

# Inquiry into New Zealand Defence Force payments to officers seconded to the United Nations

This is an independent assurance report about an inquiry carried out under sections 16 and 18 of the Public Audit Act 2001.

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# Contents

Auditor-General's overview	5
<b>Part 1 – Introduction</b>	<b>9</b>
Why we carried out our inquiry	9
What we looked at	10
Our approach to naming individuals	11
Structure of the New Zealand Defence Force	11
How UN secondments fit in the New Zealand Defence Force's general work	13
Structure of this report	14
<b>Part 2 – New arrangements for seconding officers to the United Nations</b>	<b>15</b>
Changes to the United Nations' arrangements for seconded employees	15
Documents sent in 2000 by the Military Adviser	16
Background to the decision to provide accommodation assistance to seconded officers	17
Problems with the Personnel branch advice	18
Decision to provide accommodation assistance to seconded officers	19
Arrangements made for Officer 1's secondment	20
<b>Part 3 – Secondment of Officer 1, and preparing a policy for secondments</b>	<b>23</b>
Officer 1's secondment	23
Personnel branch's draft policy of May 2001	27
Comments and advice about the draft policy	29
Policy becomes part of Defence Force Orders	32
<b>Part 4 – Secondment of Officer 2, and continuing with the existing arrangements</b>	<b>33</b>
Arrangements made for Officer 2's secondment	33
Why Officer 2 did not declare her accommodation assistance	34
<b>Part 5 – Secondment of Officer 3, and amending the Defence Force Order</b>	<b>35</b>
Arrangements made for Officer 3's secondment	35
Efforts to prepare a policy that would comply with the United Nations' requirements	37
Reverting to the existing policy	39
Decision to pay Officer 3 accommodation assistance	41
<b>Part 6 – Secondment of Officer 4, and the Military Police's investigation and report</b>	<b>43</b>
Secondment of Officer 4	43
Why Officer 4 did not declare his accommodation assistance	44
Military Police's investigation and report	45
Charges laid against Officer 4	46
<b>Part 7 – Revoking the Defence Force Order</b>	<b>49</b>
Continued non-compliant arrangements for Officer 3	49
Defence Force Order revoked in June 2008	50
Repaying the United Nations' rental subsidies	50
The New Zealand Defence Force's Court of Inquiry	51

<b>Part 8 – Overall conclusions and comments</b>	<b>55</b>
Our summary of what happened	55
Our conclusions on the questions in our terms of reference	57
Poor policy process	59
Organisational culture	65
How the seconded officers were treated	73
<b>Figure</b>	
1 – Relationships and reporting lines within the New Zealand Defence Force in 2000 and 2001	12
<b>Appendices</b>	
1 – Timeline of events	75
2 – Terms of reference for our inquiry	77

## Auditor-General's overview

In 2008, the Minister of Defence asked the then Auditor-General, Mr Kevin Brady, to inquire into a number of matters associated with the payment of accommodation assistance by the New Zealand Defence Force (NZDF) to four officers who it seconded to the United Nations (UN) Department of Peacekeeping Operations in New York.

A military Court of Inquiry had already investigated and reported on how four officers seconded to the UN over a number of years had wrongly claimed accommodation assistance by submitting false declarations. This practice enabled them to receive additional accommodation assistance from NZDF outside the terms of the UN secondment. The request to the Auditor-General effectively asked my Office to look more deeply at the causes of the problem, and in particular to identify whether anyone in NZDF encouraged or condoned the wrongdoing.

Our inquiry was carried out by staff from the Office of the Auditor-General, assisted by Ms Kristy McDonald QC. In this report, I present to Parliament the factual findings, conclusions, and recommendations of our inquiry.

The current Chief of Defence Force has accepted from the outset that this issue has arisen because of poor policy development and other failures at critical points. The conclusions of the inquiry confirm that view: this issue was mismanaged from start to finish. The policy process was slow at every point, and provided advice that was either flawed or totally wrong. Administrative and disciplinary responses were also slow.

In particular, in the final stages of our inquiry, my staff worked with NZDF to reconstruct the basic calculations that compared what officers would receive under the UN system and under the NZDF posting system. The initial advice, in 2000, had been that officers would be substantially worse off if they were paid only through the UN system. The indicative figures suggested the difference might be as much as \$100,000 annually. My staff and NZDF recalculated the relevant comparisons for three of the four officers. This analysis showed that the officers would each have been in a generally comparable financial position under the standard UN conditions. They may even have been better off sometimes. The rationale for paying additional accommodation assistance to the officers was therefore never valid. The whole saga was unnecessary.

In keeping with the terms of reference, our inquiry went further and considered what had caused these problems to arise, and how they could persist for so long when so many people in NZDF knew that what was being done was wrong. The inquiry team concluded that three aspects of the organisational culture in NZDF headquarters contributed to the problem:

- a strong silo mentality, which enabled people to see the issue as someone else's problem;
- the military discipline of hierarchy and command lines, which enabled people to see it as inappropriate for them to question decisions apparently taken by their superiors; and
- a general desire for practical solutions to problems, and an inadequate recognition of when those solutions may conflict with fundamental public sector values relating to integrity and legality.

This report does not question the importance of the command and control culture within NZDF. It is fundamental to any military organisation that lines of command are clear and effective. The question posed here is the more complex one of how far that command and control discipline should extend into the policy, administrative, and financial work of NZDF headquarters and other non-operational roles. During the inquiry, too many people told us that the command requirements prevented them from raising concerns about the integrity and legality of what was being done, and too many people accepted it as plausible that they were being directed to behave unlawfully.

The inquiry team's concern about the unspoken message that NZDF staff may be receiving about legality is brought out most clearly by the fact that the four seconded officers – all highly regarded and senior people – were all willing to accept as plausible that NZDF headquarters was expecting or ordering them to complete a false declaration to manipulate financial entitlements. My staff have interviewed each of them on oath. They all told my staff that they believed they were being ordered or were expected to do this.

I find it extraordinary that any officer could see this as something that NZDF headquarters might require of them. The fact that they did raises a question about what values they are implicitly picking up as being important to the organisation.

Cultural issues are difficult for any organisation to address. I am aware that balancing command and control discipline with the need for healthy debate and testing in the policy and administrative context is an ever-present tension.

Without constant reinforcement, it is easy and natural for staff to revert to the organisation's dominant expectation, and do whatever a superior officer says.

I endorse the recommendations in this report, which are designed to help NZDF headquarters to actively promote a full and balanced set of values for its staff that clearly sets the core public sector values of operating within the law, scrupulous honesty, integrity, transparency, and accountability alongside the military values that NZDF already recognises. It is important for any public sector organisation to manifestly live by these values, so that all staff can see that transgressions are taken seriously and attract a swift response.

This was a lengthy inquiry, which required a great deal of detailed examination of records and people on events that went back a decade. I would like to thank the staff at NZDF who assisted my staff with the inquiry, and all those who were interviewed. I would also like to thank Ms McDonald QC for her assistance.



Lyn Provost  
Controller and Auditor-General

13 July 2010





# Part 1

## Introduction

- 1.1 In this Part, we explain:
- why we carried out an inquiry into allowances paid by the New Zealand Defence Force (NZDF) to military officers seconded to the United Nations (UN) in New York;
  - what we looked at;
  - our approach to naming certain individuals;
  - the structure of NZDF;
  - how the secondments fit in NZDF's general work; and
  - the structure of this report.

### Why we carried out our inquiry

- 1.2 We carried out an inquiry into several matters associated with the payment of accommodation assistance by NZDF to four officers who it seconded to the UN in New York for different periods between 2001 and 2008.
- 1.3 NZDF provided the four seconded officers with accommodation assistance, in the form of money to pay for rental costs. The four officers also applied for and received a rental subsidy from the UN. The UN required a staff member applying for a rental subsidy from the UN to declare whether they were also receiving assistance with rent or housing from anyone else. The four officers did not declare their NZDF accommodation assistance to the UN.
- 1.4 In June 2007, the UN found out that the fourth officer seconded by NZDF had not declared that he was receiving accommodation assistance from NZDF. In September 2007, as a result of an NZDF Military Police investigation, the Vice Chief of the Defence Force was advised that:
- the four officers had received their accommodation assistance under a Defence Force Order; and
  - it was possible that the other three officers had also made false declarations to the UN.
- 1.5 On 1 July 2008, the Chief of Defence Force convened a Court of Inquiry under the Armed Forces Discipline Act 1971 to inquire into the circumstances in which conditions of service for officers seconded to the UN were developed and implemented.
- 1.6 The Court of Inquiry reported on 17 July 2008. It found that four NZDF officers seconded to the UN had signed declarations stating that they were not receiving any accommodation assistance from NZDF. The declarations were false: the four officers were receiving accommodation assistance from NZDF.

- 1.7 More generally, the Court of Inquiry found that the UN's requirements for seconded employees were incompatible with NZDF's responsibilities for setting conditions of service for its service members. It found that NZDF had not fully understood or addressed this incompatibility since secondments began in 2001.
- 1.8 In 2008, the then Minister of Defence, Hon. Phil Goff, asked the Auditor-General to review the findings of the Court of Inquiry. In particular, he asked the Auditor-General to inquire into:
- why NZDF did not address the apparent incompatibility between its policy and UN requirements when the issues received some attention in 2005; and
  - whether any officers in NZDF encouraged or condoned the practice of signing false declarations to the UN.
- 1.9 In 2009, the new Minister of Defence, Hon. Dr Wayne Mapp, asked the Auditor-General to include the question of whether NZDF had treated the four seconded officers equally. We agreed to do so.

