added benefit would be to bring language and process into line with Defence (Personnel) Regulations 2002'*

Recommendations:

- 8. That excluding IG(ADF), most of the 7 Defence complaint areas identified by the Review be brought together under one functional area.**
- 9. That a common case tracking system or complaints database be established.**
- 10. That the IGADF take the lead in defining the complaint statistics required for measuring the health of the Military Justice System across complaint areas and that all complaint areas comply with requirements.**
- 11. That DEO, Army Fair Go Hotline, SUBRIMS, DADRCM, Navy's SOSP program and any new initiatives in complaint management are managed centrally with a view to ensuring that their operations are complementary. Where feasible, these agencies should be co-located under the same group. Where they cannot be collocated, they be made responsive to the head of the new CRA.**
- 12. That a common complaint management information system be developed to manage cases across all avenues of Defence complaint. This system should have the ability to provide information in a form that will support Defence wide reporting including information required by the IG(ADF).**

Audit of Complaint Handling in Defence

In auditing the management of military justice, Defence has mandated the IG(ADF) to perform a widespread audit function. Unit level audits are already scheduled beginning in November 2004⁹, and will consider the management of ROG complaints and military justice-related administrative processes. The Review found that inspections of Navy shore-establishments carried out by Navy Systems Command also audited the management of complaints. This practice should be applied across the ADF as a method of process-improvement and to assure the quality of complaint handling at the earliest stage.

Such initiatives provide a means for Defence to identify areas for improvement in complaint handling. The Review found that Defence has a number of checks and balances in individual areas relating to complaint handling. However, it is only in the implementation of the Justice And Discipline Health and Effectiveness (JADHE) database that a view is beginning to emerge of the complex relationships that exist across all avenues of complaint handling.

The information captured by the IG(ADF)'s JADHE database would be of great strategic benefit to all Defence complaint areas. Defence's reputation for governance of complaint handling would be greatly improved through the use of a strategic tool that allowed Defence to analyse its management across all avenues of complaint. An increase in involuntary discharges in Army, for example, could be evaluated in the context of changes in military justice requirements, changes in ROG numbers, and the overall number of disciplinary actions taken in Defence. This would also allow Defence complaint agencies to adopt a more strategic approach to doing business.

Alternative Avenues of Complaint

The Review observed that where the Defence Force Regulations (DFR) address the issue of dissuading a member from lodging a complaint (Regulation 80(1)), they are uncompromising, threatening punitive action for the offence. DI(G) PERS 34-1 continues this theme, but acknowledges that it is not an offence to satisfy a complaint through normal administrative processes prior to the submission of a formal ROG¹⁰. Therefore, administrative resolution would not be regarded as an attempt to discourage the making of a complaint.

This compromise between appropriate management of complaints and the need for caution not to dissuade the complainant from submitting a ROG is problematic. A literal reading of the DFR and DI(G)PERS 34-1 can result in ADF commanders and managers encouraging complainants to go directly to ROG submission without attempting any other means of resolution. The Review believes that with the advent of ADR across Defence, DI(G) PERS 34-1 needs to be reviewed to integrate and encourage the appropriate use of other avenues of complaint resolution.

⁹ From Furse, L. 'Military justice to go under review' in Navy News, November 18 2004. P4

¹⁰ DI(G)PERS 34-1 para 20

Recommendations:

- 13. That Navy's initiative, carried out by Systems Command which includes complaint handling in its establishment audit, be adopted by Army and RAAF.**
- 14. That Defence takes a more strategic approach to the design and integration of its complaint handling systems.**
- 15. That CRA is given the clear authority to be the driving force and 'centre of excellence' in complaint handling/resolution and neutral evaluation for Defence, and that the Joint Directive be recast accordingly.**
- 16. That Defence consider the establishment of an expanded complaint resolution business unit, headed by a Director-General or AS-level manager.**

IMPROVING THE MANAGEMENT OF THE ROG SYSTEM

Performance of the ROG System

In the last Financial Year (FY), there was a 17% increase in the number of ROGs received by ADF units (mainly from Army). The 391 ROGs in FY 2003/2004 were submitted from a total ADF strength of 74,400 regular and reserve members¹¹. This equates to 0.5% of all ADF members or a ROG submitted by one in 190 ADF personnel.

Table 2 shows the number of ROGs submitted at unit level to a CO, and indicates an increase in unit ROGs over the last three years.

Table 3: Number of Unit Level ROGs (based on date received at unit)¹²

	2001-02	2002-03	2003-04
Navy	72	95	102
Army	145	126	173
Air Force	101	111	116
Total	318	332	391

Note: The above figures for unit-level redresses may not accurately reflect the true situation given that these redresses are typically under reported to CRA. The number of redresses in Table 2 differ from those recorded in past annual reports due to late reporting by units.

The increased number of ROGs received at unit level in 2003-04 is mainly related to conditions of service matters (see Table 3 below), specifically regarding long service leave, pay and allowances. The increase in conditions of service ROGs may be attributed to the recent operational tempo, with members disputing their entitlements to overseas medals, allowances, and inability to take leave prior to discharge.

Table 4: Types of ROGs received at Unit¹³

Category	2002-2003	2003-2004	Increase	Decrease
Career	149	163	14 (9.4%)	
Conditions of Service	57	107	50 (88.0%)	
Discharge	78	79	1 (1.3%)	
Discrimination	15	12		3 (20.0%)
Adverse reporting	15	11		4 (26.7%)
Medical	5	10	5 (100.0%)	
Other	13	9		4 (30.8%)
TOTAL	331	390	59 (17.8%)	

¹¹ CRA Annual Report 2003/2004. P3.

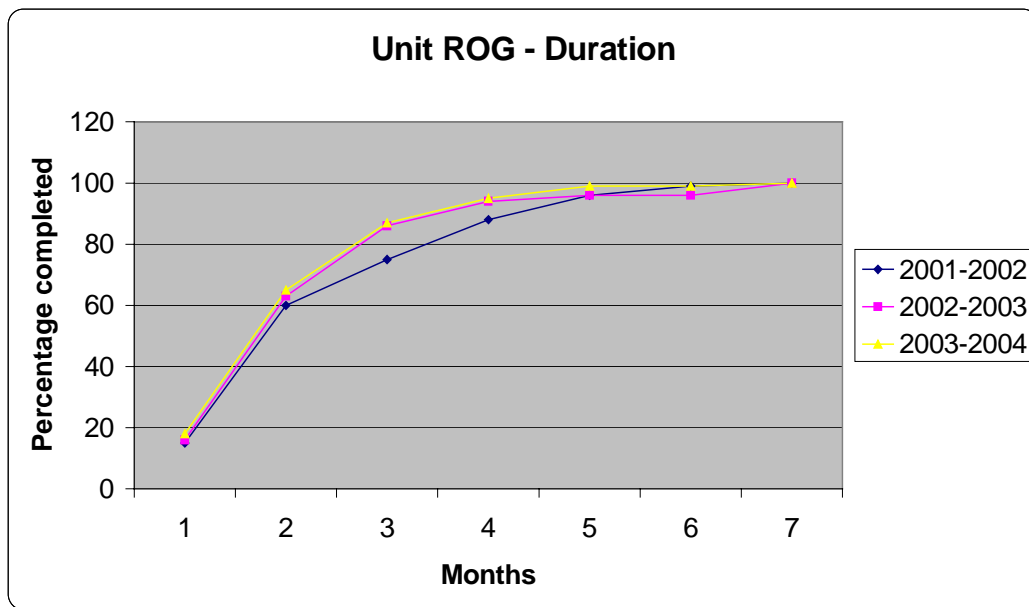
¹² From CRA Annual Report 2003/2004

¹³ op cit

Chart 1 below is a cumulative percentage distribution that shows the duration of all unit ROGs reported to CRA by financial year. It indicates that there has been an improvement in the timeliness of completion of ROGs at unit level over the last three reporting periods. The curve also shows that approximately 80% of unit ROGs are completed within three months, with the remaining 20% taking up to an additional four months. The last five percent (about 20 cases) take between five and seven months. Analysis of some of these cases revealed that complicating factors for unit level ROGs included: involvement of other agencies, lack of delegation for unit COs to make a decision, and a lack of suitable personnel to conduct investigations.

The timeliness at unit level is generally acceptable. However, with closer monitoring, and if additional assistance was provided for difficult cases, the Review believes that better performance can be achieved.

Figure 1: Duration of Unit ROGs



Once decided by a unit CO, a ROG may, subject to continued grievance, be referred to a Service Chief. The numbers are shown in Table 4. Here, the trend indicates a gradually increasing number of ROGs over the last three years, but proportionate with the number that have been considered by unit COs. The percentage of ROGs referred on has been 42%, 37% and 39% over the last three years (2001/2002, 2002/2003, 2003/2004). Therefore, about 60% of ROGs are concluded at unit level. Of the 40% remaining, a good proportion must be referred on to Service Chief because the CO cannot provide redress as it is not within his/her delegation. CRA data does not distinguish between cases referred to the agency because of a lack of authority held by the CO to determine the outcome and those ROGs referred because of continuation of the grievance.

Table 5: Number of Service Chief ROGs (based on date received at CRA)¹⁴

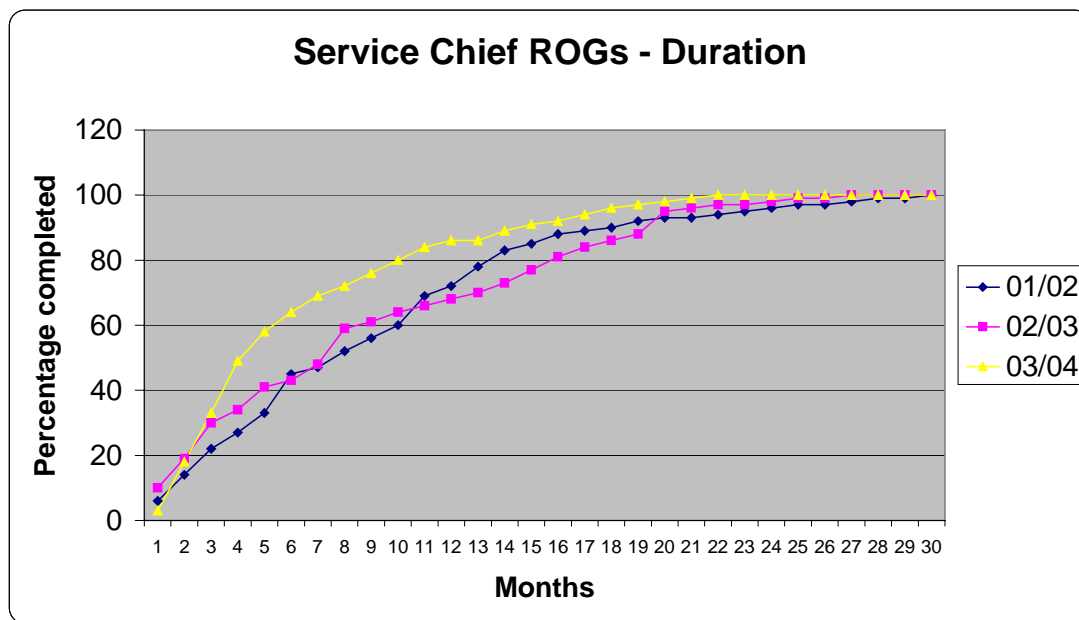
	2001-02	2002-03	2003-04
Navy	33	34	51
Army	61	49	54
Air Force	38	40	49
Total	132	123	154

Note: The numbers of redresses referred to Service Chief in Table 4 are already counted in unit redresses, and are not additional to the figures reported in Table 3.

Table 6: Type of ROGs received by Service Chief¹⁵

Category	2002-2003	2003-2004	Increase	Decrease
Career	54	62	8 (14.8%)	
Conditions of Service	14	30	16 (114.3%)	
Discharge	36	47	11 (30.6%)	
Discrimination	5	5		
Adverse reporting	8	6		2 (25.0%)
Medical	1	0		1 (100%)
Other	5	4		1 (20.0%)
TOTAL	122	153	31 (25.2%)	

Figure 2: Duration of Service Chief ROGs



¹⁴ **CRA Annual Report 03/04**, op cit

¹⁵ op cit

Chart 2 above indicates that the duration of Service Chief ROGs is much longer than for unit ROGs. Over the last three years, resolution of Service Chief ROGs has improved, with approximately 80% of Service Chief ROGs completed within ten months in the 2003/2004 reporting period. The remaining 20% has historically taken up to a further 10 months to resolve. The Review requested a ‘rule of thumb’ view from CRA of what are the components of the time taken to process a ROG to a Service Chief. They are listed in the table below.

Table 7: Composition of time taken to process Service Chief ROGs¹⁶

Cause	Frequency	Typical Duration	Time Limitations
Complainant considering options prior to submission of complaint [not included in calculations]	Unknown	1 week-1 year	No limitations
CRA goes back to Unit for more information	Approx. 20% of cases	2-4 weeks	No limitations
Allocation to case officer at CRA	100% of cases	Immediate-two years	12 months
CRA case officer preparing brief	100%	2 weeks-six months	No limitations
Service Chief decision	100%	1 week-2 months	No limitations
TOTAL DELAY		5 WEEKS – 33 MONTHS	

The proportion of complex ROGs raised to this level is greater, which increases the time taken to complete cases. As with unit ROGs, complicating factors can include: the involvement of other agencies, lack of delegation held by the Service Chief, and availability of case officers. The lack of case officers results in unallocated cases, which is a major contributor to long delays in the system at the Service Chief level. This is discussed in greater detail later.

ROGs referred to CDF are relatively few in number (see Table 7), and under the provisions of Defence legislation and DI(G)PERS 34-1 *Redress of Grievance-Tri-Service Procedures*, are only open as an option to warrant officers and officers in the ADF. The Review was advised by CDF that as a general policy he sought to determine ROGs within 2 to 3 days of them being placed before him. The Review team was advised by CRA that the time taken for some CDF ROGs to reach the Chief could extend out to several months.

Many interviewees who spoke to the Review Team felt that this step was unnecessary and that its resource-drain was far greater than any resulting benefit. Several key stakeholders in the ROG process stated that this step could be eliminated, except in cases where the complaint was about the decision of a Service Chief or VCDF. CDF expressed the strong view that the present right to seek redress to his office, as

¹⁶ This information was requested from CRA, relying on the general observations of CRA case officers based on their experience with ROG cases.

provided in the legislation, should be retained. His reasoning included the overall benefit for ADF members knowing that they are able to put their case forward for CDF consideration. This is a key facet of demonstrating leadership and accountability in the military environment. Overall, the number of cases that are referred to CDF is small, and additional staff effort is not great. While the Ombudsman's Office Steering Committee members remain concerned about the number of levels of review, they acknowledge CDF's preference for his current role to continue.

Table 8: Number of CDF ROGs

	2001-02	2002-03	2003-04
Navy	4	3	3
Army	4	7	3
Air Force	7	4	7
Total	15	14	13

Note: The numbers of redresses referred to CDF in Table 7 are already counted in unit redresses at Table 4, and are not additional to the figures reported in Tables 2 or 4.

CDF indicated to the Review that he was keen to identify how many CDF ROGs progressed on to become complaints to the DFO. From the 13 CDF ROGs in 2003/2004, six complainants went on to complain to the DFO. Although it is difficult to draw any definite conclusion from this information, it is possible that a number of these complaints could not have been resolved internally at any stage of the ROG process.

Timeliness

The focus of current and historical criticism of the ROG system has been on the extent and uncertain nature of delays. Reiterating the remarks of the Commonwealth Ombudsman before the Senate Inquiry 2004, the Commonwealth Ombudsman Annual Report 2003/2004 stated

..in some cases there has been considerable delay by the ADF in initiating the investigation of serious complaints it received.¹⁷

The Review found that these delays can stem from two areas: the delay between receiving the complaint and allocating cases to case/investigating officers (both at CRA and at unit level), and the delays in obtaining necessary information from other sources. Identifying the exact cause of these delays, however, is made difficult by the lack of relevant management information.

Synchronising clocks

The Review established there are three 'clocks' in operation that can be used to measure time taken to resolve a grievance:

- the complainant's perception of when the complaint was commenced
- the CRA perception of how long the process takes
- the DFO perception of timeliness and average time to resolve a grievance

¹⁷ From the Commonwealth Ombudsman Annual Report 2003/2004, p47.

Understanding between the three stakeholders can be undermined by this lack of shared perception of the time that has expired on a complaint. The database and reporting system maintained by CRA is not geared to measure the total time to address a complaint. It does not provide a visible measure of the cumulative time taken in addressing complaints across CO, Service Chief, and CDF levels. Each event seems to be treated discreetly. From the complainant's perspective, the 'clock' starts from the time they first complained and continues until a final outcome has been achieved. DFOs clock starts from the time a complainant first contacts them, which can be as early as during the CO phase, and may continue until the complaint is finalised through a DFO investigation. CRA may only 'officially' see the DFO perception of timeliness start after the Defence ROG investigation and decision process has been exhausted.

CRA's role needs to be expanded to measure, monitor, and report the total time taken in addressing each complaint. The Review believes that CDF and the Service Chiefs should be provided with information that reveals a full picture of the time taken to resolve an individual complaint, not a snapshot of what is occurring in subcomponents of the system. DFO could assist this process and apply complementary performance measures within its own operations to add further value to CRA reporting. Defence and DFO must be able to compare 'apples with apples' when perceptions of time taken to address a complaint are in question.

