Executive summary

1.1.1. Overall, Defence’s current arrangements for inquiry, investigation and review are unnecessarily complex, inefficient and legalistic. In many situations, these arrangements do not effectively support commanders and line managers to make optimal decisions. In addition to these organisational impacts, the costs and delays associated with these current arrangements results in unfairness to individuals. It is the remediation of these problems that has been the principal focus of the Re-Thinking Systems Review.

1.1.2. There has been a rolling series of internal and external reviews and inquiries examining discrete aspects of Defence’s inquiry, investigation and review arrangements since the late 1990s. Particular emphasis has been given to ADF military justice arrangements. However, the lesson of decades of previous inquiries and review into Defence’s arrangements for inquiry, investigation and review is that further incremental, piecemeal change will not deliver a simple, coherent and effective system that supports individuals, commanders and line managers.

1.1.3. On 8 November 2011, the then Secretary of Defence and the Chief of the Defence Force commissioned a review of all investigation, inquiry, review and audit systems, processes and structures across the Department of Defence (Defence). Unlike those previous reviews, the Re-Thinking Systems Review looks holistically at the arrangements for inquiry, investigation and review across all of Defence’s ADF and APS integrated workplaces, and proposes a model for reform, from a ‘first principles’ perspective.

1.1.4. While the Re-Thinking Systems Review is sensitive to principles of military justice and uniqueness of the military environment, it is not a review about military justice or only focused on the ADF. It is a review of the most common inquiry, investigation and review processes used by Defence in response to trigger events. These processes must work logically and coherently to enable commanders and line managers to effectively address everything from allegations of serious criminal misconduct to more routine workplace behaviour issues including discipline matters unique to military service. They must also be capable of applying to all personnel involved in the trigger event, whether ADF or APS, and regardless of whether the trigger event occurs in operational or non-operational contexts.

1.1.5. The Re-Thinking Systems Review was undertaken in two stages. While problems with existing arrangements were readily apparent, the scale, complexity and history of the current arrangements demanded a thorough approach. The first (Stage A, which concluded in August 2012) analysed the strengths and weaknesses of the current system and recommended essential components of an optimal system of inquiry, investigation and review on which future models would be based.

1 In December 2011, it was agreed that the audit phase of the review would report separately.
1.1.6. Following consideration of the Stage A Report, the then Secretary and CDF endorsed the following nine essential components of an optimal system which must underpin the development of future models for reform.

**Figure 1. Essential components of an optimal system**

- Functions effectively in an integrated environment
- Is supported by a training and education concept
- Promotes flexibility in response options including in deployed environments
- Facilitates sound and timely decision making
- Governed by lawful procedures that are simple and easy to use
- Provides transparency in processes and outcomes
- Delivers cost-effective outcomes in an adequately resourced system
- Incorporates coordinating and monitoring mechanisms to ensure consistency
- Incorporates safeguards for individuals

1.1.7. This is the report of the second stage of the work (Stage B) to make recommendations regarding the establishment of a system that is fair, timely, simple to implement, provides whole-of-Defence outcomes and takes into account legislative requirements. This Stage B Report proposes conceptual models for reform of Defence inquiry, investigation and review.

1.1.8. Extensive research and consultation has been undertaken to develop the recommended model. Key internal and external stakeholders were engaged as part of this process, providing feedback on their functional interaction with current

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3 Letter from the Secretary and Chief of the Defence Force to Head Defence Legal, Head People Capability and Chief Audit Executive, dated 8 November 2011
processes, identifying beneficial features for consideration in model development and commenting on the recommended model.

1.1.9. Internal stakeholders included representatives of key policy owners, and commanders and line managers from each of the Services and Groups. External stakeholders that were consulted and who indicated broad support for the approach taken included the Commonwealth Ombudsman, the Australian Sex Discrimination Commissioner, the Attorney-General’s Department, the Law Enforcement Integrity Commissioner and the Defence Abuse Response Taskforce. The United Kingdom’s Services Complaint Commissioner also indicated broad support for the Re-Thinking Systems Review’s approach to this reform task.

1.1.10. The Re-Thinking Systems Review also considered the functions of inquiry, investigation and review in terms of achieving the Pathway to Change objectives. In particular, the Pathway to Change strategy committed Defence to developing a reporting culture, providing mechanisms for the timely resolution of matters, ensuring accountability of decision makers, learning better ways of doing things, and improving our professionalism and performance in all areas.

1.1.11. The delivery of this Stage B Report was delayed in relation to the originally projected timeframe of February 2013. This was largely due to three additional requirements added to the project scope. First, the Re-Thinking Systems Review was required to engage in a further round of consultation with key stakeholders following receipt of initial feedback on the draft report in February and March 2013. This included ensuring that military and command issues were adequately addressed in the recommended model. Secondly, the Re-Thinking Systems Review agreed to develop an additional model based on the status quo, as amended by certain recommendations from reports of the Inspector General ADF. Thirdly, as pursuing any of the models would require significant organisational effort, cost and some disruption to Defence, it was considered important that the models were validated before being put to the Secretary and CDF for decision. Accordingly, the Re-Thinking Systems Review engaged PricewaterhouseCoopers (PwC) to analyse the recommended model and its variations to identify risks and mitigation strategies as part of Stage B.

1.2. Defence’s past approach to reform

The Re-Thinking Systems Review has considered almost 500 recommendations arising from over 20 inquiries and reviews into Defence’s current arrangements, particularly as they relate to command and line management decision making in response to trigger events.

1.2.1. Defence has a long history of reviews and inquiries into aspects of decision making regarding military justice, personnel disputes, procurement issues and other matters. Many reviews expressed concerns about similar issues (such as unclear accountability of decision makers and how to apply ADF-specific processes to an integrated workforce) and recommended changes to prevent or mitigate the risk of those issues arising again. As each recommendation was made in a different context, they were not always consistent and implementation failed to take into account the cumulative effect. The net effect is that current arrangements are not a true system, and are largely the product of historical adaptation and reactive reform.
In order to comply with Defence policies, a commander or line manager will need to have regard to 16 separate policies, navigate 39 decision points and liaise with up to 12 policy owners in order to just report an event.