## What we looked at

- 1.10 We agreed to inquire into:
- how NZDF managed the arrangements for the four officers seconded to the UN, particularly housing allowances and their consistency with the UN's requirements;
  - whether any individuals within NZDF encouraged, condoned, knew of, or acquiesced in the practice of seconded personnel signing false declarations to the UN; and
  - NZDF's consistency of treatment of the four officers seconded to the UN in New York who received an accommodation allowance from NZDF.
- 1.11 We carried out our inquiry under sections 16(1) and 18(1) of the Public Audit Act 2001. We reviewed an extensive amount of NZDF documentation and files, and analysed the UN's requirements from 2000 to 2007. We interviewed, under oath,<sup>1</sup> 17 current and former members of NZDF. We gave all those people about whose actions we have made adverse findings an opportunity to comment on draft sections of the report, before finalising it for publication.
- 1.12 We note that we could not review the Court of Inquiry's findings because of Armed Forces Discipline Rule of Procedure 158. This Rule provides that any evidence obtained in a Court of Inquiry is not admissible against a person in any matter. To avoid infringing that Rule, we put the Court of Inquiry record and the record of interviews aside. We did refer to the documents obtained by the Court of

<sup>1</sup> Under section 26 of the Public Audit Act 2001, the Auditor-General can require a person to give evidence under oath. Evidence given under oath is covered by section 108 of the Crimes Act 1961 (which relates to perjury).

Inquiry, as we would have been able to obtain those under our powers under the Public Audit Act.

- 1.13 Effectively, we conducted a new inquiry into the matters previously considered by the Court of Inquiry. Our purpose was not only to confirm the findings of the Court of Inquiry but also to look more deeply into the causes of the failures that had been identified.

### Our approach to naming individuals

- 1.14 We have not named any individuals in this report. Rather, we refer to all individuals by their job title.<sup>2</sup> We refer to the four seconded officers by number in the order that they were seconded to the UN – Officer 1, Officer 2, Officer 3, and Officer 4. We have taken this approach because we do not consider it appropriate for those individuals to be made publicly accountable for what are complex organisational failings.
- 1.15 During the nine years covered by this report, people were promoted or moved from one position to another. For example, the person who was the Assistant Chief Personnel at the start of this report was the Chief of Defence Force at a later stage in the report, but was no longer in that role at the end of this report. The person who was the second Military Adviser in New York reappears later as Officer 4.
- 1.16 Although we have not named the individuals in this report, we consider it important to identify when the holder of particular roles changed. We have used superscript letters to mark such changes. For example, two different people held the post of Director of Military Personnel Policy Development. We refer to the first as the Director of Personnel Military Personnel Policy Development<sup>A</sup>, and the second as the Director of Military Personnel Policy Development<sup>B</sup>.

### Structure of the New Zealand Defence Force

- 1.17 The secondment of officers to the UN involved several different branches of NZDF's headquarters in Wellington at various points. The internal structure of positions and branches within NZDF also changed during the nine years discussed in this report. In summary, the key parts of the organisation were:
- the Chief of Defence Force, who heads the organisation and approves and issues the relevant organisational rules (known as Defence Force Orders);
  - Personnel branch, headed by the Assistant Chief Personnel, which is the branch in headquarters responsible for developing and implementing policy for NZDF personnel, as well as for dealing with personnel issues;
  - Operations branch, headed by the Assistant Chief Operations, which was the branch in headquarters responsible for operational deployments (this branch

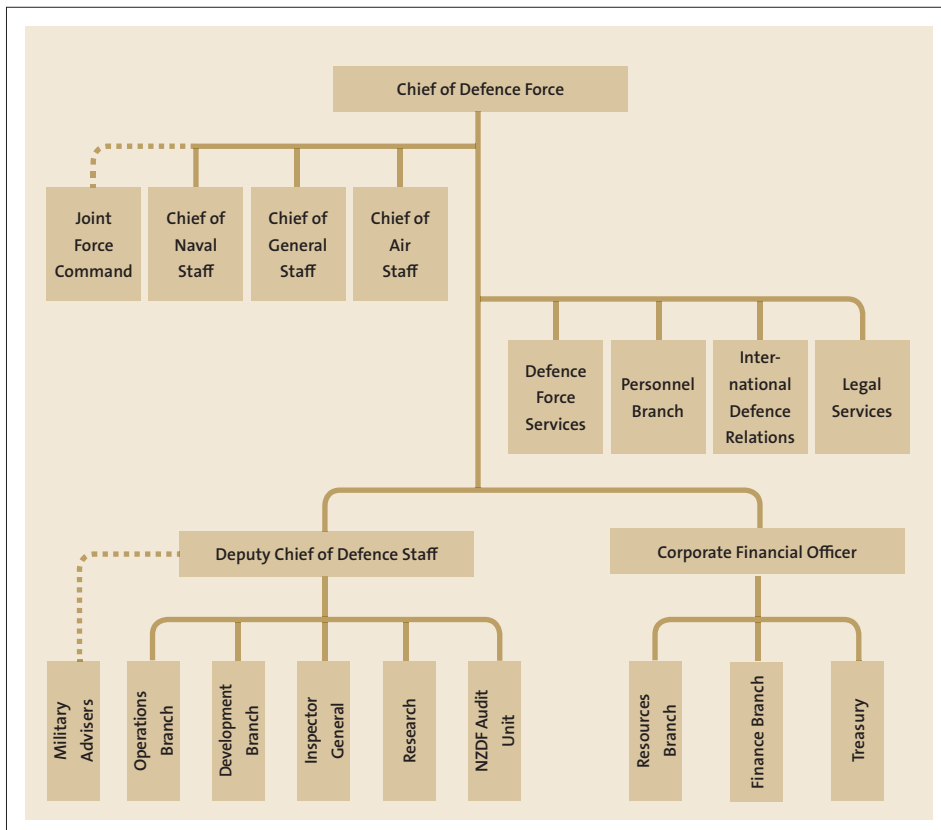
<sup>2</sup> Within NZDF, lengthy job titles are sometimes abbreviated to strings of letters. To make it easier for all readers, we have referred to these job titles in full.

later became known as Strategic Commitments and Intelligence branch and was headed by the Assistant Chief Strategic Commitments and Intelligence);

- Services directorate, headed by the Director of Services, which is the branch in headquarters responsible for administering entitlements set by Personnel branch for officers posted or seconded overseas; and
- the NZDF Military Adviser posted to the New Zealand Permanent Mission to the UN (the New York office of the Ministry of Foreign Affairs and Trade that manages New Zealand’s interactions with the UN), who was the liaison person for any NZDF staff working in the UN. The management of Military Advisers was split so that their command and control rested with the Deputy Chief of Defence Staff, but their administration (such as payment of non-salary-related allowances) was the responsibility of the Services directorate.

1.18 Figure 1 sets out the relationship between these parts of the organisation and the reporting lines in 2000 and 2001.

**Figure 1**  
Relationships and reporting lines within the New Zealand Defence Force in 2000 and 2001



- 1.19 In 2005, the organisational structure and reporting lines were slightly different from those shown in Figure 1. The position of Deputy Chief of Defence Staff no longer existed, and there was a new role of Vice Chief of Defence Force. The Operations branch was replaced by Strategic Communication and Intelligence and reported to the Vice Chief of Defence Force. Similarly, the Services directorate and Military Advisers reported to the Vice Chief of Defence Force. The Personnel branch continued to report directly to the Chief of Defence Force through the head of Personnel branch, Assistant Chief Personnel.
- 1.20 We note that NZDF's organisational structure and reporting lines changed again in 2006 and 2008.
- 1.21 Officers within NZDF always have a commanding officer, who is the officer they take orders from. Command lines also provide the framework for administrative responsibility for staffing matters. Usually, the commanding officer is within the same service (air force, army, or navy) as the officer, but when an officer is in a role at NZDF headquarters the situation is different. When an officer works at headquarters, they will have both a Branch Head and a Commanding Officer to whom they are responsible. A Branch Head (usually an officer at Brigadier-equivalent level) will direct the day-to-day conduct of activities of that officer. The Commanding Officer (usually an officer at Lieutenant Colonel-equivalent level) will be another officer who has responsibility for that officer's discipline and administration. The officers seconded to the UN did not have a formal commanding officer during their secondment, because they were not under the operational control or command of NZDF for that time.

### **How UN secondments fit in the New Zealand Defence Force's general work**

- 1.22 The other important point to acknowledge at the outset is the practical context for this issue. NZDF currently employs about 9700 regular force, 2250 reserve force, and 2700 civilian staff. During 2000 and 2001, alongside its usual work, it was deploying personnel, often at short notice, to a number of overseas locations, including to East Timor. It was also involved in carrying out a major upgrade of Personnel Policy and a review of overall remuneration.
- 1.23 The Personnel branch and the Operations branch were responsible for ensuring the welfare, and organising the terms and conditions, for all those staff. Secondments to the UN affected one person at a time and involved sending that person to New York, where another organisation would be responsible for them. We accept that the issue was a small one for staff in NZDF's headquarters in Wellington.