Joint Directive No 2/2003 requires DCRA to report annually in writing to the Secretary and CDF. This reporting has not comprehensively identified the causes of the delays in the ROG system. The present system of Key Expected Results (KERs) used within CRA is a good initiative, but would be enhanced by the inclusion of additional performance measures.

CRA's KERs do not inform the overall measurement of the performance of Defence's complaint handling. The Review believes that IG(ADF) should provide guidelines to complaint handling agencies on the nature for their respective KERs. This would enhance Defence-wide consistency in complaint management. The resulting information would give DCRA greater ability to influence outcomes in complaint handling and prepare forward budget submissions based on a sound business case. More broadly, it would allow Defence to adjust resourcing and processes to address deficiencies.

Suggestions for additional measurements of performance

A current problem for Defence is a lack of capacity to answer the question why the number of ROGs vary from year to year. For example, the answer to a question as to why ROG numbers increased might be that the policy on what would be accepted as a complaint over a hotline might have changed. An increase may have been due to changed policy on the use of drugs, greater operational activity, amended personnel policy, or a variety of reasons. Currently, DCRA is not able to answer this sort of question definitively.

The Review believes that an analysis of needs for complaint information across Defence is needed.

The Review suggests that from the ROG system perspective, the following should be considered for inclusion in what is measured, analysed and reported. Reporting must include a clear analysis of trends and achievements against goals.

Quantitative measures:

- Number of ROGs relative to number of personnel in key areas
- Number of ROGs referred to other agencies for comment/decision
- The number of ROGs not referred for further review (drop-off rate)
- Uphold rate
- Number of ROGs requiring legal advice prior to completion
- Number of ROGs notified to CRA
- Number of ROGs received at CRA
- Number of unallocated ROGs at the end of each month
- Productivity for individual CRA case officers (number of cases completed/number of days worked per case)

Qualitative measures

- Proportion of cases where material from unit is incomplete/incorrect
- Proportion of cases where Service Chief /CDF overturns earlier decision made by CO or rejects recommendations of case officer
- Percentage of ROGs later subject to complaint to external agencies (eg HREOC, DFO, AAT)
- Complaints from ex-ADF personnel made directly to external agencies without being subject to ROG process
- Correlation between CRA-identified complaint hot spots and those identified by other complaint-handling areas (ie DEO, IG, FGH, DFO and HREOC)
- Number of cases where DFO makes formal recommendations

Timeliness measures

- Cumulative percentage distribution of time taken throughout entire ROG process
- Cumulative percentage distribution of duration for unit-level ROG completion
- Cumulative percentage distribution of duration for Service Chief ROG completion
- Cumulative percentage distribution of duration for CDF ROG completion
- Cumulative percentage distribution of time taken to return responses to DFO inquiries
- Cumulative percentage distribution of time taken from acceptance at CRA to completion
- Time taken from allocation to a case officer at CRA to submission to Service Chief/CDF
- Time taken between acceptance at CRA and allocation to a case officer
- Time for response from other agencies

COs Initial Advice to CRA

The Review believes an enhanced process of preliminary assessment would assist to clarify the issues to be determined, the relevant guidelines/instructions and policy. This process should be a 'neutral evaluation' of the case to assess the information, documentation and investigation required to progress the case. This could be achieved by expanding the existing Appendix 1 to Annex I to *DIG PERS 34-1* to include at least the following additional information:

- Identity of CO for redress
- Is the CO the delegate for the redress sought?
- Has this CO previously made a decision in this matter?
- Intended IO?
- Does the intended IO have the skills and knowledge required to undertake the investigation?
- Is the IO sufficiently removed from the issue to be impartial?
- Intended time to completion?
- Special considerations?
- Does the unit need any special assistance to progress the ROG?
- Has ADR been considered?
- Have all reasonable avenues for resolution without resort to a ROG been explored?

On receipt of the proposed initial advice from a CO, an officer in CRA would consider the soundness of the proposed approach. CRA would acknowledge the initial advice with any helpful comments and suggestions that would add value to progressing the ROG. It is expected that CRA would turn around each initial advice within one day.

The implementation of this initiative is intended to reduce the proportion of ROGs at unit level that fall into the 4-7 month period to complete.

The Review expects that it would be in very few cases that CRA would suggest changes to the proposed approach. It would assist to identify at an early stage those cases that have the potential to become contentious or difficult. It will also assist CRA in fulfilling its role in providing quality advice to COs.

Recommendations:

- 17. That the initial advice proforma in DI(G) PERS 34-1be expanded to include the additional information in the ROG Initial Advice Form at Annex I:
 - Identity of CO for redress
 - Is the CO the delegate for the redress sought?
 - Has this CO previously made a decision in this matter?
 - Intended IO?
 - Does the intended IO have the skills and knowledge required to undertake the investigation?
 - Is the IO sufficiently removed from the issue to be impartial?
 - Intended time to completion?
 - Special considerations?
 - Does the unit need any special assistance to progress the ROG?
 - Has ADR been considered?
 - Have all reasonable avenues for resolution without resort to a ROG been explored?**
- 18. That CRA adopt the additional role of monitoring and providing advice to COs in potentially difficult cases.**
- 19. That Defence establish an integrated complaint measurement, analysis and reporting system.**
- 20. That DCRA develop additional performance data requirements, analysis techniques and formally report the outcomes to Head Defence Personnel Executive and Deputy Service Chiefs monthly at the DPC, and to the Chiefs Of Service Committee (COSC) biannually.**
- 21. That DCRA with DFO develop a common framework to measure the overall time taken to resolve grievances and each step in the process.**
- 22. That CRA develop the ability to monitor the time being taken on a complaint from its actual beginning, and through the entire ROG process until completion.**
- 23. That IG(ADF) provide KER guidelines to all complaint handling agencies in Defence.**
- 24. That the current right of referral of a ROG to CDF be retained.**
- 25. That IG(ADF) take the lead in the conduct of an analysis of needs for complaint information across Defence.**

Suspension of Executive Action

Suspension of executive action occurs when a complaint relates to a proposed adverse action (such as termination of employment). The general principle applied in Defence is that the adverse action is not to be taken until the complaint is resolved.¹⁸ Whilst this is an important principle in allowing a complainant every opportunity to redress an adverse action impacting on his/her wellbeing, the interpretation of rules in this area creates significant administrative problems in some cases. For example, the Review found in several ROG cases that the original (sound) decision was overturned due to extensive delays created by processing a ROG.

Suspension of executive action is one of the most significant unresolved issues from earlier reviews. The 2000 Review recommended that:

... the role of the Defence Force Remuneration Tribunal [should] be broadened to allow it to hear complaints against involuntary discharge. The Tribunal would have the power to grant compensation and/or recommend to Service Chiefs that members be re-instated. Complaints against involuntary discharge action and decisions would be excluded from the ROG system under this arrangement.¹⁹

This Review does not support this approach, because it would require significant change to the DFRT and seems incompatible with its primary role. This earlier recommendation is indicative of the level of frustration felt concerning the suspension of executive action following submission of some ROG.

Submission:

[The Directorate of Officer Career Management-Army]..recently had a case where the member had his termination reviewed at two levels through the ROG system. The member also responded to a second Notice to Show Cause (NTSC) for termination and also provided a 'response to a termination notice'. All factors across these representations were considered in the final decision to terminate the member. While there was no obligation for DGPERS-A to consider his response to a termination notice, it was still considered and the member was provided with a response. A ROG was submitted five days later (on the day of discharge). As this ROG provided no new information or change in circumstances and the reasons for terminating the member had already clearly been established, the delegate decided to proceed with executive action (DPR 85 (4) refers). However, as [DI(G) PERS 34-3] required 'exceptional circumstances', the Defence Force Ombudsman's (DFO) office attempted to have executive action to terminate on the day of discharge suspended...because the member had submitted a ROG on that same day. DFO pursued this outcome on the basis of statements in [DI(G) PERS 34-3]... The current policy does not provide for cases where individuals may attempt to slow administrative processes to suit their own purposes.

¹⁸ This definition is described in *DI(G)PERS 34-1 Redress of Grievance – Tri Service Procedures*, para 13-16

¹⁹ Recommendation 11, [Review of the ADF Redress of Grievance System 2000](#)

Whilst the Review does not endorse the sentiments in this submission, it does reflect a view by a Service career management agency that last-minute ROG submission is used as a stalling tactic where ADF members have been issued a termination notice. The Ombudsman's representatives on the Steering Committee have concerns about the attitude inherent in the submission that individuals are somehow abusing the system by pursuing their rights to complain and seek redress. DI(G) PERS 34-3 provides that executive action should be suspended except in "exceptional circumstances" and it does not follow that, simply because a number of internal processes have been completed, procedural fairness will have been achieved and the requirement for "exceptional circumstances" can be dispensed with. No exceptional circumstances were cited in this case. This is a good example of differing perceptions leading to polarisation of views between agencies.

The Review also cautions that this submission does not contain all of the relevant facts, with significant omissions highlighted by the Ombudsman's Office Steering Committee members. The Ombudsman's office emphasises the need to proceed with caution with discharge matters given the impact on a person's life and highlighted cases where late intervention had avoided injustice.

The Review concluded that the stress placed on Defence agencies and the DFO by last minute ROG submissions is unacceptable and not conducive to good management of not only the ROG in question, but effective administration. Therefore, it took the view it would be desirable to include in the Defence Instructions strict timelines for ROGs to be lodged, well in advance of an advised termination date. The establishment of such time limits would still allow the complainant adequate time to provide a considered response to the proposed termination. The Review felt that fourteen days after receiving a termination notice should be adequate as a cutoff for ROG submission.

A firm and widely publicised Defence policy along these lines needs to be supported by a similar and consistent approach being adopted by DFO. For example, on initial contact being made by a complainant to DFO in these matters, DFO staff could confirm that the complainant has received a TN, understands the time limitations, and that the TN contains a reference to Defence policy on deadlines for ROG submission. The Review recognises that the legislative authority does not exist for the DFO to enforce a deadline for complaints. However when satisfied that a complainant was made aware of the time requirements for redress action in relation to discharge, DFO would be better placed to decide if a request to suspend executive action should be supported.

Recommendation:

26. That Defence policy be amended to include a deadline for a member to submit a ROG within 14 days following the issue of a termination notice and that the final decision should be made at least 3 days prior to the termination date.

Difficult and Persistent Complainants

An area of concern for this Review and earlier reviews is the management of difficult and persistent complainants. These cases frequently become a significant drain on resources and should be processed expeditiously so that they do not impact on overall case management. Unfortunately, cases of this nature ultimately impact on the rights of others to have their cases resolved quickly. The long-term goal is to have in place the means to identify such cases and deal with to the advantage of all.

In some cases the complainant is more interested, and achieves more satisfaction, from the process rather than the final outcome. These cases should be processed expeditiously to free up the system. The long-term goal is in the reduction of such cases as the ‘message’ becomes more widely spread. It should be noted that in the processing of some of these cases, the initial assessment may give rise to a more substantial complaint and further assessment of priority may be required.

The issue of difficult and persistent complainants is not confined to Defence. The current Ombudsman Annual Report states

An issue faced by many complaint handling agencies is that some complainants are unrelenting in not accepting the decision made by the agency. It is proper that decisions made by the office should be open to question and review, but in a small number of cases the complainants are persistent and inflexible beyond any reasonable limit. This can be a great drain on the resources of the office, and can lead to the paradox that the person’s original complaint becomes transformed into a complaint directed at the complaint handling agency. We commissioned a study on the issue of persistent complainants in 2003/2004. In 2004/2005, we will consider how to address the issue.²⁰

The Review noted that not only the DFO, but also other Commonwealth agencies such as Centrelink are attempting to develop a policy to deal with difficult and persistent complainants. A common theme is that such complainants persistently raise old or exhausted issues and make unreasonable demands. It is clear that a considerable number of cases are delayed and consistently re-raised as a result of such behaviour. Such cases can be a cause of major distraction for departmental officers, affecting their work and, sometimes, their health.

Recommendation:

27. That IG(ADF) and DCRA closely monitor the outcome of the DFO study into difficult and persistent complainants and implement measures for managing them.

²⁰ From The Commonwealth Ombudsman Annual Report 2003/2004 p105

Case Prioritisation

CRA's case prioritisation approach is directly linked to the number of case officers available and the magnitude of the backlog of cases. The current prioritisation system utilised within CRA is not understood outside the organisation. Form letters sent to ROG complainants explain the general time frame within which the individual complaint will be handled, but do not detail the reasons. The current prioritisation system establishes four categories of importance²¹:

- Finalisation within two months (case involves suspension of executive action, 'excessive hardship' for complainant, or the matter has the potential to be damaging to the ADF)
- Finalisation within six months ('substantial benefit to be bestowed on complainant if upheld' or complainant is suffering 'material detriment')
- Finalisation within twelve months (complainant is suffering no detriment or any benefit that may be bestowed is 'not substantial')
- Finalisation by a specified completion date (redress sought has no meaning if the matter is not resolved by this date, member suffers no detriment leading up to resolution)

Presently, the data gathered by CRA for reporting and management purposes focuses primarily on the quantity of ROGs. Information held on the new CRA Case Management System database records the priority afforded to individual cases, which generates an anticipated completion date. Presently, this time frame creates a culture of sub-optimisation. For example, a 'low priority' case might be assigned a 12-month completion date by CRA. In all likelihood, such a case would not be assigned or considered until close to the 12-month limit.

By publicising a prioritisation system to the ADF, CRA's management of individual cases would become more transparent, and the expectations of complainants could be managed more effectively. The Review received significant feedback indicating that uncertainty about the reasons for delays contributed to their frustration felt over the service delivered by the ROG system, (see SUBMISSIONS below).

Submissions:

SQLNDR M: 'The process seems to take a long time and appears to hope that people will give up trying due to the delays'.

SQNLDR K: '..no valid reasons for delays are included in the 'standard' 60 day CRA update letter, the apparent lack of action by CRA creates suspicions that CRA is deliberately delaying any investigations.'

CAPT M: '[complainants] ..frustration is often exacerbated by a sense of polarisation and determination that they are 'right' and the system is 'wrong'. They are more firmly embedded in their position and seek vindication and 'justice' as the only acceptable outcome.'

cont...

²¹ From CRA New Starters' Brief (October 2004) Paragraph 7.

DFO 'An adequately resourced CRA which has status in the Defence hierarchy would go a long way to improving turn around times for ROGs. It could also have a greater involvement in monitoring the progress of ROG at unit level and should have a prioritisation system that enables cases to be finalised in a timely and effective fashion.'

Case prioritisation within CRA lies at the heart of timeliness of ROG resolution, the level of trust or frustration felt by members and wider issues of effective administration within Defence. The CRA prioritisation system is focused on matching each ROG to a time allowed for completion. The distinction between the factors that results in a case being given highest priority and a finalisation target within 2 months (... 'excessive hardship' ... 'potential to be damaging to the ADF'), second priority and finalization within 6 months (... 'substantial benefit' ... 'material detriment') or third priority finalization within 12 months (... 'no detriment' ... 'benefit ...not substantial'), appears to the Review to be very fine indeed.

This assessment determines if a ROG will at least be considered within 2 months or consigned to await attention for up to 12 months. Unless such criteria were judged by the same CRA manager against more refined parameters, the current prioritisation system marginalises grievances falling short of being awarded highest priority. Inquiries by the Review indicate such cases are then allocated according to the availability of suitable case officers, the degree of persistence of complainants and the arrival at CRA of ROGs relating to involuntary discharge and matters which against any common sense criteria are 'urgent'.

The Review considers a case prioritisation approach driven by an objective assessment of 'impact' may provide a more transparent and valid basis for managing the CRA case list. High impact matters would embrace those generally described within the present 'finalise within 2 months' category, however real and immediate impact on the complainant should be given greater weighing. For example, ROGs placed in a 'High Impact Case List', would include those relating to:

- Involuntary discharge;
- High impact on the complainant (in terms of financial loss, irreversible adverse impact on career, lost opportunity and/or emotional cost);
- High impact on Defence (in terms of possible defective administration, good governance, Ministerial and/or wide media/public interest);
- Circumstances where delay would seriously compromise the investigation/review (loss of information/evidence/likely outcome);
- The circumstances complained of are serious and ongoing; and
- Those cases assigned High Impact status by the Director or Deputy Director of CRA.

The above list is offered as an example. The Review believes the Director CRA and staff are better placed to develop criteria which can be applied in a practical and consistent way to sort cases into a 'High impact Case List' and a 'General Case List'. The current reference to 'damage to Defence' should not be utilised as a measure of priority. Although well intentioned, it at least has the capacity to confirm the view

(incorrectly held in the opinion of the Review) that in dealing with ROGs, Defence first preserves its own self-interest.

The Review believes that, leaving aside involuntary discharge matters and those few cases that are clearly High Impact by any measure, a High Impact Case List should at any one time comprise not more than, say, 10% of the CRA case list. Once the criteria for assessing High Impact is settled, ROGs would be then dealt with on a 'date received at CRA' basis. This would generally apply within both the High Impact Case List and the General Case List. Once the initial prioritisation is undertaken, the criterion of 'date received at CRA' would seem fair and transparent, irrespective of the nature of the complaint issues involved. Complainants who delay submission of their ROG could not expect to be given priority over long standing cases.

The Review considered whether an option should exist to allow complainants the opportunity to submit reasons to CRA why their ROG should be accorded High Impact status. This is not an area on which agreement has been reached. The Defence representatives on the Review noted that this approach was used by the Migration Review Tribunal and believed that such an option could help to surface critical timeliness factors that may not have been evident in the ROG.

