

REDRESS OF GRIEVANCES

33. In its consideration of the ROG system the review acknowledges the informative submission received from the Director General Fairness and Resolution Branch in the Department of Defence (enclosure 2).

34. It is the right of every member of the ADF to complain to his or her Commanding Officer about an issue affecting his or her service. Commonly, an application for Redress of a Grievance will be concerned with decisions or actions of a commander or supervisor that is perceived by the member to impact adversely upon his or her service. This historic right has its legislative origins in the *Articles of War 1717* (UK) and is now provided by part 15 of the *Defence Force Regulations 1952*. Those regulations, amplified by DI(G) PERS 34-1 *Redress of Grievance—Tri-Service Procedures*, limit issues which may be raised in a ROG and provide for a tiered response as follows:

- a. The Commanding Officer must inquire into the complaint, make a decision on it, take any other necessary action and notify the applicant of the decision.
- b. If the applicant is dissatisfied with the Commanding Officer's decision, the applicant may refer the complaint to the Chief of the applicant's Service.
- c. If the applicant is an officer or warrant officer and is dissatisfied with his or her Service Chief's decision, the applicant may refer the complaint to the CDF.

35. The Regulations and instructions covering the ROG system provide a number of limitations on what matters may form the subject of grievances under the system. Members may not, for example, make complaints about decisions or judgements of a civil court or service tribunal or about liabilities arising under the Financial Management and Accountability Act. Nor may they normally complain about matters that are more than six months old or matters to do with initiating action in anticipation of a decision yet to be made, performance assessments, termination notices or the merits of defence policies.

36. If a complainant remains dissatisfied with the outcome of a complaint to a Service Chief, further avenues of appeal are available but these must generally be pursued outside of the normal command chain channels. Depending on the subject matter of the complaint these further avenues might include the IGADF, the Defence Force Ombudsman, the Human Rights Commission or, possibly, even judicial review by the Administrative Appeals Tribunal or Federal Court.

37. The operation of the ROG system, rightly or wrongly, is often taken to be an indicator of the wider health and effectiveness of the military justice system. A significant backlog in the number of grievances awaiting resolution, for example, is interpreted by some commentators to be symptomatic of a more general dysfunctionality of the military justice system. While this sort of extrapolation is unlikely to be the case, the right to make a complaint and have it dealt with expeditiously is certainly a significant element of the military justice system. It is of fundamental importance that the complaints system not only works properly, but is seen to work properly.

Previous reviews of the Redress of Grievances system

38. As a result, the ROG system has been the subject of a number of reviews and inquiries both internally and externally since 2000. These include:

- a. the 2004 joint CDF and Ombudsman review of the ADF ROG system;
- b. the 2005 Senate Foreign Affairs, Defence and Trade References Committee's (the References Committee) inquiry into the Effectiveness of Australia's Military Justice System;
- c. the Ombudsman's 2007 review of the ADF's Management of Complaints about Unacceptable Behaviour; and
- d. the 2009 Report of the Independent Review on the Health of the Reformed Military Justice System, by the Honourable Sir Lawrence Street, AC, KCMG, QC and Air Marshal Les Fisher, AO, FRAeS, MAP (Rtd).

39. While each review made a number of recommendations concerning complaint handling and the ROG process, only the 2007 Ombudsman review looked specifically at the management of complaints about unacceptable behaviour. A brief summary of these reports appears below.

Joint review of the ADF's Redress of Grievance System 2004

40. This very comprehensive joint ROG review was conducted by the Ombudsman and the Department of Defence specifically into the ROG system. Importantly, the review found little to criticise in terms of Defence's approach to compliance with basic best practice complaint handling principles. Rather, the focus of the review was more concerned with the practical implementation of complaint handling processes. In this respect the ROG review noted the growth in complaint handling mechanisms that had occurred since 1997 and the consequent increase in complexity in managing and administering complaints that had resulted. It observed that there was no over-arching policy that explains to potential complainants (or their advisers) which mechanisms might be best suited to resolving their grievance.

41. While most of the 72 recommendations made by this review appear to have been incorporated into the current guidance provided by the regulations and DI(G) Pers 34-1 *Redress of Grievances-Tri-Service Procedures* (re-issued in September 2010), it remains the case that complaint handling mechanisms still appear to be complex.

The effectiveness of Australia's Military Justice System 2005

42. The References Committee's inquiry into the effectiveness of Australia's military justice system considered the ADF's military justice system of which the ROG process is a part. At the time of the inquiry a substantial backlog of ROG cases awaiting resolution had developed. Of particular interest for the issue of complaint handling was the Committee's recommendation to establish, in relation to the ROG system, an ADF Administrative Review Board (ADFARB).