This complexity undermines Defence’s work to encourage a reporting culture.

1.2.2. The imposition of more rules and procedures in an effort to prevent inappropriate decisions or behaviour has not necessarily in practice improved organisational outcomes or the standards of fairness afforded to individuals. The onerous procedural burden now facing commanders and line managers can delay actions towards resolution, obscure accountability and encourage a disproportionate focus on process rather than attaining an outcome. In some cases, particularly multi-faceted incidents, the procedural burden is so high that it serves as a disincentive for commanders and line managers to report events and initiate actions, or alternatively, creates a perception that compliance with the reporting requirements alone has satisfied Departmental obligations to manage the matter.

1.3. Re-Thinking Systems Review conceptual framework

1.3.1. Fundamentally, inquiry, investigation and review activities are tools that exist to support command and line management decision making. They are not an end in themselves. A review of these functions must focus on how they support Defence decision makers to achieve outcomes for the organisation and how those decision makers can be held accountable for their decisions. Recognising the underpinning role of these functions in Defence decision making is also consistent with Defence’s commitment through the Pathway to Change strategy to achieving clarity in processes and accountabilities.

1.3.2. Integrity in decision making is crucial to good governance and sustaining public trust. In order to maintain confidence in Defence decision making, strong and cohesive internal and external integrity systems are essential. Defence’s internal integrity system is made up of legislation, policies, procedures, structures and practices all aimed at ensuring decision makers use their powers responsibly and ethically, and that proper process is followed to achieve evidence-based and proportionate outcomes. In addition Defence, like other Commonwealth departments of State, is subject to an external integrity system that operates on a whole-of-government level. It is held accountable for its use of resources through integrity functions such as Parliamentary oversight and Australian National Audit Office scrutiny. However, its people are also entrusted with unique powers which require specialised oversight. For example, the power of command over subordinates and powers associated with use of force and war-fighting is unique to the ADF and has significant potential for abuse. In 2013, it is no longer credible for any part of Defence to suggest that it should not be subject to scrutiny through the Commonwealth’s external integrity system.

1.3.3. Informed decisions can only be made after learning relevant facts (informing oneself) about the focus of the decision. In Defence, decision making in
response to trigger events is informed by inquiry, investigation and review functions. They are all part of the decision making framework, illustrated in Figure 2.

1.3.4. On this basis, the Re-Thinking Systems Review adopted the following four phases to analyse decision making in Defence:

- **Recording, Reporting and Initial Assessment.** Making a record of relevant information, determining what is known, what needs to be discovered and what immediate actions are required, and advising the military chain of command and relevant areas within and outside of Defence.
- **Fact Finding.** Obtaining information to inform and support decisions.
- **Internal Review.** Re-consideration within Defence of a Defence decision or action.
- **External Review.** Re-consideration by an agency outside of Defence of a Defence decision or action.

1.3.5. These phases are not discrete and will often not follow a linear process. In practice, each phase may contain elements of another. For example, the Recording, Reporting and Initial Assessment, Internal Review and External Review phases may all involve elements of fact finding.

1.4. **Weaknesses of current arrangements**

1.4.1. The current Defence arrangements for inquiry, investigation and review can be incoherent and do not reflect or embed Defence’s organisational and cultural priorities. Current arrangements do not accommodate the integrated workforce or multi-faceted events that cross policy boundaries. They are unnecessarily bureaucratic and legalistic, and reinforce entrenched views. They routinely deliver delayed and irrational outcomes and can have a serious impact on productivity,
morale, and Defence’s reputation. Moreover, decision making flaws have contributed, in some cases, to financial claims against the Commonwealth.

1.4.2. The *Pathway to Change* strategy acknowledged that many of our current challenges in managing bad behaviour are the product of incoherent policy amendments and inconsistent approaches to managing our rules in the past. The *Pathway to Change* strategy committed Defence to simplifying our governance processes with stronger single point accountability and improving our processes through which we respond to and handle incidents of unacceptable behaviour.

1.4.3. In addition to the *Re-Thinking Systems Review*’s analysis of extant policy and procedures, a number of cases managed under the current arrangements were also analysed. Complexity and compartmentalised decision making were common features and contributed to the protracted resolution of these matters. Equally, there was often no apparent overarching visibility or control point in the organisation for the case.

1.4.4. The delays, confusion and errors caused by the inflexible and confusing procedural environment undermine the culture of reporting central to the *Pathway to Change* strategy. Under current arrangements, decision makers are unable to respond promptly, decisively and innovatively to trigger events that confront them, and accountability for outcomes is obscured.

1.4.5. There is a view that within the Defence environment, processes have been implemented in an attempt to eliminate the risk of error and poor judgment, which has resulted in process being substituted for problem-solving. In his valedictory address in November 2006, then Secretary Ric Smith warned of an increasing:

> plethora of directives, guidelines, procedural criteria and so on that we are required to have to deal with in a host of situations that may arise in the course of our work. These compliance requirements are often driven by fear of criticism and of litigation and compensation claims. They are often put in place in response to an administrative error or a breakdown in decision making or advising of ministers. They often substitute for, and indeed limit the scope for, common sense, values-based judgements. And in minimising the scope for reasonable risk-taking behaviour, rules and guidelines, they limit public service creativity and effectivenes.

1.4.6. The weaknesses of each phase of the decision making framework follow.

1.4.7. **Recording, Reporting and Initial Assessment.** Currently, when a trigger event occurs, commanders and line managers must comply with a multitude of reporting policies (each with separate policy ‘owners’). *Annex F: Current Defence reporting requirements* provides an overview of some of the applicable Defence policies that contain reporting requirements.