The Ombudsman's Office Steering Committee members believe that this initiative would lead to further delays, an opposite outcome to that sought by the Terms of Reference for the Review. The DFOs experience is that considerable resources can be wasted on such processes. Arguments over whether matters should be given priority can become time consuming and deflect from an agency's ability to address the substantive issues raised by the actual complaint.

Due to the differences of opinion on the potential outcome of this initiative it is recommended for consideration by CDF and DFO.

The Review is advised that, once a CRA priority is allocated, cases are then allocated according to the skill and experience of available CRA case officers, partly to meet case officer training and development needs. This practice, although understandable from the perspective of CRA, should be discontinued. Complainants are entitled to have their ROGs investigated/reviewed according to a clearly articulated and transparent case prioritisation model which does not then have a secondary barrier determined by the number and individual skills of CRA case officers.

Greater consideration should also be given to ROGs that the CRA preliminary assessment identifies as possibly open to 'quick' resolution. Early CRA intervention in these cases is in line with risk management concepts, improving time line statistics and positively influencing staff morale and outcomes. In these circumstances, the CRA process should be flexible enough to rely on the informed judgment of experienced staff and achieving a proper balance between the strict application of ROG policy and procedures and benefits likely to be achieved through adopting a flexible and perhaps innovative approach to grievance resolution. The Review believes more could be done to seize opportunities to achieve a 'win/win' outcome from ROGs.

This Review proposes that a more informed and holistic approach should be taken regarding ROG management. As detailed earlier in this Review, it is considered that a more complete Initial Advice to CRA should be required. CRA would then add value by assessing the appropriateness and completeness of the action proposed by a CO. This would at least offer the opportunity to achieve higher quality initial investigations and decision making at Unit level. The case prioritisation methodology previously outlined would assist CRA case management. The next vital component is the output achieved by CRA case officers and this is dealt with in the chapter dealing with CRA Staffing.

A large number of organisations dealing with complaint handling, for example the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) have developed a service charter, linked to an overall business plan as a means of adding transparency and accountability to this area of activity. A service charter could support the case prioritisation model. A 'Defence Grievance Handling Service Charter' might include, for example:

- Purpose of various Defence complaint handling agencies;
- Expectations (organisation and client);
- Case prioritisation system;
- Commitment to regular updates regarding processing;
- Decisions (commitment to provide reasons, plain English, in writing);
- Accountability (monthly, quarterly - reporting);
- Details of how a 'client' can help his/her own case by providing accurate and complete information within required time frames, responsibility to advise if personal circumstances change (ie address, contact details, deployment, discharge, retirement);
- staff obligations when dealing with people;
- Access (link to contact numbers and location details);
- Avenue of complaint if dissatisfied with performance of complaint handling agency.

The Review suggests that a Defence grievance handling charter would complement the more general existing Defence Service Charter. A well-developed and easily accessible website would provide relevant information to Defence members and staff and possibly reduce telephone contact and the number of submissions sent to CRA outside or too early in the process. The Review also noted that the CRA website is not accessible from outside the Defence intranet. Making the CRA website available to internet users would assist families of Defence members and those working in remote locations to access CRA more easily.

A further refinement of the CRA website could be a facility for complainants to track the progress of their case/priority on the case list by reference to an allocated case number. A useful model is available on the public website of Australia Post and a number of international document/package handling companies. Computer suppliers and other on-line businesses offer customers excellent tracking facilities of this type.

The Review cautions that an improved prioritisation system will only work if it is implemented in conjunction with an increase in case officer days and a substantial reduction in the existing backlog of cases. These issues are addressed later.

Recommendations:

- 28. That a new CRA case prioritisation approach be adopted; driven by an objective assessment of impact with criteria to be developed by DCRA.**
- 29. That a CRA website that allows complainants to track the progress of their ROG be established.**
- 30. That CDF and DFO consider the opposing opinions on the benefits of introducing a provision to provide complainants with an opportunity to submit why their ROG should be given higher priority status on the CRA case list.**
- 31. That a Defence grievance handling service charter be developed and published.**
- 32. That more ROG cases be resolved by employing ADR and administrative resolution, and that statistics should be monitored on the use of flexible means.**
- 33. That CRA adopt an approach that directs the application of best methods to achieve complaint resolution, facilitated by a review and amendment of Joint Directive 2/2003.**

A Tribunal Approach

The number of ROGs in Defence is relatively small, standing at approximately 400 per annum at Unit level. Of these only a small number are difficult cases, approximately 20 per annum. Whilst a Tribunal approach is a possible option for providing an external independent review mechanism, people interviewed by the Review raised significant concerns with a tribunal approach. These concerns centred on cost, complexity of the legislative change required and relative benefit to the organisation. A Tribunal could also generate a 'life of its own', along with the possibility of a backlog of cases and resulting additional resource needs.

The Review discussed the tribunal approach with CDF, who expressed a view that the responsibility and accountability of commanders to the wellbeing of ADF personnel was paramount. He felt that this responsibility was best served by arrangements where ADF commanders remain directly involved in the process. The Ombudsman expressed his concern about any approach that would increase costs and contribute to processing delays and does not favour a tribunal approach. The Review also accepts that there is not a need, at this stage, for a tribunal.

Investigation Standards

In June 2004 DFO stated in response to a question from the Senate Inquiry 2004 that a number of cases had been brought to his attention where the investigative process was flawed. In part, DFO stated:

..we receive a random, occasional glimpse of issues that arise internally but in our submission we have drawn attention to the fact that, for example, we have seen instances in which investigations have been undertaken by people with inadequate training, and in some instances the investigation was not as professional as it might have been. Sometimes they took too long, and conclusions and recommendations were not drawn together and did not adequately reflect the evidence..

9 June 2004

In discussions with the Review, the DFO highlighted his view that CRA needs to undertake a role in relation to investigations from the time of their initiation until completion. DFO has also observed that the earlier the opportunity exists for deficiencies to be identified, the better the outcome will be and:

It is particularly important that CRA review the quality of the brief prepared for the decision maker as any deficiency in the brief may impact on the decision made. In a number of discharge matters, the quality of the brief has been identified as a concern, for example, not including relevant information, the style of language adopted, inaccurate service records included, and inclusion of irrelevant information.

A similar theme was also expressed in the earlier 1999 ANAO Review of the ROG process²². The Review recognises, as did the DFO, that perceptions arising from a small number of investigations where the issues were not clearly defined in the first instance or became more complex as the case unfolded, can colour perceptions. Nevertheless, the objective must be to have in place policy; practice and procedures that eradicate even those few cases where the standard of the initial investigation has a detrimental impact on the outcome. Each complainant is entitled to have his/her case investigated in a thorough and appropriate manner.

Many ADF personnel conducting administrative investigations in Defence have received little relevant training, and have only been provided with a meagre introduction. The existing source-material for the conduct and administration of such inquiries, *Defence Instruction (General) 34-1*, ADFP 06.1.4, *Administrative Inquiries Manual* and ADFP 06.1.3 *Guide to Administrative Decision Making* is comprehensive and provides an excellent guide for investigators and decision makers. However, there is no mandatory policy to ensure that the person nominated to be the investigating officer is trained and competent in such matters.

²² Recommendation No. 12, **Redress of Grievances in the Australian Defence Force**, ANAO - 1999, p61, paragraph 4.34

The Review believes that there is a need for coordination of training in administrative investigations across all of those ADF courses that currently include elements of investigation and administrative law. The Defence Education and Training Development Branch within Defence Personnel Executive is well placed to provide oversight and guidance on the minimum standards required for this activity to assure that investigation training is adequate. Defence would benefit from an analysis of training needs to determine the required standard for investigating officers at different levels of professional development.

The Defence administrative investigations course piloted in September 2004, through the office of the Inspector-General (ADF), can only partly address this concern. Given the small number of personnel attending each course and frequency of the program it will not resolve the ADF-wide shortage of suitably trained personnel. Without a meaningful incentive for ADF commanders to facilitate attendance at administrative investigations courses for their personnel, the creation of substantial opportunities for people to be trained in such matters and a Defence wide approach, it is unlikely that universal training in this specific subject will ever be achieved. On the other hand, a typical member of the ADF is likely to go through service without ever having to undertake a formal administrative investigation relating to a ROG. Against this background, the Review has explored a range of opportunities to identify what practical options exist to enhance the quality of unit level administrative investigations.

Training opportunities that do exist should be offered to those members most likely to be selected to be investigating officers. Enhanced CRA performance measures and reporting suggested by the Review, further initiatives to identify ROG 'hot spots' and the grievance audit responsibilities given the Inspector General (ADF) should assist Defence to identify targeted training needs and cost effective programs.

To educate and inform commanders and managers of the grievance handling process and role of CRA, the Agency delivers a number of presentations to training courses and units. Annex E contains details of the 2003-2004 program of training courses. These presentations enhance the knowledge of key people and, with appropriate resourcing and/or rationalisation of existing capacity, should be extended. Elsewhere in this Review a suggestion is made that DFO be included in an expanded Defence outreach program of this nature.

Other options need to be explored to better inform and instruct Defence members likely to be appointed as investigating officers regarding administrative law and administrative investigation best practice. Two examples follow.

- A formal procedure to provide objective feedback to investigating officers and COs should be developed by CRA. In each instance, once the review decision is settled and communicated to a complainant, CRA should provide separate advice to the relevant CO and investigating officer regarding the quality and completeness of the investigation. Given the number of grievances advanced to CRA this should not be onerous and needs to be structured so that it becomes part of the normal process. CRA case officers are well placed to assess the quality and completeness of initial investigation and compliance with Defence administrative

guidelines. Feedback of this nature, however, should be provided through Director CRA.

A one page pro forma could be developed which, once COs and investigating officers understood the intention, should be accepted as a normal part of the ROG process and Defence quality assurance. At present there is little rigour applied regarding feedback of this type (which represents a significant loss of training opportunities). Additionally, there is nothing available by way of structured quality assurance that might impact on the quality of initial investigations. Feedback can provide positive reinforcement and complementary comments as much as it might be used to identify weaknesses. It seems on anecdotal advice that once a member has undertaken investigation of a ROG he/she is more likely to be given the task on other occasions. This serves to increase the value of the suggested procedure.

- Defence staff involved in APS recruitment action will soon be required to demonstrate their basic proficiency before being involved in the selection process²³. A merit selection and recruitment proficiency course, developed following the Defence Merit Review 2003, is available online for members to work through at their own pace. Successful completion will become a mandatory requirement for all panel members, selection coordinators and recruitment delegates in early 2005. Ten modules need to be negotiated; a process that Defence considers may take about two hours for those with no knowledge of recruitment. Completing the assessment will take about twenty minutes. The Project Manager for the course has observed:

People may only be on a selection panel occasionally, and usually without any training. Rather than having classroom training as the only option, which is resource-intensive and available to a limited number of people, an online course like this means that anyone in Defence can access the training at a time which is convenient to them.

The relevance and importance of the above comments and development of the on-line recruitment action course should not be missed in the context of the Review and criticism of ROG investigation standards. Ramifications for Defence that arise from inadequate administrative investigation of ROG's would seem at least equal to (if not far greater than) those flowing from the recruitment process.

Using the Initial Advice to CRA approach suggested in this Review, COs at unit level would be required to formally certify they, and the nominated investigating officer, have at least read and are familiar with the relevant Defence manual and guidelines, and that the investigation will be carried out in accordance with requirements. If on-line training/familiarisation were to become available, as suggested in the preceding paragraphs, this certification would have added meaning. The Review also proposes a more interventionist approach being taken by CRA, where in selected cases it might choose to undertake the investigation or nominate the investigating officer.

²³ Article in **Defence** magazine, November 2004, p4

The ADF culture in relation to the management of complaints does not promote accountability or effectiveness. COs are expected to have a level of expertise in a wide range of fields, not limited to their military specialisation. At unit level, COs make a variety of binding decisions on topics including safety, human resource management, financial matters and management of force governance and discipline. A recent report on Equity and Diversity training in Defence found that there is little practical incentive for ADF commanders to manage complaints well²⁴. As a result, management of complaints is generally regarded as a matter of low priority, and there is little incentive for doing so quickly and effectively.

The above Report observed that annual performance assessments include a dedicated section on achievement against equity and diversity targets. This approach could be extended to COs' management of grievances, so confirming personal accountability in this area and attaching consequences should it be neglected. The Review heard from a senior officer that within Navy, for example, the annual audit and review of a command extends to examination of the management of member grievances. The Review fully supports this approach and, if not already part of each Service audit and review regime, it should be adopted. Every effort needs to be taken to ensure COs recognise that effective grievance management will be very much part of assessment of their suitability for career progression.

Recommendations:

- 34. That DCRA together with IG(ADF) identify priority areas to be targeted for administrative investigation training.**
- 35. That CRA presentations to Defence training courses and units be maintained at, at least 2003-4 levels.**
- 36. That opportunities to include DFO in the CRA information presentations be explored with a view to establishing a joint outreach program.**
- 37. That a formal procedure to provide feedback to investigating officers and COs be developed by DCRA.**
- 38. That a pro forma be developed to support formal feedback procedures.**
- 39. That the feasibility of an online administrative investigation course be examined by Defence.**
- 40. That a more interventionist approach be taken by CRA in selected cases. That CRA be empowered to nominate the investigating officer or investigate in its own right with agreement of the Service Chief.**

cont...

²⁴ Jakeman Business Solutions, **Training Needs Analysis - October 2004**, stated '*... DEO should work with DPE to ensure annual managerial performance assessments include a dedicated section on achievement against E&D targets*'.

- 41. That annual assessment of COs includes their performance in grievance management.**
- 42. That single Service audits of units include an assessment of ROG management and that a copy is passed to the CO's assessing officer.**
- 43. That Defence Education and Training Development Branch (DETD) provide guidance on the level of training that should be achieved on single Service basic and intermediate officer courses.**

CRA Staffing

The present CRA Standard Operating Procedures highlight the need for CRA staff to attend courses in administrative law, privacy and freedom of information. Duty statements and selection criteria documentation relating to CRA military case officers require further development.

Based on fair comparison with the skill set of employees within relevant complaint investigation and administrative review areas of other Government agencies, and Defence staff dealing with Public Service review of actions within CRA, the Review offers the following example of skills and core competencies that should be possessed by military case officers within CRA (not in order of importance):

- Well developed understanding of relevant Commonwealth legislation, Defence practice and policy associated with administrative investigations and reviews or capacity to quickly acquire such understanding;
- A demonstrated client focus, good interpersonal and analytical skills and proven decision making;
- A comprehensive knowledge and understanding of the role, functions and responsibilities of CRA and complaint handling concepts;
- Demonstrated ability to identify complaint issues, undertake administrative investigations/reviews and develop recommendations;
- Capacity to deal tactfully and effectively with people;
- Highly developed research and writing skills;
- Demonstrated ability to prepare detailed briefing papers for consideration by senior management;
- Sound communication skills;
- Capacity to identify 'systemic issues' and matters of administration that may be identified as a result of individual grievances; and
- Generic skills including the utilisation of information technology, case management systems, capacity to work as part of a small team, manage a caseload in order to meet deadlines, OH&S, Equity and Diversity etc.

The Review believes that CRA staff selection should be directed towards identifying and developing a team of people who bring the above competencies to the area.

In some cases, APS employees are used to review ROGs. Recently, some administrative staff members have conducted limited desktop reviews of ROG cases. This raises questions about the current structure and composition of the military

redress area. A core problem for CRA has been an inability to attract and retain sufficient highly skilled case officers. This is a wider issue for Defence, not a deficiency in CRAs management.

A belief that only military personnel have the competency and skills to conduct investigations and reviews of the nature required within CRA seems popular amongst some CRA case officers and perhaps other areas of Defence. The Review does not accept this view. It seems unduly restrictive. If non-military case officers are excluded from appointment as a matter of policy/practice then the service of people who have excellent complaint resolution/review/investigation skills will forever be denied CRA. Military grievance and complaint handling is not unique. A variety of highly experienced and professional people may be available to meet the selection criteria. Given the comparatively small number of personnel attached to CRA, it would be reasonable to expect that public and private sector enterprises dealing with complaints/ administrative reviews and investigations could provide competent officers highly suited to CRA work.

For example, a team of skilled APS administrative officers guided by an office manager and supported by ready access to 'technical' and service advice could provide a responsive and professional level of service. This is not intended to discount the obvious benefits of having a solid military presence in CRA. The Review does not suggest and would not support, any change that lead to a substantial reduction of military officer involvement as case officers in CRA. The suggested approach would increase the size of the recruitment pool for case officers, add variety of perspective, have the potential to enhance practices and reduce CRAs reliance on reserve employees working part-time. Such a change may be attractive in the current Defence HR climate in preference to a request for additional Full-time Equivalent (FTE) funding or increased Average Funded Strength (AFS).

The reality of the present situation, which has existed for some time, is that CRAs full time ADF section heads/team leaders are re-deployed with little notice, leaving the area significantly under-resourced. The part-time case officers are Reservists. Each Reservist is funded by his/her own service and the Review is aware that situations have arisen, in the face of increasing case backlogs, where one service has returned a considerable portion of allocated time because a suitable member of a single service could not be deployed to CRA.

The Review was concerned to note use by CRA staff of the terms 'Cell Head' and 'Cell' when referring to the single service teams utilised within the Agency. It is noted that documents provided to the Review by CRA refer to 'Section Management' and 'Section Managers' in this context. Although the term 'section' would be preferred to 'cell', both have the tendency to divide rather than unify the CRA workforce. The Report believes that use of the word 'team' may assist to break down the remaining barriers for case sharing and cross-Service interaction.