43. The ADFARB was intended to be an external review agency with statutory independence from the chain of command. Modelled on the Canadian Grievances Board, it was intended to replace some or all of the functions of the Complaints Resolution Agency and the avenues for further review and oversight provided by the Defence Force Ombudsman and, for military justice related issues, the Inspector General ADF.

44. The ADFARB proposal was not accepted by the then Government. While it agreed there was a need to improve the complaints management system it decided that the shortfalls in the existing system would best be addressed by streamlining the existing complaints management system and retaining independent internal and external review and oversight agencies. It was considered that the creation of an entirely new external agency of the type proposed for the ADFARB would not provide real benefits in terms of increasing perceived independence and could undermine the responsibility and accountability of commanders for the wellbeing of ADF personnel in their command. The then Government's response emphasised that the overarching principles guiding the ROG system should remain that complaints be resolved at the lowest effective level in the quickest time and that primary responsibility to resolve complaints remain with unit commanders.

Commonwealth Ombudsman's review of ADF management of complaints about unacceptable behaviour 2007

45. This review was specifically concerned with the management and reporting of complaints under DI(G) PERS 35-3—*Management Reporting of Unacceptable Behaviour*.

46. Although it is possible for complaints about unacceptable behaviour to be addressed within the ROG system, they are more usually dealt with as a separate process as required by the relevant Defence Instruction. The Ombudsman found that while Defence provided an effective complaint management mechanism that was readily accessible by members, further consideration could be given to improving a number of key areas including record keeping, training, reporting, data collection, the role of inquiry officers and equity advisers and quality assurance. All fifteen recommendations made relating to these areas were accepted by Defence.

Report of the Independent Review on the Health of the Reformed Military Justice System 2009 (the Street/Fisher Review)

47. In 2009 an independent review of the implementation and the consequential effects of the 2005 Committee's report on the effectiveness of Australia's military justice system was conducted by Sir Laurence Street and Air Marshal Les Fisher (Retd).

48. In relation to the ROG system, the Street/Fisher independent review saw no need for any radical changes to the basic structure. It did however recommend the implementation of a 90-day benchmark for the completion of ROGs referred to Service Chiefs and CDF. Although the need for a benchmark was accepted, Defence chose to set it at 180 days. While this may have been a pragmatic solution having regard to resources, extending the benchmark time limit for finalising complaints from an otherwise reasonable time limit of 90 days, does not at face value seem to have been a progressive initiative in light of the fundamental principle of the need to strive for more timely ways of finalising complaints.

49. In addition to the reviews mentioned above, the ADF complaints system generally and the ROG process in particular have received ongoing attention from the Senate References Committee in its series of progress reports into reforms to the ADF military justice system following the Committee's 2005 inquiry. Also, in 2010, the ROG system was again considered in a joint review by the Commonwealth Ombudsman and Defence. On this occasion the review focussed on delays in handling grievances that are elevated to the Service Chief level. While the joint review resulted in an exposure draft of the proposed report which included a number of recommendations, a final version was not proceeded with.

Comment

50. As stated in the introduction, the present review of the ADF complaints handling policy is concerned with the policy guidance as it currently stands. The brief summary of previous reviews in the preceding paragraphs has been included to illustrate that the complaints system and ROG process has been under virtually continuous and detailed review for many years, the latest only being in 2010. The present policy guidance is largely the product of progressive implementation of successive previous reviews, most of the recommendations of which were accepted. There is little, therefore, that can be said, in terms of structural reform, that is new in this regard. What can be said is that there has been a consistent acknowledgment that, structurally, the ADF complaints system meets or exceeds the commonly accepted key principles that should underpin an effective complaints handling system. It follows from this that the reasons given for not replacing the present system with a wholly external complaints handling agency, such as that proposed in 2005 by the creation of an ADFARB, remain valid.

Best practice

51. In considering the issue of best practice, this review has had regard to the extent to which current complaint handling policy in Defence complies with criteria set by four external agencies; Australian Standards, the Australian Human Rights Commission, the Commonwealth Ombudsman and Comcare. Annex E identifies where and how Defence policy complies with best practice criteria used by these external agencies under the headings of Fairness/Objectivity, Accessibility, Responsiveness/Timeliness, Commitment/Integration, Confidentiality and Review. A similar comparison, although from a slightly different perspective, was also included in enclosure 2.