1.4.8. The typical approach to a trigger event involves making a mandatory report to a specific addressee, often using a particular form, focused on one subject

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4 James Brown, ‘Fifty Shades of Grey: Officer Culture in the Australian Army’ (2013) X:3 *Australian Army Journal* 244, 252

5 Ric Smith, ‘Thirty-eight years toiling in the vineyard of public service’ (November 2006), formal valedictory speech delivered at an Australian Public Service Commission function
matter. Multiple forms to multiple addressees are potentially required to satisfy the range of reporting requirements for multi-faceted incidents. Forms are conveyed to particular policy areas within Defence who then manage the information, often in a silo. Information exchange between areas is ad hoc at best. This compartmentalised approach means there is little prospect of undertaking meaningful trend analysis or providing accurate periodic reports. If the trigger event does not meet the stipulated threshold of seriousness, there is a real risk that no record will be created as the policy emphasis is on reporting ‘up the chain’.

1.4.9. Current guidance around initial assessment is routinely interpreted as requiring a full investigation before any decisions can be made. The guidance encourages a formulaic approach without command or line management qualitative appreciation and analysis of the problem. The nature and quantity of policy intended to guide the commander or line manager contributes to initial assessments turning into lengthy inquiry exercises, delaying prompt decisions and any prospect of decisive action on the matter.

1.4.10. **Fact Finding.** Current arrangements have elements that are too prescriptive about fact finding processes and others which are too permissive. Different policy areas can conduct duplicate and / or uncoordinated fact finding activities into the same trigger event. This lack of coordination is inefficient and complicates decision making.

The *Re-Thinking Systems Review* has seen fact findings activities around a single workplace incident spanning six years, involving four decisions makers, and costing hundreds of thousands of dollars.

1.4.11. Current arrangements can result in the disproportionate investigative effort compared to the nature of the decisions to be made to manage and resolve an incident. Statutory administrative inquiries are over-used in response to relatively straightforward workplace issues and the application of the existing ADF-focused statutory inquiry framework to integrated work environments is fraught.

1.4.12. Military investigative capacity for fact finding in connection with allegations of serious offences under the *Defence Force Discipline Act 1982* (DFDA) is under-resourced and prioritisation does not reflect whole-of-Defence needs. There is inconsistent capacity to undertake investigations of allegations of medium level disciplinary offending within the three Services and jointly in the ADF Investigative Service. While the intent of the existing model to develop and build ADF investigative capacity from the ranks of the Service Police is appreciated, in our experience the skill set and experience level required to undertake professional investigations is highly specialised. For this reason, it is simply not viable to continue relying on the Service Police capability as the sole feeder group for the ADF Investigative Service.

1.4.13. The capacity to engage external service providers to conduct fact finding on behalf of decision makers is generally unfettered (with the exception of DFDA investigations for ADF members). As the experience of the external service providers and quality of their instructions from Defence are mixed, so too have been their results.
1.4.14. **Internal Review.** Internal review arrangements are multi-layered. While this might appear to provide more avenues for an individual to seek justice, it can in fact delay access to external review, be a source of unfairness to individuals and lead to a situation where finality is difficult to achieve. There is always the prospect that an affected individual can take the outcome to yet another review option in order to pursue their desired outcome.

1.4.15. Internal reviewers often resort to a further round of fact finding activities (including through engaging consultants and external legal service providers) as they cannot be confident of previous efforts. This practice may provide decision makers with more assurance that its decisions will not be criticised by external reviewers, but the practice is not regulated and can come at considerable expense.

1.4.16. The *Pathway to Change* strategy acknowledges the need to set up mechanisms, where appropriate, for increasing contestability to improve the quality of our advice and decision making. A single layer of internal review, which is Commonwealth best-practice, prevents unnecessary delay before external review and, as such, is consistent with this principle and Defence’s work to improve individual accountabilities.

1.4.17. **External Review.** There is currently limited scope for specialised external review of Defence decisions by a Defence-dedicated organisation. The Defence Force Ombudsman appears inadequately resourced at present to undertake significant regular investigations and reviews of Defence matters. This may have contributed to Defence’s increased reliance on internal reviews and expensive ad hoc reviews by external service providers, which are often seen as necessary to credibly validate decision making and address public concern about independence and impartiality. Notwithstanding that the Inspector General ADF performs an important oversight function, the position of that office within the Department means that such review is not of the same character as external review by the Defence Force Ombudsman.

1.5. **Costs**

1.5.1. Defence’s current arrangements for inquiry, investigation and review do not provide central visibility of individual matters or associated costs and so the *Re-Thinking Systems Review* has been unable to determine the cost of current arrangements. Some costs are known, for example, Defence spent approximately $32.4m in 2011-12 in resourcing dedicated areas that undertake fact finding and internal review. However, this figure excludes the internal resource costs of localised fact finding, the costs of engaging external service providers to conduct localised fact finding or quasi review functions, and lost productivity due to workplace disruption and re-deployment of personnel from primary functions.

1.5.2. In addition, Defence has spent significant resources on high-level ad hoc external reviews over the past ten years including:

- DLA Piper Review of Allegations of Sexual and Other Abuse in Defence (over $11m);
• Review into the Treatment of Women at the Australian Defence Force Academy (Phase 1 of the Review of the Treatment of Women in the Australian Defence Force, 21 October 2011 (Broderick Phase 1 report) ($4.7m);
• HMAS Success Commission of inquiry ($6.18m); and
• Other Commonwealth funded inquiries and reviews such as parliamentary inquiries.

1.5.3. Again, these figures exclude extensive internal costs such as staff and senior management time spent facilitating ad hoc reviews, preparing and clearing documentation, and associated reporting to the Parliament and the public. Ad hoc reviews will continue to be useful for matters requiring expertise or experience not available in an external review agency. The Re-Thinking Systems Review recommends, however, that an enduring external review agency would be more cost effective for most matters.

1.5.4. The total costs for the time and effort of commanders, line managers and senior leadership in connection with inquiry, investigation and review activities will never be directly discernable as involvement in these functions is an incident of their primary responsibilities. However, it is likely that costs are higher where processes and arrangements are complex because the proportion of time that commanders, line managers and senior leaders are required to spend on these activities will be greater.