There is a history, more recently at least partly broken, that each Service deals with its own ROGs, except at times when an unacceptable backlog of cases exists. The practice of staffing and managing cases along single-Service lines would not seem the most efficient way to do business. This contributes to disproportionate workloads in

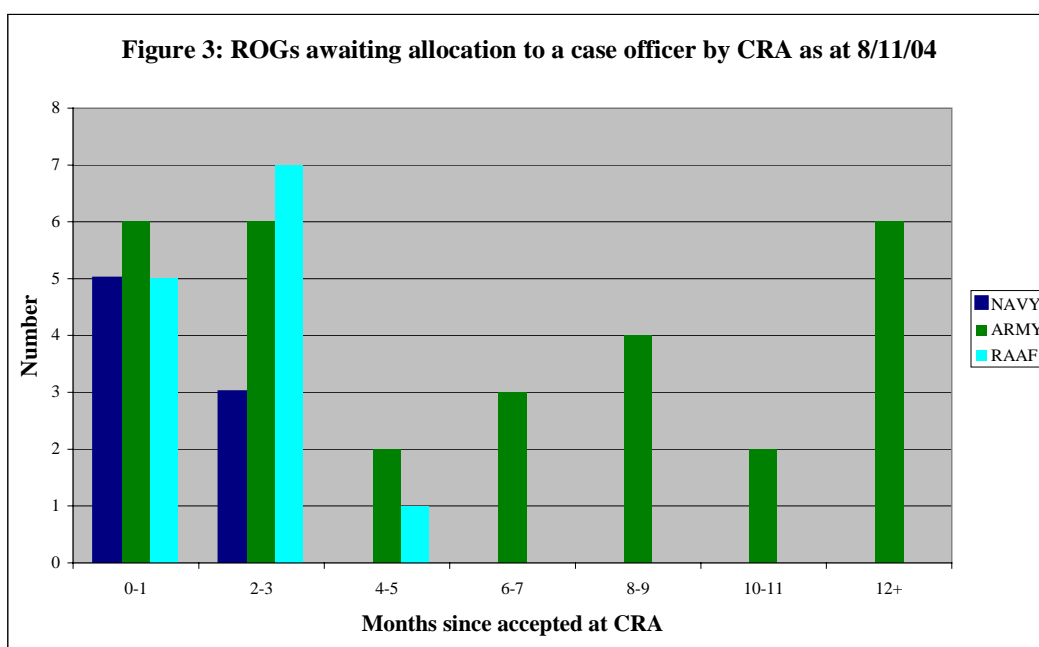
different teams and limits knowledge sharing between case officers. Case sharing should be the norm, according to priorities and regardless of the Service of the complainant. This would allow case officers to be rotated through different teams and to develop their knowledge and abilities.

A major issue identified by previous Reviews, and validated by submissions and interviews in this Review is that of the backlog of cases at CRA. The 2000 Review of the ROG system stated in its report at paragraph 124 , that:

..The primary cause of the delay is staffing shortfalls within the CRA. The Review Team was advised that the CRA has never been without a significant backlog of cases.

Four years on, this situation does not appear to have changed. At the time of writing, there are around 40 ROG cases awaiting allocation to case officers, some of which will not be allocated for six months. This backlog creates additional stress for both CRA staff and complainants. Earlier reviews have suggested that the crux of the problem is staffing, rather than funding. CRA has the financial resources to employ adequate staff, but the Services have not always provided suitable personnel on an ongoing basis. Director, CRA needs to have the flexibility and mandate to employ enough of the right personnel, at the right time.

There has been a net decrease in the processing of ROG cases, with the number of ROG cases resolved annually at CRA declining over the last three years from 199 in 2001/2002, to 168 in 2002/2003, to 124 in 2003/3004²⁵. This has been attributed largely to a shortage of case officers in the Army cell at CRA during the reporting period. This has exacerbated the backlog of (mainly Army) case allocation, which has in turn added to the delays in ROG processing (see Figure 3 below).



²⁵ CRA 2003/2004 Annual Report. Paragraph 17/18.

Case officers should be allocated an individual caseload that allows them to properly manage their flow of work and sufficient time to achieve a professional standard of case review/investigation. Ideally, they should have a number of cases at varying stages of completion. In order to determine what a typical CRA case officer's caseload should be (not as an assessment of individual capacity or competency but as a generic exercise) further work is required. An assessment of the impact on CRA of all recommendations made by this Review, if accepted, will be required. The Director CRA is well placed to undertake this project.

The Director CRA should also review the practice of allocating specific cases to be investigated by section heads/team leaders. It seems that the current practice that team leaders do not regularly undertake case officer work is limiting in providing timely disposal of complex cases, and does not allow CRA to draw on the considerable expertise of its team leaders. The general philosophy should be that team leaders should undertake more complex casework. As a consequence, CRA team leaders need to be highly skilled and competent in administrative complaint investigation. The team leaders within CRA must set a high standard. The Review believes that CRA team leaders should be allocated their own cases, and DCRA must be given a significant say in the selection of team leaders.

When that overall assessment is available, and performance measures for case officers have been identified, an objective assessment of the number of cases officers required to effectively manage the case list and staffing level required by CRA will be better understood. The resulting data would assist with the submission of a business case concerning CRA resources. The Review strongly believes, however, that the proposed review should be completed as a matter of urgency.

The CRA resource review should also examine the present policy of 'working from home' to determine if it returns real value in the context of wider Defence interests and timely resolution of ROGs. Consideration should be given to consequent loss of interaction and mentoring opportunities and impact on the timeliness and detail of case management data on the CRA case management database. The duties and number of administrative staff attached to CRA within the military redress area should also be re-evaluated. Comments are made elsewhere in this Review as to staff competencies, CRA structure and related matters.

The Review also considered, in conceptual terms, the advantages and disadvantages of developing a sub-unit of CRA in another State. Sydney and/or the South-East corner of Queensland might be possible options. It seems that considerable difficulty has been experienced identifying suitable Reservists for employment in CRA in the Canberra area. Larger populations of Reserve officers in the two geographic areas suggested might resolve, at least in part, the human resource issue. Regional delegates already exist for APS Review of Actions. The concept could be extended to apply to ROG review/investigation. Appropriate management and other arrangements would be required, however the role and functions of CRA would seem well suited to this approach.

Immediate action is required to reduce the existing backlog of cases held by CRA. Unless this is done forthwith, the package of recommendations made by the Review (as might be accepted) will not realise their full potential. Options including the

secondment of suitable case officers from elsewhere and engagement on short-term contract of experienced staff should be applied to resolve all outstanding ROGs. The Directorate of Alternative Dispute Resolution Conflict Management and Director CRA should examine each case on the unallocated case list to determine if ADR might be an option for speedy and effective closure.

Recommendations:

- 44. That the existing backlog of cases within CRA be addressed as a matter of urgency.**
- 45. That non-military personnel be considered for appointment as CRA military redress officers.**
- 46. That Reserve case officers be routinely employed on cases from other Services and responsive procedures for flexible transfer of funds between Services are adopted.**
- 47. That the term 'team leaders' be utilised within CRA in preference to 'cell head' or 'section manager'.**
- 48. That Director CRA undertakes a project to identify performance measures for CRA case officers.**
- 49. That a business case relating to CRA resources be developed by Director CRA.**
- 50. That the Services should assign appropriately skilled personnel for employment at CRA, and that Director CRA be given the opportunity to vet selection.**
- 51. That CRAs policy of case officers working from home be reviewed to identify the effectiveness and efficiency of this practice.**
- 52. That the advantages/disadvantages of developing a sub unit of CRA at other geographic locations be examined.**
- 53. That Director CRA should examine the feasibility of CRA section heads being assigned regular casework.**

Over-Servicing Within Defence

A key question for the Review was whether, under the TOR issue of “levels of complaint”, there were broader issues that needed examination. In considering the overall responsiveness and adequacy of the ROG system the Review asked the general questions: *is Defence trying to do too much in its approach to addressing complaints?*, and if it is, *is there a problem for quality and timeliness?*

The Review met with a number of administrative law experts, including Professor Robin Creyke, who holds the Alumni Chair in Administrative Law at the Australian National University to develop an understanding of how much review is enough in contemporary organisations. A view was established that Defence may be trying to do too much compared with what might generally be expected in the community.

Options discussed included:

- Defence legislation could be amended to remove the right of WOs and officers to submit CDF ROGs. CDF's involvement in a ROG would be discretionary, triggered by a recommendation from a Service Chief or CRA
- Defence could clearly articulate its strategic approach to complaint resolution in a policy instrument which would explain how the different complaint resolution mechanisms operate together
- Such an instrument could also articulate Defence complaint handling principles that could include; that there should be only two opportunities for redress following the original decision, and that following a decision subsequent steps must not involve the decision maker
- CO's could be given a right to refuse to accept a ROG if the matter related to a decision by an agency external to Defence. A list of matters excluded from the ROG system could be promulgated, similar to that included in the *Public Service Act 1999*. Discretion would have to be built into the system
- Discharge action as a result of a Notice to Show Cause should not be subject to the ROG process. Alternately, any discharge occurring as a result of a failure to show cause should be viewed as having already been through a step in the proposed two-step redress process

Most of these options are addressed elsewhere in the Report. This section mainly focuses on steps in the processes in an attempt to find ways to save time in the system. Additionally, balancing the options discussed with the recommendations of earlier reviews, the Review believes that:

- The number of levels in the current ROG system is appropriate, but that the number of steps taken to process a ROG within each level can be excessive. Having too number of steps is detrimental to the timely functioning of the overall ROG system;
- There is a need for a clearer understanding of what the ROG system offers and the roles of all agencies involved in the process;
- Time is wasted in a number of cases through excessive investigation and developing overly comprehensive briefs;

- The ROG system should be limited to reviewing complaints that it can address effectively, and should not accept complaints especially where more appropriate avenues exist for resolution; and
- Defence should establish and publicise principles for a holistic complaint management approach across the organisation.

The Review noted that while the number of levels in the current ROG system remains of concern to the Ombudsman, the Review is advised he accepts Defence's desire to retain them.

Too many steps

The following example highlights the steps throughout an administrative and complaint process. In a case where a soldier is found to have used illegal drugs and given a Notice to Show Cause, the following steps may be taken:

Example

1. Unit CO receives a report that a soldier has been found guilty of possession of prohibited drugs. CO orders investigation, which finds evidence that the soldier was in possession of cannabis.
2. Unit CO forms a view and makes a recommendation to the discharge authority (SCMA)
3. Discharge authority considers recommendations of CO and conducts desktop review of case file
4. Discharge authority (SCMA) issues notice to show cause to member via unit CO
5. Soldier responds to notice to show-cause to the unit CO – response includes fresh information
6. CO launches investigation into additional matters
7. CO forwards investigation report/recommendations back to discharge authority (SCMA)
8. CO SCMA considers new information, decides to proceed with discharge
9. CO informs soldier of outcome, issues termination notice and provides date of discharge
10. Soldier considers action, asks for statement of reasons from SCMA
11. SCMA provides statement of reasons to soldier
12. Soldier submits Redress of Grievance to CO
13. CO investigates ROG and makes recommendations to SCMA
14. CO SCMA makes a decision and notifies unit CO/soldier
15. Soldier decides to continue ROG to Service Chief
16. CO sends ROG and documents to CRA
17. Soldier lodges complaint with DFO one day prior to discharge
18. DFO/CRA consider suspension of executive action (discharge)
19. CRA conducts desktop review, makes recommendations to Chief of Service
20. Chief of Service makes decision to terminate the soldier's employment
21. Soldier pursues complaint through DFO/other means

The example highlights the potentially large number of steps in the ROG process. The Review believes that Steps 5-8 should constitute the first level of redress because they incorporate the original decision and an appeal mechanism.

Any additional redress mechanism needs to be above the level of the CO SCMA. Steps 12-15 contribute little to the complaint process. The CO still needs to know a ROG has been submitted, but is not in a position to review his or her recommendation or decision. Similarly, CO SCMA is not ideally placed to review his/her own decision. The ROG should be passed through the CO immediately CRA to the Service Chief for a clearly impartial review. *DI(G) PERS 34-1* provides an option for a CO to forward the ROG virtually immediately in these circumstances, however the requirements of other parts of the DI can be interpreted as contradicting the option.

The Review believes that the process should be modified. The DI should be amended to clearly indicate that where COs and/or a decision authority have been party to a decision in a formal adverse administrative action, any ROG that is raised in regard to these matters must be forwarded immediately to CRA for investigation and decision by a Service Chief.

In every case, a statement of reasons must accompany a termination notice. The Review believes that this is currently the practice in Navy and Air Force, but not in Army. A failure to provide a full statement of reasons with an adverse decision is not consistent with the requirements of administrative law. It is more likely to cause delay in finalising a ROG, and may compromise the outcome.

The amended ROG process would have the following benefits:

- Preserves the CO's command responsibilities, to be (where appropriate) a champion for the soldier's cause
- Dispenses with the circumstances where a decision is subsequently reviewed by the original decision maker, usually without the addition of any new information
- Preserves the right of the soldier to have his/her case reviewed by the Service Chief
- Removes several steps from the process which, generally speaking, do not add value to the quality of the decision and are not required for procedural fairness
- Opens the way for faster decision making

Plain English and improved understanding of roles

Improved understanding of Defence's 'strategic' principles underpinning complaint handling would assist both complainants and staff, and avoid delays and wasted effort. For example, that Defence uses the words 'complaint resolution' and 'review' interchangeably, and they can both be overlaid with a notion of redress. It seems that at CO/Unit level, the focus is on complaint resolution, and when this fails, the focus shifts on to more formal redress. Once a ROG escalates to CRA/Service Chief level, the focus is more on review and redress. The absence of a plain-English guide to complaint handling in Defence leads to uncertainty and potential duplication, due to a lack of clarity of roles for the various agencies involved.

Excessive investigation and over comprehensive briefs

The Review considered whether Defence had a culture of “over egging the pudding” in the conduct of investigations and the preparation of briefs for reviewing officers, that added to the time taken to finalise ROGs. Although not easily quantified, it seemed to the Review that in a number of the cases looked at that this might be the case. Defence staff may be erring on the side of caution, which causes its own problems.

In the absence of any criminality, the burden of proof or standard that is to be reached on which an administrative decision can be properly based is the civil standard of ‘balance of probabilities’. The rigour and length of the investigation should be proportional to the seriousness of the issues being examined. The standard of proof will vary depending on the seriousness of the allegations or the gravity of the consequences flowing from a finding that may be made.²⁶

In the Defence context it seems that a uniform approach is generally adopted across a range of ROGs, irrespective of the gravity of issues or consequences of the redress sought by a member. As advised by Professor Creyke, the concept of natural justice is flexible, and its processes can be tailored according to the seriousness of the issue for the individual. In accordance with this approach, each ROG could be assessed to determine how it might be managed, and the extent of review required prior to a submission to a decision-maker.

Where complainants raise a wide range of issues, many of which might be considered peripheral to the central complaint, a number of briefs seemed to err unnecessarily on the side of covering all issues. This needs to be monitored by DCRA.

To disseminate this important information to COs, case managers and others, such information could be communicated through a lessons learned style of database. DCRA has a real opportunity to add value to this process. Consistent with recommendations made elsewhere in this report, the level of review and extent of investigations undertaken in a ROG can be assessed based on contents of the ROG itself, precedent in dealing with similar issues, lessons learned from previous cases and feedback from senior officers regarding the extent of briefing material they require in such cases.

Excluding some complaint categories from the ROG process

The current Defence Force Regulations (DFR) essentially state that any complaint to do with an ADF member’s service can be the subject of a ROG. The Review believes this notion is an artifact now that other more appropriate avenues of complaint resolution are available. The Review has identified that ADR should be utilised more often and earlier as a matter of course rather than on a special case basis.

The Review noted that experience demonstrates that in the area of complaints about general Defence policy, the ROG process is an inappropriate instrument to resolve complainants’ concerns. The Review agreed that the ROG process should not be used for matters where an individual has a general issue with Defence policy. A submission can be made by any Defence member through their chain of command to

²⁶ *Briginshaw v Briginshaw* 1938 60 CLR 336.

comment on, or request changes to Defence policy. The application of Defence policy to an individual case should remain subject to normal ROG review. The ROG DI should be amended to exclude complaints about general Defence policy from the ROG process, and direct the complaints to the appropriate avenues.

The Review also discussed whether performance assessments should remain subject to ROG processes. Defence expressed support for the view noted in the ROG Review conducted in 2000, and in earlier reviews, that such complaints whilst not statistically common, are extremely difficult to resolve and are better addressed by other means. Defence believes that there are sufficient existing avenues of review, (normally at least one superior reviews the assessment). Every member has the right to formally disagree with an assessment and put his or her reasons for the disputed assessment to an impartial assessor. Defence believes that complaints that include allegations such as bias of an assessor, malice, incompetence etc must not be excluded from the ROG process.

The Ombudsman's Office members of the Steering Committee do not support excluding ROG related to performance assessments. The ROG regime provides service personnel with a transparent and certain process to have their grievances addressed and performance appraisals are no different than other employment-related matters in the eyes of a complainant. If grievances about performance appraisals are not adequately addressed the potential for adverse impacts on complainants, and consequent repercussions for morale in the forces, is high.

The Ombudsman's Office members also believe that excluding access to ROG processes in this area, will also serve to limit access to the DFO for service personnel and, therefore, independent review of their grievances. Service personnel are aware that, if dissatisfied with the outcome of a ROG, they have the opportunity to complain to the DFO. If grievances about performance assessments are excluded from the ROG process, it is highly likely that the option to complain to the DFO will be forgotten over time.