Comment

52. Both comparisons indicate that the implementation of changes in Defence complaint handling practices arising from recommendations made in previous reviews have been consistent with acknowledged best practice expectations in Australia.

Comparison with Armed Forces of other countries

53. The review had available to it information on the policy approaches towards complaint handling taken by the defence forces of the United Kingdom, Canada and New Zealand, which have similar cultural and military traditions to the ADF.

Canada

54. The Canadian Forces Grievance Process was simplified in 1998 to create two levels of review within the chain of command. The process provides for a member to submit a grievance relating to certain decisions, acts or omissions in the administration of the Canadian Forces which affect the personal rights or situation of Canadian members, provided there is no other redress process within the National Defence Act. As with the ADF redress process, there is a general six month timeframe within which a grievance should be submitted. In the first level of review the grievance is submitted to the member's Commanding Officer or a superior officer, as appropriate, and they are known as the 'Initial Authority'. If the member is unhappy with the decision of the Initial Authority, they have the right to have the matter reviewed by the Chief of the Canadian Defence Staff. The Chief of the Canadian Defence Staff has delegated the right to decide some grievances to the Director General Canadian Forces Grievance Authority, however some grievances must be decided personally by the Chief of the Canadian Defence Staff. All matters to be decided by the Chief of the Canadian Defence Staff are referred to the Canadian Forces Grievance Board to review and provide findings and recommendations to the Chief before a final decision is made. The Canadian Forces Grievance Board is an external and independent legal body with the power to summons witnesses, compel production of evidence and to determine and modify its own rules of procedure when investigating and reviewing grievances. It does not, however, have the authority to grant or deny ROG and may only provide the Chief of the Canadian Defence Staff with findings and recommendations and the Chief is not bound by these. The decision of the Chief of the Canadian Defence Staff is final and binding although it can be challenged by an application for judicial review in the Federal Court of Canada or reviewed by the Ombudsman.

United Kingdom

55. In the United Kingdom, service personnel may lodge a redress of individual grievance. The redress process allows complaints to be resolved at three different levels or by a Service Complaint Panel. The first level of review is the 'Prescribed Officer', usually the Commanding Officer their immediate superior, as appropriate. The second level is review by a 'Superior Officer' who must satisfy certain rank requirements. The third level of review is the Defence Council, which will usually delegate its powers to a Service Complaint Panel or a Single Service Board.

56. A Service Complaint Panel normally consists of two serving officers of at least one star rank, usually of the same service as the complainant. An independent member is required to sit on Service Complaint Panel for complaints of discrimination, harassment, bullying, dishonest, improper or biased behaviour, failures in health care provided to a member by the United Kingdom Ministry of Defence, or the actions of the Service police. An independent member is not a member of the regular or reserve forces or employed in the Civil Service. The Single Service Board is comprised of at least two members who will decide on a complaint.

57. The United Kingdom system generally requires a complaint to be submitted within three months of the date of the matter being complained about. A member who is or was an Officer at the time of the matter being complained of, and who is dissatisfied with the decision of the Defence Council, may require a report on the complaint to be submitted to the Queen in order to receive her directions on the complaint. The Service Complaints Commissioner monitors the Service complaints system and also has the power to refer complaints of discrimination, harassment, bullying and dishonest, improper or biased behaviour made by serving or past members of the Services to the chain of command.

New Zealand

58. New Zealand service personnel may raise a personal grievance with their chain of command if they believe they have been wronged in any manner. If Service personnel are unable to obtain redress through their respective Service, complaints can be forwarded to the CDF, who is the final authority for redress.

59. Complaints made to the CDF are referred to the Judge Advocate General (JAG), who investigates complaints and makes recommendations to the CDF. The CDF makes the final decision on a complaint, and that decision is conveyed in writing through the command chain to the complainant.

Comment

60. Not surprisingly, the ADF system for the management of members' grievances is in principle similar to those used by comparable armed forces. All systems require grievances to be dealt with in the first instance by the Commanding Officer and provide for successive levels of review where complainants remain dissatisfied with outcomes. Each system provides avenues of external scrutiny or review where necessary, although the approach taken in relation to this aspect in each case differs. In the case of Canada and the United Kingdom, provision exists for external involvement in the assessment of grievances before decision by the highest level of internal review—the Chief of the Canadian Defence Staff and a Single Service Board in the United Kingdom. None of the systems provide authority for external review agencies to exercise executive power to alter decisions made by command.