1.5.5. Presently, Defence maintains several subject matter-specific ICT case management systems. Each has separate operating, training and sustainment costs and we understand that some are not compatible with Defence’s longer term ICT plan and/or will not be technically supportable by their manufacturer in the future. In addition to the direct costs of maintaining these systems, there is an opportunity cost in terms of data analysis and trend tracking because information held on each system is often not available on others. Getting a complete data picture requires significant work and the results are not certain.

1.5.6. Moreover, the current arrangements incur unquantifiable but significant costs arising from the loss of trust in Defence by its own people as well as the Australian community. There has been considerable sustained criticism of Defence arrangements for inquiry, investigation and review which continue to undermine confidence in, and perhaps increase scepticism of, the quality of Defence’s decision making and its institutional integrity. Defence’s reputation affects its ability to recruit and retain quality personnel. Within Defence, lack of individual confidence affects preparedness to report incidents and trust that outcomes will be pursued. This, in turn, can have a detrimental impact on workforce morale, cohesion and productivity.

1.6. Status Quo Plus

1.6.1. Towards the end of Stage B, the Re-Thinking Systems Review was asked to consider the Inspector General ADF’s preferred model, ‘Status Quo Plus’. This model is based on current arrangements, enhanced by implementation of certain recommendations from recent Inspector General ADF military justice reviews. The Status Quo Plus model is discussed in detail in Chapter 3. Process maps (capturing in diagrammatical form the steps and decision points in managing a trigger event) are contained in Annex K: Process maps.
1.6.2. The Re-Thinking Systems Review does not recommend pursuing the Status Quo Plus model. In our assessment, the Status Quo Plus model does not ameliorate the weaknesses of the current arrangements outlined in the preceding section nor does it meet the essential components of an optimal system identified at paragraph 1.1.6. Moreover, we do not consider that the amendments to existing arrangements resolve the procedural (and cultural) problems with existing arrangements. A comparative table of the key features of the Status Quo Plus model with the recommended model follows at 1.13. Detailed analysis is at Chapter 9.

1.7. Recommended model

1.7.1. The Pathway to Change strategy identified that our people systems and processes govern a lot of what we actually do every day and translate our cultural principles into the routine ways we experience life in Defence. In recommending a new model for inquiry, investigation and review, the Re-Thinking Systems Review has reflected on the following statements of cultural intent:

- **On operations and beyond:** Building our organisation is as important as delivering on operations. We act speedily, with consistency, discipline and clarity. Our reputation for providing sound, frank advice is well-earned, valued and carefully maintained. People know they can trust us to do the right thing and do it well.

- **Our organisation:** We are accountable for our actions. We are outward and forward looking, always seeking to learn better ways of doing things, and to improve our professionalism and performance in all areas. We connect across our expert Services and Groups to deliver more than any part can by acting alone. Our common purpose and strong relationships make us agile, adaptable, collaborative, and aligned to deliver maximum effect.6

1.7.2. This Stage B Report recommends a conceptual model for each phase of the decision making framework described in paragraph 1.3.4. If implemented, the recommended model would lead to reform of policy, procedure and structure. However, at its core, the model is about achieving the cultural change required by the Pathway to Change strategy. The reforms ask the organisation to value, resource and support the action taken immediately when an incident becomes known as much as it resources ‘damage control’ functions.

1.7.3. The recommended model shifts focus back to the decision maker and the decision. The model does not propose to alter current decision making structures, but rather aims to support decision makers to make their required decisions (noting that not all decisions are presently made by commanders and line managers). Front loading support will prevent unnecessary damage to our people and our organisation and reduce the amount of resources directed to managing poorly-made decisions and their consequences (including legal actions, Parliamentary and media scrutiny, correspondence and ministerial briefings).

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6 Defence Committee (Department of Defence), *Pathway to Change: Evolving Defence Culture (A Strategy for Cultural Change and Reinforcement)*, 7 March 2012 (Pathway to Change strategy), para 1.1
1.7.4. A comparative table of the key features of the Status Quo Plus model with the recommended model follows at 1.13. Additionally, a hypothetical illustration has been included in Chapter 9 to provide a narrative of how the recommended model would operate in practice across the four phases of the decision making framework.

1.7.5. **Recording, Reporting and Initial Assessment.** We propose a single, standardised recording, reporting and assessment mechanism that would operate across Defence for all trigger events regardless of subject matter. Ideally this would be supported by an enterprise-wide, ICT-based tool for recording, reporting and case management that would prompt commanders and line managers for only the information necessary for the incident type(s).

1.7.6. Trigger event reports would be simultaneously submitted to the relevant chain of command and a single Defence assessment and reporting area. Completion of the required fields in the trigger event report would require the commander or line manager to provide details of the trigger event and their proposed course of action as applicable. It would therefore constitute an initial assessment without the administrative burden of completing additional paperwork such as currently required through the Quick Assessment process. Subsequent forms can be completed to update details and assessments as a matter progresses.

1.7.7. The single Defence assessment and reporting area would be responsible for providing consistent advice and assistance to commanders and line managers, where requested. It would assess reports based on agreed whole-of-Defence priorities, and consider whether decision makers outside the ordinary chain of command should also be involved in managing the trigger event. It would provide visibility to the Secretary and CDF.

1.7.8. Importantly, consolidating functions would provide support to the working level in Defence, as commanders and line managers will have much simpler processes to follow and greater clarity as to where they can seek consistent advice and assistance. This will empower them to focus on managing trigger events appropriately rather than wasting time complying with unnecessary, inconsistent and duplicate administrative burdens. This is a deliberate departure from models built by specialists in silos, which have inadvertently imposed undue burden and complexity on users.

