



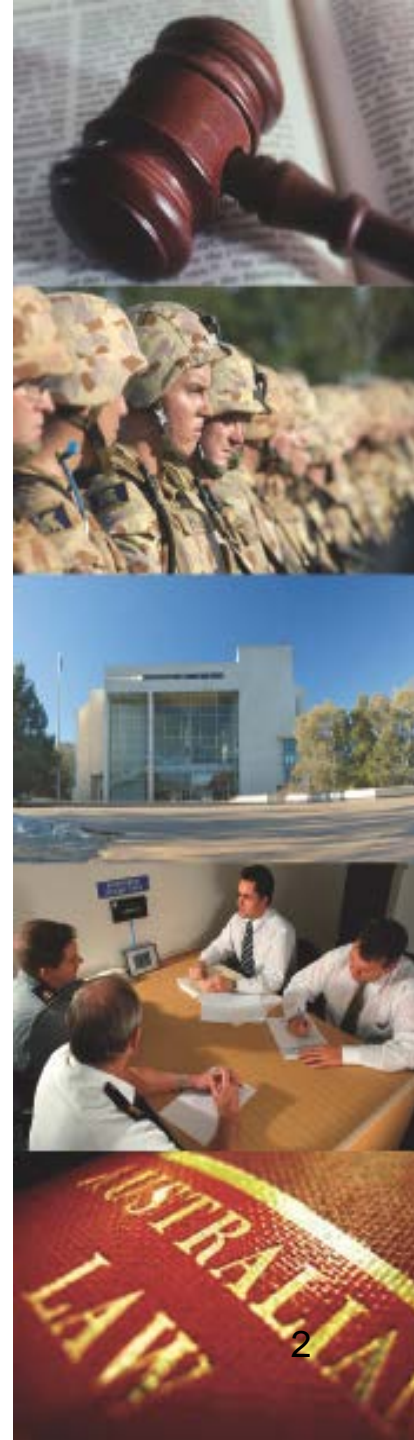
Sexual Assault and Misconduct and the ADF's Military Justice System

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Director-General ADF Legal Service



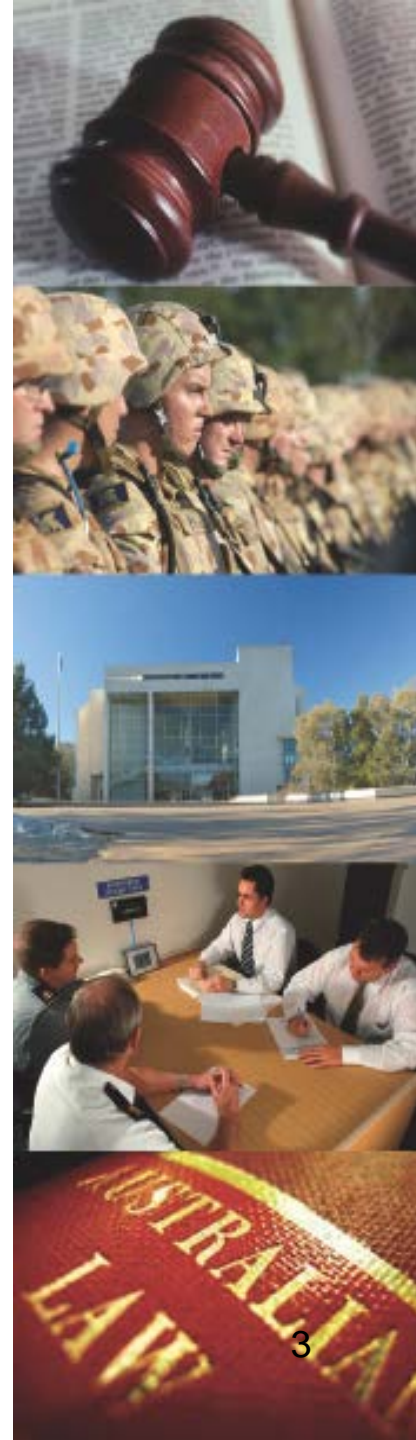
Overview

- 2011: Seven cultural reviews into the ADF
- Cultural reviews considered wide range of topics, from use of alcohol and social media to the treatment of women in the ADF
- March 2012: launch of *Pathway to Change: Evolving Defence Culture*, creating 175 items for action
- At 5 August 2013:
 - 114 action items have been finalised
 - 15 key recommendations completed
 - 86 of the 160 recommendations completed
 - 21 recommendations have been closed



Outline

- Overview of key differences between the military justice systems of the United States and Australia
- Reforms made to the Australian military justice system in 2003 and 2006
- Overview of ongoing reform in response to sexual assault and misconduct in the Australian Defence Force (ADF)



