

‘Re-thinking systems of inquiry, investigation, review and audit in Defence

Report on Stage A Annex B – Legal framework analysis

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Introduction

As part of the questionnaire responses, key internal stakeholders identified the type of inquiries, investigations and reviews used within their work area. The project has identified relevant legal and/or policy frameworks that apply to each type of inquiry, investigation and review in order to assess minimum legal and policy obligations. This has allowed the project to identify the key elements of the framework that underpins Defence's system of inquiry, investigation and review.

The framework is described by reference to whole-of-government legislation and policy, and Defence-specific requirements. Where legislation or policy is administered by other departments and agencies, Defence has limited capacity to change the requirements. However, most whole-of-government requirements are expressed in general terms and allow significant flexibility in terms of process and implementation. There is, accordingly, capacity to significantly alter the Defence-specific obligations within the whole-of-government framework. Where legislation and policy is administered by Defence, there is greater scope for Defence to make changes than is the case with non-Defence administered legislation or whole-of-government policy requirements.

The project team has identified a significant number of formal mechanisms used in Defence for inquiry, investigation and review. In addition, there are specific obligations associated with particular subject matters of inquiry, investigation and review. Table 1 identifies Defence Instructions¹ and other Defence documents that may become relevant to particular processes or particular subject matters. Table 2 describes the internal areas in Defence and external agencies who may become involved when dealing with particular processes or subject matters.

In an effort to ensure that this analysis is presented in a coherent manner, the different types of inquiry, investigation and review have been presented as investigation mechanisms, inquiry mechanisms, internal review mechanisms, external review mechanisms, other processes, and particular subject matters. This presentation does not reflect the significant overlap that may occur between and within these different categories—the system is far more complicated than this. For example, a single case may involve multiple subject matters, and will require consideration of multiple Defence Instructions, some of which are inconsistent. A single case may also require the use of multiple investigation, inquiry and review mechanisms, which do not always interact well.

¹ Defence Instructions (General) (DI(G)) are issued jointly by the Secretary and the Chief of the Defence Force (CDF) under section 9A of the *Defence Act 1903*, and can pertain to any matter dealing with the administration of the ADF. As statutory instruments, they have the force of law, and should be treated as binding in the same way legislation is treated as binding. DI(G)s can apply to both APS and ADF personnel. In relation to ADF members, a DI(G) constitutes a general order for the purposes of the *Defence Force Discipline Act 1982*. Non-compliance may result in disciplinary action being taken in accordance with the DFDA. In relation to APS employees, a DI(G) is a lawful and reasonable direction by the Secretary under subsection 13(5) of the *Public Service Act 1999*. Non-compliance may be a breach of the APS Code of Conduct and be sanctioned accordingly.

Inquiry mechanisms

The term ‘inquiry’ in Defence is used to describe fact-finding processes that inform administrative and command decisions, including decisions to prevent recurrence of an incident, to change systemic problems, or to refer an individual for investigation. While individuals may ultimately be criticised in an inquiry report, the purpose of the inquiry is not to determine whether individuals are liable to criminal or disciplinary sanctions. However, an administrative inquiry may result in an individual being referred for a disciplinary or criminal investigation or used as the basis for decisions regarding the imposition of administrative sanctions or other management action.

Many inquiries in Defence are not conducted in accordance with formal procedures laid out in whole-of-government or Defence-specific legislation or policy. The primary purpose of an inquiry is to inform decision-making, and formal procedures are not always necessary to achieve this purpose.

Some administrative inquiries conducted in Defence are labelled ‘investigations’. For example, safety investigations are, in reality, administrative inquiries whose purpose is to find the cause of a safety incident in order to prevent recurrence.

Administrative inquiry under the *Defence (Inquiry) Regulations 1985*

The *Defence (Inquiry) Regulations 1985* (the Regulations) provide for a variety of types of administrative inquiry. The inquiries have varying powers, and can be used to inquire into virtually any matter affecting the ADF:

- A General Court of Inquiry is a public inquiry appointed by the Minister under Part II. The inquiry has powers to summon both ADF and civilian witnesses, who are not able to rely on the privilege against self-incrimination.
- A Board of Inquiry is an inquiry appointed by the CDF and Secretary concurrently, the CDF alone, or a Service Chief under Part III. It is conducted in private unless otherwise specified. A Board of Inquiry has power to summon both ADF and civilian witnesses, who are not able to rely on the privilege against self-incrimination.
- An Inquiry Officer inquiry is a private inquiry appointed by a commanding officer or his or her superior under Part 6, to inquire into any matter under the command or control of that officer. Such inquiries have coercive powers in relation to ADF members only.
- A CDF Commission of Inquiry is an inquiry, usually conducted in public, appointed by the CDF under Part 8. The inquiry has powers to summon both ADF and civilian witnesses, who are not able to rely on the privilege against self-incrimination. A CDF Commission of Inquiry is mandatory to inquire into the death or suicide of an ADF members whose death appears to have arisen out of or in the course of their service—unless the Minister has directed otherwise.

Statutory inquiries under the Regulations entail various procedural obligations. These include procedures specified in the Regulations and common law procedural fairness obligations associated with the conduct of statutory inquiries generally.

Whole-of-government requirements. The Regulations are administered by Defence, and there is no whole-of-government legislation or policy which specifically addresses administrative inquiries under the Regulations, other than general common law procedural fairness obligations.

Defence-specific requirements. Apart from CDF Commissions of Inquiry, which must usually be appointed where there is a service related death, the Regulations do not require that an administrative inquiry be appointed. The Regulations simply provide for inquiry mechanisms with varying levels of power to be used at the discretion of appointing authorities within Defence. ADFP 06.1.4 Administrative Inquiries Manual provides guidance on how to select an appropriate administrative inquiry and how to conduct each type of inquiry. This is generally policy guidance only, and is not binding.

Other Defence documents, such as CDF Directive 04/2010 and various Defence Instructions, may require that formal inquiries be appointed when dealing with certain subject matters. For example, CDF Directive 04/10 requires that an Inquiry Officer Inquiry be appointed into ‘serious and complex’ matters. Also, following the conduct of a Quick Assessment in relation to unacceptable behaviour relating to an ADF member, DI(G) PERS 35-3 provides that a commander must either conduct a Routine Inquiry or an inquiry under the Regulations, initiate informal resolution, or not take further action.

Opportunities. As Defence-administered legislation, there is scope for Defence to seek amendment to the Regulations. The Regulations are authorised by section 124 of the *Defence Act 1903* which provides a power to make regulations in relation to ‘*all matters which... are necessary or convenient to be prescribed, for securing the good government of the Defence Force*’, and in particular in relation to the appointment, procedures and powers of Courts of Inquiry, Boards of Inquiry, CDF Commissions of Inquiry and Inquiry Officer inquiries.

Statutory inquiries under the Regulations are ADF focused. The most frequently used inquiry – an Inquiry Officer inquiry – can only be appointed by an ADF member, and there is no capacity under the Regulations to compel an APS employee or contractor to give evidence.² Amendment to the Regulations could improve their effectiveness in the integrated Defence environment.

However, it is important to note that statutory inquiries are not the only inquiry mechanisms available in Defence. Most inquiries conducted within Defence are non-statutory, including in relation to some quite significant matters (for example, there is no requirement that a safety investigation be conducted through the use of an inquiry under the Regulations). Survey respondents selected routine inquiries and informal fact finding – both non-statutory inquiry processes – far more frequently than administrative inquiries under the Regulations. Non-statutory inquiries can be relatively quick and simple, as there are few, if any, legal requirements and other impediments in terms of procedure. Non-statutory inquiries can be more readily seen

² APS employees could potentially be given a ‘lawful and reasonable direction’ to co-operate with an Inquiry Officer inquiry, subject to the privilege against self-incrimination.

as part of a decision-making process, rather than as a process separate from the decisions that they are intended to inform. Additionally, non-statutory inquiries apply to both ADF members and APS employees, and so are more-widely applicable in the integrated environment. The issue of non-statutory inquiries is discussed further below.

There is considerable scope to create or amend Defence policy and guidelines to clarify when a statutory inquiry is appropriate as opposed to non-statutory inquiries. For example, it may be prudent to stipulate that statutory inquiries are to be limited to instances where the matter under inquiry warrants the use of the coercive powers available under the Regulations, or where the nature of a matter warrants the formality associated with a statutory inquiry.

Routine Inquiries

Routine inquiries are a form of non-statutory administrative inquiry. They are said to be an exercise of the command power, which may limit their application to ADF members seeking to gather information about matters within their command or control.

Whole-of-government requirements. There is no whole-of-government legislation or policy which specifically addresses the conduct of routine inquiries, other than general common law procedural fairness obligations associated with the decision-making process as a whole.

Defence-specific requirements. As non-statutory inquiries, there is no Defence-administered legislation governing the operation of routine inquiries. Routine inquiries are a creature of policy – Chapter 4 of 06.1.4 *Administrative Inquiries Manual* identifies routine inquiries, describes their source of power as the command power, and outlines the procedures that should be followed when appointing or conducting a routine inquiry. These requirements are quite onerous, and there is, in reality, little difference between the procedural requirements associated with the statute based Inquiry Officer inquiry contained in the Regulations and the policy-based Routine Inquiry.

Routine Inquiries are identified in a number of other Defence documents, and in particular a number of Defence Instructions, as a possible mechanism for inquiring into various incidents. ADFP 06.1.4 *Administrative Inquiries Manual* is a policy document, and so should not be treated as binding or as an exhaustive description of routine inquiries. However, the references to routine inquiries in Defence Instructions, which have the force of law so far as ADF administration is concerned, may elevate the procedures associated with routine inquiries beyond that of mere policy. This is perhaps an unintended consequence of the blending of Defence Instructions with policy guidance. For example, DI(G) PERS 35-3 *Management and reporting of unacceptable behaviour* identifies routine inquiries as a means by which an ADF commander can inquire into unacceptable behaviour complaints. Despite them merely being non-statutory inquiries which could theoretically be applied throughout the integrated environment, DI(G) PERS 35-3 purports to preclude the use of routine inquiries in relation to APS employees, as it views routine inquiries as a creature of the command power and so limited to the ADF.

Opportunities. ADFP 06.1.4 *Administrative Inquiries Manual* provides that Routine inquiries are based on the command power. This assertion may not be correct. There is no doubt that ADF commanders have the power to appoint people to make inquiries to inform their decisions. However, managers in non-military employment situations have similar powers – a manager is entitled to ask whatever questions he or she needs to ask, or to direct an employee to make those inquiries, in order to obtain information to inform decisions the manager needs to make. Indeed, all individuals have the power to ask any questions they choose.³ There appears to be no reason in principle why ADF members should not be able to undertake inquiries on the same basis. Non-statutory inquiries are not limited, at law, to the command environment. The focus in 06.1.4 *Administrative Inquiries Manual* on routine inquiries as a creature of the command power may be confusing the issue of what is actually permissible in the absence of any such policy.

Non-statutory inquiries are conducted to inform decisions. They do not have an existence independent from the decisions that they inform. As such, and aside from the law of defamation, there appear to be few legal restrictions on the conduct of non-statutory inquiries—that is, separate to procedural obligations that attach to substantive decision that such inquiries inform. Procedural fairness obligations attach to decision-making processes as a whole, not to every sub-element of a decision (including inquiry processes). Mr Gyles made this point in his Part Three Report on the HMAS Success CDF Commission of Inquiry – there is generally no legal obligation to provide procedural fairness in the course of a routine inquiry, which is a non-statutory inquiry. The procedural fairness guidance outlined in Chapter 4 of ADFP 06.1.4 *Administrative Inquiries Manual* is therefore far more onerous than natural justice requirements imposed by law.

Seen in this way, it is clear that there is considerable scope for Defence to completely re-think routine inquiries. It is a relatively simple process to amend 06.1.4 *Administrative Inquiries Manual*, and there is no legal reason not to do so. Instead of maintaining routine inquiries in their current form, Defence could easily produce policy in relation to non-statutory inquiries that operate as policy in relation to both the ADF and APS components of Defence. Common inquiry guidelines could also ensure that procedural requirements are not unduly onerous, providing for a more flexible and balanced mechanism for the conduct of inquiries into a broad range of subjects in multiple environments. Re-thinking routine inquiries in this way would require review of other Defence documents, such as DI(G) PERS 35-3.

Other non-statutory inquiries

Routine inquiries are a type of non-statutory inquiry. Notwithstanding the lack of guidance on other non-statutory inquiries, anyone in Defence has the legal capacity to make inquiries in order to inform their decision-making.

³ *Clough v Leahy* (1904) 2 CLR 139 at 156-157 (per Griffith CJ, '[T]he power of inquiry is not a prerogative right. The power of inquiry, of asking questions, is a power which every individual citizen possesses ... Every person is free to make any enquiry he chooses; and that which is lawful to an individual can surely not be denied to the Crown, when the advisers of the Crown think it desirable in the public interest to get information on any topic'.

Whole-of-government requirements. There are no whole-of-government requirements which specifically address the conduct of non-statutory inquiries, other than general common law procedural fairness obligations associated with the decision-making process as a whole. The power of a manager to make inquiries in order to inform decisions required to be made in their capacity as a manager is an incident of the decision-making power (be that power statutory, prerogative, contractual or otherwise). Further, there is nothing to prevent any individual from asking any question, subject to any specific legislative prohibition.