1.7.9. **Fact Finding.** Fact finding in Defence would be largely conducted on the basis of ordinary command and management authority, with statutory fact finding (such as inquiries under the Defence (Inquiry) Regulations 1985) reserved for large scale inquiries only when authorised by the Secretary, CDF, the Service Chiefs or the Group Heads. This would allow decision makers to obtain only the information necessary to make decisions, and to expend resources proportionate to the matter being investigated. Simplified fact finding would reduce the need for specialists (such as lawyers and Service Police) to be involved in routine matters, would allow local people and resources to undertake such fact finding, and would free up specialists to focus on supporting complex, high stakes decision making. Easy to use guidance for non-statutory fact finding would be developed, consistent with the recommendations of the Inspector General ADF’s 2011 Review of the Management of Incidents and Complaints in Defence including Civilian and Military Jurisdiction.
1.7.10. A Defence investigation area would facilitate the provision of professional investigators in cases where a Group or Service requires specialised support, or where there are decision makers from multiple Groups and Services. The recommended model proposes that the Defence investigation area own all Defence professional investigative capability except the Service Police capability. Importantly, the intention is to provide an investigation service to commanders, line managers and other decision makers according to whole-of-Defence priorities. The priorities would be set by the Secretary and CDF, informed by Service Chiefs and Group Heads.

1.7.11. The Re-Thinking Systems Review does not propose any changes to existing decision making responsibilities.

1.7.12. **Internal Review.** The Re-Thinking Systems Review proposes a single layer of formal internal review of decisions and actions that adversely affect individuals in Defence.

1.7.13. The APS Review of Action process would remain unchanged, although the recommended model would see a more holistic view of review applications from APS employees. The ADF redress of grievance process would be replaced with a single layer of ADF internal review. ADF members could apply for review of any Defence action or decision that relates to their ADF service. An ADF member’s commanding officer would indicate support (or otherwise) on the review application form. A single Defence internal review area separate from the chain of command would receive all applications for review from both APS employees and ADF members. Depending on the nature of the decision, the area would either undertake the review itself, or refer the application to the most appropriate reviewer.

1.7.14. Command and line management would retain a broad discretion to review earlier decisions and provide a remedy. Importantly, this review would not be an entitlement, nor would it delay access to external review. Ad hoc reviews or reviews undertaken by externally engaged consultants would cease unless authorised by the Secretary and CDF.

1.7.15. **External Review.** Credible and robust external review is essential for Defence to learn from errors, and to be accountable for decisions. It is an important safeguard for individuals. Equally, oversight and scrutiny of Defence decisions by an authoritative, robust external review agency that has the confidence of the public and the Parliament serves to promote the trust of the Australian community in the ADF and Defence. External review also offers greater finality on matters than can be achieved by internal reviews.

1.7.16. We propose working with government and the relevant agencies to bolster the Defence-specific external review processes. External review of decisions affecting ADF members should be provided by a Defence-dedicated, and adequately resourced, external agency which understands the unique nature of military service. Practically speaking, this could be achieved through a re-invigoration of the role of the Defence Force Ombudsman.

1.7.17. The external review body would also have the power to investigate Service-related deaths, receive complaints regarding professional investigators in Defence, maintain an inspection program in relation to activities in Defence with a
high risk of abuse (for example, training establishments) and conduct investigations into Defence at Defence’s request and at the direction of a Minister in the Defence portfolio.

1.7.18. In addition, the Re-Thinking Systems Review proposes that the jurisdiction of the Administrative Appeals Tribunal be expanded to allow it to undertake merits review of decision relating to ADF benefits and allowances which are based on objective criteria. This would remedy the present situation in which ADF members do not have a low-cost and accessible avenue to dispute decisions about statutory entitlements other than through the courts. Given the high volume of Defence decision making in this area and the impact on Defence families, trust in independent and effective review is important to Defence’s reputation including as an employer. This aspect of the model is completely severable.

1.8. PricewaterhouseCoopers analysis

1.8.1. Pursuing the recommended model or variations would require organisational effort, cost and some disruption to Defence. For that reason, the Re-Thinking Systems Review commissioned PricewaterhouseCoopers (PwC) to analyse the recommended model and its variations to identify risks and mitigation strategies. PwC’s work, which is at Annex L: PricewaterhouseCoopers analysis, provides an independent, comprehensive and disciplined analysis of the model to supplement the analysis of the Re-Thinking Systems Review.

1.8.2. PwC’s analysis identifies control gaps and risks in the recommended model and variations, and suggests measures to address them. It is clear from this analysis that the greatest risks in the recommended model lie in poor implementation. For the most part, the identified control gaps and risks can be addressed by: providing adequate resources to the proposed Defence assessment and reporting area, Defence investigation area and Defence internal review area; drafting clear policy guidelines; providing training to Defence staff; and using trend tracking and monitoring capability to understand and correct deficiencies.

1.8.3. This analysis must be referred to and considered by the implementation team. It will be important to adopt a disciplined approach to address the identified control gaps and risks in the implementation phase.

1.9. Implementation concept

1.9.1. The detail of implementation planning for the Re-Thinking Systems Review will necessarily depend upon the recommendations adopted. An implementation concept has been proposed at Chapter 10 which identifies a series of ‘quick wins’ and other aspects of the recommended model which would require more detailed implementation planning. The quick wins are relatively simply and could be implemented as interim measures using existing Defence legal staffing and resources.

1.9.2. Organisational change of this nature will require clear oversight and accountability by a dedicated implementation team headed by a senior officer with the ability to drive prioritisation, cooperation and resource allocation. This senior officer should have experience in change management, be of sufficient level to
engage at the required levels within and outside Defence, and have strong commitment to the changes inherent in the model to be implemented. We have proposed that the Chief Operating Officer would be well placed to lead this reform. The nature of the organisational changes proposed is significant and therefore the implementation team needs to be solely dedicated to undertaking this work.

1.9.3. Further, the magnitude of this reform will take time to implement. A formal review cycle should be embedded in the implementation strategy and discipline must be applied to consideration of any isolated proposals for reform outside of that cycle. A disciplined approach will also ensure that organisational resources and energy is targeted towards this fundamental reform and not dispersed among isolated (and potentially inconsistent) reforms.