61. Like the ADF, each of the defence forces of the United Kingdom, Canada and New Zealand has had occasion to wrestle with the problems of devising policy to implement complaints handling systems that are effective, fair and timely. What is apparent from the experiences of each is that the ADF is not alone in arriving at solutions that require relatively complex and extensive guidance. With one possible exception of the involvement of external agencies in Canada's and the United Kingdom's grievance processes, there do not appear to be any stand-out features of complaint handling systems in use overseas by comparable defence forces that are so markedly superior to the ADF system, as it has evolved, that would warrant adoption in this country whether from the point of view of cost effectiveness, efficiency or fairness.

62. The ADF system of ROG is compliant with best practice standards espoused by recognised independent Australian complaint handling agencies and compares favourably with systems in use by similar armed forces overseas. While this is largely attributable to the continual and detailed scrutiny to which the system has been subjected by previous reviews, there are a number of recurring themes identified by those reviews that still require remedial attention. These are:

- a. awareness of complaint channels;
- b. complexity of instructions;
- c. delay in resolution of complaints;
- d. inequity of entitlement of officers and warrant officers to further review by CDF;
- e. initial action by Commanding Officers on receipt of a grievance;
- f. suspension of administrative action pending resolution of a grievance;
- g. the Compensation for Defective Administration scheme;
- h. setting of performance standards for complaint handling;
- i. independence of complaint agencies; and
- j. fear of recrimination.

Awareness of complaint channels

63. This aspect incorporates what is referred to in best practice standards as ‘visibility and accessibility’, and simply means that adequate arrangements must exist to ensure that members are sufficiently informed of the options available to them to state a grievance and that the process for doing so is as simple as possible. The primary means of dissemination of information about the ADF ROG system is via DI(G) PERS 34-1 *Redress of Grievance—Tri-Service procedures*, a comprehensive publication of more than thirty pages. While none of the guidance contained in the instruction appears to be unnecessary, it is not ideal for use as an entry level reference point for potential complainants or managers. Intranet access to information on the grievance process is also available, although it too relies heavily on citing the DI(G). Further, intranet connectivity is not readily available to a significant proportion of ADF members, particularly in Army.

64. That there may be a significant level of ignorance across the ADF about options for making a complaint, and the ROG system generally, is supported by empirical evidence gathered from focus groups surveyed as part of the IGADF military justice audit program. For example, over the course of 25 unit audits conducted in the period July to December 2010, 64 percent of respondents reported that they were aware of the avenues of complaint open to them, although only 55 percent reported that they knew how to lodge a grievance.

65. While instruction on complaints procedures may be included in initial training and some other leadership courses, there appears to be a need for this type of awareness to be more regularly reinforced. This could be done by the production of simple plain language ‘fact’ sheets for use on noticeboards and the inclusion of similar information as part of unit annual

awareness or induction briefings as is currently the case for equity and diversity, security, and fraud issues among others. In 2008, a concise military justice awareness training package that included basic information on ROG procedure was prepared by the Office of IGADF and offered to the Services for use by units in annual awareness training. This, or a similar approach, could provide an appropriate vehicle for the regular dissemination of basic information on grievance procedure. As an example, an updated copy of the IGADF military justice awareness training package is enclosure 3.

Recommendation 2: Simple plain language ‘fact’ sheets on the redress of grievance process should be produced for use on unit bulletin boards, websites and other locations as appropriate.

Recommendation 3: Information on grievance processes should be included in annual unit induction training using the IGADF Military Justice Awareness Briefing Package, or something similar, as a model.

Complexity of instructions

66. As observed by the Director General Fairness and Resolution in enclosure 2, it is a commonly held view in Defence and ADF circles that the framework in Defence for managing and investigating complaints, including complaints about personal conduct, is too complex. While this may well be the case, it is also true that complaint handling can be, and often is, an intrinsically complex process. This is particularly so in the case of the ADF where the employer relationship with its members is often characterised as ‘cradle to grave’. A consequence of this is that the range of matters that may potentially ground a complaint by an ADF member is very much larger—and can add more layers of complexity—than for most employees in other sectors.

67. At least part of the reason for the seeming complexity of policy guidance on ADF complaint handling appears to be because of a tendency to simply add to it as recommendations made by successive reviews are implemented. The policy guidance now contained in DI(G) PERS 34-1 is aimed not only at potential complainants but also at commanding officers and other officials who have parts to play in the grievance resolution process. The instruction requires that it be read in conjunction with at least three other Defence Instructions and publications which are relatively complex in their own right. Moreover, thirty six other policy documents are listed as being ‘related publications’.