Defence-specific requirements. There is no general Defence-specific policy in relation to non-statutory inquiries, apart from Chapter 4 of 06.1.4 Administrative Inquiries Manual dealing with routine inquiries and DI(G) ADMIN 67-2—*Quick Assessments*. However, a number of Defence documents relating to specific subject matters require those matters to be investigated, and this will frequently be done through a non-statutory inquiry.

While every individual can ask questions, members of the public cannot generally be compelled to answer questions in the absence of legislation. In the Defence environment, however, non-statutory inquiries can be supported by aspects of command and employment-based authority. ADF members can be ordered to co-operate with non-statutory inquiries (subject to fundamental legal privileges, such as the privilege against self-incrimination and legal professional privilege). APS employees can similarly be given a ‘lawful and reasonable direction’ to co-operate with non-statutory inquiries (again, subject to the fundamental legal privileges referred to above). If such orders or directions are not complied with, individuals may be subject to disciplinary action under the DFDA or APS Code of Conduct, as the case may be.

Opportunities. The role, legal nature and powers of non-statutory inquiries are not well-understood in Defence. They can range from a decision-maker informally asking questions in order to inform him or herself, to a more formal direction to an experienced investigator to inquire into a particular matter. This project could itself be considered a non-statutory inquiry.

An important advantage of non-statutory inquiries is that they need not be limited or separated by virtue of their application to the APS employment environment or to the ADF command environment. Accordingly, there is likely to be significant scope to develop whole-of-Defence guidelines on the conduct of non-statutory inquiries—to facilitate an inquiry system that works effectively, flexibly and efficiently in the integrated Defence environment.

Non-statutory inquiries are, generally speaking, are capable of being considerably more flexible than statutory inquiries, which are frequently burdened by legal procedures that may not be necessary in a broader decision-making framework. A non-statutory inquiry is more integrally part of the decision-making process, rather than a distinct legal process with legal procedures that exist independently of the requirements associated with decision-making.

Improving guidance on the availability and powers associated with non-statutory inquiries could potentially lead to a much more flexible and adaptive inquiry system for line managers and commanders in Defence.

Quick Assessments

A Quick Assessment (QA) is a mechanism used throughout Defence to immediately assess an incident or complaint, to determine whether any immediate action is required and to determine what steps should be taken next to deal with the matter.

Whole-of-government requirements. There is no whole-of-government legislation or policy dealing with QAs.

Defence-specific requirements. DI(G) ADMIN 67-2 *Quick Assessments* provides that following an occurrence, which can be any significant incident, allegation or problem, which comes to the attention of a line manager or commander, the line manager or commander must, using common sense and sound judgement, decide whether a QA is required. The purpose of a QA is to quickly assess the known facts, and to identify what is not known about an occurrence, so that a decision can be made about the most appropriate course of action to be taken in response to it. While, DI(G) ADMIN 67-2 asserts that a QA is not an investigation or inquiry, some fact-gathering and analysis must occur in order to allow a QA brief to be prepared and submitted. A QA is conducted by a QA Officer, who is appointed by a line manager or commander.

The interaction of QAs and other Defence documents (see Table 1) is at times confusing and problematic. QAs have been the subject of numerous internal reviews in recent years, including by the IGADF. One of the significant problems associated with QAs is duplication of process where there is another reporting mechanism associated with the incident or complaint. Clear examples of this include requirements in relation to notifiable incidents and safety incidents. A further problem frequently encountered with QAs is the tendency for them to grow into pseudo inquiries, rather than to simply identify what is known and not known. This is particularly apparent in the APS environment, and may be due to the lack of guidance concerning the existence and conduct of alternative non-statutory inquiry options. It may also be the result of inflexible and restrictive rules contained in some Defence Instructions that require referral of alleged misconduct for a Code of Conduct investigation immediately following a QA, without allowing for a supervisor to obtain further information to decide whether such referral is appropriate—for example, see DI(G) PERS 35-3, Annex D, paragraph 7).

Opportunities. Survey respondents selected the QA process most frequently in all categories apart from complaints about personnel decisions, poor work performance, complaints about entitlements and ADF health care complaints. In those categories, informal fact finding and/or informal workplace problem solving were selected more commonly. The most common use of QAs was in relation to unacceptable behaviour, where the process was selected by 90% of respondents. It is clear that the use of the QA process is pervasive throughout Defence, and that they are used in relation to a significant range of subject matters.

Defence is in a position to completely re-think the role, function and scope of QAs. Their existence is governed entirely by Defence Instructions, which can be amended at Defence's discretion. There is clearly merit in the idea that incidents or complaints should be immediately assessed, including to determine what is known or not known, and what should be done next. However, the current use of QAs overlaps considerably with other requirements in Defence Instructions. They also tend to evolve into more formal quasi-inquiries, rather than functioning as an immediate assessment and record of an incident or complaint. This has resulted in duplication of effort as well as flawed processes in previous matters.

To the extent that QA merely provide a record of initial decisions following a occurrence, they are not, strictly speaking, an inquiry or investigation. However, the tendency to convert a QA into an inquiry means that they should be considered as part of the inquiry, investigation and review system. There has been considerable review of QAs in recent years. There are extant recommendations in recent IGADF reviews of administrative inquiries and complaint handling, which were largely endorsed by Mr Gyles in the HMAS Success CDF Commission of Inquiry. The APS Complaint Handling Process Review has also considered QAs in the context of complaints about APS employees. These recommendations, and the concept of QAs as part of the inquiry, investigation and review system, will be considered as part of this project.

It is unlikely that amendment to DI(G) ADMIN 67-2, in isolation, would resolve the myriad of problems associated with QAs. Other Instructions would also need to be amended. One option for fundamental reform might be for QAs to focus on being records management tool—to ensure there is an enduring record of decisions made in response to significant occurrences. The tendency of QAs to overreach themselves may be due to the lack of guidance on non-statutory inquiries that are simple and quick to conduct. It may be that this tendency can be avoided if fact-finding activities underpin a QA are undertaken under general, whole-of-Defence guidelines on non-statutory inquiries.

Investigation mechanisms

While the words 'inquiry' and 'investigation' mean the same thing, they have been distinguished in this report in line with the practice developed by Defence (and especially the ADF) over recent years. The word '**investigation**' is used in this report to describe a fact-finding process that underpins a determination of individual criminal, civil or disciplinary liability. The primary investigation mechanisms in Defence are DFDA investigations and APS Code of Conduct investigations. Fraud, and to a lesser extent security investigations, are also conducted within Defence to a criminal standard, with a view to preparing a brief of evidence sufficient for criminal prosecution. These are addressed below under 'Particular subject matters'.

APS Code of Conduct investigations

The *Public Service Act 1999* (Cth) (PS Act) prescribes the APS Code of Conduct, which is a whole-of-government standard applying to Australian Public Service (APS) employees, agency heads and statutory office holders. Together with the APS Values, which are incorporated into the APS Code of Conduct, it forms the statutory

foundation underpinning the standard of behaviour expected of all APS employees. ADF members cannot be disciplined under the APS Code of Conduct. Breaches of the APS Code of Conduct can result in the imposition of sanctions against individual APS employees.

An APS Code of Conduct investigation is the fact finding mechanism used to inform decisions on whether individuals have breached the APS Code of Conduct, and the action that should be taken as a result. An APS Code of Conduct investigation is a disciplinary investigation conducted to an administrative standard⁴.

The APS Code of Conduct covers a broad range of behaviour and possible misconduct. APS Code of Conduct investigations may be in relation to a number of the particular subject matters described below, for example where there is an allegation of unacceptable behaviour or fraud against an APS employee.

Whole-of-government requirements. The primary legislation dealing with APS Code of Conduct investigations is the PS Act, the *Public Service Regulations 1999* (PS Regulations), and the *Public Service Commissioner's Directions 1999* (PSC Directions). Subsection 15(3) of the PS Act requires agency heads to develop procedures for determining whether an employee in their agency has breached the APS Code of Conduct. The PS Regulations and PSC Directions provide further detail as to the nature of these procedures. Some of the key requirements under the legislation are:

PS Act

- Agencies' procedures must comply with the basic procedural requirements contained in the PSC Directions (paragraph 15(3)(a)).
- Agencies' procedures must have due regard to procedural fairness (paragraph 15(3)(b)).
- Where an APS employee's employment is terminated, the notice of termination must specify the ground or grounds that are relied on for the termination (subsection 29(2))⁵.

PSC Directions

- Before any determination about whether or not an APS employee has breached the Code is made, the employee must be informed of the details of the suspected breach (including any variation of those details) and the range of sanctions that may be imposed, and be given reasonable opportunity to make a statement in relation to the suspected breach (clause 5.2).

⁴ Investigation to an administrative standard is for investigations that inform decisions made on the balance of probabilities, which are not subject to rules of evidence. This is to be contrasted with investigation to a criminal standard, where the product of the investigation may be a brief of evidence that satisfies the requirements of a criminal prosecution – sufficient to establish the offence beyond reasonable doubt, where the evidence admitted must comply with the rules of evidence.

⁵ Section 13 of the *Administrative Decisions (Judicial Review) Act 1976* would operate to require the provision of reasons on request in relation to all other sanctions imposed for breach of the APS Code of Conduct.

- The process for determining whether an APS employee has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows (clause 5.3).
- Reasonable steps must be taken to ensure that the person who determines whether an employee has breached the Code is, and appears to be, independent and unbiased (clause 5.4).

The Australian Public Service Commissioner has produced a Good Practice Guide – Handling Misconduct: A human resources practitioner’s guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct. This guide is not legally binding, but provides guidelines for government agencies, including in relation to investigation of suspected APS Code of Conduct breaches. It is considered in the report under ‘Commonwealth Best Practice’.

Defence-specific requirements. The key Defence document in relation to APS Code of Conduct investigations is Chapter 11 of the Defence Workplace Relations Manual (DWRM). Part 3 addresses breaches of the APS Code of Conduct, and outlines how Defence must manage suspected breaches, as well as the rights and responsibilities of APS employees, supervisors, investigators and Conduct Delegates. It includes the procedures for determining whether an employee in Defence has breached the APS Code of Conduct, as required by subsection 15(3) of the PS Act. It contains policy on specific issues including, among other things, the responsibilities for reporting breaches, responsibilities for compliance with an investigation, and appropriate behaviour during an investigation. Chapter 11 also contains a prescriptive flow chart of how a breach of the Code of Conduct is to be managed.

A number of other Defence documents, including Defence Instructions, may also be relevant to a particular APS Code of Conduct investigation, depending on the nature of the alleged breach (see Table 1). Defence Instructions are statutory instruments and have the force of law so far as matters of ADF administration are concerned. Defence Instructions (General) usually constitute lawful and reasonable directions issued by the Secretary of the Department of Defence and must therefore be read in conjunction with Chapter 11 of the DWRM. For example, where an APS Code of Conduct investigation stems from an allegation of unacceptable behaviour, DI(G) PERS 35–3 *Management and reporting of unacceptable behaviour* must be complied with as well as Chapter 11. This can be difficult, particularly where there are inconsistencies in the processes contained in these documents. It may be unclear as to whether a complaint should be treated as an allegation of unacceptable behaviour and managed in accordance with DI(G) PERS 35–3, or whether it should be treated as an allegation of misconduct which potentially breaches the Code of Conduct, and managed in accordance with the DWRM.

Opportunities. APS Code of Conduct investigations were identified by survey respondents as a process used in attempting to resolve all of the subject matters listed in the survey at least once. They were identified by more than 5% of respondents in nine of the 14 categories. APS Code of Conduct investigations were most commonly identified in relation to unacceptable behaviour (26%), fraud (22%)

and personnel disputes or conflict (19%). It is clear that an APS Code of Conduct investigation can cover a wide range of subject matters.

The whole-of-government legislative requirements in relation to APS Code of Conduct investigations are not particularly prescriptive. On this basis, Defence has considerable flexibility to develop and apply processes for investigating and making decisions in relation to alleged APS Code of Conduct breaches. The requirements associated with independence and procedural fairness (which attach to the entire process of determining if an individual has breached the Code of Conduct, not the investigation in isolation) are not particularly burdensome on decision makers.

The flexibility available to Defence in developing processes under subsection 15(3) of the PS Act gives Defence significant capacity to align these processes with other inquiry, investigation and review processes, including those that apply to ADF members. The ability to create or adjust structures associated with APS Code of Conduct investigations is similarly flexible.

APS Code of Conduct investigations are part of the larger process of managing misconduct by APS employees. Importantly, formal misconduct procedures are not mandatory in all cases of suspected misconduct. For example, in cases involving personality clashes or minor misconduct, other approaches such as using the performance management system or alternative dispute resolution processes may be used to manage the conduct—provided the behaviour is addressed in some way and actions recorded. Such approaches can be more timely and cost-effective, as well as result in a more satisfactory outcome for both respondents and complainants. The APS Complaint Handling Process Review has recommended that there be a single expert area to assist managers in determining the most appropriate way forward. Given the legal flexibility available, and the commonalities in the issues raised, there is considerable scope to align such a structure with ADF structures.