The Review did not reach a consensus on this issue. Development of a deeper understanding of the specific issues and consequences is needed before any implementation is considered.

Without changing the current legislation there are some steps that can be taken with respect to delegations that could speed up the process. However Defence must be careful not to suborn the legislation. Opportunities appear to exist for lower level officers to receive delegations allowing them to resolve matters in a more timely way.

Recommendations:

- 54. That DI(G)PERS 34-1 be amended to clearly indicate that where COs and/or a decision authority have been party to a decision in a formal adverse administrative action, any ROG that is raised in regard to these matters be forwarded immediately to CRA for investigation and decision by a Service Chief.**

cont...

- 55. That in every case, a full statement of reasons must accompany a termination notice.**
- 56. That DCRA develop and publish plain-English guide(s) to making a complaint, and managing a complaint, that complement the DI(G)PERS 34-1.**
- 57. That DCRA develop a method for identifying and communicating information about case precedents to stakeholders including COs (externally) and CRA case officers (internally), in order to avoid excessively complex briefs and duplication of earlier research efforts.**
- 58. DCRA develop a paper for consideration by COSC that recommends the delegation of powers in some cases where:**
 - The Service Chief /CDF does not have the delegation to grant the redress requested, and**
 - It will facilitate a fair and quick resolution of the complaint**
- 59. That Defence should establish complaint handling principles common to all categories of complaint.**
- 60. That Defence should seek amendment to Part XV of *Defence Force Regulations 1952* to reflect current practice, delegations and referral, and, where necessary, to give effect to the other recommendations made in this report.**

Legal Advice

Delays occurring within the Defence ROG system arising from referral of cases for legal advice are an area of some controversy. The frequency of such referrals and nature of the advice sought can also colour a perception of how well the process works, and how well it serves the best interests of Defence and complainants. Views expressed to the Review by DFO staff confirmed their belief that ‘awaiting legal advice’ was cited as a frequent reason for delay. Further frustration was expressed that after considerable delay, legal advice in some cases seemed to have done little to resolve specific issues and concentrated more on justification of a decision or interpretation of Defence policy rather than the specific issues of the case. DFO observed before the Senate Inquiry 2004:

Another general comment I would make – and certainly we have seen it is this area – is that there is a growing tendency of agencies to try to get legal clearance on issues before they either complete their own processes or even respond to the Ombudsman. One can understand agencies are more legally risk averse but we see instances where we think it is probably an oversensitivity to legal complications. Generally we do not see a need for agencies to get legal clearance at a routine level when dealing with us,

*but we have seen that happen in defence and we have seen that happen in other areas.*²⁷

Moving from these more general observations regarding agencies to the specific Defence situation the Deputy Commonwealth Ombudsman added:

*..There is an increasing tendency for reports that we request in relation to particular complaints to be sent to lawyers for vetting and clearance. That has proved to be a very substantial delay. On a number of recent occasions, [CRAs] reports have been rejected by the legal scrutiny, sent back for redoing and often the second or third report has also been tied up in significant delays with the lawyers.*²⁸

When asked by the Committee if, to the knowledge of the DFO and Deputy Ombudsman, Defence had made a decision that it would delay answering any DFO queries to make sure ‘the whole legal scrutiny is followed before you get them’, the Deputy Ombudsman said:

There are certainly cases where that is so. I do not think it is a general rule. The cases that concern us most about delay are relatively small in number and therefore I would not draw a conclusion that there is a general rule that things will be buried in legal scrutiny. But there are at least several cases that we have before us at the moment where this legal scrutiny has been a significant delaying factor.

Similar observations are included in the Commonwealth Ombudsman Annual Report 2003-2004. To understand the extent of problems identified, the Review sought to quantify cases where legal advice had been sought, from both CRA and DFO. Information provided by CRA indicates the following:

Table 9: CRA statistics on legal advice sought in ROG cases/DFO complaints²⁹

Circumstances	Person seeking legal advice	Prevalence of legal advice (%)
Unit ROGs (known to CRA)	Unit CO	19%
Service Chief-level ROGs	Service Chief or CRA	17%
CDF ROGs	CDF or CRA staff	3%
DFO complaints	CRA staff	7%
ROG cases (overall)	Complainant	Not known

²⁷ From minutes of **Senate Committee into the Effectiveness of Australia’s Military Justice System**, meeting on 9 June 2004

²⁸ From minutes of **Senate Committee into the Effectiveness of Australia’s Military Justice System**, meeting on 9 June 2004

²⁹ This information was sought by the Review from CRA. Information provided is based on a total of 36 current ROG cases at CRA and 76 active DFO complaints in mid-November 2004.

Information provided by DFO, however, is that of their current open cases, 19 involve ROGs. Of those cases, legal advice had been sought in relation to 8 matters. This represents 42% of cases being referred for legal advice. The Ombudsman's Office Steering Committee members are of the view that this is undesirably high.

The CRA statistics indicate that the provision of formal legal advice in ROG cases at the unit level is quite high. The Review notes, however, that at unit level, Commanding Officers often have immediate access to unit legal officers, and can quickly seek their input in administrative decision making. There is no evidence to indicate this practice fails to add value to the ROG process. Legal advice offered to the CO at an early stage may be beneficial in providing a more procedurally fair process, contribute to the correct decision being taken or enhance the quality of the initial investigation. The Review also observed earlier that the time taken at unit level was generally reasonable.

The Review notes that cases that progress to the DFO are statistically more likely to have involved legal assistance than cases resolved at lower level. It may be that, as a ROG case progresses through a number of levels, it is more likely to attract legal advice. The significant number of referrals and the inherent delays are of concern to the Ombudsman's Office Steering Committee members.

The Review believes that although differing perceptions will arise over the need to refer a case for legal advice, the practice highlights a possible systemic failure in the current ROG process. The Review recommends that the Director CRA should closely monitor and report trends in this area.

Case Example:

The Review was advised of instances where a number of complainants to the DFO said that other Defence cases involved issues similar to their own, and that the outcomes of these cases would support their claims. As a result, DFO asked CRA for the personal files of the third parties. CRA case officers asked DFO to issue a formal request under the *Ombudsman Act 1976* concerning the third party files. The CRA request was based on generic Defence legal advice that a formal request is required when third party files are requested by any external agency because of privacy obligations.

The general perception amongst DFO staff that the provision of legal advice by Defence was becoming more widespread may have been further exacerbated by these exchanges.

Learning Points:

- Communication between DFO and CRA case officers did not clarify the nature of the legal advice in question
- Immediate clarification of contentious issues between agencies would assist to reduce the perception that another agency is being evasive, difficult or using the need for legal advice to frustrate the early and complete delivery of documentation.

In the *CRA Annual Report 2003-2004* the Director CRA observed the lack of a legal officer located within CRA limits opportunities for case officers to engage in more informed discussion of matters relating to administrative law and administrative decision making. It was suggested an integrated legal officer could review most, if not all, CRA briefs before they are provided to a delegate for decision. In the Director's view this would potentially improve the quality of CRA briefs, contribute to the professional development of CRA staff, ensure the legal soundness of briefs and provide better protection against an increasing level of litigation by complainants.

A number of these comments are not supported by the Review, which does not see the need for every brief to be reviewed by a legal officer before going to a decision maker and the comment regarding protection from litigation seems overly defensive. If applied as policy each would underpin the concerns raised by the DFO. However, if attachment of a legal officer to CRA would reduce the delay that does arise when CRA requests legal advice elsewhere and as a resource to mentor and add value to case officer decisions, the proposal is supported by the Review.

Recommendations:

- 61. That Director CRA closely monitor and report emerging trends in the number of cases where formal legal advice is sought during the resolution of ROG cases at Service Chief and CDF level, and prior to responding to DFO requests.**
- 62. That Director CRA obtain indicative information on the extent of legal advice obtained during unit level ROGs in order to determine if this is causing undue delay.**
- 63. That a legal officer be attached to CRA if it can be demonstrated that it would reduce the delays arising from CRA obtaining legal advice elsewhere.**

Working Arrangements between CRA/DFO Staff

The Review interviewed a representative range of CRA and DFO Defence Team staff both individually and as a group. The frank and informative response from both agencies was appreciated and greatly assisted the Review to arrive at its recommendations.

At the outset it must be said that in recent times adjustments have been made within both areas that have enhanced interaction and the level of understanding that exists between CRA staff and DFO staff. Such activity is to be encouraged. Several interviewees expressed a view that where differences did arise, it was often the result of failure to communicate the reason for a request and relevance to the matter under investigation. Against the background of the volume of complaints handled and complexity of issues decided the Review found that the working arrangements between CRA and DFO were positive overall.

Although both areas are similar in that they are established to impartially conduct administrative reviews and investigations, the differences between CRA and DFO goals can on occasions create tension. Unless CRA staff members are fully aware of the statutory responsibilities of the DFO they may misread the purpose of DFO requests for information and position taken on specific complaints. Conversely, DFO staff members need to have a sound appreciation of Defence practice and policy and understand the environment in which CRA operates.

The Review is satisfied that on a day-to-day basis CRA focuses on each ROG and undertakes an ‘internal review’, as defined by the Administrative Review Council in its Report No 44: 2000:

an (internal review) is a process of review on the merits of an agency’s primary decision. It is undertaken by another officer within the same agency, usually a more senior officer’.

The Council also observed that internal review can take a number of forms; that an agency may have more than one system of internal review and that ‘complaint (in the Defence context – grievance) handling’ is a broader concept than that of internal review. Further, it said that complaint handling can encompass issues of service delivery and process, whereas internal review involves reviewing a particular decision on the merits, with a possibility of a changed outcome. It seems to the Review that there exists a perception within DFO that, as a matter of practice, CRA undertakes an ‘internal review’ and does not usually focus on Defence service delivery, reviewing internal procedures and wider matters of administration. The Review was satisfied that CRA is performing this role, but would benefit from publicising their activity in this regard.

DFO staff are required by legislation and internal policy to focus not only on the merits of an individual complaint but wider matters of administration, and be especially alert to identify possible systemic issues or policy and practice that Defence may need to review and revise. The DFO role does not fall within the above definition of ‘internal review’ and goes beyond the ‘complaint handling’ concept identified by the Administrative Review Council. This distinction between the role of CRA and that of the DFO may not be fully understood by all CRA and DFO case officers.

On average, four full time DFO staff members are allocated to the DFO Defence Team within the Ombudsman’s Canberra office. These team members investigate Defence complaints, act as a co-ordination point for interaction between Defence and the DFO and provide agency ‘specialist’ advice to other Ombudsman staff dealing with Defence complaints. The Director of the DFO Defence Team generally attends to the allocation of cases and monitors workflow in addition to having his/her own case load. The case load within the DFO Defence Team is no less than that of CRA.

Current CRA operating procedures provide that inquiries from the DFO be given high priority and every effort is to be made to provide a substantive reply to the DFO within 20 working days. Interim responses are suggested when it seems clear that a response will not be available within 20 days.

Individual perceptions regarding complaint issues, staff turnover rates which disrupt the continuity of case management and interaction on a personal level, solid case loads and a genuine desire to produce outcomes required by Defence/DFO increase the likelihood of differences of opinion arising between staff. Some possible avenues to facilitate greater awareness and understanding between CRA and DFO staff members include the following:

- identification of opportunities for common training for CRA/DFO case officers (in subjects relevant to both areas such as administrative law and investigations, best practice complaint handling and ADR)
- regular and structured information and familiarisation sessions involving both areas (this might include joint discussion of case scenarios, identification of complaint issues and focus on outcomes)
- mutually agreed reporting categories for complaints and common understanding of how complaint resolution times are measured. This would include a shared understanding of what delays, if any, may occur in the processing of a complaint to the DFO.
- identified outcomes and requirements for monthly ‘caseload and work in progress’ meetings (ie agenda, minutes and the allocation of specific follow up action)
- relevant case officers to be involved in monthly meetings
- regular reporting of outcomes from CRA/DFO to the Deputy Ombudsman and HDPE with any issues which cannot be resolved being promptly referred to that level
- the exchange of CRA/Defence and DFO/Ombudsman ‘knowledge packs’ amongst staff explaining the policy and practices applied in the areas and more generally within Defence and the Ombudsman’s Office.
- Joint representation of CRA and DFO at Defence training courses and other outreach opportunities.
- A structured range of opportunities for DFO staff to observe relevant Defence activity and interact with key areas such as those dealing with high numbers of ROGs and redress decisions.

A substantial flaw in the current interaction between CRA and DFO is that difficult cases are left unresolved for too long. The ability to progress a case seems too often lost as differences arise concerning preferred or possible outcomes. Case officers in both agencies need to recognise that there will be occasions when agreement will not be reached. This is to be expected, and does not reflect on the professional standards of either agency. When differences do arise regarding appropriate case outcomes, and those differences are unduly impeding case finalisation, direction from the Deputy Ombudsman/HDPE should be sought.

It would also seem useful to reflect on further comments made by the Deputy Ombudsman before the Senate Committee:

..There is an issue about whether it would be more effective in the investigation of complaints for material subsequent to the original administrative process to be presented to us in whatever form it is developed .. by the reviewer. Our investigations are conducted in private but we have considerable expertise in analysing material that we receive ourselves. I would argue that there is real value in obtaining material from an internal

review or a collection of internal information about the original process that may be defective and having it presented to us in whatever form in which the investigator has put it together.. Given the number of recent investigation reports that have been sent to the lawyers and been rejected, there is a separate issue independent of whether the material should have been presented to us ..

The above comments tend to lend weight to the concept that when DFO requests a file it should be provided as soon as possible and ‘as is’, without further development, the addition of legal advice or refinement by way of further CRA action. Although this seems the general practice adopted by CRA, to the extent that it may reduce delay in cases set to become ‘controversial’ it seems worthy of further consideration.

Recommendations:

- 64. That the *DI(G)PERS 34-3 Inquiries by the Commonwealth Ombudsman and the Defence Force Ombudsman affecting the Department of Defence and the Australian Defence Force* (dated 3 May 1996) be urgently updated to reflect current best practice, including DFO requirements to see original documents concerning a decision that is being contested. The amendments should clearly prescribe practices, responsiveness, and principles for dealing with DFO complaints and requests.**
- 65. A DFO/CRA memorandum of understanding, or similar service level agreement be developed to optimise cooperative practices and policies between these agencies.**
- 66. That CRA/DFO establish an agreed forward program of common training, joint information sessions and other measures designed to facilitate better understanding and awareness between CRA and DFO staff.**
- 67. That monthly meetings between CRA and DFO have an agenda, allocate tasks, and closely monitor task completion, with meeting minutes provided to the Senior Assistant Ombudsman (Defence) and HDPE.**
- 68. That DFO/CRA explore the possibility of common categorisation of cases and measurement of time taken to resolve complaints.**

Establishing Defence Complaint Management Principles

The Review believes that Defence should establish complaint-handling principles that encompass the entire complaint environment. Such principles should inform and facilitate a holistic complaint resolution approach, and might include:

- That two levels of impartial review of a decision and process are all that is necessary. Only in exceptional cases would further levels be contemplated.
- That once reasonable internal review processes in Defence have been exhausted, complainants will be directed to external review mechanisms
- ADR is a desirable alternative in some cases
- A minimum common standard of training is required for any case officer to be able to work in any of Defence's prescribed complaint handling agencies
- All complaint handling agencies will be pre-approved by COSC to ensure coordination across Defence
- IG(ADF) is responsible for independent monitoring of the performance of all complaint servicing across Defence
- Defence respects the rights of its members to take their complaints to external agencies, including HREOC and DFO.
- Complaints will be attended to promptly. Defence aims to hear and finalise its determinations as soon as possible, but always within nine months of receipt of the first complaint
- There will always be a case load that requires prioritisation, however Defence will not permit a backlog of complaints which have not been allocated to case officers to develop beyond six weeks
- That any adverse administrative decision that is made will be formally conveyed to a member in writing with the full statement of reasons for the decision

Recommendations:

- 69. That HDPE prepare for COSC consideration a statement of Defence's principles on the management of complaints.**
- 70. That once established, Defence's principles on the management of complaints be made available to all members of the ADF.**

CONCLUSION AND IMPLEMENTATION

Conclusion

Defence has devoted considerable effort to providing improved avenues of complaint in recent years. The formal Redress of Grievance system is now one of a range of options; for example the Defence Equity Organisation advice line, the Army Fair Go Hotline and Alternative Dispute Resolution can now be used by ADF members to have their complaints heard or resolved. The creation of an independent Inspector General of the ADF with responsibilities for reporting on the health of the military justice system including complaint handling is improving good governance.

This Review believes that Defence should now coordinate all these initiatives through the establishment of an overarching, principles based policy, which would guide all complaint-related activity. The dispersion of the complaint agencies across Defence groups does not readily permit flexibility, innovation and creativity in resolving complaints. An improved outcome, with a managed allocation of resources could be established if many of the agencies operated from within one group under the leadership of a single director general. The existing Complaint Resolution Agency should be used as the foundation stone for this initiative. Reporting on performance in all avenues of complaint handling using a consistent methodology is essential for Defence leadership to manage complaints effectively.

The Redress of Grievance System, whilst the oldest formal complaint system available to military members, still retains its place of importance among the newer avenues of complaint. It is believed that Defence should move beyond the ad hoc relationships that now exist between the complaint agencies towards more formal arrangements, and complaints should be resolved by means other than the ROG process. A better understanding of what the ROG system offers is also essential in managing complainant expectations. To that end, the wide availability plain English guides for all avenues of complaint is essential.

