

**Submission by the
Commonwealth Ombudsman**

**REVIEW OF THE AUSTRALIAN
DEFENCE FORCE CADETS SCHEME**

Submission by the Commonwealth and Defence Force Ombudsman
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INTRODUCTION

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

My office receives complaints by cadets and cadet officers. Although cadets are not members of the Defence Force, and therefore cannot complain to me in my capacity as Defence Force Ombudsman, we investigate complaints by cadets as the Commonwealth Ombudsman. We receive roughly equal numbers of approaches by the cadet staff (the officers or instructors of cadets), and the cadets themselves.

We do not receive large numbers of complaints about the cadet scheme; for the last five years we have received, on average, four complaints a year. However my office has been receiving and investigating these complaints for over thirty years, and have noticed common themes and possible areas for improvement. These are most relevant to the review's terms of reference that refer to the structural and administrative arrangements of the Australian Defence Force Cadets (ADFC).

RESPONSE TO TERMS OF REFERENCE

Cadet staff

Most of the complaints we receive about cadet matters relate to the appointment, treatment, promotion, termination and discipline of the cadet staff. Our observations indicate that cadet staff are in an awkward position, as their role has various characteristics, reflecting functions of an employee, an ADF member, and a volunteer. However, cadet staff do not entirely belong to any of those categories.

Normally this does not cause any problems, and we appreciate that the quality of the volunteer cadet staff is a large part of the success of the ADFC. However we have received complaints about disciplinary or adverse administrative action which has been taken in relation to cadet staff which has been military in nature. An overly military-focussed approach may not be appropriate for cadet staff. Complaints to our office have suggested that this type of adverse action can have a disproportionately negative impact on a volunteer, who is subject to a military style of investigation but does not have the range of support or knowledge available to a fulltime ADF member.

Although it may not be strictly relevant to this review, there is some uncertainty about the limits of our ability to look at complaints by staff members. As they are not ADF members, there is some question as to whether my office is able to look at these

complaints. As Commonwealth Ombudsman, I cannot investigate employment-related matters. My view is that cadet staff are not in an employment relationship with Defence, and therefore these matters can be usefully investigated by my office. This view of my jurisdiction has been accepted by Defence in the past, and I believe that our office will continue to have a useful role in handling complaints by cadet staff.

Knowledge of internal complaint option

We have noted that cadets and cadet staff who are dissatisfied with a decision relating to them are not always clear about where they can complain to within the cadet organisation. Although there is a redress of grievance system for cadets, similar to that for serving members of the ADF although without a legislative basis, it appears that cadets are not always aware of how to access this system.

Compared to approaches from serving ADF members, we decline to investigate a much higher proportion of cadet complaints on the grounds that the person approaching our office has not yet utilised the available internal complaints mechanism. This indicates that cadets are less aware than ADF members of how to use the appropriate redress of grievance process.

Difficulties in timely administration

The part-time nature of many cadet staff can have an impact on the timeliness of the way problems are handled. For example, we received a complaint by a naval cadet instructor about a delay in handling his complaint. The instructor was complaining about the way a previous investigation into his own actions had been conducted.

In that case, the instructor was advised that a decision on his complaint would occur within 28 days, or if that was not possible advice and updates would be given every 28 days. When the instructor approached our office, six months had passed since he had made his complaint and he had not received updates, nor had the matter been finalised.

Investigations

A recurrent theme across approaches to our office is the quality of investigations that are done in response to incidents or complaints. Both cadets, and their families, have approached our office with concerns about the timeliness and thoroughness of investigations.

There is also a perception by cadets that the investigation process is unnecessarily process-driven and cumbersome. For example, we received a complaint from a father of a cadet about the investigation into an alleged sexual assault on his daughter by another cadet. Because he had not been kept informed of the investigation, from his perspective it appeared that the matter had stalled and was being 'buried'.

I acknowledge that these types of matters must be dealt with in accordance with proper procedures. However cadets, and their families, tend to be less familiar with the requirements of defence investigations, and may need an additional level of explanation at the start of any process to ensure that their expectations of the process will be met. It may also be necessary to provide additional contact, and pastoral support, during an investigation process.

Additional responsibilities to minors

In October 2005 I issued a report into the results of my office's investigation into the ADF's management of service personnel under the age of 18 years. The report is on our website¹. Although that report was about ADF personnel, many of the recommendations are also relevant to the treatment of cadets.

I would particularly draw your attention to Recommendation 6, which recommended that particular care be taken with the selection procedures for instructional and support staff. This recognises that the care of minors is a specialist area and requires additional training and awareness of the issues that can arise.

Conclusion

Decisions are made in relation to cadets and staff that affect every aspect of their participation in the ADFC; including commencement, activities, promotion and disciplinary matters. Compared to other decisions made by government organisations which are viewed by my office, the decisions made about cadets are less transparent. Our observations indicate that the procedures used, the processes followed, and the reasons for decisions could be more fully explained to the cadets and cadet staff who are affected by them. This would also lessen any perception that the decisions themselves were unfair or unreasonable.

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http://www.ombudsman.gov.au/commonwealth/publish.nsf/Content/publications_investigation_reports_2005