Investigation under the *Defence Force Discipline Act 1982*

The *Defence Force Discipline Act 1982* (DFDA) creates service offences and prescribes how they must be investigated, tried, reviewed and petitioned. Unlike the disciplinary processes associated with breaches of the APS Code of Conduct, which are determined to an administrative standard, a criminal standard of proof (including application of rules of evidence) is applied to DFDA offences. The investigative powers in Part VI of the DFDA reflect this treatment of DFDA offences.

Whole-of-government requirements. The DFDA is Defence-administered legislation, and applies only to ADF members and Defence Civilians.⁶ There are no whole-of-government legislative requirements associated with DFDA investigations. However, DI(G) ADMIN 45-4 *Defence Investigations Standards* incorporates the minimum investigation standards outlined in the Australian Government Investigations Standard (AGIS), which is a whole-of-government document

⁶ Under subsection 3(10) of the *Defence Force Discipline Act 1982*, a **defence civilian** means a person (other than a defence member) who: (a) with the authority of an authorized officer, accompanies a part of the Defence Force that is: (i) outside Australia; or (ii) on operations against the enemy; and (b) has consented, in writing, to subject himself or herself to Defence Force discipline while so accompanying that part of the Defence Force.

administered by the Australian Federal Police. The AGIS includes minimum standards associated with, for example, investigator qualifications, investigation planning and conduct, and ethical behaviour.

Defence-specific requirements. Part VI of the DFDA includes particular legislative requirements for the investigation of service offences. It includes provision for:

- the investigation of service offences by an investigating officer—defined as either a police member/officer, or an officer, warrant officer or non-commissioned officer engaged in the investigation of a Service offence; and
- specific duties of investigating officers in relation to the interviewing of suspects, the gathering of certain evidence and the treatment of a person in custody.

ADF Service Police Manual volume 2, section 3 provides guidelines for investigative responsibilities for specific offences. DI(G) ADMIN 45-4 includes further requirements in relation to DFDA investigations.

DFDA investigations into the most serious matters are conducted by the ADF Investigative Service (ADFIS). Service Police investigators conduct investigations into less serious matters, while the most minor matters are investigated at unit level by investigating officers who are not Service Police members. There is an ongoing concern regarding the admissibility of evidence collected by civilian investigators in DFDA proceedings.

Opportunities. As Defence-administered legislation, there is scope to amend the investigative procedures outlined in Part VI of the DFDA. For example, the definition of ‘investigating officer’ could be expanded to include authorised civilian investigators, in order to create greater parallels between DFDA investigations and criminal standard investigations by other Defence Investigative Authorities.⁷ Such a proposal has previously been accepted by the Chiefs of Service Committee (COSC), but has not been implemented at this time. The reform of Part VI of the DFDA currently underway aims to modernise and expand the DFDA investigative powers available to ADFIS.

There is also scope to adjust the internal organisational structures relating to the investigation of DFDA offences. For example, the 2011 ADFIS audit recommended that ADFIS and the three service police forces be amalgamated. There is no Commonwealth legislation preventing this course of action, and it is entirely within Defence’s discretion whether or not to do so.

Internal review mechanisms

Review is a process whereby a decision, action or omission is reconsidered, usually on the application of a person affected by the decision. Review of this nature, sometimes referred to as ‘merits review’, is a ‘looking again’ at the decision or action.

⁷ The other Defence Investigative Authorities are the Inspector-General’s Division, which investigates fraud to a criminal standard, and the Defence Security Authority, which may investigate security matters to a criminal standard.

Outcomes can include re-making the decision, making recommendations that a decision be amended, or deciding that the decision should remain.

There are numerous review mechanisms both within and external to Defence. A common review process involves a level of internal review followed by a level of external review. It is impossible to capture all of the review processes relevant to Defence, but some of the more significant have been outlined here. It is also important to note that review is frequently conducted informally, rather than through formal processes.

APS review of actions

The APS review of actions process is a whole-of-government process by which APS employees can obtain review of decisions and actions (including a refusal or failure to act) related to their employment. It does not apply to ADF members. The review of action mechanism may relate to any number of subject matters, including performance management, the outcomes of unacceptable behaviour complaints, leave entitlements, security clearances, salary and Studybank entitlements, and the fitness for duty management process.

Whole-of-government requirements. Subsection 33(1) of the PS Act provides that an APS employee is entitled to review, in accordance with the PS Regulations, of any APS action that relates to his or her APS employment (apart from termination decisions). Division 5.3 of the PS Regulations provides for a two-tier review process. First, a layer of internal review by which an APS employee is entitled to apply for review to the Agency Head, who must review the action or refer it to the Merit Protection Commissioner. The internal review can be conducted ‘in any manner the Agency Head sees fit’, provided the decision on the review is in writing and includes reasons. Secondly, there is a layer of external review to the Merit Protection Commissioner, who has power to make a recommendation only.

The Merit Protection Commissioner has produced a good practice guide in relation to the APS Review of Action scheme: *Not just about process: the review of actions scheme – a human resources practitioner’s guide to responding to and managing employee complaints and disputes*. This is not legally binding, but provides guidelines for government agencies. It is considered in the report under ‘Commonwealth Best Practice’.

Defence-specific requirements. The primary Defence policy guidance in relation to APS review of action is Chapter 15 of the DWRM. Part 4 contains guidance on what employees can do in relation to employment decisions and actions with which they are dissatisfied. It also describes those actions that are subject to review and those which are not. It sets out the rights of review for APS employees, including the process regarding requests for primary and secondary review of employment-related actions.

A number of other Defence documents may be relevant to the APS Review of action process (see Table 1). Many Defence Instructions are couched in mandatory language and legally binding on APS employees as lawful and reasonable directions by the Secretary of the Department of Defence. Reconciling provisions of these

Instructions in conjunction with the policy in Chapter 15 of the DWRM may be difficult in some circumstances.

Opportunities. The APS review of action process is driven by applications from APS employees. The existence of this mechanism does not prevent line managers and commanders from reviewing decisions and actions in the absence of an application, or from engaging in informal review of decisions and actions. This ‘catch-all’ mechanism also exists alongside review mechanisms associated with particular subject matters, including external review mechanisms involving the Australian Human Rights Commission or the Information Commissioner.

The minimum requirements set out in the PS Regulations are very broad. In particular, apart from the requirement to conduct a review, and to give a written decision including reasons, the internal review process can be conducted however the Agency Head sees fit. There is accordingly considerable scope to create or adjust APS review of action processes and structures within Defence, including through creating some alignment with ADF review mechanisms. The APS Complaint Handling Process Review has recommended that procedures be implemented to ensure that managers can seek advice from a single expert area for guidance in the event they have received a complaint, and there may be scope for this to be extended to encompass advice regarding requests for APS review of action. A procedure along these lines could easily be co-ordinated with similar procedures for ADF review processes.

ADF Redress of Grievance

The redress of grievance (ROG) mechanism is a statutory review process for ADF members who consider that a decision, act or omission in relation to their service is detrimental. It does not apply to APS employees. The ROG process may be applied in relation to a numerous array of subject matters, including entitlements, personnel decisions, and decisions to take adverse administrative action.

Whole-of-government requirements. There are no whole-of-government requirements in relation to the ROG process.

Defence-specific requirements. The statutory provisions governing the ROG process is contained in Part 15 of the *Defence Force Regulations 1952*. Regulation 75 provides that, subject to certain exceptions, an ADF member may make a complaint under Part 15 if:

- (a) *the member considers that a decision, act or omission in relation to the member’s service is adverse or detrimental to him or her; and*
- (b) *the adverse or detrimental effect of that decision, act or omission is capable of being redressed by:*
 - (i) *a member of the Defence Force; or*
 - (ii) *an employee of the Department; or*
 - (iii) *an employee of the Defence Material Organisation.*

At first instance, complaints under Part 15 are made to a member’s commanding officer, who must inquire into the complaint and make a decision (or, in some cases,

refer the matter directly to the member's Service Chief). If the member is not satisfied with the commanding officer's decision, he or she can refer it to their Service Chief. In the case of officers or senior non-commissioned officers, a member can further refer a complaint to the Chief of the Defence Force.

DI(G) PERS 34-1 *Redress of Grievance – Tri Service Procedures* contains further detail about ROG processes. DI(G) PERS 34-1 sets out requirements regarding the administration of ROG complaints, including the inquiry process. Paragraph 27 states that the nature of the ROG and the circumstances surrounding the ROG will dictate the necessary level of formality and breadth of inquiry required. This may include undertaking an administrative inquiry or attempting an alternative dispute resolution process. While Defence Instructions have the force of law, they cannot override legislative provisions. In the event of any inconsistency between Part 15 and the Instruction, the process outlined in Part 15 would prevail.

When dealing with a ROG in relation to various types of incident, the requirements set out in other Defence documents associated with particular types of decision must be considered as part of the process of dealing with the ROG (see Table 1). For example, a person may lodge a ROG complaint in relation to the handling of an unacceptable behaviour complaint, and so DI(G) PERS 35–3 as well as DI(G) PERS 34-1 will be relevant. There may be concurrent review processes resulting in a significant use of resources through repetition of effort as well as the inconsistent application of policies in resolving the issue.

Opportunities. The Regulations are administered by Defence. Accordingly, there is probably scope to amend the Regulations in order to achieve reform in this area. There are no whole-of-government legislative limitations on the way Defence provides review processes for ADF members. It should be noted, however, that the ROG process has a long history due to its association with command. Accordingly, there may be some sentimental attachment to some aspects of the ROG process, which may provide a barrier to reform.

The APS review of action process similarly deals with a general right of internal review. While ADF and APS process and practice associated with these formal internal review frameworks is significantly different, the flexibility of the APS review of action process and Defence's administration of the Regulations means that there is considerable scope for Defence to bring these two review processes into much closer alignment.

The ROG system also exists in parallel with numerous other formal review mechanisms, both internal and external to Defence. For example, decisions made in relation to an ADF member's Medical Employment Classification are subject to their own review process under DI(G) PERS 16-15, but may also be the subject of a ROG application. There is considerable scope to simplify and merge some of these mechanisms.

Security clearance reviews

Security clearance reviews are carried out by the Australian Government Security Vetting Agency (AGSVA), which sits within the Defence Security Authority. AGSVA

makes decisions in relation to security clearances, and conducts security clearance reviews, for most Commonwealth agencies.

Whole-of-government requirements. The Australian Government Personnel Security Protocol provides that APS employees may seek a review of a security clearance decision. The primary or internal review will be carried out by AGSVA. The delegate for the purpose of the review is to:

- have regard to the PS Regulations when determining the exact procedures for the review, and
- rule on the review without seeking implicit or explicit approval from any person who was involved in making the initial decision.

AGSVA is in the process of developing review procedures. It currently conducts reviews in accordance with the principles contained in the Australian Government Personnel Security Protocol.

Defence-specific requirements. While AGSVA is part of Defence, the security clearance review process is a whole-of-government process. There is no relevant Defence-specific policy.

Opportunities. The Guidelines are not especially prescriptive in terms of what process AGSVA must implement in undertaking security clearance reviews. There is an opportunity to ensure that the security clearance review process operates consistently with other review processes in Defence, and in particular with the APS review of action and ADF redress of grievance processes.

Medical Employment Classification Review Board reviews

A Medical Employment Classification Review Board (MECRB) is constituted when an ADF member's medical condition falls below certain levels, affecting his or her employment in the ADF. MECRB decisions may affect decisions relating to postings or deployment. A MECRB may also issue a termination notice for medical unfitness. Other than the issue of a termination notice (which is governed by a statutory process in the *Defence (Personnel) Regulations 2002*), an individual affected by a MECRB decision can apply for the MECRB to review that decision.

Whole-of-government requirements. There are no whole-of-government requirements in relation to MECRB reviews, as they are a creature of a Defence-specific Instruction. Whole-of-government legislation such as the *Work Health and Safety Act 2011* may have an indirect effect on MECRB decision-making.

Defence-specific requirements. DI(G) PERS 16–15 *Australian Defence Force Medical Employment Classification System* sets out the policy for the ADF Medical Employment Classification (MEC) system. Paragraph 30 provides that if at any time, doubts arise concerning the appropriateness of the member's current MEC or fitness for deployment or employment, commanding officers are to initiate a MEC Review. Where a MEC Review returns certain conclusions, the individual must be referred to the MECRB to confirm or assign a MEC. If an individual is unhappy with a MECRB decision, the individual can make a representation to the MECRB who will reconsider the matter (unless the MECRB President has issued a termination notice, in which

case the member can represent against the proposed termination in accordance with regulations 85 and 87 of the Defence (Personnel) Regulations). Subsequent to a MECRB review of the MEC decision, an ADF member can apply for redress of grievance according to the ordinary ROG processes.

Opportunities. The review process outlined here operates in addition to the statutory ROG process available in relation to almost all decisions affecting ADF members. This duplication of process could potentially be reduced, particularly given that the MECRB process in DI(G) PERS 16-15 is within the discretion of the Secretary and CDF to amend.

ADF Health Care Complaints

Any ADF member concerned with the quality of health care that they have been provided may make a complaint. Complaints may relate to a range of issues, such as a failure of communication between the ADF member and the health care provider, a perception of poor quality of care, breaches of privacy, or a disagreement on Medical Employment Classification.

Whole-of-government requirements. There are no whole-of-government requirements in relation to the management of complaints about ADF-specific health care, as they are a creature of a Defence-specific Health Directive. Although, there is potential for external review by the Health Commissioner in the relevant State or Territory. Whole-of-government legislation such as the *Work Health and Safety Act 2011* may also have an indirect effect on review.