Implementation

The Review has sought to identify practical solutions to complex problems. Its recommendations should be considered as a reform package with each component part playing an important role in the overall outcome. Piecemeal implementation would compromise the overall effectiveness of the reform package. The recommendations of this Review are intended to be practical and achievable, facilitating the empowerment of CRA and the improvement of complaint handling in Defence. Implementation would also be enhanced by DFO involvement in monitoring progress and providing feedback.

The Review believes that a dedicated implementation effort is required over the next two years to create an integrated best practice complaint system in Defence.

Recommendations:

- 71. That a Defence wide implementation team, including a representative from DFO be formed by HDPE, and that it routinely report progress on both the implementation of recommendations and the improvements in performance in timeliness of complaint resolution in Defence, to the DPC.**
- 72. That the Steering Committee reconvenes by December 2005 and reports to CDF and the Ombudsman on the progress of implementing the Review recommendations.**

SUMMARY OF RECOMMENDATIONS

The Review recognised that there is not one simple fix to improving responsiveness to complaints in Defence. The practical approach that the Review adopted resulted in a large number of complementary recommendations. The recommendations have been broadly grouped into the areas of: Legislation, Policy, Improving Process, Performance Management and Reporting, Organisation and Structure, Information Systems/Management, Staffing, Training, and Implementation. To assist an implementation team, initial views on the allocation of responsibilities for action and time frames were established.

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
<i>LEGISLATION</i>				
1	P5	That, for the purposes of the ROG provisions of the Defence Force Regulations, ‘service’ be defined as service in the permanent or active reserve forces.	DCRA, HDPE	<12 months
2	P5	That the scope of matters about which a member can submit a grievance be changed to “any decision, act or omission relating to a member’s service that is considered or perceived to be adverse or detrimental to the member and which is capable of being redressed by a member of the ADF or civilian employee of the Department of Defence”. As a pre requisite to submitting a grievance, a member must have attempted to resolve their problem by other means through the normal chain of command and such efforts must be documented in the grievance.	DCRA, HDPE	<12 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
4	P5	<p>That complaints of the following types be excluded/prohibited from the ROG system:</p> <ul style="list-style-type: none"> • Complaints regarding a process which seek to anticipate a decision that hasn't yet been made; and • General complaints against the merits of Defence policies. <p>That CDF and DFO consider the opposing opinions on the benefits of excluding assessments, ratings or gradings in performance evaluation reports from ROG processes.</p>	CDF, DFO	<12 months
5	P6	That, where a CO does not have the authority to grant the redress sought in a ROG, after having explored direct means of obtaining possible resolution, the CO should refer the ROG and any associated documentation gathered at unit level to the CRA for investigation and referral to a senior level redress delegate.	DCRA, HDPE, Service Chiefs	<12 months
6	P6	That members should be required to submit a ROG no later than 6 months after the occurrence of the issue raised in the grievance, or the day the member knew, or ought reasonably to have known, that the offending decision, act or omission in question occurred. A redress delegate should have the discretion to accept a complaint that is 'out of time' in exceptional circumstances but only if the redress delegate can foresee some tangible benefit or value in doing so.	DCRA, HDPE, Service Chiefs	<12 months
24	P29	That the current right of referral of a ROG to CDF be retained.		

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
26	P31	That Defence policy be amended to include a deadline for a member to submit a ROG within 14 days following the issue of a termination notice and that the final decision should be made at least 3 days prior to the termination date.	HDPE, CDF	<6 months
40	P41	That a more interventionist approach be taken by CRA in selected cases. That CRA be empowered to nominate the investigating officer or investigate in its own right with agreement of the Service Chief.	DCRA, Service Chiefs	<6 months
54	P51	That <i>DI(G)PERS 34-1</i> be amended to clearly indicate that where COs and/or a decision authority have been party to a decision in a formal adverse administrative action, any ROG that is raised in regard to these matters be forwarded immediately to CRA for investigation and decision by a Service Chief.	DCRA, HDPE	<6 months
60	P52	That Defence should seek amendment to Part XV of <i>Defence Force Regulations 1952</i> to reflect current practice, delegations and referral, and, where necessary, to give effect to the other recommendations made in this report.	DCRA, HDPE	<6 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
<i>POLICY</i>				
14	P20	That Defence take a more strategic approach to the design and integration of its complaint handling systems.	HDPE, CDF	
40	P41	That a more interventionist approach be taken by CRA in selected cases. That CRA be empowered to nominate the investigating officer or investigate in its own right with agreement of the Service Chief.	DCRA, Service Chiefs	<6 months
55	P52	That in every case, a full statement of reasons must accompany a termination notice.	CA	Immediate
56	P52	That DCRA develop and publish plain English guide(s) to making a complaint, and to managing a complaint, that complement the <i>DI(G)PERS 34-1</i> .	DCRA	<6 months
58	P52	DCRA develop a paper for consideration by COSC that recommends the delegation of powers in some cases where: <ul style="list-style-type: none"> • The Service Chief/CDF does not have the delegation to grant the redress requested, and • It will facilitate a fair and quick resolution of the complaint. 	DCRA, HDPE	<9 months
59	P52	That Defence should establish complaint handling principles common to all categories of complaint.	HDPE, CDF	<9 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
64	P58	That the <i>DI(G)PERS 34-3 Inquiries by the Commonwealth Ombudsman and the Defence Force Ombudsman affecting the Department of Defence and the Australian Defence Force</i> (dated 3 May 1996) be urgently updated to reflect current best practice, including DFO requirements to see original documents concerning a decision that is being contested. The amendments should clearly prescribe practices, responsiveness, and principles for dealing with DFO complaints and requests.	DCRA	<6 months
65	P58	A DFO/CRA memorandum of understanding, or similar service level agreement be developed to optimise cooperative practices and policies between these agencies.	HDPE, DCRA, Deputy Ombudsman	<6 months
69	P59	That HDPE prepare for COSC consideration a statement of Defence's principles on the management of complaints.	HDPE	<9 months
70	P59	That once established, Defence's principles on the management of complaints be made available to all members of the ADF.	HDPE	

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
<i>IMPROVING PROCESS</i>				
3	P5	<p>That, in order to avoid duplication of effort, action in relation to a ROG should be terminated where the member has applied to have the action reviewed by a Court or Tribunal or has referred the matter to an external review body (eg HREOC, DFO) that opts to investigate the complaint.</p> <p>[The Review suggests that the word ‘terminated’ should be replaced with the phrase ‘suspended pending outcome’]</p>	DCRA, HDPE, CDF	<12 months
17	P29	<p>That the initial advice proforma in DI(G)PERS 34-1 be expanded to include the additional information in the ROG initial advice form in Annex I:</p> <ul style="list-style-type: none"> • Identity of CO for redress? • Is the CO the delegate for the redress sought? • Has this CO previously made a decision in this matter? • Intended IO? • Does the intended IO have the skills and knowledge required to undertake the investigation? • Is the IO sufficiently removed from the issue to be impartial? • Intended time to completion? • Special considerations • Does the unit need any special assistance to progress the ROG? • Has ADR been considered? • Have all reasonable avenues for resolution without resort to a ROG been explored? 	HDPE, CDF	< 6 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
18	P29	That DCRA adopt the additional role of monitoring and providing advice to COs in potentially difficult cases	DCRA	<6 months
27	P32	That IG(ADF) and DCRA closely monitor the outcome of the DFO study into difficult and persistent complainants and implement measures for managing them.	IG(ADF)	
28	P37	That a new CRA case prioritisation approach be adopted, driven by an objective assessment of impact with criteria to be developed by DCRA.	DCRA	< 6 months
30	P37	That CDF and DFO consider the opposing opinions on the benefits of introducing a provision to provide complainants with an opportunity to submit why their ROG should be given higher priority status on the CRA case list.	CDF, DFO	
32	P37	That more ROG cases be resolved by employing ADR and administrative resolution, and that statistics should be monitored on the use of flexible means.	DCRA, DADRCM	<3 months
33	P37	That CRA adopt an approach that directs the application of best methods to achieve complaint resolution, facilitated by a review and amendment of Joint Directive 2/2003.	DCRA, HDPE, CDF, SECDEF	<9 months
44	P46	That the existing backlog of cases within CRA be addressed as a matter of urgency.	DCRA, Service Chiefs	Immediate

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
61	P55	That Director CRA closely monitor and report emerging trends in the number of cases where formal legal advice is sought during the resolution of ROG cases at Service Chief and CDF level, and prior to responding to DFO requests.	DCRA	<3 months

PERFORMANCE MANAGEMENT and REPORTING

10	P18	That the IG(ADF) take the lead in defining the complaint statistics required for measuring the health of the military justice system across complaint areas and that all complaint areas comply with requirements.	IG(ADF)	
13	P20	That Navy's initiative, carried out by Systems Command, which includes complaint handling in its establishment audit, be adopted by Army and RAAF.	CA, CAF	
20	P29	That DCRA develop additional performance data requirements, analysis techniques and formally report the outcomes to HDPE and Deputy Service Chiefs monthly at the DPC, and to the Chiefs of Service Committee (COSC) biannually.	DCRA, HDPE	<6 months
21	P29	That DCRA with DFO develop a common framework to measure the overall time taken to resolve grievances and each step in the process.	DCRA with DFO staff	<3 months
22	P29	That DCRA develop the ability to monitor the time being taken on a complaint from its actual beginning and through the entire ROG process until completion.	DCRA	<3 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
23	P29	That IG(ADF) provide KER guidelines to all complaint handling agencies in Defence.	IG(ADF)	<3 months
31	P37	That a Defence grievance handling service charter be developed and published.	DCRA	<3 months
32	P37	That more ROG cases be resolved by employing ADR and administrative resolution, and that statistics should be monitored on the use of flexible means.	DCRA, DADRCM	<3 months
37	P41	That a formal procedure to provide feedback to investigating officers and COs be developed by CRA.	DCRA	<6 months
38	P41	That a proforma be developed to support formal feedback procedures.	DCRA	<3 months
41	P42	That annual assessment of COs includes their performance in grievance management.	CDF, Service Chiefs, HDPE	<12 months
42	P42	That single Service audits include an assessment of ROG management and that a copy is passed to a COs assessing officer.	DCRA, Service Chiefs	<12 months
48	P46	That Director CRA undertakes a project to identify performance measures for CRA case officers.	DCRA	Immediate
61	P55	That Director CRA closely monitor and report emerging trends in the number of cases where formal legal advice is sought during the resolution of ROG cases at Service Chief and CDF level, and prior to responding to DFO requests.	DCRA	<3 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
62	P55	That Director CRA obtain indicative information on the extent of legal advice obtained during unit level ROGs in order to determine if this is causing undue delay.	DCRA	<3 months
68	P58	That DFO/CRA explore the possibility of common categorisation of cases and measurement of time taken to resolve complaints.	DCRA with DFO staff	<3 months
<i>ORGANISATION and STRUCTURE</i>				
8	P18	That excluding IG(ADF), most of the Defence complaint areas identified by the Review be brought together under one functional area.	HDPE, CDF	<9 months
11	P18	That DEO, Army Fair Go Hotline, SUBRIMS, DADRCM, Navy's SOSP program and any new initiatives in complaint management are managed centrally with a view to ensuring that their operations are complimentary. Where feasible, these agencies should be co-located under the same group. Where they cannot be co-located, they are made responsive to the head of the new CRA.	HDPE, Service Chiefs	<9 months
15	P20	That CRA is given the clear authority to be the driving force and 'centre of excellence' in complaint handling/resolution and neutral evaluation for Defence, and that the Joint Directive be recast accordingly.	HDPE, CDF	

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
16	P20	That Defence consider the establishment of an expanded complaint resolution business unit, headed by a Director-General or AS-level manager.	HDPE, FASPERS, CDF	<9 months
<i>INFORMATION SYSTEMS/MANAGEMENT</i>				
9	P18	That a common case tracking system or complaints database be established.	DCRA supported by IG(ADF)	
12	P18	That a common complaint management information system be developed to manage cases across all avenues of Defence complaint. This system should have the ability to provide information in a form that will support Defence-wide reporting including information required by the IG(ADF).	DCRA supported by IG(ADF)	
19	P29	That Defence establish an integrated complaint measurement, analysis and reporting system.	IG(ADF)	
25	P29	That IG(ADF) take the lead in an analysis of needs for complaint information across Defence.	IG(ADF)	
29	P37	That a CRA website that allows complainants to track the progress of their ROG be established.	DCRA	
57	P52	That DCRA develop a method for identifying and communicating information about case precedents to stakeholders, including COs (internally) and CRA case officers, in order to avoid excessively complex briefs and duplication of earlier research efforts.	DCRA	<3 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
67	P58	That monthly meetings between CRA and DFO have an agenda, allocate tasks, and closely monitor task completion, with meeting minutes provided to the Deputy Ombudsman and HDPE.	DCRA, Senior Assistant Ombudsman (Defence)	Immediate
STAFFING				
7	P6	In order to overcome the long-standing staffing problems within the Military Redress Section of the CRA, the Service Chiefs should undertake to: <ul style="list-style-type: none"> • Ensure that personnel posted to permanent positions within the CRA have the requisite skills and abilities to perform the duties of their position; • Endeavour to provide relief manning where permanent positions within CRA are expected to be vacant for more than 2 months; and • Formulate agreements for the ongoing provision of adequate Reserve manpower to the CRA 	Service Chiefs	<3 months
45	P46	That non-military personnel are considered for appointment as CRA military redress officers.	DCRA	<12 months
46	P46	That Reserve case officers be routinely employed on cases from other Services and responsive procedures for flexible transfer of funding between Services are adopted.	DCRA, Service Chiefs	<3 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
47	P46	That the term 'team leaders' be utilised within CRA in preference to 'cell head' or 'section manager'.	DCRA	Immediate
49	P46	That a business case relating to CRA resources be developed by Director CRA.	DCRA	<6 months
50	P46	That the Services should assign appropriately skilled personnel for employment at CRA, and that Director CRA be given the opportunity to vet selection.	Service Chiefs, DCRA	<6 months
51	P46	That CRAs policy of case officers working from home be reviewed to identify the effectiveness and efficiency of this practice.	DCRA	<6 months
52	P46	That the advantages/disadvantages of developing a sub unit of CRA at other geographic locations be examined.	DCRA, HDPE	<3 months
53	P46	That Director CRA should examine the feasibility of CRA section heads being assigned regular casework.	DCRA	<3 months
63	P55	That a legal officer be attached to CRA if it can be demonstrated that it would reduce the delays arising from CRA obtaining legal advice elsewhere.	DCRA	

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
<i>TRAINING</i>				
34	P41	That DCRA together with IG(ADF) identify priority areas to be targeted for administrative investigation training.	IG(ADF), DCRA	<3 months
35	P41	That CRA presentations to Defence training courses and units be maintained at, at least 2003-4 levels.	DCRA	Ongoing
36	P41	That opportunities to include DFO in the CRA information presentations be explored with a view to establishing a joint outreach program.	DCRA, Senior Assistant Ombudsman (Defence)	
39	P41	That the feasibility of an online administrative investigation course be examined by Defence.	IG(ADF)	<12 months
43	P42	That Defence Education and Training Development Branch (DETD) provide guidance on the level of training to be achieved on single Service basic and intermediate officer courses.	HDPE, DGETD	<12 months
66	P58	That CRA/DFO establish an agreed forward program of common training, joint information sessions and other measures designed to facilitate better understanding and awareness between CRA and DFO staff.	DCRA, Senior Assistant Ombudsman (Defence)	<3 months

Recommendation No.	Location in Report	Recommendation	Responsibility	Time-frame
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IMPLEMENTATION

71	P61	That a Defence wide implementation team, including a representative from DFO be formed by HDPE, and that it routinely report progress on both the implementation of recommendations and the improvements in performance in timeliness of complaint resolution in Defence, to the DPC.	HDPE, Senior Assistant Ombudsman (Defence)	
72	P61	That the Steering Committee reconvenes by December 2005 and reports to CDF and the Ombudsman on the progress of implementing the Review recommendations.		

TERMS OF REFERENCE

REVIEW OF AUSTRALIAN DEFENCE FORCE REDRESS OF GRIEVANCE SYSTEM

Introduction

1. The Australian Defence Force (ADF) Redress of Grievance (ROG) process has been the subject of a number of reviews in recent years, both within Defence and by external bodies. Despite a number of changes which have sought to improve the process, Defence and the Defence Force Ombudsman continue to have concerns about the level of dissatisfaction of ADF members in relation to the processing of complaints, particularly the time taken to finalise complaints. This suggests that scope remains to improve the responsiveness of the ROG system.

Background

2. In June 1997 CDF recommended that ADF ROGs be included as a topic in the 1997/98 Australian National Audit Office (ANAO) Audit Strategy document for Defence. The audit commenced in April 1998 and the ANAO audit report was tabled in Parliament on 10 June 1999.

3. ANAO report, titled Redress of Grievances in the Australian Defence Force, made 14 recommendations for improving the ROG system. Defence agreed to eight of the recommendations. The remaining six recommendations were agreed with qualification as Defence wished to conduct further study to determine the extent to which they could be adopted.

4. In mid 2000 both Defence and the Ombudsman's Office agreed that there would be merit in examining possible changes that would go beyond the scope of the ANAO audit. A joint Defence/Defence Force Ombudsman review team was appointed and in September 2000 the team submitted a report on the structural, resource and cultural impediments to the effective and efficient operation of the ROG system. The report made 24 recommendations, most of which were agreed and implemented with the reissue of Defence Instruction (General) Personnel 34-1—Redress of Grievance—Tri-Service procedures, in August 2001.