Australian Military Discipline System

- Current military discipline system for the ADF: the *Defence Force Discipline Act 1982* (DFDA)
- In force since 1985
- ADF equivalent to the Uniform Code of Military Justice



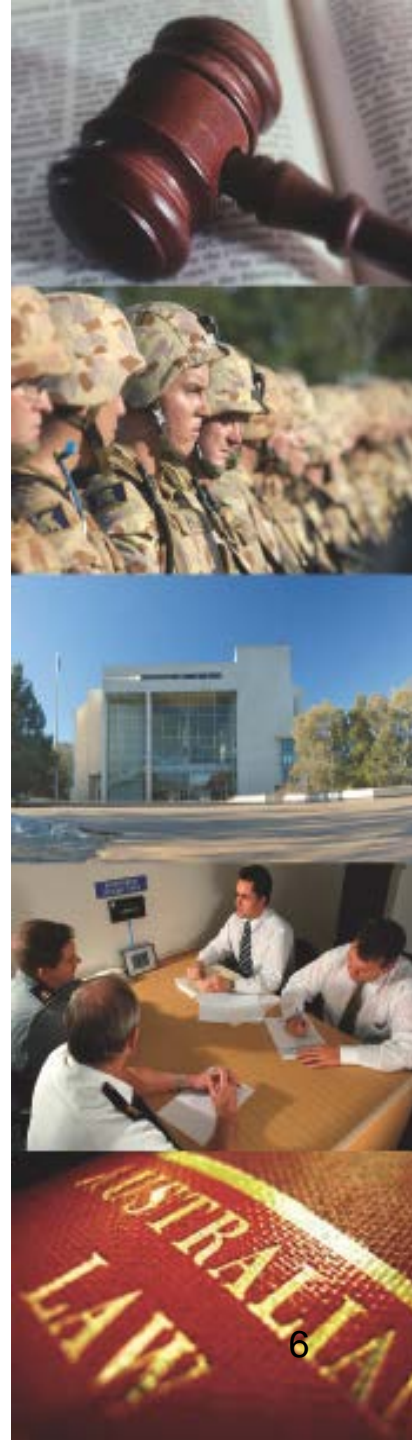
Key Differences

- The DFDA has a narrower jurisdiction
- **‘Substantial purpose test’:**
disciplinary proceedings under the DFDA need to ‘reasonably be regarded as substantially serving the purpose of maintaining or enforcing service discipline’ in order to be valid
- Unlike the UCMJ, jurisdiction under the DFDA is not based on the status of an individual as a service member