Defence-specific requirements. Health Directive No 914 *Management of health care related complaints in the Australian Defence Force* outlines the principles and procedures to be employed in managing health care related complaints made by serving members of the ADF, or their authorised delegate(s), in the military setting. It sets out the process for making a complaint, including that ADF members should seek to address the complaint at the point of service delivery—which may involve the most senior uniformed health practitioner of the relevant Unit. Failing resolution at the point of service delivery, the matter is to be formally referred to the SHO of the Area Health Service where the treating medical facility is located for a Joint Health Support Agency (JHSA) facility, or the SMO of the formation (or equivalent) for a non-JHSA facility, following the completion of a *AD092- Health Care Complaint or Compliment form*. The review process within JHSA will include formal management by the JHSA Health Care Complaint Review Committee (HCCRC). The Health Directive also provides guidance on where to lodge complaints if the seriousness of the complaint warrants reference directly to Director of the Joint Health Agency or the Operational Health Advisor. Additionally processes are provided for complaints relating to uniformed and non-uniformed psychologists.

Opportunities. The survey indicated that overall inquiry, investigation and review processes into ADF health care complaints functioned relatively poorly in all areas under investigation. Less than half of all respondents indicated that the process functioned well in regards to resources and usefulness, and only one third of respondents indicated that the process functioned well in regards to restriction and timeliness. While the Health Directive provides the process for reporting complaints

and the appropriate reviewer, there is little guidance on how reviews are to be undertaken. This is supported by the results of the survey which indicate that 55% of matters are resolved through informal fact finding. This may indicate that the expectations of those involved are not sufficiently clear. Given this, there may be scope for reform of the process for handling ADF health care complaints.

Compensation for Detriment Caused by Defective Administration

Compensation for Detriment Caused by Defective Administration (CDDA) is a discretionary compensation mechanism to provide redress to individuals who have been adversely affected by defective administration. While the CDDA scheme is not itself an inquiry, investigation or review mechanism, decisions to compensate an individual will follow a review of the original action causing detriment.

Whole-of-government requirements. The CDDA Scheme allows Government agencies to compensate persons who have experienced detriment as a result of an agency's defective actions or inaction. The CDDA Scheme is an administrative, not a statutory (legislative) scheme. It has been established under the executive power of section 61 of the Constitution. Payments made under the CDDA Scheme are discretionary. Decision-makers may award compensation if an agency's defective administration has caused detriment.

Attachment A of Finance Circular No. 2009/09 Discretionary Compensation and Waiver of Debt Mechanisms defines defective administration as:

- a specific and unreasonable lapse in complying with existing administrative procedures; or
- an unreasonable failure to institute appropriate administrative procedures; or
- an unreasonable failure to give to (or for) an applicant, the proper advice that was within the officer's power and knowledge to give (or reasonably capable of being obtained by the officer to give); or
- giving advice to (or for) an applicant that was, in all the circumstances, incorrect or ambiguous.

Detriment means quantifiable financial loss that an applicant has suffered. There are three types of detriment:

- detriment relating to a personal injury including mental injury (personal injury loss);
- economic detriment that is not related to a personal injury (pure economic loss); and
- detriment relating to damage to property.

The Finance Circular contains examples and additional guidance as to what losses can be compensated and the required application process.

Defence-specific requirements. There is no additional internal Defence policy which specifically addresses the conduct of CDDA scheme reviews. The CDDA scheme is managed by the Directorate of Special Financial Claims within Defence Legal.

Opportunities. Survey respondents indicated that CDDA processes had been used in relation to all subject matters listed in the survey. However, in all categories, the number of respondents who selected CDDA processes was less than 3%. It is clear that this review process is used infrequently, compared to the central review processes of APS review of action and ADF redress of grievance.

While payments under the CDDA Scheme are discretionary, Finance Circular No. 2009/09 is fairly prescriptive in terms of the criteria delegates must consider in reviewing an application. As this is a whole-of-government policy administered by the Department of Finance and Deregulation, there is little opportunity to review the current scheme. Additionally, given that it is a discretionary compensation scheme, it is important that such discretion not be fettered. Given this, the opportunities for reform are limited. That said, there is opportunity to reconsider matters such as who manages the CDDA scheme, and whether it is sufficiently harmonised with other review functions in Defence. For example, the IGADF's 2011 report: *Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction*, which has informed part of the Pathways to Change program, recommended that the CDDA Scheme be managed outside of Defence Legal.⁸

Inspector General ADF

The Inspector General ADF (IGADF) is a statutory office established under the *Defence Act 1903*. IGADF's functions include review of particular matters (including individual complaints) about the operation of the military justice system.

Whole-of-government requirements. IGADF is established under the Defence Act, which is Defence-administered legislation. There are no whole-of-government requirements relevant to IGADF's roles.

Defence-specific requirements. IGADF has a number of roles identified in Part VIIIB of the Defence Act, including:

- to inquire into or investigate matters concerning the military justice system,
- to conduct performance reviews of the military justice system, including internal audits, and
- to advise on matters concerning the military justice system, including making recommendations for improvements.

The IGADF may conduct inquiries or investigations on his own initiative, at the direction of the CDF, at the request of a Service Chief (although the IGADF may decline to investigate in this case), or at the request of any other individual (although the IGADF may decline to investigate in this case). The *Defence (Inquiry) Regulations 1985* outline the powers and procedures associated with an inquiry by the IGADF.

⁸ Recommendation 13

DI(G) ADMIN 61-1 *Inspector General of the ADF – role, functions and responsibilities* provides further information, including guidance as to when an individual should make a submission to the IGADF.

Opportunities. IGADF is outside the ordinary chain of command, but still within Defence – IGADF answers directly to the CDF. The IGADF's functions can be associated with two of the elements of the broader decision-making framework – review (through individual submissions to IGADF), and external oversight (through own-motion and CDF-directed general inquiries into the military justice system). With IGADF outside the chain of command, the review function could actually be considered an external oversight mechanism, rather than a form of internal review. IGADF also undertakes other functions, such as the conduct of unit-level military justice audits.

IGADF's jurisdiction is in relation to military justice. The jurisdiction aligns with several aspects of the Defence Force Ombudsman's (DFO) jurisdiction, except that the DFO cannot deal with complaints about disciplinary matters under the *Defence Force Discipline Act 1982*. Change to the IGADF's role could be driven from Defence, as the office and its jurisdiction is established through Defence-administered legislation. There appears to be scope to align the IGADF's review and oversight roles more effectively with a streamlined review system that incorporates a combination of internal and external review mechanisms.

Joint Housing and Accommodation Review Committee

The Joint Housing and Accommodation Review Committee (JHARC) is an informal body that considers members' complaints about the provision of Service residences to ADF members by the Defence Housing Authority (DHA). However, the complaint must be reviewed by the local DHA Housing Management Centre Managers before consideration by the Committee. The aim of this process is to give Defence members an avenue to seek a remedy for complaints in respect of the wide range of services that the DHA provides. Should the review of a housing-related decision or action by the JHARC not satisfy an ADF member, the member may submit a ROG through the chain of command under Part 15 of the *Defence Force Regulations 1952*.

Whole-of-government requirements. There are no whole-of-government requirements in relation to JHARC reviews, as JHARC is a creature of policy only.

Defence-specific requirements. Defence policy in relation to JHARC is contained in Annex 7.1 to Chapter 7 of Volume 2 of the ADF Pay and Conditions Manual (PACMAN). It is specified to be policy guidance only and does not have the force of law. DHA involvement in JHARC processes may be reflected in agreements or arrangements between DHA and Defence concerning the delivery of housing services to ADF members by DHA on behalf of Defence.

Opportunities. The review process outlined here operates in addition to the statutory ROG process available in relation to almost all decisions affecting ADF members. As JHARC processes are based on policy only, there appears to be considerable scope

for Defence to reconsider the existence of JHARC and its processes, with a view to removing duplication of internal review processes.

Review of convictions of service tribunals under the *Defence Force Discipline Act 1982*

The Part VIIIA of the *Defence Force Discipline Act 1982* (DFDA) provides for the review of service tribunal proceedings that result in a conviction of a person for a service offence. This command-based review regime provides a safeguard for convicted persons and facilitates oversight of service tribunals more generally. Part VIIIA of the DFDA provides for both automatic review processes and a review mechanism that can be initiated by the submission of a petition by a convicted ADF member.

Convictions and punishments awarded by service tribunals are subject to review by a competent reviewing authority (being a senior ADF officer). For trials before a Subordinate Summary Authority, a commanding officer reviews the proceedings first and subsequently seeks a legal report. For trials undertaken by all other service tribunals, a report from an ADF legal officer must be obtained before the competent reviewing authority conducts their review. If the competent reviewing authority disagrees with matters of law in such a legal report, then he or she may seek further legal report from the Judge Advocate General (JAG), if the JAG consents, from a Deputy JAG (DJAG). For the review of trials before a Defence Force magistrate or Court Martial, the legal report is provided by the JAG or a DJAG.

Persons convicted of service offences are also entitled to seek review of their conviction and any punishments imposed on them by submitting a petition to a competent reviewing authority. For summary proceedings, convicted persons have two levels of review available to them as of right (including to their Service Chief). Similarly to automatic review processes, the competent reviewing authority must seek a legal report from an ADF legal officer before making a decision in respect of a petition. Persons convicted of service offences may also submit a petition to the CDF, who may action it as a matter of discretion.

Whole-of-government requirements. The DFDA is administered by Defence, and there is no whole-of-government legislation or policy which specifically deals with internal reviews and petitions of proceedings of service tribunals.

Defence-specific requirements. Policy guidance on the internal review and petition of the proceedings of service tribunals is contained in Chapter 11, Volume 3 of ADFP 06.1.1—*Discipline Law Manual* (DLM). This manual provides guidance on the application of the Military Discipline Law in the ADF. As it is issued by CDF, mandatory provisions in the DLM can be enforceable as general orders for the purposes of section 29 of the DFDA.

Opportunities. It may be possible to streamline internal review and petition processes contained in the DFDA to promote consistency with the essential components of an optimal system identified in this report. However, it is noted that the DFDA has been the subject of extensive reform during the past decade. Given this, the appetite for further reform as part of this project may be limited.

External review mechanisms

Defence Force Ombudsman

The Defence Force Ombudsman (DFO) provides external review of matters affecting ADF members. The DFO role is conducted by the Commonwealth Ombudsman. Complaints from former ADF members and family of ADF members may also be considered in one or other of these roles.

Whole-of-government requirements. The DFO is established under Part IIA of the *Ombudsman Act 1976* (Cth), which gives the Commonwealth Ombudsman the further function of Defence Force Ombudsman (DFO).

- Under section 19C(3), the DFO may investigate administrative actions with respect to a matter that is related to the service of an ADF member or that arises in consequence of a person serving or having served in the ADF.
- The DFO cannot investigate actions connected with disciplinary proceedings or the grant or refusal of an honour or award to an individual.
- The DFO investigates complaints from serving members only after they have exhausted internal grievance mechanisms, unless there are exceptional circumstances.

Defence-specific requirements. The DFO is external to Defence, and, apart from arrangements to co-operate with and facilitate DFO investigations, there is no specific Defence policy in relation to the DFO's processes.

Opportunities. While the DFO is external to Defence, and is established through legislation that is not administered by Defence, there is potential to negotiate with the Ombudsman's office and the Attorney-General's Department to amend the legislation and alter the DFO's jurisdiction. The DFO currently provides an external review mechanism specific to ADF members, and so there is greater scope for reform than there may be in relation to other mechanisms which apply to the Government more broadly. In some ways, the DFO's role in respect of ADF members reflects the role of the Merit Protection Commissioner in respect of Defence APS employees. There may be benefits in Defence seeking reform of the DFO review mechanism—in terms of achieving increased alignment in APS and ADF external review processes, as well as developing internal and external ADF review options that complement each other.

Honours and Awards Tribunal

The Honours and Awards Tribunal conducts reviews of decisions to refuse individuals an honour or award. At government request, it also conducts inquiries and makes recommendations on general eligibility issues relating to Defence honours and awards.

Whole-of-government requirements. The Honours and Awards Tribunal operates under the *Defence Act 1903*. There are no other whole-of-government legislative or policy requirements specific to its operation.

Defence-specific requirements. The Defence Honours and Awards Tribunal is empowered under section 110V of the *Defence Act 1903* to review reviewable decisions which comprise decisions or refusals to recommend a person or group of persons for either a defence award, defence honour or foreign award, made either by or on behalf of the Minister, by a person within the Department of Defence or person within the Defence Force.

The Act sets out the following mandatory requirements:

- for defence honours - the Tribunal is required to undertake a review of the decision and may make recommendations to the Minister following its review.
- for a defence award or foreign award – the Tribunal is required to review the decision and either affirm the original decision or set it aside and substitute a new decision or refer the matter to a person (as determined appropriate by the Tribunal) for reconsideration.

Section 110W empowers the Minister to direct the Tribunal to hold an inquiry on any matters relating to honours or awards for eligible service. If the Tribunal is directed to hold an inquiry, the Tribunal must do so and provide a report to the Minister on its findings and recommendations.