## Structure of this report

- 1.24 The next six parts of this report discuss the detailed and complex events relating to the four seconded officers as well as the development of NZDF policy for their conditions of service and entitlements. The report is mostly in chronological order:
- Part 2 covers the period from March to December 2000 – it discusses the original decision by the Chief of Defence Force to pay seconded officers accommodation assistance and the arrangements made for Officer 1’s secondment before he went to New York;
  - Part 3 covers the period from January to December 2001 – it discusses the arrangements made for Officer 1 once he started his secondment and the development of the policy for seconded officers and its later incorporation within Defence Force Orders;
  - Part 4 covers the period from late 2002 until early 2003 – it discusses the secondment of Officer 2;
  - Part 5 covers the period from mid-2004 until December 2005 – it discusses the arrangements made for Officer 3 and the events leading up to the amendment of the applicable Defence Force Order;
  - Part 6 covers the period from October 2006 until mid-2008 – it discusses the secondment of Officer 4 and his treatment by NZDF after the UN found out that he had made a false declaration; and
  - Part 7 covers the period from September 2007 until June 2008 – it discusses the continued payment of accommodation assistance to Officer 3 and the revocation of the Defence Force Order.
- 1.25 In Part 8, we set out our overall conclusions on what happened and what went wrong, as well as our comments on the underlying causes of the failures.
- 1.26 Appendix 1 sets out a timeline of events. The terms of reference for our inquiry are in Appendix 2.

## Part 2

# New arrangements for seconding officers to the United Nations

- 2.1 In this Part, we discuss the events that took place from March to December 2000 – before Officer 1 started his period of secondment with the UN. We describe:
- the changes the UN made in 1999 to the way it seconded staff;
  - the content of documents sent to NZDF headquarters in New Zealand by its Military Adviser in New York;
  - NZDF's decision to provide accommodation assistance to seconded officers; and
  - the arrangements made for Officer 1's secondment.

### Changes to the United Nations' arrangements for seconded employees

**In February 1999, the UN changed the way it seconded staff. NZDF had seconded staff under the old system, but not under the new system.**

- 2.2 The UN employs some staff directly, but also relies heavily on staff seconded from contributing states such as New Zealand. In February 1999, the UN changed the way it seconded employees from states. Until then, employees seconded from states were paid a salary and any allowances by their home state. This is referred to as the gratis system. NZDF had seconded officers under this system. In practice, it meant that the administrative and financial arrangements for the seconded officers did not need to change, and that they simply worked in a different organisation and command system for operational purposes.
- 2.3 From February 1999, the UN moved to a system where seconded employees were paid a salary and allowances directly by the UN, and were not to be paid by, or receive any benefits from, their home state. This is referred to as the non-gratis system. The change in payment arrangements was intended to strengthen the independence of the UN. Removing any financial relationship between a seconded person and their home state government made it clear that, while staff were seconded, they were controlled by the UN and not their home state governments. The changes were also designed to create parity between employees seconded to the UN from different states.
- 2.4 In practice, this change meant that seconding organisations needed to consider how to suspend their usual arrangements for remuneration and other benefits during the secondment. The employee needed to be able to understand any difference in entitlements during the secondment before agreeing to it.
- 2.5 This is not unusual when an employee is seconded from one organisation to another: it is common for there to be detailed negotiations between the primary

employer, the host organisation to which the person is being seconded, and the employee, to agree on the detailed rights and responsibilities of each.

- 2.6 In early 2000, NZDF began to consider whether to send an officer to work for the UN in New York. This would be the first time that NZDF had seconded an officer under the new non-gratis system.

## Documents sent in 2000 by the Military Adviser

**NZDF had access to the documents it needed about the UN's requirements that applied to employees receiving accommodation allowances from their home state in 2000.**

- 2.7 In early 2000, NZDF's New York-based Military Adviser to the New Zealand Permanent Mission to the UN (the Military Adviser<sup>A</sup>) faxed some advice to Operations branch staff on how other states provided for their officers who were seconded to the UN, and in particular on whether they provided their officers with an allowance to cover housing costs.
- 2.8 The Military Adviser<sup>A</sup> included a copy of the UN's *Administrative Instruction on rental subsidies and deductions* (the *Administrative Instruction*) in the material he sent to NZDF. The *Administrative Instruction* set out when the UN would pay a rental subsidy to its employees (whether or not they were seconded) and the conditions for the payment of the rental subsidy. It stated that, if a home state paid accommodation assistance to an employee, then that employee needed to declare this to the UN.
- 2.9 Depending on the amount of the accommodation assistance provided to the employee, the rental subsidy the UN paid could be either reduced or not paid, and deductions could be made from the employee's salary.<sup>3</sup> Deductions were made because the salary and post adjustment<sup>4</sup> paid to employees by the UN included an allowance for the average rental costs in different parts of the world.<sup>5</sup>
- 2.10 The Military Adviser<sup>A</sup> also faxed a copy of the UN's *General Information on Conditions of Service* (the *General Information*) to the Deputy Assistant Chief Personnel<sup>A</sup> on 25 April 2000. The *General Information* also set out the requirements for UN payments of a rental subsidy, including the requirement that employees declare any accommodation assistance provided by their home state. It also referred to the fact that salary deductions may be made if the home state

<sup>3</sup> See paragraphs 24-26 of the UN *Administrative Instruction Rental Subsidies and Deductions for staff at duty stations in Europe and North America* (ST/AI/350).

<sup>4</sup> The "post adjustment" is part of a UN salary package. The adjustment is designed to compensate UN staff for differences in living costs, providing staff with the same purchasing power regardless of where they might be posted to.

<sup>5</sup> See paragraph 4 of the UN *Administrative Instruction Rental Subsidies and Deductions for staff at duty stations in Europe and North America* (ST/AI/350).



provided accommodation assistance. We were unable to find a copy of that fax or the *General Information* document within Personnel branch files.

- 2.11 In this report, we use the term “the UN’s requirements” to refer to the UN requirements for the payment of the rental subsidy, which were set out in the *Administrative Instruction* and in the *General Information*.

## Background to the decision to provide accommodation assistance to seconded officers

### **The Assistant Chief Personnel<sup>A</sup> provided advice to Assistant Chief Operations that an officer seconded to the UN would be worse off financially than an officer posted to the UN.**

- 2.12 On 3 May 2000, the Assistant Chief Personnel<sup>A</sup> provided advice to the Assistant Chief Operations on the options for funding the secondment of an officer to the UN. The advice was focused only on the practical question of how to fund the secondment. It did not consider broader questions about the difference between an ordinary NZDF posting to an offshore role and a secondment to another organisation. Nor did it consider in any detail the difference between the previous gratis secondments to the UN and the purpose of the new non-gratis secondment system. Therefore, it did not address the general point that NZDF would need to suspend the officer’s overall remuneration and benefits during the secondment, or that this might require specific and detailed analysis and agreement.
- 2.13 The funding options put forward were that:
- the UN fully funds the appointment, including salary and accommodation;
  - NZDF funds the seconded officer; or
  - the UN funds the salary costs, and NZDF provides the accommodation.
- 2.14 The Assistant Chief Personnel<sup>A</sup> recommended that the third option be adopted. He stated that this option was acceptable to the UN and fairest to the officer. The Assistant Chief Personnel<sup>A</sup> also stated that, if the officer were to be paid fully by the UN, that officer would be disadvantaged financially compared to an officer posted to New York by NZDF.
- 2.15 The advice included a table that compared the financial position of a seconded officer receiving UN pay and allowances to an officer posted overseas receiving NZDF pay and allowances. It also compared the financial position of a seconded officer receiving UN pay and allowances and NZDF accommodation assistance with an officer posted overseas receiving NZDF pay and allowances. The table showed that a seconded officer on UN pay and allowances would receive much

less money than an officer posted overseas receiving NZDF pay and allowances. The table also showed that a seconded officer who received UN pay and NZDF accommodation assistance would be in a financial position comparable to an officer posted overseas.

- 2.16 The table contained information about UN pay and allowances that could not have been obtained solely from the material sent back by the Military Adviser<sup>A</sup>. We did not find any other UN material from that period within NZDF's files, so we were unable to determine where the information came from.

## Problems with the Personnel branch advice

**The Personnel branch table concluded that an officer seconded to the UN would be significantly worse off financially when compared to an officer posted to New York. This conclusion was wrong. Officers seconded to the UN were in a financial position that was generally comparable to that of an officer posted to New York. Therefore, there was no need to pay the seconded officer's NZDF accommodation assistance.**

- 2.17 We reviewed the table attached to the advice provided by Assistant Chief Personnel<sup>A</sup> to Assistant Chief Operations. We found numerous errors in the table. The calculations in the table were incorrect, because they did not show that, if NZDF paid accommodation assistance to a seconded officer, the UN might make deductions from the officer's salary or might not pay its rental subsidy. The advice made no reference to the *Administrative Instruction* or the *General Information*. It was also flawed because the column for the posted officer did not include a calculation showing that rent was paid but the column for the seconded officer did show rent being paid. Therefore, the total figure paid to the posted officer was inflated when compared to the total figure paid to the seconded officer, because it failed to include the payment of rent. The two columns were not comparing like with like.
- 2.18 We then reconstructed the analysis, for each of the three seconded officers for whom we had UN payslips. We obtained information from NZDF on what it would have paid the three officers (at the time they were seconded to the UN) had they been posted to New York, and then compared that to what they received from the UN. We agreed with NZDF that this analysis showed that the seconded officers would have been in a generally comparable financial position under the standard UN conditions to an officer posted to New York on NZDF terms and conditions.
- 2.19 Therefore, the rationale for paying NZDF accommodation assistance to the seconded officers was not valid. They would not have been financially disadvantaged by the secondment. To pay additional accommodation assistance

to the seconded officers would (and in fact did) put them in a better position financially than a posted officer.