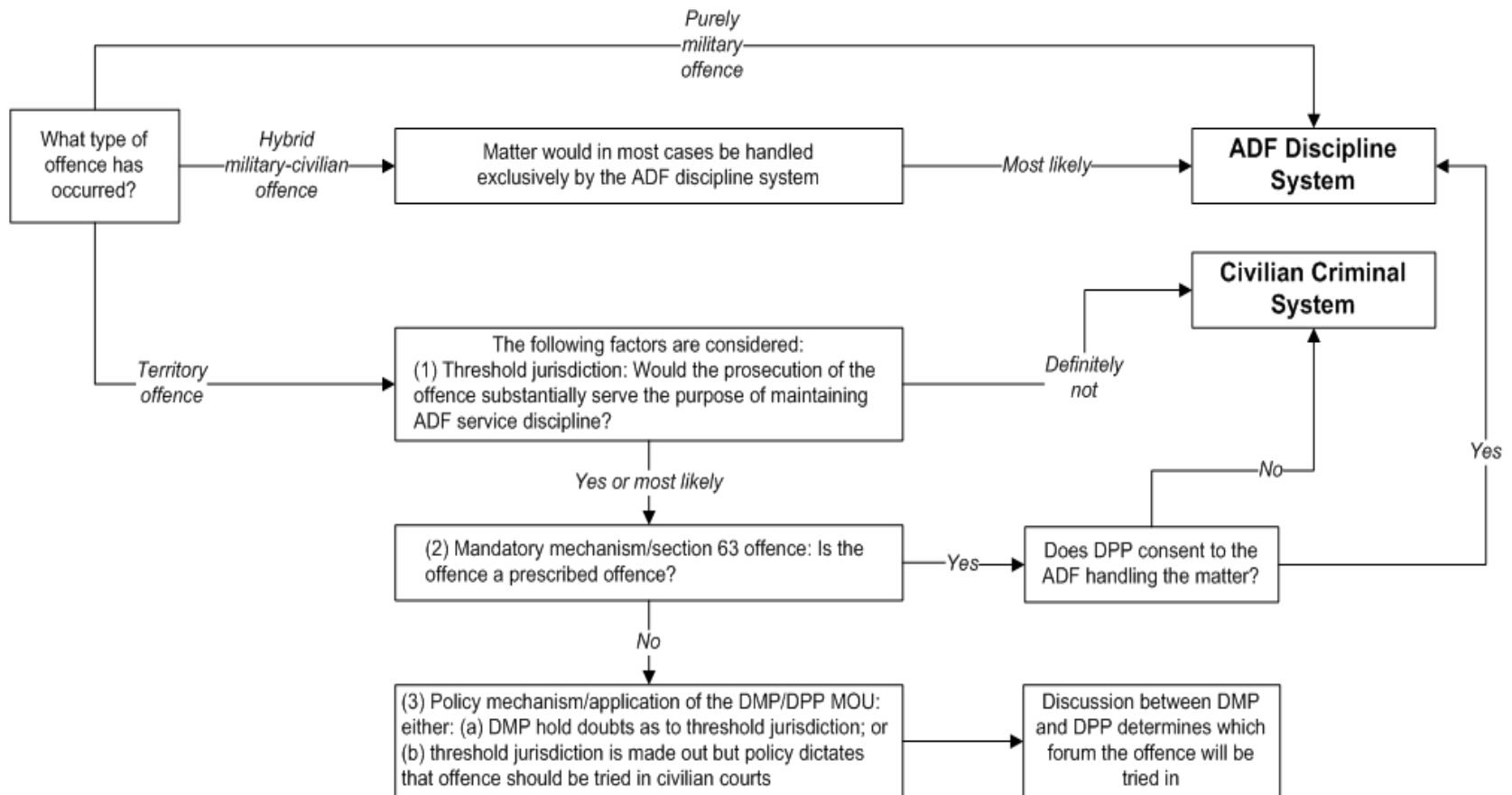
Key Differences

- The DFDA is complementary to the civilian Australian criminal justice system
- Very serious offences – including most sexual assaults – are generally dealt with by civilian authorities
- The consent of civilian prosecution authorities is required to prosecute most serious offences, including sexual assault, under the DFDA
- Administrative action remains open to command
- Less serious sexual offences can be tried under the DFDA



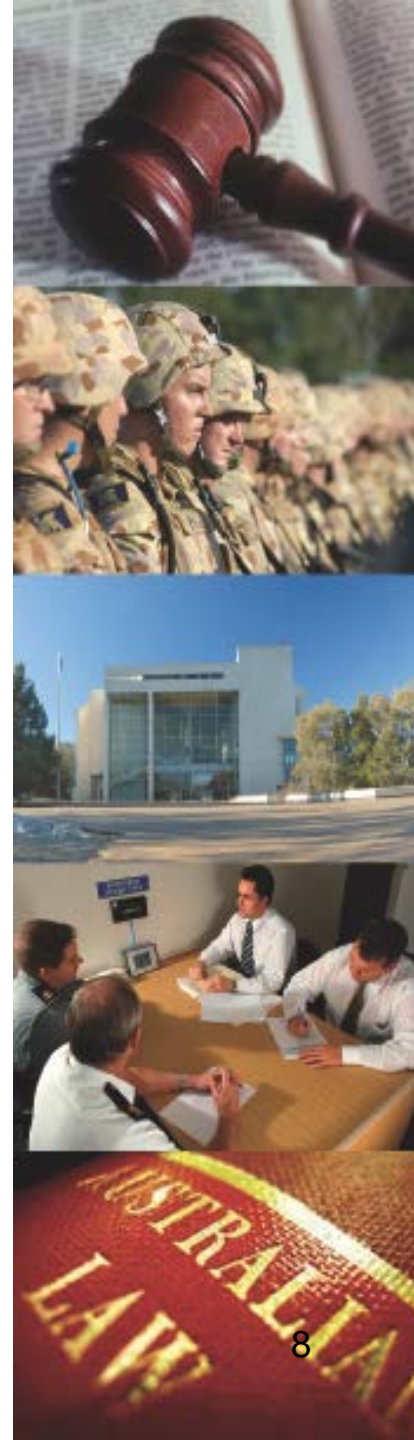
Key Differences

Chart: Process for determining whether the ADF or civilian authorities will exercise jurisdiction



2003 and 2006 reforms

- Most recent reforms started in the mid-1990s
- The key aims:
 - increase impartiality, independence
 - fairness of military justice system
- The focus of the reforms was the role played by convening authorities