Opportunities. The issue of honours and awards is unique, in that inquiries and reviews do not stem from a negative incident which must be dealt with. As such, there is little chance of conflict with other Defence policies or inquiries, investigations and reviews. The Tribunal's role is to inform Ministerial level decision making, and in particular the exercise of the prerogative power to issue honours and awards. Given this, no significant opportunities for alignment or amalgamation with other Defence inquiry, investigation and review processes have been identified.

Australian Human Rights Commission

The Australian Human Rights Commission (AHRC) is responsible for conducting reviews in response to complaints by individuals that they have been discriminated against contrary to Commonwealth anti-discrimination legislation. There are similar bodies associated with State human rights legislation.

Whole-of-government requirements. The AHRC, and its jurisdiction, is established under the *Australian Human Rights Commission Act 1986* (Cth). Its functions include inquiring into and conciliating any complaints of unlawful discrimination.

Defence-specific requirements. Discrimination complaints are frequently handled within Defence in accordance with DI(G) PERS 34-3, and then, if an individual is not satisfied with the outcome, through internal review processes. The AHRC is an external organisation, and, apart from arrangements to co-operate with AHRC inquiries, there are no Defence-specific requirements in relation to its function.

Privacy

The *Privacy Act 1988* imposes requirements that Defence must comply with in relation to personal information it collects about individuals. Defence must only collect, use, disclose and store personal information in accordance with the Information Privacy Principles contained in the Act. Where an individual alleges a

breach of the Privacy Act, there are a number of review mechanisms to deal with the allegation.

Whole-of-government requirements. Section 36 of the *Privacy Act 1988* provides that an individual may complain to the Information Commissioner about an act or practice that may be an interference with the privacy of the individual. The Commissioner may then investigate a complaint and make certain orders.

Defence-specific requirements. Many Defence documents contain restrictions regarding privacy, and include guidelines on how Defence can comply with the Information Privacy Principles in its handling of personal information. There is also specific guidance regarding health information. Defence personnel who have a complaint regarding privacy may lodge a complaint, at first instance, with the manager of the area responsible for the alleged privacy breach, who will make a decision on the complaint with the assistance of the Values, Behaviours and Resolution Branch. If dissatisfied with the manager's decision, Defence personnel can apply for an APS Review of Action or ADF Redress of Grievance.

Freedom of information

Individuals may request access to records held by Government departments under the *Freedom of Information Act 1982* (Cth). Generally speaking, when a person requests access to records, Defence must consider whether to grant access, including whether any exemptions to disclosure apply.

Whole-of-government requirements. The *Freedom of Information Act 1982* (Cth) provides for internal and external review of FOI decisions. If an applicant is dissatisfied with an initial decision, they may seek an internal review. Review officers will review the merits of the decision, and an application may be resolved by agreement between the parties. If an agreement is not reached, an application may be made to the Information Commissioner who will issue a written determination affirming, varying or setting aside and substituting the access decision. If an individual remains unsatisfied with the outcome, he or she can apply to the Administrative Appeals Tribunal to review the FOI decision.

Defence-specific requirements. Defence policy includes guidelines on Freedom of Information in Defence. However, most of the requirements for Freedom of Information are contained in the whole-of-government FOI Act and policy promulgated by the Information Commissioner.

Administrative Appeals Tribunal

The Administrative Appeals Tribunal provides independent review of administrative decisions made by the Australian Government. Unlike the DFO, the AAT can make binding decisions on matters that fall within its jurisdiction.

Whole-of-government requirements. The AAT's function is to review the merits of a specific decision made by an administrator under an enactment. The *Administrative Appeals Tribunal Act 1975* sets out the jurisdiction of the AAT. It does not have a general jurisdiction to review all decisions of administrators, but rather jurisdiction must be conferred upon it by an enactment. The types of matters for

which it has been conferred jurisdiction that are relevant in the Defence context include decisions relating to veterans' affairs under the *Veterans' Entitlements Act 1986*, Commonwealth employees' workers compensation under the *Safety, Rehabilitation and Compensation Act 1988*, and freedom of information under the *Freedom of Information Act 1982*. A small number of decisions relating to ADF service entitlements are reviewable by the AAT, where the enabling instrument confers such a right.

Defence-specific requirements. Some Defence-specific documents refer to the ability of Defence personnel to appeal a decision in the Administrative Appeals Tribunal, such as Chapter 4 of the ADFP 06.1.3 *Guide to Administrative Decision-making*. However, most of the grounds for appeal are contained in the *Administrative Appeals Tribunal Act 1975*

Other processes

A number of other mechanisms or processes are used within Defence, which have some bearing on the conduct of inquiries, investigations and reviews.

Defence Whistleblower Scheme

The Defence Whistleblower Scheme is a reporting mechanism for individuals in Defence to report misconduct by APS employees, ADF members, contractors and Defence civilians. Reports can be made on any subject matter, and the way in which a report is dealt with may depend on requirements related to particular subject matters. Dealing with a report made under this scheme may require an investigation or inquiry, and decisions made under this scheme may also be the subject of review processes.

Whole-of-government requirements. The whole-of-government legislation associated with the Defence Whistleblower Scheme is contained in the PS Act and PS Regulations. This legislation deals only with reports made by APS employees about breaches of the APS Code of Conduct. It does not cover with other misconduct by APS employees, nor does it cover reports made by ADF members or about misconduct involving ADF members.

- Section 16 of the PS Act provides that a person performing functions in or for an Agency must not victimise, or discriminate against, an APS employee because the APS employee has reported breaches (or alleged breaches) of the Code of Conduct.
- Regulation 2.4(1) of the PS Regulations requires that an Agency Head establish procedures for dealing with reports made under section 16 of the PS Act. Regulation 2.4(2) outlines requirements for the procedures, which include that they must:
 - have due regard to procedural fairness and comply with the *Privacy Act 1988*⁹,

⁹ A whistleblower's identify is considered 'personal information' for the purposes of the *Privacy Act 1988*.

- ensure that if a report is made it will be investigated, unless considered to be frivolous or vexatious,
- provide information about the protection available under section 16 of the PS Act to persons making reports,
- enable an APS employee who has made a report, and who is not satisfied with the outcome of the investigation of the report, to refer the report to the Public Service Commissioner, the Merit Protection Commissioner, or a person authorised by them; and
- ensure that the findings of an investigation are dealt with as soon as practicable.

Defence-specific requirements. DI(G) PERS 45–5 *Defence Whistleblower Scheme* contains Defence’s procedures in accordance with regulation 2.4 of the PS Regulations. It also expands Defence’s Whistleblower Scheme beyond the APS. It defines a whistleblower as any person who alleges misconduct, including criminal activity or unethical conduct, by APS employees in Defence, ADF members, contractors supplying goods or services to Defence, and Defence civilians. As a Defence Instruction, this document has the force of law so far as matters of ADF administration are concerned. The two main themes of DI(G) PERS 45–5 are the protection of whistleblowers, in order to avoid victimisation or other deterrents against making reports, and to ensure that reports are investigated appropriately.

Part 4 of Chapter 11 of the DWRM contains an outline of the Defence Whistleblower Scheme, including who can use it, when it should be used, what must be reported, confidentiality requirements, and review processes.

Noting that the Defence Whistleblower Scheme is a reporting mechanism, rather than an inquiry, investigation or review tool, there is still potential for overlap between the functions of different areas in relation to the management of a whistleblower complaint. This problem is not exclusive to this Scheme, but applies wherever there are multiple avenues to make complaints. The Inspector General – Defence is responsible for the management of the Scheme, and undertakes the initial review and referral of a complaint to the appropriate area in Defence. However, where the same complaint is reported through different channels within Defence, and this is not identified, there is the potential for conflicting outcomes and wasted resources.

Opportunities. The Whistleblower scheme was identified as a process used by 19% of survey respondents who had been involved in managing or overseeing fraud matters in the last 12 months. It was otherwise most commonly identified in relation to unacceptable behaviour (8%) and procurement matters (8%). As the scheme is managed by Fraud Control and Investigations Branch, it is not surprising that it is most commonly associated with fraud. It is clear, however, that the Defence Whistleblower Scheme is not limited to reports of fraud, and that any misconduct is covered.

The PS Regulations set out the minimum requirements in relation to the procedures agencies must implement in relation to whistleblower complaints. These requirements are reasonably flexible. For example, even though they do not extend

beyond APS employees, it is clear that they are sufficiently flexible for Defence to have established a process that applies to all individuals in Defence. The structures in Defence underpinning the Whistleblower scheme are entirely of Defence's own choosing, and are not the result of any legislative requirements.

There is some repetition of content in Chapter 11 of the DRWM and DI(G) PERS 45–5. An opportunity lies in reviewing these Defence-specific documents to ensure that Defence's whistleblower procedures best reflects the requirements of the PS Regulations, and are presented in a manner that is easy to understand. Similarly, there is considerable scope to review Defence Instructions and other documents related to subjects that may be the subject of whistleblower reports, to avoid overlap and simplify the overall process. For example, if an unacceptable behaviour complaint is made to a line manager or commander as well as the Whistleblower Hotline, what is the most appropriate complaint handling process to follow and which area within Defence should be responsible for the management of that complaint? The interactions of the policies addressing particular types of incident are not all clear on this issue, and anecdotal evidence suggests that both complainants and respondents have been frustrated with this.

Alternative Dispute Resolution

Alternative dispute resolution (ADR) are processes in which an impartial person/s assists those involved in a dispute or conflict to resolve the issues. ADR processes are alternatives to traditional adversarial dispute resolution processes and may be used independently or in conjunction with these traditional processes.

Whole-of-government requirements. In relation to instances where the Commonwealth is a party to a dispute, Appendix B of the Legal Services Directions sets out the obligation of the Commonwealth and its agencies to behave as model litigants in the conduct of litigation. Part of this obligation includes endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to ADR before initiating legal proceedings and by participating in ADR processes where appropriate. The Commonwealth and its agencies must only commence court proceedings if it has considered other methods of dispute resolution, such as ADR.

In relation to instances where a dispute has arisen between two employees, the PS Regulations contain the Government's policy regarding review of APS actions. Regulation 5.1 provides that employees' concerns are intended to be dealt with quickly, impartially and fairly and that the review processes are intended to be consistent with the use of ADR methods to reach satisfactory outcomes where appropriate. The APSC website contains general principles regarding the conduct of ADR, including the types of ADR methods available and how agencies may use ADR appropriately.

Defence-specific requirements. DI(G) PERS 34-4 *Use and Management of Alternative Dispute Resolution in Defence* contains Defence policy with respect to the conduct of ADR and conflict management. It provides that ADR is used to complement existing Command and management processes. It is intended that in all cases where it is assessed that ADR is appropriate, ADR should be used on a

voluntary basis at the earliest possible opportunity and the lowest practical level before the implementation of formal methods of dispute resolution (for example, ADR may be considered for use in certain circumstances before recourse to disciplinary action under the DFDA or APS Code of Conduct). However, ADR will only be employed after approval by command/management and after the Directorate of ADR and Conflict Management has conducted an assessment and deemed the dispute appropriate for ADR intervention. To this end, its use is regulated. Facilitative techniques currently employed by Defence include Mediation, Workplace Conferencing, and Facilitated Negotiation.

Opportunities. Survey respondents frequently cited 'informal workplace problem solving' as a process commonly used to resolve matters in the workplace. Notably, 60% of respondents indicated that they used information workplace problem solving as a process used to resolve personnel dispute and conflict matters. On this basis, the project assumes that quasi-ADR processes are commonly by used by line managers and commanders to resolve matters, even if they are not conducted formally through the Directorate of ADR and Conflict Management. As ADR processes can often provide a mutually acceptable outcome for the parties involved, an opportunity lies in ensuring that the use of such processes are considered where workplace conflicts are first brought to the attention of line managers and commanders, and ensuring that line managers and commanders are equipped to manage such processes. Resolving disputes early at a low level may avoid the need to undertake more formal inquiry and investigation processes if disputes are left unresolved. The project understands that DI(G) PERS 34-4 will be incorporated in the Conflict and Alternative Resolution Manual.

Particular Subject Matters

The inquiry, investigation and review mechanisms described above can typically be used to inquire into, investigate or review multiple subject matters. Many legislative and policy requirements are associated with a particular subject matter, rather than the mechanism being used.

Unacceptable Behaviour

28% of survey respondents indicated that they had been involved in managing or overseeing at least one unacceptable behaviour matter in the last 12 months. Managing unacceptable behaviour as it occurs is part of the responsibility of line managers and commanders in Defence, and will almost always include engaging with processes in the inquiry, investigation and review system.

Whole-of-government requirements. There are no legislative requirements with respect to the investigation of an incident of unacceptable behaviour per se. However, aspects of unacceptable behaviour are covered in various pieces of legislation. An incident of unacceptable behaviour may lead to an APS Code of Conduct investigation or pose a risk to Work Health and Safety. The Australian Human Rights Commission and state-based equivalents may become involved where the unacceptable behaviour is discrimination. Recent developments in some States have been to incorporate workplace bullying into the criminal law.