68. It is clear that all of these instructions are intended to be for the guidance and benefit of multiple categories of end users, not all of whom would necessarily have a need to be across all of the information contained therein. At the same time, as previously remarked, there does not seem to be much about the policy guidance that is redundant, although it is likely that some content (for example, guidance on inquiries), may be duplicated in other policy instructions. It is acknowledged however that duplication in such cases is not necessarily a bad thing – consolidation of relevant guidance at the risk of duplication can be advantageous where it would otherwise mean having to cross reference.

69. The problem of complexity of guidance in this area of policy is not unique to the ADF. It may be the case that the complexity of the omnibus policy guidance contained in primary source instructions such as the ROG Defence Instruction must simply be accepted as unavoidable if such guidance is to properly reflect the policy intent.

70. This does not necessarily mean that nothing can be done to improve the situation. There would be advantage in approaching the problem of complexity from the point of view of presentation, that is, by giving further consideration as to how these complex issues might be better presented so as to cater more directly to the differing needs of the readership of such instructions. Some progress has been made in this regard. The re-issue of DI(G) PERS 34-1 in September 2010 has attempted, through the use of annexes aimed at particular categories of potential users, to simplify the presentation of the instruction. It is understood that Fairness and Resolution Branch has also commenced work to produce a Complaints and Alternate Resolution Manual which will aim to present the policy in a more user-friendly way. This type of approach should be encouraged for use in other related policy areas.

Recommendation 4: The presentation of complex policy guidance instructions should be simplified to better meet the differing needs of likely end-users.

Recommendation 5: The production of a user-friendly Complaints and Alternate Resolution Manual should be expedited to complement, or replace if appropriate, existing detailed guidance provided by Defence Instructions.

Delay in resolution of complaints

71. The issue of undue delay in the resolution of complaints is the most frequently recurring criticism of the ADF grievance system. Statistics available from focus group surveys conducted as part of the IGADF unit military justice audit program in 2010 indicate that 66 percent of respondents do not believe that ROGs are resolved promptly. Commanding Officers are required to deal with grievances within 90 days. Complaints that are referred for consideration by a Service Chief are required to be dealt with within 180 days. Those that are eligible for further referral to the CDF are required to be dealt with within 90 days. Theoretically therefore, the delay in finalising a grievance, other than those referred to the CDF, will not become 'undue' until 270 days have elapsed, although the general rule is that all grievances should be resolved as soon as reasonably practicable, with priority being given to grievances about termination or discharge decisions.

72. Most commonly, problems of undue delay occur with grievances that are referred to Service Chiefs for resolution. At the end of 2010 the backlog of unresolved grievances at this level was 148. At the end of August 2011 there were 152 open Service Chief grievances, with 64 of these under review by Complaints Resolution case officers and the other 88 awaiting allocation of a case officer.

73. For many years the backlog in unresolved grievances at the Service Chief level has seemed an almost intractable problem and remains a visible indicator of the performance of the system. The backlog is not due to any lack of effort or application by Complaints Resolution staff. The main difficulty appears to be an inability to attract and retain sufficient suitably qualified staff as case officers, thus perpetuating a situation where grievances can remain unallocated to a case officer for lengthy periods. Case officer work within Defence is a relatively specialised area of occupation which, to date, has mostly been filled by permanent or Reserve ADF members. Not everyone who enters it is necessarily suited and many decide after a short time that it is not for them. While the case officer staffing situation stabilised in late 2010 and by late August 2011 had become fully complemented with 14 case officers, this improvement in personnel resources is still insufficient to reduce the backlog of cases and attend to the inflow of new grievances at the same time.

74. Reduction and elimination of the backlog must be regarded as a priority task as its continued presence remains a serious factor in undermining confidence in the whole complaints handling process. One approach taken in the past to reduce the growth of the backlog has been to restrict the matters about which grievances may be lodged. However, this can only be regarded as a solution of limited potential if the fundamental and historic rationale which underpins the military grievance system is not to be breached. While it may be convenient to argue that the addition of resources is not the answer, it is difficult to see how the situation can be retrieved without extraordinary, albeit temporary, arrangements being put in place. Provided that funding can be made available, the most practical option appears to be contracting out the task, perhaps to suitably qualified legal firms with Defence and complaints management experience. In the longer term, further consideration could also be given to rebalancing the case officer mix in Complaints Resolution with a greater proportion of Defence APS officers to assist with workforce stability.