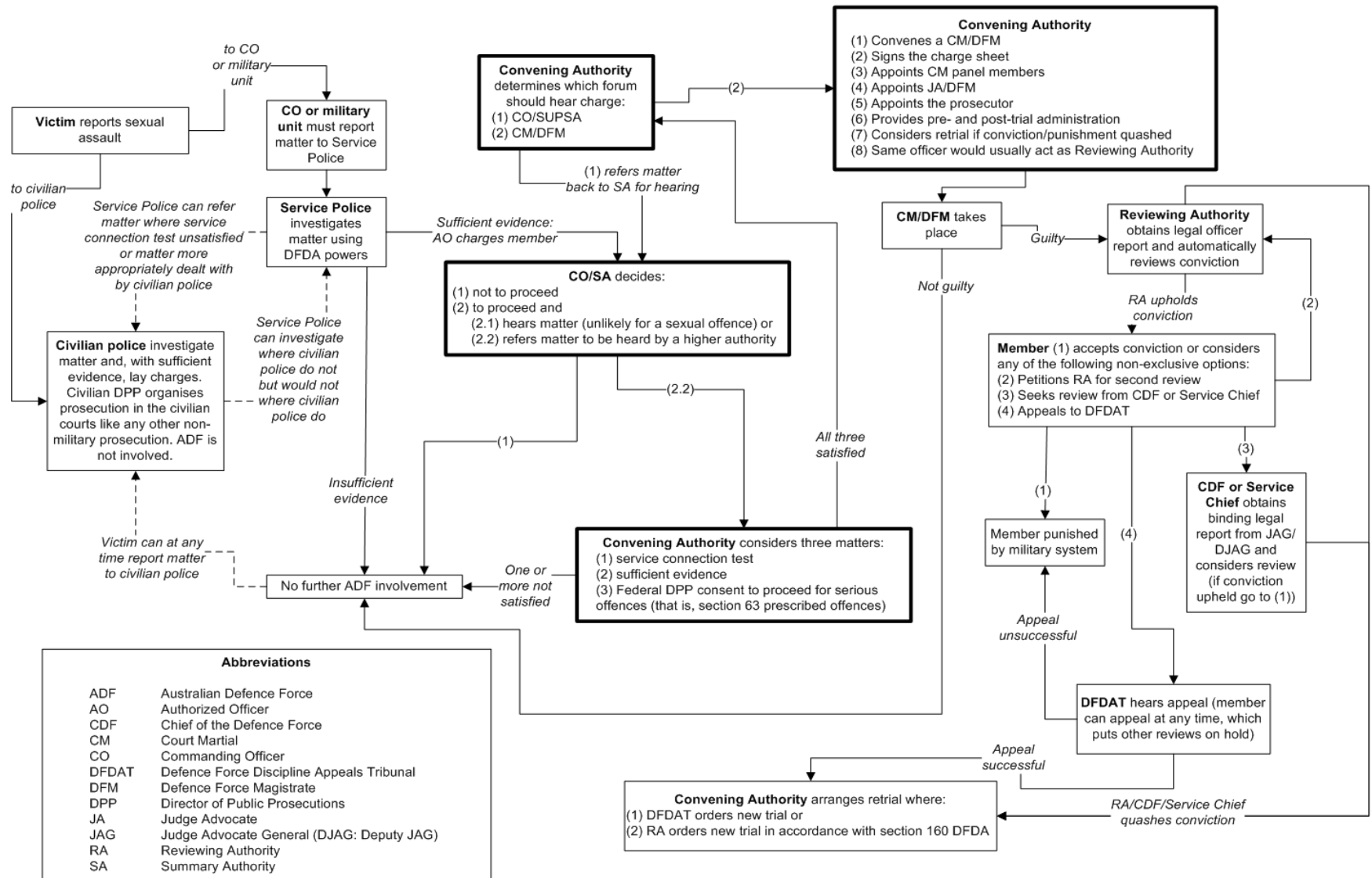
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2003 and 2006 reforms

- Before the reforms, a convening authority in the ADF could:
 1. determine whether there should be a trial;
 2. determine the nature of the tribunal and the charges;
 3. select the Defence Force magistrate or judge advocate and court martial panel members;
 4. select the prosecutor; and
 5. as the Reviewing Authority, review the proceedings