1.10. Support to individuals

1.10.1. The functioning of the recommended model would be practically enhanced by the provision of effective support to individuals involved in, or who wish to enliven, these processes (for example, by making a report or seeking review). While individuals would normally obtain support or advice from their chain of command or line management in the first instance, other support arrangements external to the chain of command or line management would be available, including equity advisors, legal advice, SeMPRO (in the case of sexual misconduct), health services, chaplaincy and a range of counselling options.

1.10.2. While the focus of the Re-Thinking Systems Review is on decision making, that process has a significant impact on individuals and therefore it is essential that support arrangements are coordinated and coherent. Coordination is also required by the Pathway to Change strategy’s intent to enhance our people’s understanding of how to lodge and respond to complaints.

1.11. ICT feasibility study

1.11.1. The recommended model would operate most efficiently if supported by a single, whole-of-Defence Enterprise Recording, Reporting and Case Management System which has the capacity to receive reports of trigger events and track them through to resolution. As stated above, there are currently a number of electronic case management and reporting systems in use or under development in Defence. These are costly to develop and maintain, and most do not have the capability to share information. This means that data relating to a single trigger event is expected to (but may not) be entered into multiple databases, and makes data tracking and trend analysis difficult.

1.11.2. The Re-Thinking Systems Review has commenced work with Chief Information Officer Group to undertake a feasibility study into the viability of a whole-of-Defence system, including whether such could occur through building on one or more of the existing systems already used in Defence or whether a new system (or systems) would better meet Defence’s long-term needs.
1.12. Conclusions

1.12.1. A key conclusion of the *Re-Thinking Systems Review* is that the current arrangements facilitate overlapping, drawn-out investigations which delay meaningful action and frustrate rational outcomes.

1.12.2. A culture of reporting must have at its foundation a system that supports timely and professional action when a report of a trigger event is made. The *Re-Thinking Systems Review* proposes reforms to policy, procedure and structure, but at their core the reforms are about changing culture.

1.12.3. Significant resources are presently invested in functions that respond to internal and external concerns with decisions already made. Those functions include staff work to support internal review of decisions, legal action involving the Department, responses to ministerial representations, questions on notice and Parliamentary hearings and media enquiries among others.

1.12.4. If the reforms were adopted, the organisation would put in place a coherent system to resource, support and explicitly value the action taken by commanders and line managers immediately when an incident becomes known.

1.12.5. The *Re-Thinking Systems Review* argues that resources directed to support frontline command and line management decision making may, over time, reduce the load on those ‘reactive’ functions, improve outcomes for Defence and individuals and reflect Defence’s cultural intent.

1.12.6. The lesson of decades of previous inquiries and review into Defence’s arrangements for inquiry, investigation and review is that further incremental, piecemeal change will not deliver a simple, coherent and effective system that supports individuals, commanders and line managers.
1.13. Side by side model comparison: Re-Thinking Systems Review recommended model vs Status Quo Plus

1.13.1. The following table provides a side by side comparison of the key features of the recommended model and the Status Quo Plus model.

<table>
<thead>
<tr>
<th>Phase 1: Recording, Reporting and Initial Assessment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy guidance</strong></td>
<td>Status Quo Plus model: There would be 16 policies outlining requirements for commanders and line managers to record and report trigger events. Recommended model: There would be one policy outlining requirements for commanders and line managers to record and report trigger events.</td>
</tr>
<tr>
<td><strong>Specialist areas receiving reports</strong></td>
<td>Status Quo Plus model: Commanders and line managers would be required to determine which of 12 different specialist areas in Defence should be provided with a report. Recommended model: Commanders and line managers would provide all reports to one specialist area in Defence.</td>
</tr>
<tr>
<td><strong>Reporting to chain of command</strong></td>
<td>Status Quo Plus model: Commanders and line managers would be required to report some trigger events to their chain of command. Recommended model: All trigger events would be reported to the chain of command and Defence assessment and reporting area simultaneously.</td>
</tr>
<tr>
<td><strong>Reporting form / mechanism</strong></td>
<td>Status Quo Plus model: Commanders and line managers would be required to determine which, if any, of nine different forms / mechanisms for reporting must be used. In several cases, the form / mechanism would not be specified. Recommended model: All trigger events reported to the chain of command and Defence assessment and reporting area would be reported on a single form, or through a single mechanism.</td>
</tr>
<tr>
<td><strong>Reporting threshold</strong></td>
<td>Status Quo Plus model: The threshold for reporting a trigger event to a specialist area would depend on which reporting obligations apply, and would often be defined in terms of seriousness. As seriousness is a matter of personal judgment, commanders and line managers would be required to determine the seriousness of a trigger event themselves in order to determine their reporting obligations. Recommended model: The threshold for reporting to the chain of command and Defence assessment and reporting area would not require personal judgment as to the seriousness of the trigger event. Instead, all trigger events in listed categories would be reported.</td>
</tr>
<tr>
<td><strong>Recording requirements</strong></td>
<td>Status Quo Plus model: Depending on the nature of the trigger event, trigger events would be recorded through Quick Assessments (where a Quick Assessment is required), or in accordance Service-specific directions and the Defence Records Management policy. Recommended model: All trigger events would be recorded on a single form and supplementary forms would be completed as a matter progresses.</td>
</tr>
</tbody>
</table>