- 2.20 As far as we can tell, it was not until we completed this analysis in late May 2010 that anyone in NZDF understood that the seconded officers would in fact have been in a generally comparable financial position to posted officers. As we set out later in the report, for the next 10 years, NZDF proceeded on the assumption that the seconded officers would be worse off and needed additional support.

### Decision to provide accommodation assistance to seconded officers

**Based on the Personnel branch advice, the Chief of Defence Force<sup>A</sup> agreed that NZDF would supplement the payment of housing and utilities for an officer seconded to the UN.**

- 2.21 Based on the advice from the Assistant Chief Personnel<sup>A</sup>, on 10 May 2000, the Assistant Chief Operations sent a paper to the Chief of Defence Force<sup>A</sup>, recommending that he agree in principle that, if NZDF obtained a secondment position, then the officer would be paid by the UN “with NZDF supplementing housing and utilities”. The Chief of Defence Force<sup>A</sup> agreed with the recommendation.
- 2.22 It is clear that Personnel branch staff did not adequately consider the general question of the nature of a secondment under the non-gratis system, and failed to identify the complexities of the UN’s rental subsidy scheme. The advice provided to the Assistant Chief Operations in May 2000 was wrong. There was no need to provide additional support to seconded officers. Even if there had been, it would have been possible for NZDF to provide accommodation assistance to a seconded officer and still comply with the UN’s requirements.

### Documents missing from the files

- 2.23 When we reviewed the Personnel branch files, we were surprised by the relatively small number of documents about the development of the conditions of service and entitlements for Officer 1 in 2000. Particular documents that we expected to see were not held in those files. For example, the copy of the *General Information* that the Military Adviser<sup>A</sup> sent to the Deputy Assistant Chief Personnel<sup>A</sup> in April 2000 was not in the files.
- 2.24 Similarly, documents that we expected to see within the Operations branch files about UN secondments were not there. For example, the copy of the *Administrative Instruction*, sent to Operations branch staff in April 2000 by the Military Adviser<sup>A</sup>, was not in the files.

- 2.25 It is clear from the Assistant Chief Personnel's Minute of May 2000 to the Assistant Chief Operations that Personnel branch staff (who prepared the table attached to the Minute) had access to some UN material. We were unable to identify that UN material because it was not included in the files.

### Arrangements made for Officer 1's secondment

#### **NZDF had not finalised its policy about the entitlements of seconded officers before Officer 1 accepted the offer of a secondment to the UN.**

- 2.26 NZDF nominated Officer 1 for a UN vacancy in the Department of Peacekeeping Operations. Officer 1 was offered the position in October 2000. In June 2000, a Personnel branch staff member prepared a paper setting out what would happen to various aspects of Officer 1's NZDF conditions of service (such as superannuation, long leave, and honours) if he were seconded to the UN. The paper did not deal with accommodation assistance.
- 2.27 The conditions of service and entitlements for NZDF staff are contained in Defence Force Orders. Defence Force Orders are made by the Chief of Defence Force under the Defence Act 1990. The Defence Force Orders set out the conditions of service and entitlements for officers posted overseas by NZDF to NZDF positions, but in 2000 did not provide for conditions of service or entitlements for officers seconded to the UN. As previously noted, the UN system for secondments had changed and new arrangements needed to be negotiated and agreed. Therefore, when Officer 1 received his offer from the UN, he was unable to determine what his conditions of service or entitlements from NZDF would be.
- 2.28 Before accepting his UN offer, Officer 1 received some advice from Personnel branch staff about what some of his conditions of service and entitlements would be. Personnel branch staff advised him that the Assistant Chief Personnel<sup>A</sup> had said that Officer 1 was to get conditions of service that ensured that he was no worse off than he would have been had he remained in New Zealand. At the time, Officer 1 recorded in an email that he had also discussed the secondment with the Military Adviser<sup>A</sup>, who had advised him to ensure that the conditions of service were adequate for the cost of living in New York. The Military Adviser<sup>A</sup> had also told Officer 1 that the UN had a number of rules that affected what he would be entitled to from the UN. Officer 1 accepted the UN offer in late October 2000. However, the NZDF conditions of service and allowances he would be entitled to were unresolved.
- 2.29 Officer 1 appears to have received a copy of the Assistant Chief Personnel<sup>A</sup> Minute of May 2000, some time during late 2000, which showed that seconded officers would be significantly disadvantaged financially if NZDF did not pay

accommodation assistance. It appears that by this point the advice in the Minute had become a basic assumption that informed all later discussions and action.

- 2.30 Officer 1 received a copy of the *General Information* with his UN offer documentation. The *General Information* explained how the rental subsidy scheme worked, including the requirement for a declaration and that salary deductions may be made if accommodation assistance was provided by the home state. Officer 1 told us that he read the document before he went to the UN, but did not fully appreciate how the rental subsidy provisions applied to him.
- 2.31 When Officer 1 left New Zealand at the end of 2000 to begin his secondment with the UN, his conditions of service – including what allowances he would be paid – were still unresolved. However, he had been advised that NZDF would be paying him accommodation assistance.



## Part 3

# Secondment of Officer 1, and preparing a policy for secondments

- 3.1 In this Part, we discuss the events that occurred during 2001 when Officer 1 started his secondment to the UN. NZDF developed a policy for seconded officers in 2001 that was incorporated into Defence Force Orders in December 2001. Until then, NZDF made case-by-case decisions about Officer 1's secondment when he raised issues with them. We discuss:
- arrangements made for Officer 1's secondment;
  - the Personnel branch's draft policy of May 2001;
  - comments and advice about the draft policy; and
  - the draft policy becoming a Defence Force Order.

### Officer 1's secondment

**NZDF made decisions about Officer 1's secondment as issues arose, as there was no policy or Defence Force Order in place to determine conditions of service or entitlements for seconded officers. People also had different views as to who if anyone had command responsibility for Officer 1 during his secondment. Officer 1 made a false declaration to the UN when applying for his UN rental subsidy, as he believed that he was required to obtain the UN's rental subsidy to offset the accommodation assistance that NZDF was providing.**

### Finalising entitlements during the secondment

- 3.2 When Officer 1 arrived in New York, NZDF still had not finalised his conditions of service or entitlements. An example of this was insurance cover. Because officers seconded to the UN Department of Peacekeeping Operations could be sent into conflict zones, providing insurance cover was a significant issue for seconded officers. Personnel branch had not worked out how it would provide any necessary insurance cover for Officer 1 before he started at the UN, or what cover the UN might provide.
- 3.3 Initially, Personnel branch staff proposed to continue paying Officer 1 his NZDF salary (as well as his UN salary) during his secondment to ensure that he had Accident Compensation Corporation (ACC) cover. Personnel branch staff recognised that this would create a large tax liability for Officer 1, so they proposed to reduce his accommodation assistance to offset this. This proposal was put to Officer 1 in February 2001. He advised Personnel branch staff in February 2001 that the UN rules prohibited the payment of a salary by the home state. He stated:

*If possible, I should continue to comply with the UN Rules that require payment by the UN. To do otherwise, and be caught out, would be to create a situation that would force the UN to return me to New Zealand and risk bringing the country into disrepute.*

- 3.4 At this point, it appears that Personnel branch staff were unaware that the UN also provided compensation for workplace injuries. Officer 1, with his Minute of February 2001, sent information on the UN's compensation provisions to Personnel branch. The compensation provisions did not provide any cover for non-work injuries or illnesses.
- 3.5 On 23 March 2001, the Assistant Chief Personnel<sup>A</sup>, in a Minute to the Chief of Defence Force<sup>A</sup>, recommended continuing to pay Officer 1's salary during his secondment to the UN to maintain ACC cover.
- 3.6 Under the ACC legislation at the time, unless Officer 1 was a New Zealand taxpayer or was overseas for fewer than 183 days, he would not be eligible for ACC cover. The Assistant Chief Personnel<sup>A</sup>, in the same Minute to the Chief of Defence Force<sup>A</sup>, recognised that Officer 1 did not fit either of those criteria and would not be covered by ACC. Therefore, Personnel branch's proposal would not have complied with the ACC legislation.
- 3.7 It appears that Officer 1 was never paid his NZDF salary after the start of his UN secondment, because his service stopped the salary payment into his account. It also appears that, after receiving advice from the Chief Financial Officer, the Chief of Defence Force<sup>A</sup> decided that NZDF would obtain private insurance cover for Officer 1.
- 3.8 We discussed the issue of insurance cover with the officer who held the role of Assistant Chief Personnel at that time. He commented that the practical reality of the situation was that Officer 1 was in New York and needed cover immediately, and that putting in place a scheme that gave him ACC cover was the best way to do it.
- 3.9 It was important for NZDF to provide Officer 1 with insurance cover for non-work injuries from the start of his secondment. Personnel branch had known since October 2000 that Officer 1 was going to be seconded. They nonetheless failed to determine how it could provide that insurance cover for Officer 1 before he left New Zealand.