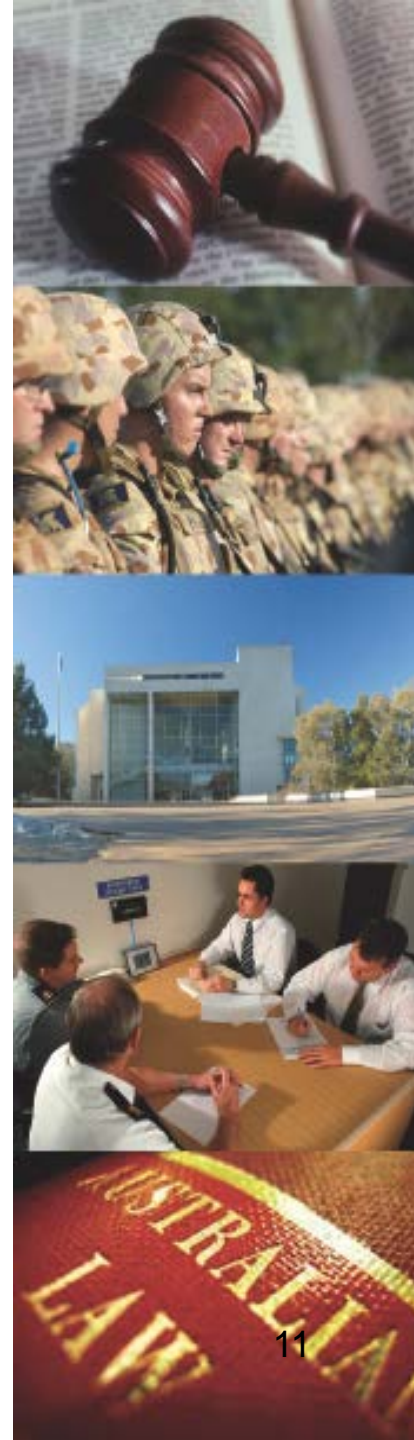


Pre-2006 Handling of an ADF Sexual Offence



2003 and 2006 reforms

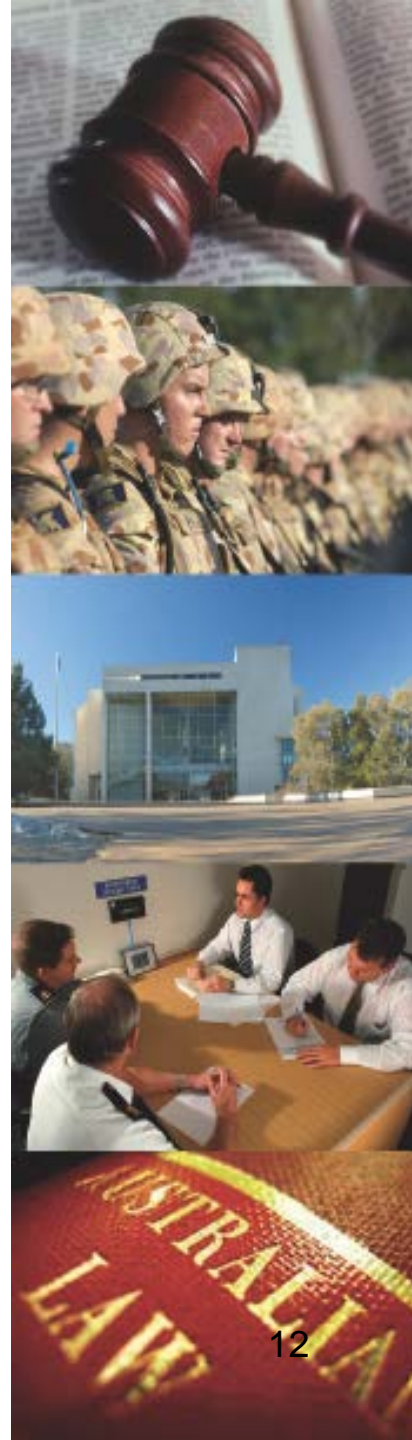
- Gradual move to abolish the position of the convening authority, over the last decade
- Starting point: the 1999 - 2002 policy-based reforms:
 - Prosecution policy introduced for convening authorities
 - Convening authorities no longer permitted to be a reviewing authority for a trial they convened
 - Convening authorities no longer able to select the judge advocate or Defence Force magistrate
 - Established the position of the Judge Advocate Administrator