**Phase 2: Fact Finding**

| Non-statutory fact finding at unit / team level | Status Quo Plus model: Commanders and line managers could appoint a 'routine inquiry' and conduct it in accordance with the process outlined in ADFP 06.1.4 Administrative Inquiries Manual and general administrative law principles. Recommended model: Commanders and line managers would conduct whatever fact finding they considered proportionate and reasonable in light of their information needs and what decisions need to be made. |
| **Statutory fact finding at unit / team level** | Commanders and line managers would be required to appoint an ‘Inquiry Officer inquiry’ under Part 6 of the Defence (Inquiry) Regulations 1985 for ‘complex and serious’ matters. | Commanders and line managers would not appoint any statutory inquiries. |
| **Use of professional investigators at unit / work area level** | Commanders and line managers could locate and appoint an Inquiry Officer with training from the Inspector General ADF’s office in the conduct of an administrative inquiry. | Commanders and line managers could request that the Defence investigation area provide a professional investigator (or investigation team) to conduct fact finding to inform their decisions. The Defence investigation area would assess this request and facilitate the provision of appropriately skilled investigators as appropriate in accordance with whole-of-Defence priorities. |
| **Professional investigation structures** | Professional investigations in Defence would be conducted by multiple areas. | Professional investigations in Defence would be coordinated and conducted by a single Defence investigation area, except for professional investigation capability retained by the Service Police. |
| **Prioritising investigations** | Each specialist area would conduct investigations in accordance with their own priorities and limited by its own resources. | The Defence investigation area would conduct investigations in accordance with whole-of-Defence priorities set by the Secretary and CDF, in consultation with Service Chiefs and Group heads. |
| **Statutory inquiries** | There would be six species of statutory inquiry available in Defence, which could be appointed at various levels (from commanding officers to Ministers). There would be no central coordination of statutory inquiries. The Inspector General ADF would maintain an administrative inquiry tracking system. | There would be two flexible species of statutory inquiry, which could be appointed by senior leadership within Defence or by a Minister. The Defence investigation area would act as a Secretariat for all statutory inquiries. |

### Phase 3: Internal review

| **APS Review of Actions** | APS employees would have access to the APS Review of Actions process. These would be submitted to the Directorate of Complaint Resolution for consideration. | APS employees would have access to the APS Review of Actions process. These would be submitted to the Defence internal review area for consideration. |
| **ADF members’ right to apply for review** | ADF members would be able to obtain review of any decision, action or omission they consider to be adverse to them, where the adverse effect can be redressed by someone in Defence. | ADF members would be able to obtain review of any decision, action or omission they consider to be adverse to them, where the adverse effect can be redressed by someone in Defence. |
| **Layers of review for ADF members** | There would be two formal layers of review. Command and line management would also retain discretion to review matters outside of the formal process. The Inspector General ADF would have discretion to review ‘matters that relate to military justice’. | There would be one formal layer of review. Command and line management would also have discretion to review matters outside of the formal process. |
### Role of Commanding Officer

The first layer of formal internal review would be review by a commanding officer. If the commanding officer made the original decision and there is no new information, or if the commanding officer does not have the authority to grant the redress sought, the commanding officer must refer the matter to the ADF member’s Service Chief or an alternative authority. Otherwise, the commanding officer must inquire into the complaint and determine appropriate action in response.

Commanding officers would receive applications for review from ADF members, and forward them to the internal review area. The commanding officer may indicate support (or otherwise) for the review application on the review application form.

### Role of internal review area re ADF internal review

The Directorate of Complaint Resolution would provide advice to commanding officers about the commanding officer layer of review. For matters referred to a Service Chief, the Directorate would prepare a brief for the Service Chief (or their delegate).

All review applications would be forwarded to the Defence internal review area for allocation to a review delegate with the authority to re-make the decision under review. Where appropriate, review delegates would be appointed within the Defence internal review area, although some delegations would necessarily remain within the Services.

### Secretary and CDF discretionary review

Command and line management would have a broad discretion to review earlier decisions and provide a remedy.

Command and management would have a broad discretion to review earlier decisions and provide a remedy.

### Phase 4: External review

**Defence-specific external integrity agency**

The Defence Force Ombudsman may investigate complaints relating to an ADF member’s service and make recommendations to Defence. The Defence Force Ombudsman and Commonwealth Ombudsman would be the same person. The Ombudsman’s office no longer has any resources quarantined for Defence Force Ombudsman functions.

The proposed external review agency could investigate complaints relating to an ADF member’s service and make recommendations to Defence. The agency would have sufficient resources dedicated to its Defence functions, whether or not the agency was part of the Commonwealth Ombudsman’s office.

**Discipline matters**

The Defence Force Ombudsman would not have jurisdiction to investigate discipline matters.

The external review agency would have jurisdiction to investigate discipline matters.

**Pay and conditions**

The Defence Force Ombudsman could investigate complaints relating to ADF pay and conditions and make recommendations to the CDF.

ADF members could apply to the Administrative Appeals Tribunal for review of decisions relating to pay and conditions. The Tribunal would have power to re-make those decisions where they are incorrect (noting that this is not essential to the implementation of the Phase 4 recommended model).
Recommendations

1.14. Phase 1: Recording, Reporting and Initial Assessment

**Recommended model:** a single recording, reporting and initial assessment mechanism; a low recording and reporting threshold; reporting simultaneously to the chain of command / line management and a Defence assessment and reporting area.

1. That you agree that:

   (a) Defence requires a single Defence-wide reporting policy which, by being easy to use and standardised, encourages recording, reporting and assessment of trigger events by commanders and line managers.

   (b) The threshold for recording and reporting trigger events must be low in order to promote a reporting culture in Defence, allow leadership visibility and trend analysis and improve Defence record keeping about trigger events.

   (c) Essential information about trigger events must be reported simultaneously to the chain of command / line management and a single Defence assessment and reporting area for whole-of-Defence purposes, including visibility by the Secretary and CDF as required, even if the responsible Service or Group does not require assistance in managing the event.

   (d) The single area must support commanders and line managers in managing a trigger event, as necessary, but must not supplant command or other decision making responsibility and accountabilities. Decision makers must remain responsible for making the decisions that are within the scope of their delegated authority (noting that not all decisions rest with commanders and line managers, or even the Services and Groups).

   (e) Recording and reporting of trigger events should occur through an Enterprise Recording Reporting and Case Management system, in order to foster transparency in decision making and actions, provide increased visibility for commanders, line managers and other decision makers, improve data collection and accessibility throughout Defence, increase opportunities for trend analysis, and generally improve recording and reporting of inquiry, investigation and review activities.

2. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for recording, reporting and initial assessment of trigger events in Defence.
1.15. Phase 2: Fact Finding

Recommended model: the vast majority of fact finding be non-statutory; statutory inquiries be limited to high-level inquiries; a Defence investigation area ‘own’ and manage all professional investigative capability (with the exception of the Service Police organisations).

3. That you agree that:

(a) The purpose of fact finding in Defence is to support internal decision making by commanders, line managers and others, as opposed to being a means of appeasing public or other concern.

(b) Defence requires simple, effective and proportionate fact finding mechanisms to support informed decision making by commanders, line managers and other Defence decision makers. Simplified arrangements would allow most fact finding to be undertaken using local, organic capability, reducing the need for specialist training or assistance.

(c) Defence requires a dedicated professional investigative capability, which is ‘owned’ by a single position and comprises ADF members and APS employees with both generalist and specialist skills, to support some decision making by commanders, line managers and others.

(d) Defence requires a coordinated approach to the setting of priorities and the allocation of resources in relation to professional investigative capability in order to reduce parallel investigations into a single matter (even where there are different evidence requirements). The priorities must be set by the Secretary and CDF, informed by Service Chiefs and Group Heads.

(e) The Services should retain their current Service Police capability, focusing primarily on single-Service requirements with a minor investigative capability.

4. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for fact finding in Defence.

1.16. Phase 3: Internal Review

Recommended model: a single layer of review for ADF members and APS employees; a single Defence internal review area receive all review applications; APS Review of Actions remain the same; ADF members to submit review applications through their commanding officer.

5. That you agree that:

(a) Delays caused by multiple layers of internal review are a source of unfairness to individuals. Defence should move to government best practice for the management of internal review of decisions and actions, by entitling ADF members to a single, expeditious layer of review (noting that a single layer of review for ADF members would not reduce the rights...
of ADF members). This is consistent with the APS Review of Actions model.

(b) The purpose of internal review is to re-consider and, where appropriate, re-make Defence decisions or actions (rather than to make a recommendation only). Internal review decision makers must have the authority to re-make decisions.

(c) Commanding officers should have an advocacy role regarding members under their command during internal review (even where decisions are not made within the Service) in recognition of their special role in relation to ADF members under their command.

(d) ADF members must be able to obtain reasons for decisions that are reviewable through the internal review process.

(e) Defence requires a single internal review area separate from the chain of command to receive internal review applications from APS employees and ADF members and, depending on the nature of the decision that is being reviewed, either review the decision itself or direct the application to the most appropriate internal review decision maker.

(f) Defence decision makers, including senior leadership, must have the discretion to review earlier decisions and provide a remedy, outside formal internal review procedures. This includes the ability of the Secretary and the CDF to direct expert fact finding into sensitive and complex matters.

(g) ADF members seeking internal review should not ordinarily be provided legal support in preparing an application for internal review unless there are exceptional circumstances.

(h) APS employees currently have a legislative entitlement to a single layer of internal review and this entitlement is sufficient.

6. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for internal review in Defence.

1.17. Phase 4: External Review

| **Recommended model:** Merit Protection Commissioner continue to review applications from APS employees; a Defence external integrity agency review applications from ADF members and conduct inquiries into Defence matters; the Administrative Appeals Tribunal review decisions relating to ADF benefits and allowances. |

7. That you agree that:

(a) It is in Defence’s interests that external review mechanisms have the confidence of the public and the Parliament. Credible and robust external review mechanisms are essential for transparent and independent oversight. They are also more likely to deliver conclusive resolution of matters, reduce reliance on expensive, ad hoc reviews and support Defence’s cultural intent by providing ongoing feedback.
(b) All decisions affecting ADF members, including command decisions, should be subject to external review to ensure adequate safeguards for individuals and effective oversight of Defence as a whole. Multiple avenues for internal review are not an effective substitute for credible and robust external review.

(c) The advantages inherent in existing external review mechanisms (such as the Defence Force Ombudsman) are not being realised due to inadequate resourcing and Defence’s continued resort to ad hoc reviews.

(d) External review of decisions affecting ADF members should be provided by an external Defence-dedicated agency which understands the unique nature of military service. This agency would make recommendations to Defence.

(e) The Defence-dedicated external review agency should have power to conduct inquiries into Defence matters at the request of the Government, the Department or on its own motion.

(f) Public accountability and transparency in relation to Service-related deaths may be more effectively provided through the operations of an external integrity agency, given that fact finding to inform decision making in Defence following a death does not always require the level of formality currently provided through a CDF Commission of Inquiry.

(g) The Administrative Appeals Tribunal should undertake external review of decisions regarding allowances and other benefits, given that such decisions are based on the satisfaction of statutory criteria. The Tribunal has power to re-make decisions.

(h) APS employees currently have access to external review for all decisions affecting their employment, and these arrangements are sufficient.

8. Based on the above principles, Head Defence Legal, Head People Capability and Chief Audit Executive recommend that you endorse the recommended model as the preferred model for external review of Defence decisions.

1.18. Implementation

9. That you agree that Defence requires discipline both in commissioning future reviews and in accepting internally and externally generated recommendations so that the coherence of the recommended model is not undermined during and after implementation.

10. That you agree that a formal review cycle at programmed intervals is an effective means of applying this discipline after implementation, coupled with continuous improvement processes internal to the recommended model.

11. That you direct the Chief Operating Officer to establish a dedicated and appropriately resourced and skilled implementation team, under his/her oversight, to commence work immediately.

12. That you direct Head Defence Legal to commence work immediately on the ‘quick wins’ identified in the implementation concept in Chapter 10.4.
13. That you direct the Chairs of the Military Justice Coordination Committee to pursue simplification of the summary discipline system, having regard to the three options outlined in Annex G: Specialist roles and processes.

14. That you direct DEPSEC DP to coordinate with Services and Groups to develop a coherent approach to individual support in parallel with the implementation of the Re-Thinking Systems Review recommended model.