Defence-specific requirements. The primary Defence document defining and governing the management of unacceptable behaviour is DI(G) PERS 35-3 *Management and Reporting of Unacceptable Behaviour*. ‘Unacceptable behaviour’ is defined as including workplace bullying and harassment, and a complaint is a complaint even where the complainant has requested that no action be taken. The Instruction provides that a line manager or commander must act on all unacceptable behaviour complaints brought to their attention in a prompt, fair and impartial manner. The Instruction also outlines the process that must be complied with where a complaint of unacceptable behaviour is made, including the conduct of a Quick Assessment, referral for an APS Code of Conduct investigation, or an ADF administrative inquiry (either a non-statutory routine inquiry or an inquiry under the *Defence (Inquiry) Regulations* 1985).

The Instruction must be read in conjunction with other Defence Instructions dealing with particular subject matters, as well as DI(G) ADMIN 45-2—*The reporting and management of Notifiable Incidents*. A notifiable incident is defined as including any incident that raises a reasonable suspicion that an offence may have been committed against the *Defence Force Discipline Act 1982* (DFDA) or the civilian criminal law criminal, or an incident that involves allegations of a conflict of interest. DI(G) ADMIN 45-2 provides that line managers and commanders must determine whether an incident is a notifiable incident as soon as possible and, if it is, report it immediately. Other relevant Defence documents are outlined at Table 1.

Opportunities. There is significant anecdotal evidence to suggest that there is confusion regarding the interaction of the various Defence Instructions relating to unacceptable behaviour, given that there are multiple Instructions that may apply to the one incident. For example, an allegation of fraud may constitute both unacceptable behaviour and a notifiable incident. Not only have difficulties been experienced in identifying all of the relevant policies that apply, but there are substantial inconsistencies between these documents. For example, DI(G) PERS 35-3 provides that the respondent is to be notified of the complaint that has been made against them, and this usually takes place as part of the QA process. However, DI(G) ADMIN 45-2 states that line managers and commanders must take reasonable steps to ensure a suspected offender is not forewarned.

Given that concept of ‘unacceptable behaviour’ is a Defence construct, there is considerable scope to amend the approach taken in the Defence Instructions. There is an opportunity to review these Defence Instructions with a view to setting out a simpler and consistent process. In the Part Three report of the HMAS *Success* Commission of Inquiry, Mr Gyles also critical of Defence’s equity and diversity policies and recommended changes to DI(G) PERS 35-3. Values, Behaviours and Resolution Branch is currently developing a Complaints and Resolution Manual, which is to include the content of various DI(G)s, including DI(G) PERS 35-3.

Fraud Management

10% of survey respondents indicated that they had been involved in managing or overseeing at least one fraud matter in the last 12 months.

Whole-of-government requirements. Section 45 of the *Financial Management and Accountability Act 1997* (FMA Act) provides that a Chief Executive must implement a fraud control plan for the Agency.

- Commonwealth Fraud Control Guidelines (2011) are issued under section 64 of the FMA Act and regulation 16A of the FMA Regulations. Regulation 16A(2) provides that an official performing duties in relation to the control and reporting of fraud must act in accordance with the Commonwealth Fraud Control Guidelines.
- The Commonwealth Fraud Control Guidelines (the Guidelines) provide that, among other things:
 - Employees, clients or members of the public must be provided with an appropriate channel for reporting fraud that, where possible, ensures confidentiality. Agencies should have in place a formal reporting system where all instances or allegations of internal or external fraud or attempted fraud within the agency and any subsequent investigations and outcomes, can be securely stored, recorded, analysed and monitored.
 - Agencies are responsible for making decisions at a number of critical stages in the management of a suspected fraud. This includes the decision to initiate an investigation (including the transition from audit or compliance work to a fraud investigation), or referral to law enforcement. It also includes subsequent decisions on the actions resulting from an investigation, whether that be referral of a brief of evidence to the CDDP, application of administrative, disciplinary or civil sanction or other action (such as a decision to take no further action).
 - Agencies must put in place appropriately documented procedures setting out criteria for making the decisions such as the decision to initiate an investigation or referral to the AFP. The procedures must be consistent with these Guidelines and in accordance with the requirements under the AGIS for identification of breaches and case selection, and investigation management.
 - Agencies may investigate allegations of fraud affecting that agency or its programs using agency or third party investigators only where the investigators possess the minimum competencies; the Agency Head, or delegate, has formally authorised the investigators to undertake fraud investigations; and the investigations are conducted by agency investigators in accordance with the Guidelines and other relevant laws, including privacy provisions and any secrecy provisions under Acts specific to an agency or program.
 - Agencies must have in place processes and procedures that are consistent with, or exceed, the model procedures outlined in the AGIS.

Defence-specific requirements. Defence Fraud Control Plan No. 9 (DFCP9) contains the strategy and methodology on which fraud risk assessments and treatments are based. It contains fraud prevention strategies (such as mandatory training), fraud detection strategies (such as mandatory reporting of suspected fraud, internal reviews and internal and external audit), the process for responding to detected fraud, and the requirements regarding the reporting of detected fraud.

DFCP9 states that Defence policy for mandatory reporting of fraud is found in DI(G) ADMIN 45–2—*The Reporting and Management of Notifiable Incidents*, which requires all instances of fraud to be reported to a Defence Investigative Authority (DIA).¹⁰ DIAs within Defence are to, among other things, detect and investigate fraud against Defence and the programs, assets and resources administered by Defence on behalf of the Commonwealth.

DI(G) FIN 12-1 *The control of fraud in Defence and the recovery of public monies* sets out the arrangements that are to apply in relation to dealing with fraud on Defence. It sets out the responsibilities for fraud control in Defence, and the policy relating to detection and investigations.

Apart from those matters referred to the civilian police, fraud allegations in Defence are typically investigated by the Inspector General – Defence, ADFIS, Service Police, or unit level DFDA investigators. The investigation is conducted to a criminal standard, and a product of a fraud investigation is likely to be a brief of evidence for the Commonwealth Director of Public Prosecutions or the Director of Military Prosecutions. The outcomes of a fraud investigation may also be used to inform other decisions, such as APS Code of Conduct action or the imposition of adverse administrative action against ADF members, even if there is insufficient evidence for a prosecution to the criminal standard. Such action may take place concurrently with or subsequent to the criminal standard investigation.

Given that an incident of fraud may not only constitute a criminal offence, but may also be a breach of the APS Code of Conduct or the DFDA, there are multiple avenues for investigating an allegation. DI(G) FIN 12-1 provides that line managers and commanders are responsible for ensuring the notification of offences in accordance with DI(G) ADMIN 45-2, however where there are multiple issues and multiple Defence areas responsible for different aspects of an allegation, there is the potential for conflict in relation to which process to follow.

Opportunities. Survey respondents were asked about the functionality of fraud inquiry, investigation and review processes. There was a marked negative response in relation to the timeliness of these processes. It is not apparent whether this relates to the timeframes for criminal proceedings, which are largely outside of Defence’s control, as opposed to timeframes associated with internal administrative processes. The negative response indicates, however, that there may be some problems with the way fraud investigations and other processes relating to fraud progress.

The main requirement in the Guidelines is for an agency to have procedures in place. In relation to investigations of fraud, the Guidelines include some minimum qualifications for investigators, and also require the procedures to comply with the AGIS. Apart from these requirements, the Guidelines are relatively flexible and provide Defence considerable discretion so far as their implementation is concerned. They leave the structures associated with investigating fraud entirely at the discretion of each agency. The Guidelines state that the procedures adopted will reflect the

¹⁰ DIAs in Defence are IGD, DSA, ADFIS and Service police.

circumstances of each agency. This leaves Defence with scope to streamline fraud investigation processes and policies, including the possibility of structural reform to ensure that fraud investigations are conducted by a single area within Defence, regardless of whether the alleged offender is a civilian or an ADF member.

Security investigations

26% of survey respondents indicated that they had been involved in managing or overseeing at least one security incident in the last 12 months.

Whole-of-government requirements. The Australian Government Protective Security Policy Framework (the Framework) is promulgated by the Attorney General's Department and is the principal means for disseminating Commonwealth protective security policies, principles, standards and procedures to be followed by all Australian Government agencies for the protection of official resources. In the context of investigations, it requires agencies to investigate security incidents promptly and with sensitivity. Specifically, the Protective Security Guidance for Executives sets out a number of mandatory requirements. In relation to investigations, this includes that:

- Agencies must ensure investigators are appropriately trained and have in place procedures for reporting and investigating security incidents and taking corrective action, in accordance with the provisions of Australian Government Guidelines on Security Incidents and Investigations, and/or The Australian Government Investigations Standards.
- The AGSVA is to have procedures in place to resolve any grievances.

Defence-specific requirements. The *Defence Security Manual* (DSM) contains the Defence-specific policy on security. Part 2:12 Security Incidents and Investigations details the security policy for the reporting and investigation of security incidents within Defence. It sets out the roles and responsibilities of staff, and provides that all security incidents must be reported.

In terms of the conduct of investigations after an incident has been reported, the DSM cross references a number of different areas and policies. For example, it provides:

- The DSA Security Incident Centre (SIC) will determine which incidents will be subject to further formal investigation and determine the appropriate Defence investigative authority to conduct the investigation.
- The Australian Government Investigation Standards must be used for the conduct of security investigations other than audit or compliance work.
- Administrative inquiries are conducted in accordance with Australian Defence Doctrine Publication 06.1.4 Administrative Inquiries Manual.

A security incident may not only constitute a breach of the DSM, but also the APS Code of Conduct or the DFDA.

Opportunities. Generally, survey respondents were positive about the functionality of processes associated with security incidents. A majority of respondents provided

a positive response in relation to availability of resources, how restrictive the processes are, the timeliness of the processes, and the usefulness of the processes.

The Guidelines are not especially prescriptive in terms of what Agencies must include in their security policies and procedures, but instead requires agencies to develop such policies and procedures which meet their specific business needs. Given this, an opportunity may lie in reconsidering the current processes in place for undertaking security investigations, with a view to consolidating the processes and areas of responsibilities involved. For example, there is no legal impediment to consolidating the security investigation function (so far as the preparation of criminal law briefs of evidence are concerned) with other investigative functions in Defence. Indeed, consolidating investigative functions would ensure ongoing compliance with the framework through allowing appropriately trained investigators to be available to conduct investigations as the need arises.

Procurement process inquiries

Procurement process inquiries are conducted in the event there is a complaint or some other incident lending doubt as to the probity of a procurement process. 12% of survey respondents indicated that they had been involved in managing or overseeing procurement process inquiries in the last 12 months.

Whole-of-government requirements. The Commonwealth Procurement Rules¹¹ establish the core procurement policy framework and articulate the Government's expectations of all departments and agencies subject to the Financial Management and Accountability Act and their officials, when performing duties in relation to procurement. The Rules should be read in conjunction with the procurement related Finance Circulars.

Paragraph 6.8 of the Rules states that, if a complaint about procurement is received, agencies must apply equitable and non-discriminatory complaint-handling procedures. Agencies should aim to manage the complaint process internally, where possible, through communication and conciliation. Where a procurement complaint cannot be resolved internally, external review mechanisms will be available, including the Commonwealth Ombudsman and judicial processes.

Defence-specific requirements. The minimalist requirements in the Commonwealth Procurement Rules establish the framework within which agencies determine their own specific procurement practices. The Defence Procurement Policy Manual is the principal reference documents for Defence officials conducting procurements. Chapter 5.7B details the process for handling complaints relating to the conduct of Defence procurement and should be applied to complaints arising in the period between the request documentation being issued and the date of contract signature, regardless of when the actual complaint is made. It also sets out a complaint handling process.

¹¹ Formerly the Commonwealth Procurement Guidelines.

Depending on the nature of the complaint, various Defence Instructions may be relevant. For example, DI(G) PERS 25-7 *Gifts, hospitality and sponsorship*, and DI(G) PERS 25-6 *Conflict of interest and declarations of interest*.

A procurement complaint may relate to the conduct of Defence personnel, and so the procurement inquiry process may lead to (or run in parallel with) an APS Code of Conduct investigation, a DFDA investigation, or another type of investigation process.

Opportunities. Survey respondents were not positive about the functionality of inquiry, investigation and review processes surrounding procurement complaints. Less than half of survey respondents considered that these processes were useful. There is room for improvement in ensuring that inquiry, investigation and review processes in Defence better meet needs in terms of managing procurement complaints.

The Commonwealth Procurement Rules are not prescriptive in terms of what agencies must do to respond to procurement complaints, and there is considerable scope to adjust procurement inquiry processes to operate more effectively and consistently with other inquiry and review processes in Defence. Given that a procurement process complaint may stem from an employee acting inconsistently with a Defence-specific policy (for example, through accepting a gift from a potential tenderer), an opportunity may lie in reconsidering how such Defence documents interact, including responsibilities for investigation. It is important to note that a procurement process inquiry will usually be in response to complaints by parties external to Defence.

Debt write off

Decisions involving debt write-off, writing off equipment and loss and damage forms are frequently the subject of inquiry, investigation or review. 10% of survey respondents indicated that they had been involved in managing or overseeing matters of this nature during the past 12 months.

Whole-of-government requirements. Debt write-off is dealt with in section 47 of the FMA Act. It provides that a Chief Executive must pursue recovery of each debt for which the Chief Executive is responsible unless:

- (a) *the debt has been written off as authorised by an Act; or*
- (b) *the Chief Executive is satisfied that the debt is not legally recoverable; or*
- (c) *the Chief Executive considers that it is not economical to pursue recovery of the debt.*

Section 41 provides that an official or Minister must not misapply public property or improperly dispose of, or improperly use, public property and section 42 sets out liability for loss of public property.