### **Officer 1 applies for the UN's rental subsidy**

- 3.10 Officer 1 applied for the UN's rental subsidy in late January 2001, once he had found an apartment. He declared to the UN that he was not receiving any NZDF accommodation assistance.



## Why Officer 1 did not declare his NZDF accommodation assistance

### Officer 1's comments

- 3.11 As we discussed in Part 2, Officer 1 received information from Personnel branch before going to New York which showed that NZDF officers seconded to the UN would be significantly worse off financially than NZDF officers posted to New York.
- 3.12 Officer 1 told us that it was his understanding that NZDF expected him to obtain the UN's rental subsidy, which would then be used to offset the accommodation assistance that NZDF paid. The only way he could do this was to not disclose to the UN that he was receiving NZDF accommodation assistance.
- 3.13 Officer 1 told us that the tenor of conversations and email discussions he had with Services directorate staff and the Military Adviser<sup>A</sup>, before he applied for the UN's rental subsidy, led him to believe that he was required to obtain the UN's rental subsidy, which meant that he had to fill out a false declaration. He felt that not signing the declaration would have had implications for New Zealand's relationship with the UN.
- 3.14 Officer 1 had no formal commanding officer while he was seconded to the UN. He regarded the Military Adviser<sup>A</sup> as the person who had some administrative responsibilities for him. He liaised with the Military Adviser<sup>A</sup> about his conditions of service and entitlements, and the Military Adviser<sup>A</sup> reimbursed him for payments he made (for example, for rent).
- 3.15 The advice given to Officer 1 needs to be seen in the light of the unique culture that exists within NZDF. Officer 1 told us that he considered the advice he received from the Military Adviser<sup>A</sup> and Services directorate staff about claiming the UN's rental subsidy to be orders, and that he needed to comply with those orders. As we set out below, others had a different view.

### Services directorate staff comments

- 3.16 Services directorate staff told us that they did not see a copy of the *General Information* until May 2001 (when they commented on the draft 2001 policy) and were not aware of the UN's requirements until then. That is, Services directorate staff did not understand in January 2001 that Officer 1 was required to declare his accommodation assistance to the UN, or that the UN may make deductions from his salary and may not pay him the rental subsidy.

### The Military Adviser's comments

- 3.17 The Military Adviser<sup>A</sup> acknowledged that he sent copies of the *Administrative Instruction* and the *General Information* to NZDF in 2000. He told us that he does not recall whether he read all of those documents. However, it is clear from

the documents he sent to NZDF in 2000, which we discussed in Part 2, that he understood at the time he wrote those documents that the UN may make salary deductions if the home state provided accommodation assistance.

- 3.18 He also told us that he was not Officer 1's commanding officer and had no oversight of Officer 1's employment – he merely administered Officer 1's reimbursement, which he paid after clearance from NZDF headquarters. He did not regard himself as conveying orders. He also advised us that he saw no risk of sanction if Officer 1 had questioned the advice that he was being given.
- 3.19 In late December 2000, the Military Adviser<sup>A</sup> sought advice from Services directorate and Personnel branch staff about the arrangements made for him to provide assistance to Officer 1. Services directorate staff told the Military Adviser<sup>A</sup> on 10 January 2001 that NZDF would fund the accommodation costs of Officer 1 up to a rental ceiling of US\$3,500 each month. He was also told that the UN's rental subsidy that Officer 1 would receive was to be used to offset the monthly rent.
- 3.20 As discussed in paragraph 3.3, in February 2001, Personnel branch staff sent a proposal to Officer 1 for his comment. The proposal was to reduce Officer 1's accommodation assistance and to continue to pay him his NZDF salary to ensure that he had ACC cover. Officer 1 sent his draft comments on the proposal to the Military Adviser<sup>A</sup>. In his draft comments, he included statements about his need to comply with the UN rules, including being paid by the UN, and that to do otherwise could risk bringing New Zealand into disrepute.
- 3.21 Officer 1 also noted that:
- Following removal of gratis officers from UN service in February 1999 the fundamental position of the UN is that officers serving in the UN must be paid by the UN rather than their own Governments.*
- 3.22 He also stated that some form of option that meant that he was being paid by the UN needed to be put in place.
- 3.23 The Military Adviser<sup>A</sup> sent an email to Officer 1 and stated that officers seconded from different countries had different arrangements with their home states, not all of which complied with the UN's requirements. The Military Adviser<sup>A</sup> stated:
- Your comment re travel is probably spurious as whatever arrangement is finally agreed to the UN will look after that as you will be under their care (either fully as they state, supplemented as you seem to be (housing, medical provided etc) or paid and supported by NZ with the UN pay spending little time in your account en route to the Govt account). To the UN you will be following their rules because that is what they will be told.*

*This would all have been simpler if the matter had been dealt with either honestly (as the UN requirements say whilst protecting your service issues, super etc or earlier (ie before you accepted the position). Once again whatever arrangement is agreed, the UN does not need to know.*

- 3.24 Officer 1 was unable to recall whether this email exchange occurred after he had applied for the UN's rental subsidy. We asked the Military Adviser<sup>A</sup> whether he was telling Officer 1 not to declare his accommodation assistance to the UN in that email. He told us that what he meant in the email was that, in his view, some of the arrangements for seconded officers (such as superannuation and medical entitlements) were between the seconded officer and the Chief of Defence Force, and that the UN did not need to know the finer details of those service arrangements.

### Personnel branch's draft policy of May 2001

**The policy drafted by Personnel branch in May 2001 did not comply with the UN's requirements. Some senior staff within NZDF knew this.**

- 3.25 On 22 May 2001, the Assistant Chief Personnel<sup>A</sup> circulated a Minute that set out a draft policy on conditions of service and entitlements for personnel seconded to the UN. This Minute was circulated to several people for comment, including the General Manager Defence Force Services, people within the individual services, and the Assistant Chief Operations.
- 3.26 The draft policy provided that NZDF would pay accommodation assistance to seconded officers less any rental subsidies provided by the UN. The draft policy did not refer to the UN's requirements for paying a rental subsidy or whether seconded officers were required to declare their NZDF accommodation assistance to the UN. It appears that the rationale for paying accommodation assistance was the Personnel branch advice in May 2000 that seconded officers would be significantly worse off financially than an NZDF posted officer if they were not paid accommodation assistance.
- 3.27 As we explained in Part 2, the UN's requirements were that, if a home state was providing accommodation assistance, then the UN may have reduced the rental subsidy it paid, or not paid the subsidy, and may have made deductions from the employee's salary. There is no evidence that Personnel branch had determined from the UN's requirements whether the amount they were proposing to pay seconded officers would mean that the UN would still pay any rental subsidy, or whether the UN would make any salary deductions. However, the draft policy assumed that a seconded person would receive the UN's rental subsidy and be paid the NZDF accommodation assistance.

- 3.28 We note that the draft policy did not provide that officers would receive the full amount of both the UN rental subsidy and the NZDF accommodation assistance, rather it provided that NZDF would top up the amount paid by the UN, up to a rental limit set by the General Manager Defence Force Services. However, the draft policy did not acknowledge the possibility that the UN payments would be reduced if NZDF provided accommodation assistance, and was silent about whether the seconded officer was required to declare their accommodation assistance to the UN.
- 3.29 Shortly after the draft policy was circulated for comment, the Deputy Chief of Defence Staff (the most senior of the Chief of Defence Force's staff officers within NZDF headquarters) became aware, partly through material sent to him by the Military Adviser<sup>A</sup>, that the arrangements made for Officer 1 did not comply with the UN's requirements. He wrote to the Chief of the Air Force (because Officer 1 was in the Air Force) and stated:
- Pers Branch have instituted a plan whereby [Officer 1] receives his UN salary and also housing support from the NZDF. His salary is actually tailored to enable him to live in New York and create no cost to the member state. The NZDF is in reality breaking the UN contract which states that a member state cannot support an employee under contract to the UN.*
- 3.30 He also noted that:
- Whilst outside the purview of DCDS, I felt you should be apprised of the situation as I know that this matter would give you some cause for concern.*
- 3.31 The Deputy Chief of Defence Staff advised us that he had no knowledge of the specific details. Rather, he understood that there was a problem and regarded himself as passing it on to the appropriate person.
- 3.32 We were unable to determine what, if anything, the Chief of Air Force did in response to this information.