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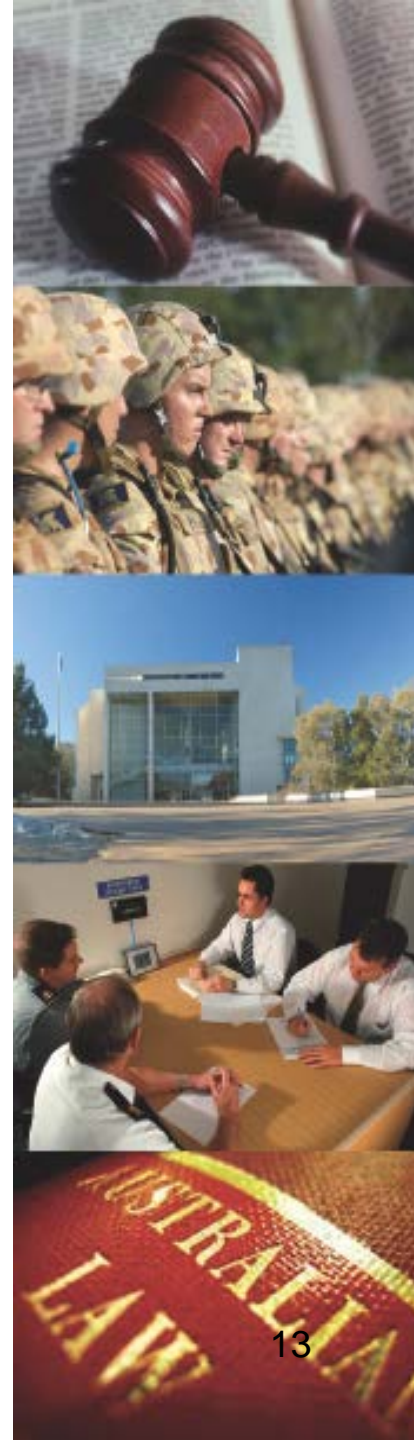
2003 reforms

- **In 2003:** the 1999 - 2002 policy changes were given legislative force
- The DFDA was amended to ensure:
 - the impartiality of a reviewing authority
 - the selection of members of the court martial panel and the judge advocate, or a Defence Force magistrate, would be made by the Judge Advocate General
 - the creation of the position of the Chief Judge Advocate, as a statutory appointment
 - convening authorities were required by legislation to excuse themselves where actual or perceived bias existed
- A new position was also created: the Chief Judge Advocate



2006 reforms

- The 2006 reforms abolished convening authorities
- The responsibilities of the convening authority were transferred to the:
 - Director of Military Prosecutions
 - Registrar of Military Justice; and
 - Superior Authorities
- A new position was created: the Director of Defence Counsel Services



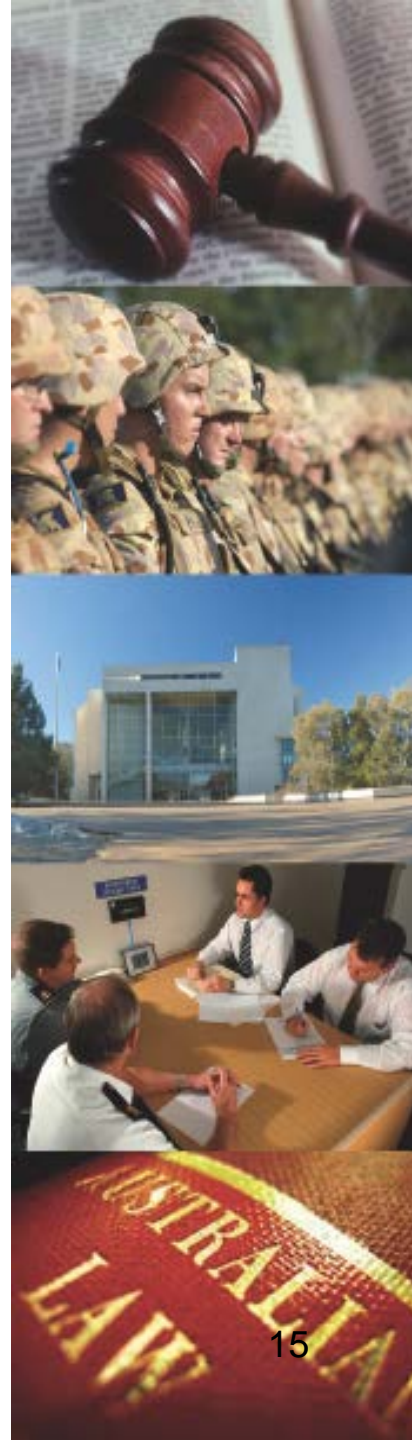
Basis for Reforms

- Two factors influenced reforms:
 - Decisions from superior courts in comparable jurisdictions (UK and Canada) relating to the fair trial rights of service members
 - Anecdotal evidence indicating that the Australian military justice system needed structural reform to lessen the role played by command