5. At the Senate inquiry into the Effectiveness of Australia's military justice system, CDF's evidence on 06 August 2004 (page 41) included an acknowledgment that there is still criticism of the handling of some ROG investigations even though significant improvement has been achieved in recent years. CDF stated: 'We will continue to look for ways to improve standards and timeliness. The time taken to deal with some complaints and grievances is still longer than I would like'. and 'I have had discussions with the Defence Force Ombudsman about conducting a joint review of the redress process to identify further improvements. He and I have decided to proceed'.

Aim of review

6. The aim of the review is to identify deficiencies in the ROG system and make recommendations to refine the process to better meet the needs of members and the ADF.

Objectives of review

7. Drawing upon the work already undertaken by the ANAO and by the Defence review team in 2000, this review should make recommendations on actions required to implement a responsive and effective ROG system for the ADF. The review should establish performance measures for assessing the timeliness of the ROG process. The review team's consideration should cover, but not be limited to, the following factors affecting the responsiveness of the current system:

- a. the levels of investigation and review provided by the ROG process;
- b. the scope and nature of complaints;
- c. the adequacy of complaint investigation and review;
- d. the nature and extent of legal advice throughout the process;
- e. oversight of, and accountability within, the process;
- f. circumstances under which executive action should be suspended;
- g. the impact of concurrent complaints made to the Defence Force Ombudsman, the Human Rights and Equal Opportunity Commission or any other external body;
- h. the nature of, and working relationships between, Defence's complaint handling agencies, including the Complaint Resolution Agency (CRA), Inspector-General ADF, Inspector-Generals Division and the Special Financial Claims Directorate; and
- i. the nature of working arrangements between Defence and Defence Force Ombudsman staff.

8. The review should look at broader Australian community standards for responsiveness to complaints and draw conclusions as to their appropriateness to Defence, and whether they might provide useful benchmarks for Defence's ROG processes.

Composition of the review team

9. The review team will be lead by the following members:

- a. BRIG John Cox Defence
- c. Mr Bill Stoll Consultant

10. Secretariat support is to be provided by the CRA.

Time frame for review and reporting arrangements

11. The review is to commence on 13 September 2004 and be completed by 11 December 2004. The review team will report to a Steering Committee comprising the Deputy Ombudsman, Senior Assistant Ombudsman (Defence), Head Defence Personnel Executive and First Assistant Secretary Personnel. Contact with the Steering Committee will take the form of regular discussion with individual members throughout the period of the review and the presentation of a draft report about a week before the final deadline.

Original Signed

P.J. Cosgrove, AC, MC
General
Chief of the Defence Force
20 September 2004

Original Signed

Professor J. McMillan
Defence Force Ombudsman

20 September 2004

INTERVIEW QUESTIONNAIRE

2004/107438/1

See Distribution List**INTERVIEWS – REVIEW OF THE ADF REDRESS OF GRIEVANCE SYSTEM****Reference:**

A. Defgram 539/2004 dated 28 September 2004

1. The CDF and Defence Force Ombudsman agreed a joint review of the ADF Redress of Grievance System. The focus is on the responsiveness of the system. Reference A announced the conduct of the review and includes a copy of the terms of reference.
2. The steering committee and review team decided that an essential part of the information-gathering phase is to interview key individuals with responsibilities for, or are directly associated with the ROG process. The interviews will take place prior to 29 October 2004.
3. At Enclosure 1 is a questionnaire that has been designed to help prompt discussion on key issues identified to date by the review team, (it is not intended to limit the scope of discussions). By answering the questionnaire in advance of the meeting, the time required for the interview should be about 30 minutes.
4. Also included at Enclosure 2 are the names and contact details of the steering committee and team members should you wish to discuss an issue before the interview. The distribution list for this minute provides the complete list of personnel that the team intends to interview.
5. A member of the team will be in contact with you or your staff to arrange an appointment.

ORIGINAL SIGNED**John Cox**

Brigadier (Retd)

Russell Offices R1-1-A098

Phone: (02) 626 68323

Email: john.cox2@defence.gov.au

18 Oct 2004

Enclosures:

1. Questionnaire – Review of the ADF Redress of Grievance System 2004
2. Members of Steering Committee/Review Team

Distribution:

Chief of the Defence Force

Deputy Service Chiefs (Army, Navy, RAAF)

Head, Defence Personnel Executive

First Assistant Secretary, Personnel

Inspector General (Defence)

Inspector General (ADF)

FASLEGAL

Director, Commonwealth (Defence) Defective Administration

Director, Defence Administrative Law Services

Director, Directorate of Litigation (Defence)

Director of Entitlements (Defence)

Director CRA

Director Defence Equity Organisation

CRA Deputy Director, Military Redress

CRA Deputy Director, Civilian Review

Director of Alternative Dispute Resolution

COL Terry McCullagh

WGCDR Andrew Elfverson

CO ADF Personnel Centre (Canberra)

CO HMAS HARMAN

Mr Kevin Radnidge

CRA Military Redress case officers

DFO case officers

REVIEW INTO THE ADF REDRESS OF GRIEVANCE SYSTEM 2004

QUESTIONNAIRE

This questionnaire is intended as a framework for consultation with the Review Team. By considering and answering this questionnaire prior to interview, you will enable the Review Team to relate submissions and interviews back to the Terms of Reference for the review (see Defgram http://defweb.cbr.defence.gov.au/home/documents/data/DEFPUBS/DGM04/dg539_04.pdf). The Review Team will take a copy of the responses. Information provided may be published in the Review.

PART 1

1. What are the major problems with the Redress of Grievance (ROG) system with respect to its responsiveness?
2. How would you describe the characteristics of a reasonably responsive ROG system?
3. What should be, and should not be the expectation of Australian Defence Force members in relation to the ROG system?

PART 2:

4. What is your view of the appropriateness, necessity and extent of legal advice obtained during various stages of the ROG process?
5. Do you believe that the ROG process is conducted in an accountable and transparent manner?
6. To what extent are you satisfied with the outcomes of the ROG system?
7. Suspension of executive action during the ROG process can be a major issue for the ADF, particularly where discharge action is delayed. What is your view on managing this issue?
8. How well do the various Defence complaint agencies operate together (DEO, CRA, DADRCM, IG, Fair Go Hotline etc)? To what extent is this an issue?
9. In your experience, what is the nature of the relationship between Defence and the Office of the Ombudsman? What are the issues concerning this relationship?
10. In your experience, are ROG processes generally conducted correctly (ie in accordance with DI(G)PERS 34-1)?

PART 3:

11. In what capacity have you dealt with the ROG system (tick categories that apply):
 - a. Complainant
 - b. Commander/manager
 - c. Decision maker
 - d. Case officer

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12. Would you support the following options generated by previous reviews which appear to be outstanding (tick appropriate box):

OPTION	YES	NO
ROGs relating to complaints that have been referred and accepted by an agency external to Defence which has legislative authority to impose a decision (ie AAT) should be terminated		
ROGs referred to external agencies (ie Ombudsman, HREOC) should be suspended until the outcome of the external process is made known		
Authority should exist for complaints considered frivolous or vexatious to be dismissed		
Complaints about the merits of ADF policy where the complainant does not have a direct personal interest should not be allowed		
The avenue for Officers and Warrant Officers to refer a ROG to CDF should be removed, except in cases where the ROG was directly against a Service Chief or VCDF		
Only ROGs capable of final redress within Defence will be accepted		
Members will not be able to submit a grievance on a decision that is more than six months old unless special permission is obtained from a redress delegate		
Time requirement for ADF members to refer a ROG to a second redress delegate should be reduced to 14 days		
Members who have submitted ROGs will receive a progress report every 28 days irrespective of whether there is something to report		
Existing policy/procedures should be modified to allow only those ROGs where the unit commander/Service Chief has authority to make a final decision to come before them		

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Members of Steering Committee/Review Team

Review Team:

BRIG John Cox (Retd)

Mr Bill Stoll

Mr Richard Dittler

Ms Glenda Barton

Steering Committee:

RADM Brian Adams (HDPE)

Mr Peter Sharp (FASPERS)

Mr Ron Brent (Deputy Ombudsman)

Ms Mary Durkin (Senior Assistant Ombudsman (Defence))

LIST OF PERSONS INTERVIEWED BY REVIEW

The following people/agencies were formally interviewed by the Review Team:

Human Rights and Equal Opportunity Commission
Commonwealth Ombudsman

Deputy Ombudsman

Senior Assistant Ombudsman (Defence)

Chief of the Defence Force

Head, Defence Personnel Executive

First Assistant Secretary, Personnel

Inspector General (Defence)

Inspector General (ADF)

Deputy Service Chiefs (Army, Navy, RAAF)

Director, Special Financial Claims

Director, Defence Administrative Law Services

Director, Directorate of Litigation (Defence)

Director CRA

CRA Deputy Director, Military Redress

CRA Deputy Director, Civilian Review

Director Defence Equity Organisation

Director of Alternative Dispute Resolution and Conflict Management

COL Terry McCullagh (former Director of Personnel-Army)

CO ADF Personnel Centre (Canberra)

CO HMAS HARMAN

Mr Kevin Radnidge (CRA case officer who has worked at DFO)

CRA Military Redress case officers

Director, DFO Team and DFO case officers

DEFENCE INSTRUCTIONS (GENERAL)

Department of Defence
CANBERRA ACT 2600

31 August 2001

Amendments to Defence Instruction (General) PERS 34-1 are issued pursuant to section 9A of the *Defence Act 1903*.

ALLAN HAWKE
Secretary
Chief of the Defence Force

C.A. BARRIE
Admiral, RAN

LIST B—ISSUE NO PERS B/10/2001

Amendment PERS 34-1

Redress of Grievance—Tri-Service procedures

Single Service filing instructions

This instruction should be filed as:

1. NAVY ADMIN 35-9
2. ARMY PERS 167-1
3. AIR FORCE ADMIN 9-18

Cancellation

DI(G) PERS 34-1 ISSUE NO PERS B/4/96 (AL1) of 18 MAR 96 is cancelled.

REDRESS OF GRIEVANCE—TRI—SERVICE PROCEDURES

INTRODUCTION

1. Members of the Australian Defence Force (ADF) have available a number of formal and informal mechanisms to address complaints. **In the first instance, members should seek resolution of any complaint at the lowest possible level through normal command channels and administrative arrangements.** Where a member is not satisfied that a complaint has been resolved through the normal administrative processes, Defence Force Regulations (Part XV) make provision for a formal grievance procedure. The purpose of that system is to provide a formal mechanism for complaints to be investigated and reviewed and, where necessary, to correct wrong or unfair decisions, or actions. Access to the formal complaint system is through the submission of a redress of grievance (ROG) to the member's Commanding Officer (CO).

2. Early resolution of complaints is an important factor in the maintenance of morale. A member who submits a ROG has a right to expect the complaint will be addressed promptly. Equally, members should be aware that submitting a ROG before attempting any administrative resolution of a complaint may in fact delay resolution of the problem. The ROG process should be used only as a **last resort, not a first option.**

3. Oversight of the ROG system is vested in the Director of the Complaint Resolution Agency (DCRA). Under a joint directive issued by the Chief of the Defence Force (CDF) and the Secretary, the Complaint Resolution Agency (CRA) is tasked with ensuring independence in the investigation and handling of complaints³⁰. In addition to providing advice on complaint handling, the CRA investigates and proposes responses to ROGs referred by ADF members to the Service Chiefs and CDF. Annex A contains further information about the CRA. The CRA also monitors the progress of ROGs at unit level.

AIM

4. The aim of this instruction is to detail procedures for dealing with ROGs.

DEFINITIONS

5. For the purposes of this instruction the following definitions apply:

- a. **Administrative resolution.** Resolving a complaint without using the ROG system through research and application of the relevant rules, policy, procedures, orders and instructions.

³⁰ Joint Directive 5/1998 Joint Directive by the CDF and the Secretary, Department of Defence (DoD) to DCRA, dated 22 September 1998.

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- b. **Case officer.** An officer, or member of the Australian Public Service, appointed by DCRA: to review documents, inquiry reports and decisions, that form part of a grievance, or are relevant to decisions made in relation to a grievance; to prepare a brief of the facts and circumstances; and to make recommendations for consideration and decision by a Service Chief. A case officer is not an inquiry officer for the purposes of Australian Defence Force Publication (ADFP) 202—*Administrative Inquiries Manual*.
- c. **Complaint.** A written expression of the member's grievance.
- d. **Complainant.** A member who has submitted a written grievance.
- e. **CO.** A member of the ADF who, by virtue of a delegation or instrument of appointment, exercises authority and holds responsibility for assigned ADF personnel.
- f. **Decision.** A written record of the final or operative acts by a CO, or a Service Chief in response to the grievance.
- g. **Grievance.** A written complaint by a member about any matter relating to his or her service that includes a real or perceived ground for complaint.
- h. **Investigation.** An investigation includes a review by a CO, case officer or Service Chief of relevant files and other records pertinent to the subject of the ROG and/or any one or more of the inquiries referred to in ADFP 202 initiated as a consequence of the ROG.
- i. **Member.** A member of the Permanent or Reserve Forces of the Navy, Army or Air Force.
- j. **Redress.** The provision of a remedy, correction, relief or adjustment
- k. **Service Chief.** Chief of Navy (CN), Chief of Army (CA) or Chief of Air Force (CAF) or appointed delegates.
- l. **Statement of reasons (SOR).** Defined in annex G, paragraph 23.

OUTLINE OF THE REDRESS OF GRIEVANCE PROCESS

Submission of a redress of grievance

6. A complaint through the ROG system may only be made by a member of the ADF. Defence Force Regulations provide that a member may submit a complaint concerning any matter relating to his or her service. A complaint must, in the first instance, be submitted in writing to the member's CO except in specified circumstances that are detailed in annex B. In such cases, a member may submit the complaint directly to the CO's superior officer. ROGs should be submitted in the format detailed in annex C.

Commanding Officer's responsibilities

7. A CO is required to: acknowledge receipt of a ROG in writing (an example receipt is in annex D); investigate the complaint; make a decision on whether the member has grounds for complaint; resolve the matter, if it is within the CO's authority; and inform the member in writing of the outcome, including the decision on the complaint and the reasons for the decision. Detailed instructions for the handling of complaints by COs are provided in annex E. Annexes F and G provide advice in relation to the investigation of complaints and matters to be considered in making a decision on a complaint. Further processing of the ROG will then depend on the CO's decision and whether the member requests that the ROG be referred to the Service Chief.

Referral to higher authority

8. If not satisfied with the decision of his or her CO, the member may request that the complaint be referred to the appropriate Service Chief for decision. In this case, the ROG is to be sent to directly to the CRA for further action. If the complainant is an officer or warrant officer and he or she is dissatisfied with the decision of the Service Chief, the member may request that the complaint be referred to the CDF, through the CRA, for further action. The decision by a Service Chief or CDF, as appropriate, represents the final step in the ROG process.

Action by Complaint Resolution Agency

9. Under a joint directive issued by the CDF, CRA is tasked with independently reviewing ROGs on behalf of CDF and the Service Chiefs, or their delegates.³¹ On receipt of a ROG at the CRA, the complaint will be allocated a priority. Complaints against proposed executive action, such as discharge, are usually afforded the highest priority. In due course, a case officer will be appointed to review the substance of the complaint. The case officer will then prepare a brief for consideration and decision by the appropriate Service Chief, or CDF. Annex A contains further information about the CRA.

Review by a Service Chief

10. Regulation 76(1) of Defence Force Regulations provides that a member who is not satisfied with the decision of his or her CO on a ROG may request that the complaint be referred to the appropriate Service Chief. In reviewing a ROG, a Service Chief will note the brief prepared by the CRA case officer who has reviewed the ROG on his behalf. For details on a case officer's review and brief, refer to paragraphs 4. and 5. of annex A. On occasion, a Service Chief may consider that a complaint has merit, but the remedy sought by the member will not be within the authority of the Service Chief to grant because he does not hold the relevant delegation, eg, a request to write off a debt to the Commonwealth. In these circumstances, the Service Chief may make a formal representation on behalf of the member to the officer who has the authority to grant the redress sought by the member.

Review by Chief of the Defence Force

11. Regulation 79 of Defence Force Regulations provides that an officer or warrant officer who is not satisfied with a decision by a Service Chief (or delegate) may refer a ROG to CDF³². In reviewing the ROG, CDF will consider the grounds for complaint, outcomes, decisions made, the member's responses and the case officer brief. The matter will not normally be the subject of a fresh investigation. Complainants should also note that certain powers reside solely with the Service Chiefs, eg in relation to some terminations of appointment or discharge. In these cases, if CDF considers that the complaint has merit, he is not able to provide the redress sought and his influence would be confined to bringing his concerns to the attention of the Service Chief.

Delegation

12. CDF, CN, CA and CAF are empowered by Regulation 81 of the Defence Force Regulations to delegate all or any of their powers to determine ROG to an officer not below the rank of O-7. Each of the Service Chiefs has signed instruments delegating some or all of their powers to determine ROGs to other senior appointments within their respective Services.

³¹ Joint Directive 5/1998 Joint Direct by the CDF and the Secretary, DoD to DCRA, dated 22 September 1998.

³² This right is conferred by Regulation 79 of Defence Force Regulations. For the purpose of Regulation 79, reference to a Warrant Officer does not include the ranks of Flight Sergeant or Chief Petty Officer, but it does include Warrant Office Class 2.

Suspension of proposed executive action

13. When a complaint relates to a proposed action, that action is not normally to be taken until the complaint has been resolved. The underlying principle is that approving authorities should not take irrevocable, or pre-emptive, action that would prejudice an appropriate remedy, if a member's complaint were subsequently upheld.