## Comments and advice about the draft policy

**When reviewing the draft policy, staff in the Services directorate told Personnel branch that there were UN requirements that affected what assistance NZDF could provide to a seconded officer. In particular, they advised Personnel branch that a seconded officer would have to declare any accommodation assistance to the UN. Personnel branch did not change the draft policy accordingly, nor seek the documents that would have explained the UN's requirements.**

### Services directorate's advice on the draft policy

- 3.33 The General Manager Defence Force Services referred the draft policy to Services directorate staff for comment. The Services directorate staff asked the Military Adviser<sup>A</sup> for advice about the draft policy.
- 3.34 The Military Adviser<sup>A</sup> advised the Services directorate staff that a home state could provide a seconded person with accommodation assistance, but the assistance had to be reported to the UN. He also sent a copy of the *General Information* as well as copies of the earlier faxes and letter he had sent to the Operations branch in 2000.
- 3.35 The Military Adviser<sup>A</sup> noted in his memo to Services directorate staff:
- It would seem that little notice has been taken of the UN guidelines when determining how these contracted personnel would be provided for. These guidelines were sent to HQNZDF on 25 April 2000, when further advice was requested by [the Deputy Assistant Chief Personnel<sup>A</sup>].*
- 3.36 The Military Adviser<sup>A</sup> included in the information he sent to Services directorate staff some information stating that the UN may make salary deductions if a seconded person were receiving accommodation assistance from their home state.
- 3.37 Based on the information received from the Military Adviser<sup>A</sup>, a Services directorate staff member prepared a Minute for the Director of Services. The Director of Services then prepared a Minute for his manager, the General Manager Defence Force Services. In this Minute, the Director of Services stated that:
- The UN salary contains a component for property rental, and if the NZDF provides housing assistance (as in the case of [Officer 1]), there is a requirement for this to be reported to the UN.*
- 3.38 The Director of Services also advised that, if the UN became aware that NZDF was paying Officer 1 accommodation assistance, it would probably stop paying the rental subsidy. However, the Minute did not refer to the salary deductions that the

UN may have made if the seconded officer declared their NZDF accommodation assistance to the UN. The Minute also referred to the fact that the Military Adviser<sup>A</sup> had provided them with a copy of the UN's *General Information* and that he had also provided a copy of this document to Personnel branch staff in April 2000.

3.39 The Minute also stated:

*In appreciating that NZDF wishes to be fair to its personnel, it must also ensure that there is no form of 'double-dipping', as UN salaries and the Post Adjustment are set based on the area of service, and contain elements to cover the likes of rents and other costs (maybe utilities).*

3.40 The Director of Services suggested that NZDF, in determining the entitlements for officers, should review what components the UN provided for in the post adjustment. He also suggested that the conditions for Officer 1 should be similarly reviewed.

3.41 The General Manager Defence Force Services then sent this Minute to the Assistant Chief Personnel<sup>A</sup>. There is a handwritten note dated 13 June 2001, on top of the Minute from the Director of Services, from the General Manager Defence Force Services. The note states:

*AC Pers: I hate to have another bite but there is some good stuff to consider.*

3.42 The Director of Military Personnel Policy Development<sup>A</sup>, who was responsible for developing the policy within Personnel branch, saw the Director of Services' Minute on the draft policy. He told us that, at the time, he considered that the draft policy covered the matters that were raised in the Director of Services' Minute. He believed that the need for seconded personnel to make a declaration was not a matter that needed to be included in the policy. Rather, he saw it as a matter for whoever in NZDF was administering the seconded person. He also considered that it was an individual's responsibility to make the declaration.

3.43 The Director of Military Personnel Policy Development<sup>A</sup> also advised us that the policy did not intend or state that any form of assistance provided by NZDF was not to be declared to the UN. He told us that he did not see copies of either the *Administrative Instruction* or the *General Information*. However, he considered that the policy as drafted would have enabled NZDF to achieve fair relativity between seconded and posted officers if the seconded officers had made declarations and their UN rental subsidy been reduced. The policy enabled NZDF to pay more of the accommodation costs, depending on the amount of UN rental subsidy paid.

3.44 The Director of Military Personnel Policy Development<sup>A</sup> advised us that the overriding requirement in developing the arrangements for Officer 1 and for the later policy was to ensure fair relativity under section 45 of the Defence Act. The

Chief of Defence Force<sup>A</sup> had also required that the arrangements for Officer 1 be such as to maintain parity with NZDF officers posted to New York. He further advised that, if the arrangements or policy had done otherwise, then this would have left the Chief of Defence Force open to complaint by Officer 1 under section 49 of the Defence Act, if Officer 1 considered that he had been unfairly treated in the setting of his conditions of service.

3.45 Personnel branch files for this period did not include a copy of the *Administrative Instruction* or the *General Information*. It appears that staff preparing the policy did not refer to these documents – even though Services directorate staff had referred to them in their Minute to the Personnel branch, and even though the *General Information* had been sent to the Deputy Assistant Chief Personnel<sup>A</sup> in 2000.

3.46 The Assistant Chief Personnel<sup>A</sup> told us that he does not recall whether he saw the Minute from the Director of Services, which had been copied to him by the General Manager Defence Force Services. He told us that he usually put a line through his name on documents where he was the addressee and signed the document. The copy of the Minute of 13 June 2001 that we obtained from NZDF was not signed by the Assistant Chief Personnel<sup>A</sup>.

### Other comments on the draft policy

3.47 Personnel branch staff received other comments on the draft policy from the individual services and other branches of NZDF. No one else commented on whether the proposed draft policy complied with the UN's requirements.

3.48 On 16 October 2001, the Assistant Chief Personnel<sup>A</sup> sought advice from the Directorate of Legal Services on the proposed draft policy. A staff member from the Directorate of Legal Services provided that advice on 2 November 2001. The legal advice did not discuss the UN's requirements for the payment of rental subsidies, nor did it discuss whether NZDF could pay accommodation assistance to seconded officers.

### Senior officers' awareness that arrangements for Officer 1 did not comply with the UN's requirements

3.49 As we discuss in paragraphs 3.29-3.32, it is clear that the Deputy Chief of Defence Staff and the Chief of Air Force knew by May 2001 that the arrangements that had been put in place for Officer 1 did not comply with the UN's requirements. However, the Deputy Chief of Defence Staff was not aware that Officer 1 had made a false declaration to the UN and had no knowledge of the specific arrangements put in place for Officer 1.

- 3.50 Services directorate staff understood by the end of May 2001 that Officer 1 would have had to make a declaration to the UN to receive the UN's rental subsidy.
- 3.51 The Military Adviser<sup>A</sup>, in his fax to Services directorate staff at the end of May 2001, notes that housing assistance can be provided but has to be declared to the UN. He also states that he was not aware whether Officer 1 had advised the UN of his NZDF accommodation assistance.
- 3.52 By June 2001, Personnel branch staff were also aware that, if NZDF paid accommodation assistance to Officer 1, then Officer 1 had to declare this to the UN.
- 3.53 While different individuals had different levels of awareness of these matters and not all of them understood that a declaration was required, it is clear that a number of these people were aware that Officer 1 needed to declare his NZDF accommodation assistance to the UN. It appears that no one within NZDF sought to determine whether Officer 1 was in fact declaring it, and whether a declaration was having any effect on his overall financial position.

### Policy becomes part of Defence Force Orders

**Staff in the Services directorate were not provided with a further copy of the draft policy before it was incorporated in Defence Force Orders.**

- 3.54 On 26 November 2001, the Assistant Chief Personnel<sup>A</sup> sent a Minute to the Chief of Defence Force<sup>A</sup>, seeking approval for the draft policy and consequent amendments to the Defence Force Orders.
- 3.55 The draft policy included the payment by NZDF of accommodation assistance to seconded personnel, less any rental subsidies paid by the UN. The Chief of Defence Force<sup>A</sup> approved the policy on 27 November 2001. A new section, section 15, was included in chapter 2 of Defence Force Order 4. It set out the conditions of service and entitlements for service members seconded to the UN.
- 3.56 As part of the process of amending the Defence Force Orders, the draft amendments were circulated for comment to several of the people who had provided comments on the draft policy. They were not circulated to Services directorate staff.
- 3.57 Officer 1's secondment to the UN ended in July 2003. NZDF paid him accommodation assistance during his secondment. He received the UN's rental subsidy during his secondment, and did not declare his NZDF accommodation assistance to the UN.



## Part 4

# Secondment of Officer 2, and continuing with the existing arrangements

- 4.1 In this Part, we describe the events leading up to the secondment of Officer 2 to the UN in New York and her application to the UN for a rental subsidy. We discuss:
- the arrangements made for her secondment by NZDF; and
  - why Officer 2 did not declare her accommodation assistance to the UN.

### Arrangements made for Officer 2's secondment

**Personnel branch staff, Services directorate staff, and the Military Adviser<sup>B</sup> were aware that Officer 1 was not declaring his accommodation assistance. They were also aware that the intention was for Officer 2 to be paid on the same basis.**

- 4.2 Officer 2 started her secondment with the UN on 11 February 2003. Her NZDF conditions of service and entitlements included being paid accommodation assistance by NZDF. By the time she was seconded, the applicable Defence Force Order had been in force for more than a year and Officer 1 was still on secondment with the UN.
- 4.3 Before Officer 2's secondment to the UN, the Military Adviser<sup>B</sup> raised a number of issues with the Personnel branch about the proposed conditions of service and entitlements for Officer 2. He noted in an email that his view was that NZDF needed to continue the way it had been operating with Officer 1. His email was forwarded to the Director of Services, who advised the Military Adviser<sup>B</sup>:
- The UN are unaware that the NZDF is refunding direct to [Officer 1] a portion of the rental cost above that provided for in the UN rent ceiling, and I strongly suggest that we do not enlighten them either in that case or for [Officer 2] (otherwise we may well end up footing the bill for the lot).*
- 4.4 This email was copied to the Assistant Chief Personnel<sup>B</sup> and Deputy Assistant Chief Personnel<sup>B</sup>. On 20 November 2002, the Assistant Chief Personnel<sup>B</sup> sent a Minute to a number of NZDF personnel (including the Director of Services and the Military Adviser<sup>B</sup>) setting out the entitlements for Officer 2, which included the payment of accommodation assistance less any rental subsidy paid by the UN.
- 4.5 Officer 2 finished her secondment on 31 March 2006 and received accommodation assistance from NZDF during her secondment. She also received the UN's rental subsidy during her secondment, and did not declare her accommodation assistance to the UN.