Recommendation 6: Funding should be made available as a matter of priority to contract out the task of reducing the current grievance backlog of cases to suitably qualified legal firms.

Recommendation 7: In the interests of longer term stabilisation of the Complaint Resolution case officer complement, consideration should be given to greater use of Defence APS personnel as Complaint Resolution case officers.

Inequity of entitlement of officers and warrant officers to further review by CDF

75. Since its commencement, the present ADF ROG system has provided for an additional level of review by the CDF of grievances submitted by officers and warrant officers which, is not available to other ranks. While this may have been justified in times past by custom of the Service, it has become increasingly difficult to sustain an argument that officers and warrant officers should be entitled to access an additional avenue of review for complaints about their Service that others may not simply because of their rank. It is understood that relatively few cases seek review by the CDF and of these even fewer result in any change to the previous decision. This aspect of the grievance system now appears to be inequitable and could be discontinued without significant detriment.

Recommendation 8: The entitlement of officers and warrant officers to access a further level of review of their grievances by the CDF should be discontinued.

Initial action by Commanding Officers on receipt of a grievance

76. The Defence Force Regulations and DI(G) PERS 34-1 mandate that Commanding Officers must, after receipt of a grievance, complete a series of actions in accordance with paragraph 15 of annex C to that Instruction, including conducting a QA and inquiring into the grievance. Paragraph 17 of annex C to the Instruction mandates that the Commanding Officer must automatically refer the grievance to the Service Chief if;

- a. the grievance is about a decision, act or omission by the member's Commanding Officer;
- b. the Commanding Officer has already inquired into the issues raised in the grievance via a process other than the grievance process; and

- c. the grievance does not provide the Commanding Officer with new information that causes the Commanding Officer's original decision to be altered.

77. Paragraph 18 of annex C to the Instruction mandates that the Commanding Officer must complete all the requirements of paragraph 15, including the requirement to inquire into the grievance, even if the circumstances in which mandatory automatic referral to the Service Chief pertains. In cases where the circumstances of paragraph 17 for mandatory referral apply, or where it is clear from the QA that the Commanding Officer has no authority to resolve the grievance, the requirement for him or her to inquire into it not only appears to serve no useful purpose, but has the potential to add unnecessary delay to the grievance resolution process.

78. The grievance process could be improved by amendment of the Regulations and relevant Defence Instruction to provide for the Commanding Officer to automatically refer a grievance to the Service Chief, without first inquiring into it, where the circumstances of paragraph 17 of annex C to the Instruction apply or where it is clear that the Commanding Officer does not have the authority to resolve the grievance. Consideration should also be given to clarifying the circumstances in which a Commanding Officer may refer a grievance to an authority with the power to resolve it who is not the Service Chief.

Recommendation 9: The redress of grievance regulations and Defence Instruction (General) Personnel 34-1 should be amended to mandate that where it is clear that a Commanding Officer does not have the authority to resolve a grievance or where the circumstances of paragraph 17 to annex C of the Defence Instruction apply, the Commanding Officer must refer the grievance without further inquiry to the relevant Service Chief.

Recommendation 10: The circumstances in which a Commanding Officer may refer a grievance to an authority who has power to resolve the grievance, where that authority is not the Service Chief, should be clarified.

Suspension of administrative action pending resolution of grievance

79. Under the present system, provision is made for adverse administrative action to be suspended pending resolution of a grievance that has been submitted in relation to the action proposed where that action may give rise to an irrevocable or pre-emptive action, or cause undue hardship to the member. Paragraph 41 of DI(G) PERS 34-1 mandates that the suspension of termination action must be considered in all cases. The policy goes on to provide that in certain circumstances, such as those involving considerations of safety, security, discipline or effective operation of the unit, the proposed administrative action may be taken despite the submission of a grievance, although such circumstances are to be exceptional.

80. The overall effect of this policy, which is not a requirement of the Regulations, appears to lean toward the suspension of administrative action as being the *de facto* or 'normal' course. While this is undoubtedly a considerable benefit to a complainant, a commonly heard criticism of this policy from the command point of view is that some complainants can take undue advantage of this situation by the submission of one or more grievances so that the proposed administrative action can become suspended for lengthy indefinite periods. Where this occurs the effect of suspension becomes more pronounced in direct proportion to the size of the backlog of complaints awaiting resolution.

81. While caution should be always exercised before an existing benefit is curtailed, there is little by way of administrative action taken that cannot be revoked if necessary to restore a complainant's position where a complaint is upheld. That said, there does appear to be a case for review of the present policy regarding suspension of administrative action so that suspension of administrative action becomes the exception rather than the 'rule', defacto or otherwise.