14. Notwithstanding the foregoing, Service requirements may override the suspension of executive action, ie when considerations of safety, security, discipline or effective operation of the unit reasonably dictate that the proposed action should be taken regardless of the submission of a complaint. Such circumstances are expected to be exceptional.

15. Where necessary, COs are to formally request the relevant approving authority to suspend executive action. A request (or a decision) that executive action proceed, in the face of a ROG, must be accompanied by a detailed justification of why such action is necessary. Requirements for the handling of complaints that delay the implementation of executive action are included in annex E.

16. The submission of a ROG should not, as a general rule, delay executive action where that action is beneficial to the member. For example, where a member has lodged a ROG against certain aspects of a financial claim that favours the member, those aspects of the claim not in dispute should be finalised, especially where investigation of the complaint is likely to be lengthy.

Expeditious handling of complaints

17. ROGs are to be finalised without undue delay. In particular, COs, and others responsible for the processing of complaints, are to have regard to any special time constraints applicable and are to allocate priorities accordingly. A response to a request for a SOR, or for any other information relating to a ROG, is to be provided within 14 days of receipt. A ROG is not to be unduly delayed to the extent that, even if the complaint were eventually to be substantiated, no redress could be effected because the passage of time had overtaken events.

Withdrawal of a complaint

18. A member may withdraw a complaint at any time during its processing. The withdrawal is to be notified in writing to the CO and it is not mandatory to state reasons. The member's CO is to provide a copy of the notice of withdrawal to the CRA. In certain circumstances, where the complaint raises broader issues of importance to the ADF, the matters originally raised in the ROG may continue to be investigated after the ROG itself has been withdrawn. A member cannot be forced, or persuaded, to withdraw a complaint. (*see* annex H).

Complaints not able to be redressed

19. Because the ROG process is ultimately determined within the ADF, members should be aware that resolution of some complaints may be outside the authority of any ADF officer to remedy. For example, ADF commanders do not normally have authority to waive or write off debts to the Commonwealth. Irrespective of the rights or wrongs associated with such a debt, the ROG process itself may never be able to ensure an outcome satisfactory to the complainant. Equally, a ROG submitted to obtain an apology from someone may ultimately be unsuccessful because the ADF has no power to require a person to apologise. In these or similar instances, an alternative method of resolving the member's complaint should be explored.

3 This right is conferred by Regulation 79 of Defence Force Regulations. For the purpose of Regulation 79, reference to a Warrant Officer does not include the ranks of Flight Sergeant or Chief Petty Officer, but it does include Warrant Officer Class 2.

Offence to dissuade

20. It is an offence under Defence Force Regulations to dissuade or prevent, or to attempt to dissuade or prevent, a member from making a complaint (*see* annex H). Notwithstanding the foregoing, reasonable attempts to satisfy a complaint through normal administrative processes prior to the submission of a formal ROG will not be viewed as attempts to discourage the making of a complaint.

ALTERNATIVE MEANS OF HANDLING COMPLAINTS

Administrative resolution of complaints

21. Considerable scope exists to resolve complaints through normal administrative channels without recourse to the formal ROG system. Before submitting a ROG, members are to seek advice regarding the matter causing the grievance through the normal chain of command (*see* annex B).

22. It is in the interests of both the member and the ADF that, before a ROG is submitted, all avenues for resolving the complaint or obtaining an adequate explanation for the decision are explored. This may well lead to an unfair or wrongful decision being overturned by the original decision-maker. Alternatively, the provision of additional information or counseling may demonstrate the correctness or justification for a decision, which in turn may satisfy the member's grievance. ROGs are to include details of attempts made to resolve the complaint through administrative means and copies of documents relating to this process.

Alternative dispute resolution

23. Complaints involving interpersonal relationships, personality conflicts or similar matters may be more effectively resolved by using processes such as mediation or conciliation instead of a formal ROG. COs are encouraged to consider employing alternative dispute resolution (ADR) options, in the first instance, in appropriate cases before proceeding with the formal determination of a ROG. Information on ADR is contained in ADFP 202, chapter 3.

24. The decision to use ADR techniques is an exercise of command discretion. It is also essential that a complainant agrees to participate willingly in any informal dispute resolution process before proceeding with any such process. ADR is a specialised field and COs should seek advice from the ADR Management Cell within The Defence Legal Services (R8-02-015, Department of Defence, CANBERRA ACT 2600) in circumstances where ADR is being considered.

MATTERS OUTSIDE THE REDRESS OF GRIEVANCE SYSTEM

25. The following complaints are outside the ADF ROG system and can not be accepted:

- a. complaints subject to or regarding a decision, judgment or order made by a civilian court or tribunal, a Service tribunal or the Defence Force Discipline Appeals Tribunal;³³
- b. complaints about a determination made in respect of a liability to the Commonwealth made under section 42 of the *Financial Management and Accountability Act 1997*; for example, complaints about recovery of money for loss of or damage to Commonwealth property through negligence or gross negligence;³⁴
- c. anonymous complaints; and
- e. complaints that are lodged when complainants are not members of the ADF.

REVIEW BY DEFENCE FORCE OMBUDSMAN

26. ADF members with complaints about matters affecting their service must first seek resolution of their complaint through Service channels, including the ROG process. ADF members may forward complaints to the Defence Force Ombudsman (DFO) at any time, but the DFO will not investigate complaints until the ADF ROG system has been exhausted, unless there are exceptional circumstances. Notwithstanding, the DFO can investigate complaints about unreasonable delays in the ROG process, or complaints from members who have not been informed about the progress of their complaints, at any time during the ROG process.³⁵

³³ Defence Force Regulation 82.

³⁴ Defence Force Regulation 82.

³⁵ Ombudsman Act 1976.

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27. Members below the rank of warrant officer may refer their complaints to the DFO for investigation if not satisfied with the decision of their Service Chief. Officers and warrant officers may also refer their complaints to the DFO if dissatisfied with the decision of the CDF. On completion of an investigation the DFO will advise the member of the outcome and will provide a copy of the response to Head Defence Personnel Executive.

REPORTING

Reporting requirements

28. Reports are to be raised at the following stages of the ROG process:
- a. on receipt of a ROG;
 - b. during the investigation of a ROG (progress reports); and
 - c. on completion of a ROG.

Details of reporting requirements are contained in annex I.

Reporting of deficiencies

29. Apart from its primary function as a complaint resolution mechanism, the ROG system is a valuable source of information regarding the functioning of Defence procedures and systems. The ROG system provides the ADF with a capacity to learn from mistakes and to avoid similar complaints in the future. Therefore, where in the course of investigating a complaint it becomes apparent that there are anomalies or deficiencies in legislation, policy or procedures, a CO or DCRA, as appropriate, should notify the relevant area of the ADF of those deficiencies or anomalies.

Annexes (not included in this report):

- A. Complaint Resolution Agency
- B. Instructions for complainants
- C. Redress of grievance pro forma
- D. Example of receipt for a redress of grievance
- E. Instructions for Commanding Officers
- F. Investigation into a redress of grievance
- G. Guide for decision makers
- H. Offences against Defence Force Regulations
- I. Redress of grievance administrative requirements

Sponsor: DGCMP (DPP)

TRAINING PROVIDED BY CRA IN 2003/2004

Presentations were provided by CRA at the following training courses during 2003/2004.

Navy

CO/XO Designate Courses – Canberra
 Junior Officers Leadership Courses – HMAS CRESWELL
 Senior Sailors Command Leadership Development Courses – HMAS CRESWELL
 CO's Secretary Pre-Joining Training – HMAS CERBERUS
 CO HMAS CERBERUS and administrative staff
 CO HMAS KUTTABUL and administrative staff
 CO HMAS WATERHEN and administrative staff
 CO HMAS PENGUIN and administrative staff
 HMAS ALBATROSS administrative staff
 HMAS HARMAN Divisional Officers Seminar

Army

Pre Command Seminar, Canungra
 Headquarters 1 Division, Brisbane
 1 Brigade, Darwin
 4 Brigade, Melbourne
 5 and 8 Brigades, Sydney
 9 Brigade, Adelaide
 Puckapunyal Military Area, Victoria
 Victoria Barracks, Melbourne
 Soldier Career Management Agency, Queenscliff
 Royal Military College of Australia
 Regional Training Centre-NSW
 Army Personnel Agency-Sydney
 Army Personnel Agency-Melbourne
 Army Personnel Agency-Adelaide
 Army Personnel Agency-Darwin

Air Force

Commanding Officers Course – Canberra
 Administrative Officer Basic Course Phase 1 – Canberra
 Administrative Officer Basic Course Phase 2 – Canberra
 Wing Commanders Course, Canberra
 321 Combat Support Squadron, RAAF Base Darwin
 RAAF Edinburgh, Adelaide

Defence

Australian Command and Staff Course – Canberra

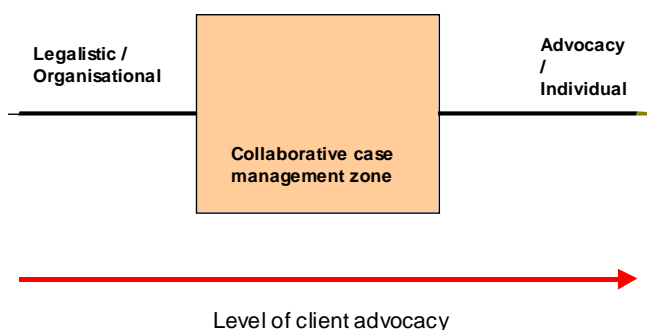
ROLES AND RELATIONSHIPS

To illustrate some of the issues affecting the relationship between various internal and external agencies involved in handling Defence complaints agencies, the Review felt that some fundamental exploration of the roles and perceptions of agencies was appropriate. Within Defence, there are a number of agencies that deal with complaints. These include agencies specifically mandated to manage complaints (such as CRA and IG), as well as agencies that have the delegation to decide on the subject matter of ROGs (such as the Directorate of Special Financial Claims).

How agencies relate to each other and how they perceive their roles is critical to the successful handling of complaints in Defence. In the model below, agencies and individuals can be seen to assume a role along the spectrum of client advocacy. A higher level of client advocacy results in an inability to assume an organisational perspective. Alternately, a purely organisational perspective may diminish the ability of the individual/organisation to resolve the complaint. The ideal state is for the individual or agency to have an awareness of both the organisational and the individual perspective.

The Review felt that the relationships between different agencies within Defence, and external to it, were critical in facilitating the timely and effective resolution of complaints. Annex F illustrates the scope of different roles adopted by various complaint handling agencies, and their effect on inter agency relationships.

Concept Model: Collaborative Case Management



Although it can be argued that CRA is required to adopt a formal and impartial role, CRA staff did not feel that they were adopting a legalistic role, and this Review agrees that this phenomenon was not apparent. Irrespective, there can be little doubt that such a perception by any individual or agency places strain on any relationship, as well as potentially contributing to an impression of bureaucratic inefficiency.

F-2

The Review found that any lapse into an advocacy role by a case officer created the danger that resolution of the complaint would be unnecessarily drawn out by extended argument and the possibility of re-processing elements of the complaint to generate a desired outcome. An example of such a role is outlined below”. The model above represents the ideal state for inter-agency relationships. In being conscious of the different dynamics of advocacy or legalistic roles, case officers and agencies can avoid the difficulties of adopting an adversarial mindset with respect to cases and outcomes.

The *Joint Directive 2/2003* mandating CRA states, in part, that

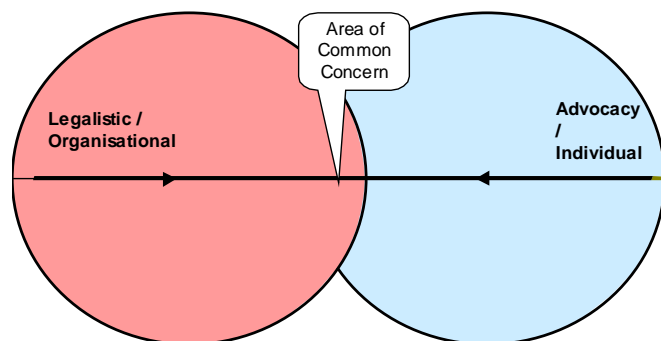
[CRA has the responsibility to] On behalf of CDF and the Chiefs of Service, investigate and prepare briefs concerning Applications for Redress of Grievance referred by ADF members for consideration by CDF, Chiefs of Service or their delegates

Paragraph 2a

Implicit in CRAs investigation and review role is the importance of being neutral and impartial, but not necessarily independent from Defence, as the agency resides within the Defence organisation. The Review felt that CRA case officers were impartial, and independent from the complaint and any outcomes. In any event, the function performed by CRA is one of internal merits review; a function which does not require independence from Defence. The Review believes that independence from the Defence organisation is not necessary for fair and impartial outcomes to be reached. Additionally, the office of the IG(ADF) provides another level of review if required.

In examining individual cases identified as being of concern to both the DFO and CRA, a variety of apparent roles played had a significant impact on the timeliness of resolution and the degree of conflict between the agencies and with the complainant. It should be noted that these cases were identified because of the long time taken to resolve them, and their status as ‘difficult cases’ was seen as impacting on the relationship between various agencies. They do not represent the mainstream of ROG cases.

Concept Model: Client Relationship Spectrum



Agencies can adopt different roles with respect to the client, or even form different views about the client’s identity (ie is the client the complainant, or the organisation, or both). For example, although the mandate for CRA does not condone an advocacy role, there is a natural tendency for case officers to empathise with clients who appear to have been wronged. This phenomenon exists within all agencies managing complaints and is not sinister in nature, but rather symptomatic of a lack of role awareness by some case officers in various agencies.

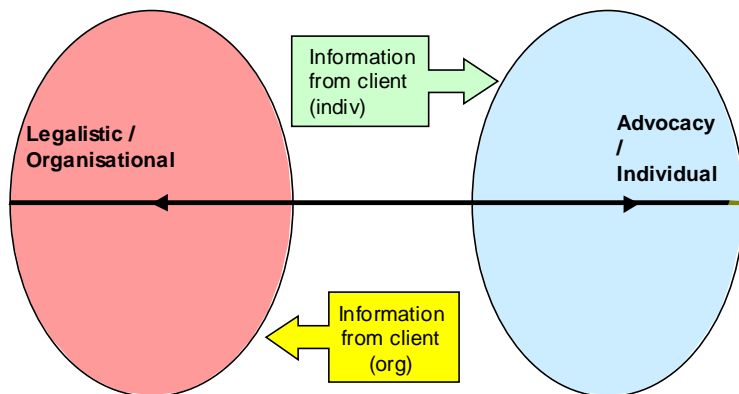
An advocacy/individual role is assumed when a case officer adopts the cause of the aggrieved person. Such a role is embodied in the asking of *why not* questions, and defining critical issues in terms of how they relate to a complainant’s story, and whether they validate it.

In contrast, a legalistic/organisational role is adopted when the case is managed strictly in accordance with the letter of policy/regulation, and the case officer ignores all unique circumstances with respect to the complaint and the complainant. Such a role embodies the asking of *why* questions, and defining critical issues in terms of their individual merits based solely on organisational policy.

In cases where two agencies adopt roles at different ends of the Client Relationship Spectrum, the nature of communication is immediately adversarial. This is because the mindset of the advocate role results in a fundamentally different series of questions from the mindset of the legalistic role (ie *why* v *why not*). If the case officers are not conscious of this dynamic, it can lead to early polarisation of views, and a lack of understanding between the organisations. This is exacerbated by the use of tools such as email, where individuals cannot read body language or ask intuitive questions.

This leads to the situation below:

Concept Model: Client Relationship Spectrum – Communication Crisis

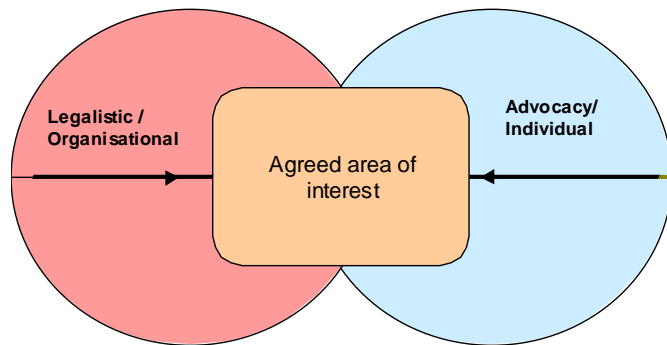


In this situation, a lack of a perceived area of common concern leads to a polarisation of views by the case officers/agencies, which influences the nature of information coming in to each agency. In this scenario, the agency adopting an organisational standpoint seeks information from within itself to justify its actions, and the organisation adopting an advocacy role seeks information from the complainant to justify his/her case.

This scenario may lead to both agencies being mistrustful of each other's motives and reasons for requesting information, as they do not have a common understanding of their respective purpose for asking. The fundamental difference between the purpose of each agency in this scenario is that one agency seeks to prove a claim, whilst the other agency seeks to disprove it.

The ideal scenario is defined below:

Concept Model: Client Relationship Spectrum – Balance



In the Concept Model above, agencies and individuals agree early on the facts and information that are relevant to dealing with the complainant's case. By doing so, they achieve a shared understanding of what processes (if any) need to occur, and what can be done to achieve a fair resolution. It should be noted that this does not guarantee outcomes that are completely satisfactory to individual complainants or consensus between agencies. It does, however, facilitate an understanding of the possible resolution of conflict at an early stage.

If agencies are clear as to their purpose and articulate what outcome they are seeking with respect to a case, conflict and mistrust will be prevented.