Defence-specific requirements. Chapter 5.1 of the Chief Executive Instructions contains the policy in relation to debt management. It provides when a debt can be written off and by whom. Chapter 6 of the Chief Executive Instructions provides that

a loss of public property must be reported and investigated in accordance with FINMAN 2 – Financial Management Manual, chapter 6.3 Loss and Recovery of Public Property and where applicable DI(G) FIN 12–1 *The control of fraud in Defence and the recovery of public monies* or DI(G) ADMIN 45–2 *The Management and Reporting of Notifiable Incidents*. FINMAN Chapter 6.3 provides that the delegate may appoint an official or other person to investigate a loss of or damage to departmental property, or seek a report from an official or other person, and sets out the possible courses of action a delegate must follow upon receiving a report.

Opportunities. Survey respondents were generally positive about the functionality of inquiry, investigation and review processes in relation to decisions to raise or write off debts. However, there is opportunity to improve these processes – for example, only 46% of respondents gave a positive response in relation to their restrictiveness.

The FMA Act is not prescriptive in terms of what processes an Agency must undertake in determining whether a debt is legally recoverable or economical to pursue. Defence has considerable discretion to determine the most appropriate processes to use in the Defence context. Given this, an opportunity may lie in reviewing the current policies to identify areas for improvement, including simplification of the process and harmonization of the related policies.

Work Health and Safety investigations

Safety incidents and accidents require investigation to avoid recurrence. Some safety incidents may also result in criminal, disciplinary or administrative action against responsible individuals. 23% of survey respondents indicated that they had been involved in managing or overseeing a safety incident within the last 12 months.

Whole-of-government requirements. The *Work Health and Safety Act 2011* (Cth) provides that Defence must ensure, so far as is reasonably practicable, the health and safety of workers. The meaning of ‘workers’ is not limited to ADF members and APS employees, but includes contractors and visitors.

Section 68 of the Act provides that the powers and functions of a health and safety representative for a work group includes, among other things, investigating complaints from members of the work group relating to work health and safety, and inquiring into anything that appears to be a risk to the health or safety of workers in the work group, arising from the conduct of the business or undertaking

In relation issues resolution, section 81 provides the following:

- (1) *This section applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.*
- (2) *The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations.*
- (3) *A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.*

The Act also contains provisions regarding the conduct of external investigations by Comcare.

Defence-specific requirements. SAFETYMAN contains Defence's policy in relation to health and safety. This policy is currently under review in order to take account of the obligations contained in the revised Act. Safety investigation processes are also being reviewed as part of the Human Resources Shared Services Program (WHS Pilot Project).

In SAFETYMAN, Volume 2, Part 5, Chapter 2 Incident Investigation sets out the requirement for all significant occupational health and safety incidents to be investigated in order to ascertain the cause of the event, and what measures may be required to prevent repetition. The focus is on preventing recurrence, rather than assigning blame. SAFETYMAN aims to assist and guide personnel appointed to conduct an incident investigation and to assist decision makers when reviewing and approving processes to prevent a recurrence.

There are a significant number of specific Defence policies and guidance which address particular work health and safety issues. For example, hazardous chemicals, managing risk in particular instances, asbestos, heat injury management, and manual handling. Bullying and harassment, which are examples of unacceptable behaviour under DI(G) PERS 35-3, can also be safety issues under the Act. This is a significant issue, given that criminal penalties can be imposed for a breach. Safety incident policy may interact with other policies, including the Defence documents described in Table 1.

Opportunities. Survey respondents were generally positive about the processes associated with safety investigations, with a majority of respondents returning a positive response in relation to all four categories of functionality: resources, restrictiveness, timeliness and usefulness.

The Act is not prescriptive in terms of what processes an Agency must adopt in investigating and responding to safety incidents. This is reflected in the relatively flexible investigation procedures currently outlined in SAFETYMAN. A safety investigation is essentially an administrative inquiry. When ADF members appoint a safety investigation, it will frequently be in accordance with 06.1.4 Administrative Inquiries Manual. APS managers, on the other hand, cannot use statutory or command based inquiries to conduct a safety investigation. There is considerable scope to align the APS and ADF inquiry processes, which would aid the conduct of safety investigations in the integrated environment. It is important that safety investigations operate quickly and effectively, given the strict obligations Defence has to workers under the *Work Health and Safety Act 2011*.

A safety investigation can lead to, or be conducted in parallel, with disciplinary investigations under the DFDA or the APS Code of Conduct. The interaction of safety investigations with these other processes could be improved. Safety investigations are likely to examine the behaviour of contractors in relation to safety incidents, as well as ADF and APS personnel. The role of contractors, and

Defence's powers in relation to inquiring into an incident involving contractors, could be improved and clarified.

Performance management

39% of survey respondents indicated that they had been involved in managing or overseeing poor work performance within the last 12 months. The most commonly identified inquiry / investigation processes in relation to performance management were informal fact finding (44%), routine inquiry (18%) and APS Code of Conduct investigation (15%). The most commonly identified review processes were informal review (21%), APS review of action (11%) and ADF redress of grievance – CO level (7%).

Whole-of-government requirements. APS Code of Conduct and APS review of actions processes are governed by whole-of-government legislation. Where these processes are used as part of the management of an APS employee's performance, they must accord with the whole-of-government requirements outlined above in relation to these processes. There are no whole-of-government requirements relevant to ADF members.

Defence-specific requirements. The primary mechanism for managing an APS employee's performance is the PFADS process, which is a mandatory process under the Defence Employment Collective Agreement 2012-14 (DECA). The PFADS process includes a decision on performance rating, which may have an effect on whether an individual receives performance progression salary increases. The DECA states that, where an employee is dissatisfied with their performance rating or any action or decision taken in relation to this Part after discussing these concerns with their first-level supervisor, they should discuss their concerns with their second-level supervisor. If this does not provide resolution, employees are encouraged to use Alternative Dispute Resolution methods and/or any other dispute resolution method outlined in Section I4 of the DECA. Paragraph I4.3 provides that disputes about matters arising in the workplace, including disputes about the interpretation or implementation of this Agreement and the National Employment Standards should be dealt with in accordance with the following process:

- a. in the first instance, an employee or their representative is to discuss the dispute with their supervisor;*
- b. if discussions at the workplace level do not resolve the dispute, it should be referred to more senior levels of management for resolution; and*
- c. subject to certain requirements, where a dispute remains unresolved:*
 - (i) the parties to the dispute may agree to refer the dispute to Fair Work Australia (FWA); or*
 - (ii) a party to the dispute may apply to FWA to conduct a dispute resolution process in accordance with the terms of this Dispute Prevention and Settlement procedure.*

In many cases, an APS employee would apply under the APS review of action scheme for review of a negative performance rating.

Performance of ADF members is managed in accordance with DI(G) PERS 10–8 *Performance Appraisal Reporting in the Australian Defence Force*. Annex A states that reviewing officers are responsible for making determinations on representations in relation to performance assessments. In undertaking this task they are to:

- (1) *ensure that the principles of procedural fairness are adhered to;*
- (2) *consider the written material comprising the representation, the appraisal report and all the records or other evidence/information upon which the initial assessment was based, when reaching a decision;*
- (3) *discount any personal knowledge of, or feeling towards, either the member making the representation or the assessor;*
- (4) *ensure that the decision is supported by evidence; and*
- (5) *ensure that the member is given a personal copy of the finding on the representation.*

Opportunities. Survey respondents were not positive about the functionality of formal processes associated with performance management. In particular, 39% of respondents indicated that the processes were too restrictive, while 43% of respondents indicated that they were not timely. It is clear that there is room for improvement to ensure that the processes for reviewing performance are providing line managers and commanders with the tools they need to manage poor performance.

In relation to APS employees, the performance review process is contained in the DECA and so there is little scope for reform until the next phase of negotiations. That said, there is an issue as to how a review process under the DECA interacts with other inquiries, investigations or reviews into conduct that may have led to the poor performance. An opportunity may lie in considering how Defence-specific policies relating to conduct interact with the performance review process.

The Defence Instruction relating to performance management of ADF members is subject to change at the discretion of the Secretary and CDF. In that sense, there is more scope to reform these processes for ADF members than APS employees. However, the greater scope for reform is more likely in the way review of performance decisions interacts with other review mechanisms in Defence—there is capacity to simplify these interactions and create a more streamlined system.

Complaints against service police

Service police and ADFIS investigators are subject to a code of conduct. Allegations that the code of conduct has been breached are investigated through a Service Police code of conduct investigation.

Whole-of-government requirements. DFDA investigations are, by virtue of DI(G) ADMIN 45-4 *Defence Investigations Standards*, conducted in accordance with Australian Government Investigations Standards 2011. The Standards include a requirement that investigations are conducted in accordance with APS Values and

the APS Code of Conduct, and that agencies have procedures governing the manner in which complaints concerning the conduct of its investigations are handled. The procedures must 'ensure that complaints are handled in a timely, appropriate and comprehensive manner'.

Defence-specific requirements. CDF Directive 15/2008 sets out a Service Police Code of Conduct and the process for managing complaints made against Service Police. The IGADF is responsible for overall management of these matters. The Directive details the different types of complaints, and the process for reporting and management of complaints according to the category. The more serious complaints are subject to a higher degree of IGADF oversight. Possible management actions include, but are not limited to:

- referral to an external organisation for investigation (such as the civil police);
- a DFDA investigation (which may be undertaken by IGADF, ADFIS or appropriate Service Police outside of the unit to which the member the subject of the complaint is posted);
- an administrative inquiry (which may be undertaken by IGADF, or through the chain of command);
- referral back to a local unit commander for further action; or
- a determination that no further action is required.

Opportunities. The whole-of-government requirements in relation to Service Police conduct are minimal. While procedures need to exist to manage complaints about Service Police and other investigators, there is very little particularisation of the nature of those procedures. To that end, Defence has considerable discretion to tailor the procedures to its needs. For example, inquiry into complaints about Service Police can be through the use of other established inquiry mechanisms in Defence. The structures involved in managing these inquiries are also entirely in Defence's discretion.

Australian Cadet Force

The Australian Cadet Force is a voluntary organisation established under legislation. Cadets have a very different legal relationship with Defence than ADF members or APS employees. The administration of the Cadet Force lies with Defence, so this area needs to be considered as part of this project.

Whole-of-government requirements. There is no specific whole-of-government legislation relating to Cadets. However, given the organisation's link to the Commonwealth, any funding allocated to a Cadet unit is subject to certain provisions under FMA Act, while activities must be conducted in accordance with the *Work Health and Safety Act 2011*. Further, legal requirements relating to children, whether in legislation or otherwise, will also be relevant given the age of most Cadets.

Defence-specific requirements. The starting position of the legislation is to clearly define what Cadets and Cadet staff are not, specifically, that Cadets and Cadet staff are not members of the Australian Defence Force (ADF). Cadets and Cadet staff are referred to in Defence legislation including section 62 of the *Defence Act 1903* in

relation to Australian Army Cadets, section 8 of the *Air Force Act 1923* in relation to Australian Air Force Cadets and section 38 of the *Naval Defence Act 1910* in relation to the Australian Navy Cadets. Each of these sections contains corresponding subsections which state that members of the Cadet Force are not members of that Service.

Defence Determination 2005/15, which is issued under section 58B of the Defence Act and reproduced in the Pay and Conditions Manual (the Determination), describes the Australian Defence Force Cadet scheme as a youth development organisation that is staffed and funded in partnership between Defence and the community. It is essentially a community based organisation which has a military philosophy.

The status of different class of personnel within the Cadet Forces differs. In relation to Cadets, the *Cadet Force Regulations 1977* apply specifically to the Cadet Forces. Regulation 8 contains the process for acceptance and enrolment as a Cadet, with subregulation 8(1) providing 'a person may volunteer as a Cadet by furnishing to the service chief an application in accordance with a form approved by the service chief.' A Cadet may therefore be considered a volunteer.

Cadet staff are dealt with differently under the Defence legislation. Subregulation 5(1) of the *Cadet Force Regulations 1977* provides 'the service chief may appoint as officers or instructors in a Cadet Force persons who are suitable to supervise and control the training programme for, and the activities of, Cadets enrolled in a unit.' The appointment of a person as a Cadet staff member in accordance with the Regulations sets the framework for the relationship between the Commonwealth and the person but the appointment is not, of itself, a contract of employment. Thus while the Cadet staff do not sign an employment contract, they are appointed to their positions by the relevant service chief and may be considered employees for a number of different specific purposes, such as employee entitlement issues (for example, allowances but not salary).

Cadets and Cadet staff must comply with any responsibilities set out in the *Cadet Force Regulations 1977*. This includes the Code of Conduct contained in Schedule 4. Regulation 17 states that a service chief may impose one or more of the listed sanctions for a breach of the Code, including formal counselling, reprimand, official warning, reduction in rank, reassignment of duties, suspension of duties or discharge or termination.

Further, Cadets and Cadet staff must comply with any directions made by the Minister and their relevant Service Chief (or their delegate). Cadet staff have additional responsibilities with respect to their training and administration of Cadets. This includes responsibilities under work health and safety legislation, the supply of intoxicating liquor, allowing Cadets access to firearms, and often responsibilities regarding the management of finances in accordance with the FMA Act.