Recommendation 11: The policy described in DI(G) PERS 34-1 concerning the suspension of administrative action pending the resolution of a grievance should be reviewed so that suspension may be considered only where exceptional circumstances exist.

Compensation for Detriment caused by Defective Administration (CDDA) scheme

82. Where, after due process, a grievance related to a decision or action has been found to be substantiated, a complainant may wish to seek financial compensation for the detriment suffered. This will usually take the form of an application for compensation under the Defective Administration Scheme. As a vehicle for providing relief in cases where some form of financial compensation would in all the circumstances be appropriate, the Defective Administration scheme is not ideal. Compensation may only be awarded where it can be shown that the detriment suffered was due to administrative error.

83. The focus on administrative error as a pre-requisite for access to this scheme is not well suited to the military environment, where substantial compensable detriment can result to a member from a wide range of causes which cannot easily or conveniently be defined as administrative error. The difficulties associated with the utility of this scheme in the military environment have been recognised for some time and have been the subject of criticism in some of the submissions received by this review.

84. A recommendation to introduce a new avenue, specific to the military environment, by which compensation could be awarded was recommended by Street/Fisher. The Street/Fisher review found that:

The current CDDA administrative scheme is not well suited to correct wrongs associated with ADF service. A new discretionary compensatory delegation, controlled by the CDF, needs to be developed to meet the expectations and unique service considerations of the uniformed workforce.

85. To date this recommendation has not been implemented. This review agrees with the recommendation made by the Street/Fisher Report. The present situation whereby the Service Chiefs and the CDF are unable to award any form of 'merit' compensation to aggrieved members outside of the CDDA scheme, even though they may personally recognise the validity of the case and support the claim, detracts from the effectiveness of the complaint handling process and should be remedied. It has been suggested that this issue could be addressed through the application of Section 58B of the *Defence Act 1903* which provides the Minister with discretion to determine payments to members of the ADF. It is understood that such payments could apply to both serving and former members, and even deceased members. However, even if this is possible, the better option would be to establish a purpose-designed compensation scheme for the ADF which clearly sets out the circumstances in which it would have application.

86. A further criticism of the CDDA system is that some delegates have been part of Defence Legal, other parts of which may also have advised a commander or manager with respect to the decision for which compensation has been claimed. This has raised perceptions of apprehended bias on the part of the CDDA decision maker; see also paras 11 and 12 of annex F.

Recommendation 12. The Street/Fisher recommendation to establish a discretionary delegation to CDF to compensate administrative/management/financial errors in addition to the current CDDA scheme should be implemented.

Recommendation 13: To avoid any perception of apprehended bias in compensation decisions, the decision maker with respect to compensation—whether as part of CDDA or an ADF-specific scheme if established—should be organisationally separate from Defence Legal.

Independence of complaint agencies

87. From time to time the independence of the ADF's complaint agencies has been raised as an issue. As discussed earlier, the involvement of the Commanding Officer is a cornerstone of the ADF's complaint handling system, as it is in other comparable armed forces. The Commanding Officer, though not independent from the chain of command, is nevertheless required by his or her duties and responsibilities to act impartially in relation to dealing with complaints from persons within his or her command. Where this is not possible, as for example in cases in which the Commanding Officer has been previously involved, relevant law and policy require that the Commanding Officer forward the matter for consideration by higher authority.

88. Matters for the consideration of Service Chiefs are staffed by Complaints Resolution, which is directly responsible to the CDF and is otherwise independent of the chain of command. In the event that a complainant is dissatisfied with the outcome of review by a Service Chief, a complainant has the option of seeking further review by the Defence Force Ombudsman who is independent and entirely external to Defence or, if the matter involves military justice issues, by the independent IGADF, a statutory office appointed by the Minister for Defence specifically for the purpose of such review.

89. As mentioned earlier in this report, one point of difference in the approach taken by the United Kingdom and Canadian Armed Forces is that provision is made for the involvement of an external entity, be it a Grievance Board or an individual, in the grievance assessment process before submission for decision by what in the ADF would be the Service Chief level of review. While this review has seen no compelling evidence to support the adoption of such an approach for the ADF as an imperative, there may nevertheless be some merit in examining whether the concept could be adapted for the ADF system. While the Canadian Grievance Board model has already been rejected on cost and other grounds, an adaptation of the United Kingdom approach could be feasible. This might consist of including an external individual as an independent 'assessor' of the complaint resolution brief prepared for Service Chief decision and could help to reinforce the perception of impartiality of the process. As in the United Kingdom, involvement of an external, independent individual in the grievance process could be limited to certain cases involving harassment, bullying, or other unacceptable behaviour. The downside of this approach is that it would add to the cost and could further delay finalisation of a response.