## Why Officer 2 did not declare her accommodation assistance

**Officer 2 did not declare her accommodation assistance because she believed that NZDF expected her to obtain the UN's rental subsidy.**

- 4.6 Officer 2 was sent some material about her offer from the UN before going to New York. She was serving offshore immediately before her secondment. She told us that she was unaware of the requirement to declare any NZDF accommodation assistance to the UN before accepting the UN offer and when she arrived in New York. She was aware that Officer 1 was already on secondment with the UN and therefore believed that NZDF had already worked out the arrangements for seconding officers to the UN.
- 4.7 After she arrived in New York, Officer 2 told us that she discussed the issue of the declaration with Officer 1 and the Military Adviser<sup>b</sup>. As a result of these discussions, she was under the impression that NZDF expected her to sign the declaration. She was also under the impression that it was generally known in NZDF headquarters that this was wrong and that they knew that the seconded officers were making false declarations. Both Officer 1 and the Military Adviser<sup>b</sup> expressed their disquiet about this situation to her.
- 4.8 She understood that what she was doing was wrong, but believed that this was what NZDF expected of her, based on her discussions with the Military Adviser<sup>b</sup> and Officer 1. In this context, it is important to note that the applicable Defence Force Order had now been in force for more than a year, and that Officer 1 had been on secondment for two years. Officer 2 had been posted overseas by NZDF before, so would have been aware of the conditions of service and allowances that NZDF provided to officers serving overseas.
- 4.9 Officer 2 also advised us that she considered that she gained no personal financial advantage by receiving the UN rental subsidy. She believed that it merely reduced the amount of accommodation assistance that NZDF provided to her. As we discussed in Part 2, this is unlikely to be correct, although we saw no evidence that Officer 2 knew that she was in fact in a better financial position than an NZDF officer posted to New York would be.

## Part 5

# Secondment of Officer 3, and amending the Defence Force Order

5.1 In this Part, we describe the arrangements made for Officer 3's secondment and the events that led to NZDF amending its Defence Force Order in December 2005. We discuss:

- the arrangements made for Officer 3;
- why Officer 3 did not declare his NZDF accommodation assistance to the UN;
- the efforts to prepare a draft policy that would comply with the UN's requirements;
- how NZDF reverted to a non-compliant draft policy (and therefore an amended Defence Force Order that still did not comply with the UN's requirements); and
- the decision to pay Officer 3 accommodation assistance.

### Arrangements made for Officer 3's secondment

**NZDF initially did not agree to pay Officer 3 accommodation assistance. Once the UN offered him the secondment in April 2005, he asked NZDF to review its decision. After the Defence Force Order was reviewed in December 2005, NZDF decided to pay him accommodation assistance. This was six months after his secondment had started.**

#### Before Officer 3's secondment

- 5.2 Officer 3 was nominated for a UN secondment in late 2004. Immediately before the secondment, he had been posted in the Middle East. His wife had been employed by the UN in New York during his Middle East posting, and he was keen to join her and their children, who were living in New York.
- 5.3 In September 2004, it was proposed that Officer 3 be seconded to the UN. The Assistant Chief Strategic Commitments and Intelligence requested that Personnel branch prepare a set of conditions of service for Officer 3. The Assistant Chief Personnel<sup>c</sup> advised the Assistant Chief Strategic Commitments and Intelligence that the Defence Force Order was under review. In particular, he noted in this Minute that the UN contract prohibited the payment of accommodation assistance by the home state to a seconded person when the person was also receiving the UN's rental subsidy.
- 5.4 Officer 3 was advised in September 2004 by his service that, if he obtained the UN secondment, he would not be paid NZDF accommodation assistance during his secondment to the UN.
- 5.5 Officer 3 left New Zealand in January 2005 to go to New York on leave without pay. He had not heard at that point whether he would be offered the UN position. The

UN offered Officer 3 the position in April 2005, and his employment was to start in June 2005. He then sought to clarify his conditions of service and entitlements with NZDF. He had previously been posted overseas with his family by NZDF and understood what the NZDF conditions of service and entitlements were for posted officers.

- 5.6 Officer 3 was aware that the conditions of service and entitlements that his service had advised would apply to him were different to those of Officer 2 and were also different to those of NZDF posted officers. He asked NZDF to pay him the accommodation assistance. His wife worked as a permanent UN employee in New York and had been working there for a period before his secondment. She received the UN's rental subsidy.
- 5.7 As we discuss in more detail in paragraphs 5.16-5.32, Personnel branch was revising the applicable Defence Force Order in 2004 and 2005. What Officer 3's conditions of service and entitlements should be was referred to Personnel branch for clarification. Personnel branch staff put resolving this issue on hold until the revision of the Defence Force Order was completed in December 2005.

### **Why Officer 3 did not declare his NZDF accommodation assistance to the UN**

- 5.8 Officer 3 arrived in New York in January 2005. He was on leave without pay from NZDF while he waited to hear from the UN whether he would be offered the position he had applied for. Once he was offered the UN position, Officer 3 discussed the UN secondment with Officer 2 and the Military Adviser<sup>B</sup>. Officer 2 discussed with him the fact that she was receiving the UN's rental subsidy and NZDF accommodation assistance, and that this was contrary to the UN's requirements. She told him that she was uncomfortable about this. She also said that she had previously discussed the matter with the Military Adviser<sup>B</sup>.
- 5.9 Officer 3 then raised the issue with the Military Adviser<sup>B</sup>. He asked whether NZDF knew the situation that they were being put in. The Military Adviser<sup>B</sup> advised Officer 3 that he had informed NZDF and had been in touch with Personnel branch. The Military Adviser<sup>B</sup> advised Officer 3 to sign the declaration and get the contract. Officer 3 was told that he was just doing his job and that NZDF would sort it out. The Military Adviser<sup>B</sup> told Officer 3 to declare his UN rental subsidy and allowances to NZDF. In the meantime, he was covered by the Defence Force Order and he should comply with it.
- 5.10 Officer 3 had to sign various documents when he started with the UN. They included a declaration stating that he would comply with the UN Staff Regulations and Rules. This was a separate declaration to the one that was

required to be made when applying for the rental subsidy. He did not apply for the UN's rental subsidy.

- 5.11 Officer 3 was uncomfortable signing the declaration, but considered that he was being instructed to do so by the Military Adviser<sup>B</sup>, who was his superior officer. He believed that refusing to do so and turning down the UN offer could have led to a perception by the UN that New Zealand was not meeting its expectations.
- 5.12 Officer 3 signed the UN declaration. At the point that Officer 3 signed his various UN documents in June 2005, he was not receiving any accommodation assistance from NZDF and had not applied for the UN's rental subsidy. However, his wife was receiving the UN's rental subsidy for the family and, as we discuss below, he later started receiving accommodation assistance from NZDF.
- 5.13 The issue of how the UN's requirements applied to Officer 3 are very complicated, because he was not receiving the UN's rental subsidy – his wife was. However, under the UN's staff rules, all staff members were required to inform the UN of any change in the situation as reported at the time of recruitment if this would affect their status or entitlements. The UN's requirements are unclear about whether Officer 3 or his wife was required to declare any accommodation assistance later paid to Officer 3 by NZDF.
- 5.14 No one from NZDF discussed with Officer 3 whether his wife should be declaring to the UN the NZDF accommodation assistance that he was receiving, even though Services directorate staff and Personnel branch staff were aware that she was receiving the UN's rental subsidy.
- 5.15 It is also important to note that Officer 3 was the third officer seconded to the UN by NZDF, and there was an existing Defence Force Order in force about seconded officers' conditions of service and entitlements. This Defence Force Order applied to Officer 3, and under it he was entitled to be paid accommodation assistance by NZDF.

### Efforts to prepare a policy that would comply with the United Nations' requirements

**From around mid-2004, Personnel branch staff were aware that the Defence Force Order did not comply with the UN's requirements and that the seconded officers were not declaring their accommodation assistance to the UN. Early drafts of the revised Defence Force Order proposed amending it so that it complied with the UN's requirements.**

- 5.16 During 2004 and 2005, there was a high turnover of staff in senior positions in Personnel branch. Some staff were posted to other parts of NZDF from Personnel branch, and those staff were not always immediately replaced. Personnel branch

was also working on significant projects in a short time frame – in particular, a Strategic Human Resource Plan, a Strategic Human Resources Framework, and a Human Resources Implementation Plan.