2006 Reforms – the New Positions

- **Director of Military Prosecutions:** given the power to decide what cases to prosecute at the court martial and Defence Force magistrate level, and who the prosecutor would be
- **Registrar of Military Justice:** given the power to choose the panel members on a court martial, at random
- **Superior Authorities:** created to represent the service interests in relation to the decision to prosecute
- Command input into the discipline system was retained through **Superior Authorities**

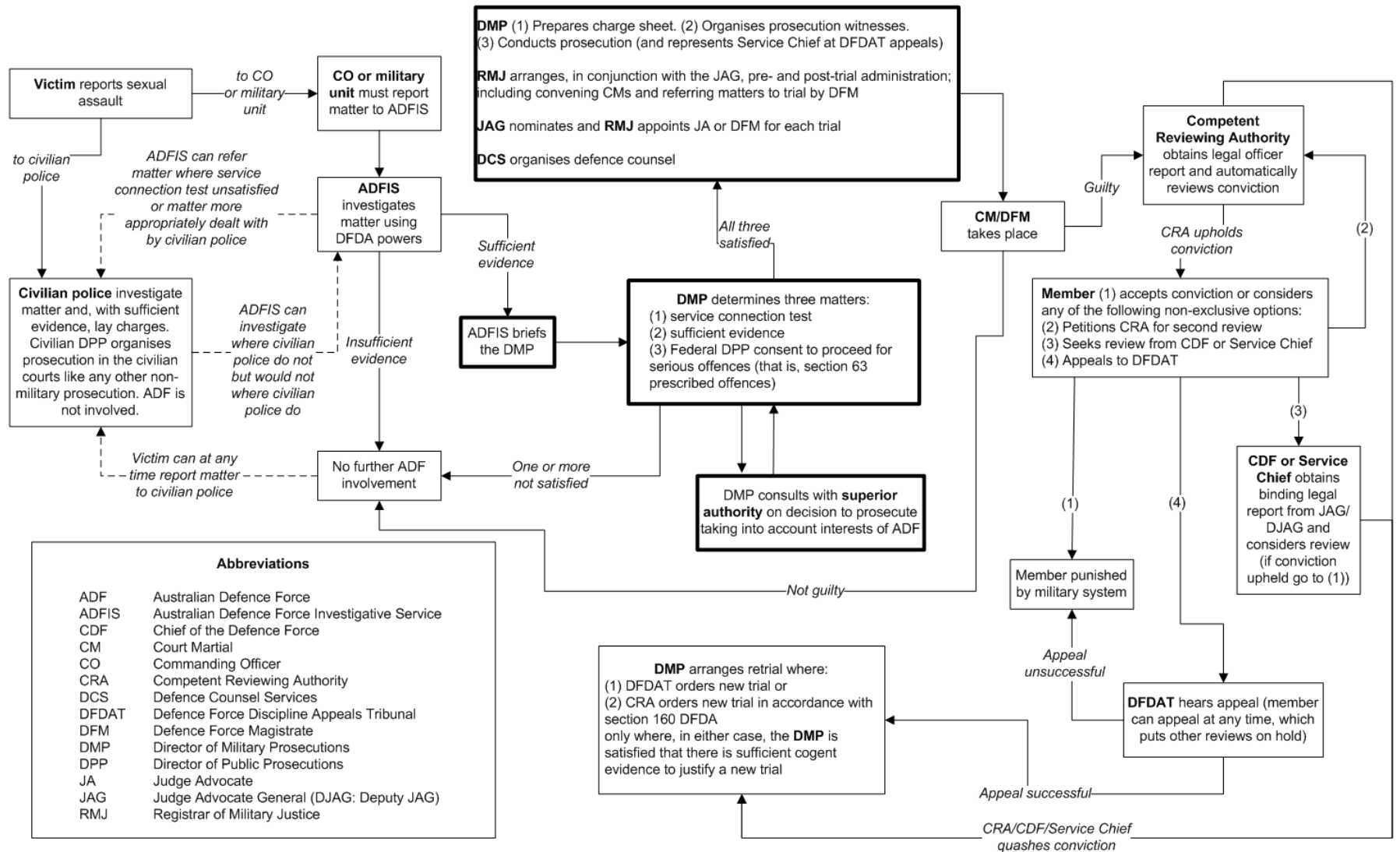


2006 reforms

- Director of Defence Counsel Services established to provide legal support to accused members
- ADF military police given power to independently and directly recommend serious charges to the Director of Military Prosecutions