Recommendation 14. To improve perceptions of impartiality of the complaints resolution process, consideration should be given to further examining the feasibility and benefit of including an independent, external ‘assessor’ in the preparation of briefs for Service Chiefs in selected cases, based on the United Kingdom Single Service Board model.

Fear of recrimination

90. One of the reasons often cited as discouraging potential complainants from coming forward is said to be a fear of recrimination should they be discovered doing so. Both the Defence Force Regulations and DI(G) PERS 34-1 clearly make it an offence to prevent, dissuade, victimise, penalise or prejudice a member in any way for submitting a grievance or facilitating the processing of a grievance. The underlying principle is stated to be that members should be able to freely decide whether to submit a grievance without fear of repercussion.

91. The policy and law on this aspect is quite clear and there is nothing further required by way of legislative or policy amendment in these areas. As there is some evidence to support the view that some members may be discouraged from making a complaint for fear of repercussions, this is more likely to do with cultural factors or a lack of awareness of what the law is, both on the part of potential complainants and those who might have reason to discourage or victimise a complainant. Since it is not possible to legislate against wilful ignorance or stupidity, the most useful approach to remediation lies in education through better awareness and regular reinforcement of policy requirements. This could be done by including relevant guidance in annual and induction training conducted at unit level and in production of user friendly publicity material as suggested at recommendations 2 and 3 above.

Recommendation 15: Publicity and training packages of the kind described in recommendations 1 and 2 above should contain explicit warnings about preventing, discouraging, victimising or otherwise dissuading members from making a complaint or facilitating the processing of a complaint.

Performance measures

92. The requirement for the promulgation of performance measures was recognised as far back as the 2004 Joint Ombudsman and CDF ROG Review's recommendation 19 that ‘Defence establish an integrated complaint measurement, analysis and reporting system’ and complementary recommendation 23 for ‘IGADF to provide Key Expected Result (KER) guidelines to all complaint handling agencies in Defence.’

93. This requirement was echoed in the 2009 Military Justice System Review Team (Street/Fisher Review) report's recommendation 33 to ‘Establish and promulgate Key Performance Indicators (KPI) against which the performance of each of the principal military justice system agencies can be assessed’. Although considerable work was undertaken between the two reviews and since, their satisfaction remains elusive.

94. Performance measures, to have value, must be developed and 'owned' by each agency involved. IGADF promulgated a set of KPIs based on the Commonwealth Ombudsman's *A good practice guide for effective complaint handling* to assist individual agencies, and provided funding for management consultancy services to facilitate their work. Regrettably, progress to reach agreement on a useful set of performance measures for complaint handling has remained slow against a continuing succession of reviews advocating further change. It

may be that the need for specific performance measures beyond those already in place to address completion timeframes may be unnecessary if the proposal to develop a grievance handling service charter is implemented as proposed at recommendation 17 below.

Recommendation 16: The need for performance measures in grievance management beyond the setting of realistic completion times should be reviewed in light of the Commonwealth Ombudsman's proposal to develop and publish a Defence grievance handling service charter.

Defence Force Ombudsman submission

95. In his submission to the review, the Defence Force Ombudsman made recommendations which were based upon the findings arising from a joint Ombudsman/Defence study of the ROG system in 2010. While the 2010 study did not result in an agreed final report, this review supports those recommendations.

Recommendation 17: The following recommendations made by the Defence Force Ombudsman in his submission to this review should be implemented:

- a. Defence agree that a 180 day time limit for finalisation of ROGs referred to Service Chiefs is not optimal, and any process of reform should include a staged reduction in the time taken to resolve complaints.**
- b. Defence undertake a case management risk analysis of each ROG to match the resources allocated to the ROG to the risk posed to the organisation.**
- c. Defence review the content and style of briefs to the Service Chiefs.**
- d. Defence undertake an evaluation of the extent to which the peer review and quality assurance processes value could be further streamlined.**
- e. Defence publish a service charter for the handling of ROGS that includes performance measures for which Defence will be held accountable in managing members' redresses.**
- f. Defence cease the practice of putting cases in an unallocated queue and allocate to case officers upon receipt.**