Further, just as Defence owes a duty of care to Cadets and Cadet staff, Cadet staff owe a duty of care to Cadets within their supervision. The relevant duty of care is more onerous as the vulnerability of a particular member, or class of members, increases. Given that many Cadets are minors, they may be considered of a more

vulnerable class and this duty must therefore be discharged to a very high standard. This will include a legal obligation to ensure that Cadets are provided with a safe and secure environment.

The Cadet Policy Manual sets out the policy that governs the Cadet organisation. Chapter 8 contains the Cadet Behaviour Policy, and notes that while each of the Cadet Organisations have their own policies on the reporting and management of unacceptable behaviour and sexual offences, this policy is designed to provide a principles based approach across all three Cadet Organisations. It aims to set out, among other things, what is unacceptable behaviour in ADF Cadets, what their rights and responsibilities are in relation to unacceptable behaviour, and how unacceptable behaviour will be treated. It also addresses sexual misconduct and how this must be reported to the relevant authorities.

In terms of unacceptable behaviour, Chapter 8 states that it will be dealt with by utilising the chain of command. Complaints and incidents of unacceptable behaviour involves five basic elements, including intervening to stop the situation, determining the facts, managing the complaint (formally and informally), monitoring the situation after the complaint has been resolved, and providing remedial training and support where appropriate. In relation to the stage involving determining the facts, Chapter 8 provides that leaders are to respond to the situation in line with the seriousness of the behaviour, which may require some preliminary assessment of facts. Annex C to Chapter 8 contains an Assessment Guide, which sets out what constitutes a Quick Assessment, and states that 'an assessment should be done as soon as reasonably practicable after an incident has been observed, occurred or reported. Whenever possible, an assessment should be conducted within 28 days of a complaint being made or an incident being observed'. It then sets out the obligations of the member conducting the assessment and the decisions that a member may make, including referring the matter to the civilian police or a superior authority, or resolving the matter by referring it to the unit commander or through alternative dispute resolution techniques.

Opportunities. Given that different policies apply across the Cadet organisation, an opportunity may lie in reviewing such policies with a view to ensuring consistency. Additionally, while the *Cadet Force Regulations 1977* set out the Code of Conduct that Cadets and Cadet staff must comply with and states what sanctions may be imposed in the event of a breach, other than requiring that an assessment must be made in response to an incident, there is no guidance in relation to how a breach is to be determined or whether any review procedures are available to ensure that decision makers are accountable. Given this, an opportunity lies in ensuring that appropriate guidance regarding the entire process that is involved in responding to a trigger event (from an initial assessment to review of a decision) is available in relation to matters involving Cadets and Cadet staff. Such a mechanism would need to take into account the special nature of the Cadet organisation, including the fact that it is not part of the ADF (or the APS), that it is a youth development organisation and that its members include minors. The ability for sensitive matters to be referred to specialist Defence areas, such as Values, Behaviours and Resolution Branch should also be considered.

It is understood that the *Cadet Force Regulations 1977* are currently being reviewed, including the content of the Code of Conduct and review and recruitment processes. Consultation will occur with the responsible areas during Stage B to ensure that such issues are considered.

Table 1 – Defence documents relevant to inquiry, investigation and review

	APS Code of Conduct investigations	Investigation under the DFDA	Administrative Inquiry under D(I)Rs	Routine inquiry	Non-statutory inquiry	Quick Assessment	APS review of action	ADF redress of grievance	Security clearance review	MECRB review	ADF health care complaints	CDDA	IGADF review	JHARC	Review of DFDA convictions	Defence Force Ombudsman	Honours and Awards Tribunal	Australian Human Rights Commission	Privacy	Freedom of Information	Administrative Appeals Tribunal	Defence Whistleblower Scheme	Alternative Dispute Resolution	Unacceptable behaviour	Fraud management	Security investigation	Procurement process inquiry	Debt write off	Work health and safety investigation	Performance management	Complaints against service police		
Defence-administered legislation																																	
<i>Defence Act 1903</i>			2										•				•																
<i>Defence Force Discipline Act 1982</i>	•														•																		
<i>Defence Force Regulations 1952</i>							•																										
<i>Defence (Inquiry) Regulations 1985</i>			•										•																				
<i>Defence (Personnel) Regulations 2002</i>																																	
Defence Instructions																																	
DI(G) ADMIN 08-1 <i>Public comment and dissemination of official information by Defence personnel</i>																																	
DI(G) ADMIN 10-8 <i>Conduct Reporting and Tracking System</i>																																	
DI(G) ADMIN 20-29 <i>Defence Security Manual</i>																																	
DI(G) ADMIN 67-1 <i>Freedom of Information Act—Implementation in the Department of Defence</i>																					•												
DI(G) ADMIN 45-2 <i>The reporting and management of notifiable incidents</i>																																	
DI(G) ADMIN 45-4 <i>Defence Investigations Standards</i>	•																																
DI(G) ADMIN 58-1 <i>Authority in an Integrated Defence Organisation</i>																																	
DI(G) ADMIN 61-1 <i>Inspector-General of the Australian Defence Force—role, functions and responsibilities</i>													•																				
DI(G) ADMIN 65-1 <i>Administrative Inquiry Tracking</i>																																	
DI(G) ADMIN 67-2 <i>Quick Assessment</i>					•																												

	APS Code of Conduct investigations	Investigation under the DFDA	Administrative Inquiry under D(I)Rs	Routine Inquiry	Non-statutory inquiry	Quick Assessment	APS review of action	ADF redress of grievance	Security clearance review	MECRB review	ADF health care complaints	CDDA	IGADF review	JHARC	Review of DFDA convictions	Defence Force Ombudsman	Honours and Awards Tribunal	Australian Human Rights Commission	Privacy	Freedom of Information	Administrative Appeals Tribunal	Defence Whistleblower Scheme	Alternative Dispute Resolution	Unacceptable behaviour	Fraud management	Security investigation	Procurement process inquiry	Debt write off	Work health and safety investigation	Performance management	Complaints against service police				
DI(G) CIS 6-1-001 <i>Appropriate and inappropriate use of Information and Communications Technology Resources</i>																																			
DI(G) FIN 12-1 <i>The Control of Fraud in Defence and the Recovery of Public Monies</i>																																			
DI(G) OPS 13-14 <i>Australian Defence Force Investigative Service—Service Police Central Records Office</i>																																			
DI(G) OPS 13-15 <i>Incident scene initial action and preservation</i>																																			
DI(G) PERS 10-7 <i>Promotion in the Australian Defence Force—provisional, temporary and Limited Tenure Promotion and honorary rank</i>																																			
DI(G) PERS 10-8 <i>Performance Appraisal Reporting in the Australian Defence Force</i>																																			
DI(G) PERS 12-1 <i>General Scope of Legal Assistance Provided to Service Personnel and Legal Aid to Australian Defence Force Members Overseas</i>																																			
DI(G) PERS 15-1 <i>Misuse of Alcohol in the Defence Force</i>																																			
DI(G) PERS 15-4 <i>Alcohol testing in the Australian Defence Force</i>																																			
DI(G) PERS 15-5 <i>Management of the use or involvement with prohibited substances in the Australian Defence Force</i>																																			
DI(G) PERS 16-15 <i>Australian Defence Force Medical Employment Classification System</i>																																			
DI(G) PERS 16-20 <i>Privacy of health information in Defence</i>																																			
DI(G) PERS 16-26 <i>Management of a suicidal episode in the Australian Defence Force</i>																																			
DI(G) PERS 19-18 <i>Defence Safety Manual</i>																																			
DI(G) PERS 20-6 <i>Death of Australian Defence Force personnel</i>																																			

	APS Code of Conduct investigations	Investigation under the DFDA	Administrative Inquiry under D(I)Rs	Routine Inquiry	Non-statutory inquiry	Quick Assessment	APS review of action	ADF redress of grievance	Security clearance review	MECRB review	ADF health care complaints	CDDA	IGADF review	JHARC	Review of DFDA convictions	Defence Force Ombudsman	Honours and Awards Tribunal	Australian Human Rights Commission	Privacy	Freedom of Information	Administrative Appeals Tribunal	Defence Whistleblower Scheme	Alternative Dispute Resolution	Unacceptable behaviour	Fraud management	Security investigation	Procurement process inquiry	Debt write off	Work health and safety investigation	Performance management	Complaints against service police
DI(G) PERS 20-8 <i>Defence Casualty and Bereavement Support Manual</i>																															
DI(G) PERS 25-6 <i>Conflicts of interest and declarations of interests</i>																															
DI(G) PERS 25-7 <i>Gifts, hospitality and sponsorship</i>																															
DI(G) PERS 33-4 <i>Management and administration of Australian Defence Force members under 18 years of age</i>																															
DI(G) PERS 34-1 <i>Redress of Grievance—Tri-Service procedures</i>							●																								
DI(G) PERS 34-2 <i>Complaints of discrimination and harassment through the Australian Human Rights Commission</i>																	●														
DI(G) PERS 34-3 <i>Inquiries and investigations by the Commonwealth Ombudsman and the Defence Force Ombudsman</i>																●															
DI(G) PERS 34-4 <i>Use and Management of Alternative Dispute Resolution in Defence</i>																						●									
DI(G) PERS 35-2 <i>Application of the Sex Discrimination Act to the Australian Defence Force</i>																															
DI(G) PERS 35-3 <i>Management and Reporting of Unacceptable Behaviour</i>																							●								
DI(G) PERS 35-4 <i>Management and Reporting of Sexual Offences</i>																															
DI(G) PERS 35-6 <i>Formal Warnings and Censures in the Australian Defence Force</i>																															
DI(G) PERS 35-7 <i>Defence Equity Adviser Network</i>																															
DI(G) PERS 37-4 <i>Individual management of Defence members undergoing initial training</i>																															
DI(G) PERS 45-1 <i>Jurisdiction under Defence Force Discipline Act—Guidance for Military Commanders</i>																															
DI(G) PERS 45-5 <i>Defence Whistleblower Scheme</i>																					●										

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Freedom of Information Manual																				●												
SAFETYMAN																														●		
ADF Service Police Manual		●																														
The Decision-maker's Handbook																																
Defence Records Management Policy Manual																																
Defence Enterprise Collective Agreement 2012-2014 (DECA)																															●	

1. This not intended to be a comprehensive list of all Defence documents (for example single service instructions are not included), but instead is a list of some of the key generally applicable documents that may be relevant in relation to inquiry, investigation and review.
2. Light green shading indicates that the Defence document may be relevant for the purposes of the specific type of inquiry, investigation or review. Black dots indicate that the document is a primary Defence reference document for the specific type of inquiry, investigation or review.

Table 2 – Internal and external co-ordinating structures

	APS Code of Conduct investigations	Investigation under the DFDA	Administrative Inquiry under D(I)Rs	Routine Inquiry	Non-statutory inquiry	Quick Assessment	APS review of action	ADF redress of grievance	Security clearance review	MECRB review	ADF health care complaints	CDDA	IGADF review	JHARC	Review of DFDA convictions	Defence Force Ombudsman	Honours and Awards Tribunal	Australian Human Rights Commission	Privacy	Freedom of Information	Administrative Appeals Tribunal	Defence Whistleblower Scheme	Alternative Dispute Resolution	Unacceptable behaviour	Fraud management	Security investigation	Procurement process inquiry	Debt write off	Work health and safety investigation	Performance management	Complaints against service police	
Internal co-ordinating structures																																
Office of the Secretary and CDF																																
Values, Behaviour and Resolution Branch	2																															
Group Human Resources																																
Single Service headquarters																																
Single Service personnel agencies																																
Defence Workplace Relations																																
Audit and Fraud Control Division																																
Work Health and Safety Branch																																
CDF Commission of Inquiry Directorate																																
Australian Defence Force Investigative Service																																
Single Service police																																
Inspector General Australian Defence Force																																
Inspector General - Defence																																
Defence Security Authority																																
Chief Financial Officer Group																																
Freedom of Information and Information Management Branch																																
Joint Health Command																																

	APS Code of Conduct investigations	Investigation under the DFDA	Administrative Inquiry under D(I)IRs	Routine Inquiry	Non-statutory inquiry	Quick Assessment	APS review of action	ADF redress of grievance	Security clearance review	MECRB review	ADF health care complaints	CDDA	IGADF review	JHARC	Review of DFDA convictions	Defence Force Ombudsman	Honours and Awards Tribunal	Australian Human Rights Commission	Privacy	Freedom of Information	Administrative Appeals Tribunal	Defence Whistleblower Scheme	Alternative Dispute Resolution	Unacceptable behaviour	Fraud management	Security investigation	Procurement process inquiry	Debt write off	Work health and safety investigation	Performance management	Complaints against service police
Defence Legal Division																															
Ministerial and Executive Coordination and Communication Division																															
Honours and Award Tribunal																															
External co-ordinating structures																															
Australian Public Service Commission																															
Australian Human Rights Commission																															
Office of the Information Commissioner																															
Defence Force Ombudsman																															
Merit Protection Commissioner																															
Department of Finance and Deregulation																															
Attorney-General's Department																															

1. This is not intended to be an exhaustive list of co-ordinating structures within and external to Defence. It instead lists some of the key co-ordinating structures relevant in relation to inquiry, investigation and review
2. Green boxes indicate that the co-ordinating structure may have a role in relation to the type of inquiry, investigation or review.