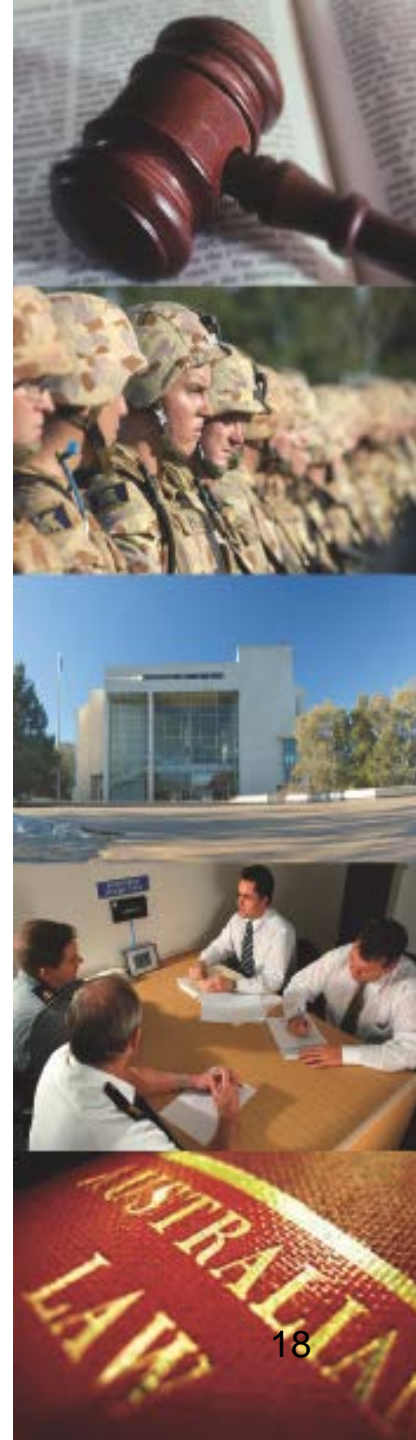


Post-2006 Handling of an ADF Sexual Offence



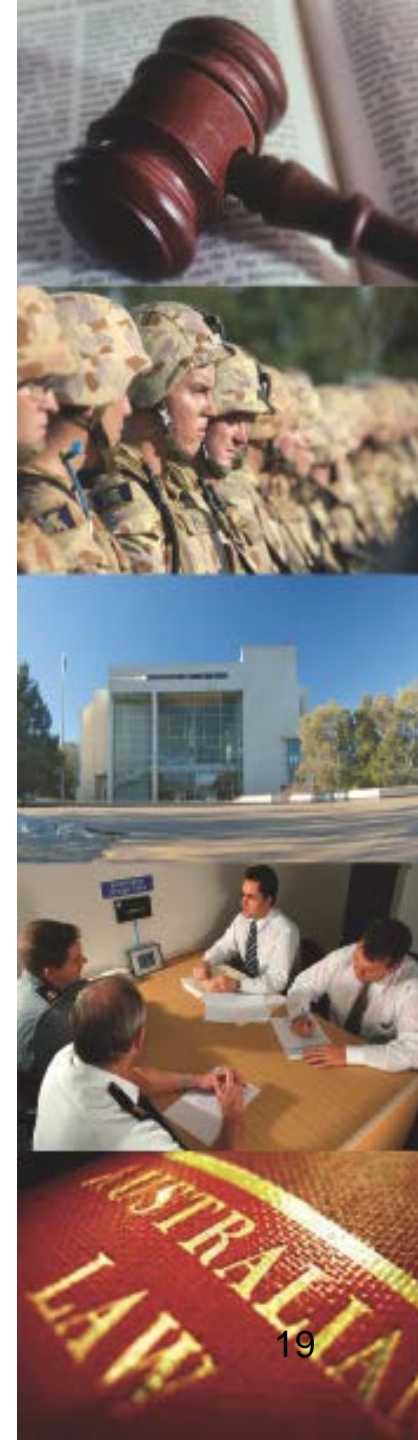
2003 and 2006 reforms

- Have they been successful?
- Street/Fisher Review in 2008: the reforms enabled the Australian military justice system to deliver impartial, rigorous, and fair outcomes
- In the future, statistics will be available through the Sexual Misconduct and Prevention Response Office - SeMPRO



Ongoing Reform

- Review into the Treatment of Women in the ADF (2012)
- Sexual Misconduct and Prevention Response Office (SeMPRO) launched on 23 July 2013
- SeMPRO allows restricted disclosures and unrestricted disclosures to be made by victims of sexual assault or misconduct – similar to the United States Sexual Assault Prevention & Response Program



Ongoing Reform

- The Chief of the Defence Force has directed reform of the mechanisms available for dealing with the needs of victims
- Existing and proposed mechanisms:
 - evidence by video-link
 - further investigative training for military police
 - victim impact statements at trial
 - dedicated legal assistance for victims



Questions