- 5.17 Personnel branch staff started reviewing the applicable Defence Force Order in 2004. The officer responsible for managing the review of the Defence Force Order was the Director of Military Personnel Policy Development<sup>B</sup>, although much of the work was delegated to a Personnel branch staff member. Some time in 2004, the staff member had obtained a copy of the *Administrative Instructions* and used them in preparing the initial drafts of the policy.
- 5.18 The Personnel branch staff member produced several drafts of the policy. One of the early drafts proposed to remove from the Defence Force Order the payment of NZDF accommodation assistance to seconded officers. She circulated this draft to Services directorate staff and the Military Adviser<sup>B</sup>. The Military Adviser<sup>B</sup> opposed this change, and recommended that NZDF retain its existing practices.
- 5.19 The Personnel branch staff member produced further drafts of the policy, including one in June 2005. This draft of the policy was in the form of a draft Minute to the Chief of Defence Force<sup>B</sup> recommending that the Defence Force Order be amended. This draft recommended that NZDF continue providing accommodation assistance, but that seconded personnel be required to declare that assistance to the UN. In her draft, she recognised that this option would mean that the UN would cease paying its rental subsidy and that the seconded person's post adjustment would be reduced. She also stated in that draft Minute that the current provision of accommodation assistance to seconded personnel did not comply with the UN's requirements, because the seconded personnel were not declaring their NZDF accommodation assistance to the UN.
- 5.20 This draft policy was sent to the Military Adviser<sup>B</sup> for comment. He disagreed with the draft policy and proposed that a model used by another country be adopted. The other country's model involved a seconded person's UN pay and allowances passing through their bank account back to their home state. Their home state would then continue to provide their pay and allowances. This model did not meet the UN's requirements.

## Reverting to the existing policy

**Some time after mid-2005, Personnel branch staff changed the draft policy so that it continued existing practices. It also removed all references to the current Defence Force Order not complying with the UN's requirements and seconded officers not declaring their accommodation assistance to the UN.**

- 5.21 Until around June 2005, the draft Minutes and draft revised Defence Force Orders prepared by Personnel branch staff were seeking to have a Defence Force Order that complied with the UN's requirements.
- 5.22 The next draft Minute to the Chief of Defence Force<sup>b</sup> and draft Defence Force Order were finalised by Personnel branch staff in late November 2005. The draft Minute was substantively different from all previous drafts. It proposed that NZDF continue providing accommodation assistance to seconded officers and proposed extending the existing entitlements for seconded officers with dependants. All references to the UN's requirements, the fact that the existing Defence Force Order did not comply with them, and the fact that the seconded officers were not declaring their accommodation assistance to the UN were removed from the draft Minute.
- 5.23 The draft Minute to the Chief of Defence Force<sup>b</sup> also included tables containing comparisons of entitlements and conditions of service of NZDF officers seconded to the UN in New York and NZDF officers posted to New York to NZDF positions. The tables showed that, without the payment of NZDF accommodation assistance, the seconded officers would have been paid much less than posted officers.
- 5.24 We reviewed these tables and found errors in them. In particular, the tables showed that seconded officers would be significantly worse off financially than NZDF officers posted to New York. As with the tables prepared in 2000, this conclusion was incorrect. As we discussed in Part 2, the seconded officers were in fact in a financial position that was generally comparable to posted officers. There was therefore no need to pay them NZDF accommodation assistance. The opportunity to identify the fundamental error in the Personnel branch advice of 2000 was missed, again because of incorrect calculations prepared by Personnel branch. As we discussed in Part 2, it appears that, until May 2010, no one in NZDF understood that seconded officers were in fact slightly better off financially.
- 5.25 There were also other errors in the tables – for example, one of the tables stated that an officer seconded to the UN with dependants was entitled to fewer holiday allowances than an officer without dependants, and that an officer seconded to the UN with dependants had a lower salary than an officer without dependants.

The tables had different figures for the amount that seconded officers were entitled to by way of accommodation assistance under the operative policy. Neither figure was correct.

- 5.26 We asked Personnel branch staff and the Assistant Chief Personnel<sup>c</sup> why the draft Minute to the Chief of Defence Force<sup>b</sup> and draft Defence Force Order had been so radically changed, and why all reference to the fact that the existing policy did not comply with the UN's requirements had been removed.
- 5.27 The Director of Military Personnel Policy Development<sup>b</sup> told us that he discussed the early drafts with the Assistant Chief Personnel<sup>c</sup>. The Director of Military Personnel Policy Development<sup>b</sup> told us that the Assistant Chief Personnel<sup>c</sup> had advised him that he would not take a paper up to the Chief of Defence Force<sup>b</sup> (the former Assistant Chief Personnel<sup>a</sup>) if it contained any reference to the policy not complying with the UN's requirements. The Director of Military Personnel Policy Development<sup>b</sup> told us that the Assistant Chief Personnel<sup>c</sup> said that he would discuss the matter with the Chief of Defence Force<sup>b</sup> verbally but did not want any written reference to it in the Minute.
- 5.28 The Assistant Chief Personnel<sup>c</sup> advised us that he did not have a conversation in those terms with the Director of Military Personnel Policy Development<sup>b</sup>. His recollection is of a discussion that acknowledged the potential for conflict between NZDF's policy and the UN's requirements and the need to ensure that they did not expose the Chief of Defence Force and NZDF by doing the wrong thing. He did not want to take a paper to the Chief of Defence Force<sup>b</sup> that proposed a policy that did not comply with the UN's requirements.
- 5.29 The Assistant Chief Personnel<sup>c</sup> told us that he understood that the revised policy was going to meet NZDF's duty to its staff and accommodate the UN's requirements. He told us he did not discuss the Minute verbally with the Chief of Defence Force<sup>b</sup>. The Assistant Chief Personnel<sup>c</sup> also advised us that he would only have had a general understanding of issues such as this, and that staff working on issues would have had more detailed understanding. Therefore, it was possible for him to have been unaware of the complete picture.
- 5.30 The Chief of Defence Force<sup>b</sup> told us that he does not recall having a conversation with the Assistant Chief Personnel<sup>c</sup> about the draft policy, and that he would not knowingly have approved a policy that did not comply with the UN's requirements.
- 5.31 The documents discussed above show that Personnel branch staff understood the problem and were working on solutions, until the direction of the policy changed significantly at a late stage to remove all discussion of the problem. But



the documents do not show why that change was made. We have been given two different recollections of what appear to have been a critical conversation. The Director of Military Personnel Policy Development<sup>B</sup> understood that the new direction conflicted with the UN's requirements but thought that was what he was being instructed to do. The Assistant Chief Personnel<sup>C</sup> told us that he thought the conflict had been resolved.

- 5.32 The Chief of Defence Force<sup>B</sup> approved the amended Defence Force Order on 16 December 2005. The amended Defence Force Order continued the existing arrangements for seconded officers, and extended the entitlements for seconded officers with dependants.

### Decision to pay Officer 3 accommodation assistance

#### **After NZDF decided to continue with the existing arrangements for seconded officers, Officer 3 was paid accommodation assistance.**

- 5.33 After the Chief of Defence Force<sup>B</sup> approved the amended Defence Force Order, the Assistant Chief Personnel<sup>C</sup> sent a letter to Officer 3 advising him that NZDF would pay him accommodation assistance. The decision to pay Officer 3 accommodation assistance had remained unresolved for more than eight months after he sought clarification of his entitlements and six months after his secondment started.
- 5.34 Officer 3, like Officer 1, was required to accept a UN secondment without knowing what his NZDF conditions of service or entitlements would be and how they would interrelate with his UN contract or how they would affect his wife (who received the UN's rental subsidy).
- 5.35 Because Personnel branch staff understood that the current Defence Force Order conflicted with the UN's requirements, they must have also understood that to pay Officer 3 accommodation assistance without him (or his wife) declaring that assistance to the UN may have meant that he would breach the UN's requirements.
- 5.36 Because the letter did not state whether he (or his wife) should declare the NZDF accommodation assistance, Officer 3 operated based on the earlier advice he had received from Military Adviser<sup>B</sup> and Officer 2 and did not declare his accommodation assistance. While this decision ensured that Officer 3 was in the same financial position as the previous seconded officers, it also continued the pattern of NZDF officers not complying with the UN's requirements. For the officers directly affected, the decision to continue with the same system effectively confirmed their understanding that NZDF condoned and expected this.

- 5.37 We note that at no stage in 2004 or 2005 did Personnel branch staff seek advice from the Directorate of Legal Services, either on the draft policy or the proposal to pay Officer 3. This is despite Personnel branch staff identifying that the Defence Force Order did not comply with the UN's requirements and that two seconded officers had not declared their accommodation assistance to the UN (which was contrary to the UN's requirements). We also note that the Directorate of Legal Services did not review the Defence Force Order before it was approved. At the time, there was no procedural requirement for a legal review before Defence Force Orders were approved.

## Part 6

# Secondment of Officer 4, and the Military Police's investigation and report

- 6.1 In this Part, we describe Officer 4's secondment and what happened after the UN found out that Officer 4 was not declaring his accommodation assistance. We discuss:
- the secondment of Officer 4 to the UN in New York;
  - why Officer 4 did not declare his accommodation assistance to the UN;
  - the NZDF Military Police investigation into Officer 4; and
  - the charges laid against Officer 4.

### Secondment of Officer 4

**Officer 4 had previously been the Military Adviser<sup>B</sup> to New Zealand's UN mission in New York. He understood the UN's requirements and knew that previously seconded officers had made false declarations. At the time NZDF seconded him to the UN, NZDF was aware that allegations had been made of financial irregularities during his term as Military Adviser.**

- 6.2 Officer 4 had been the Military Adviser<sup>B</sup> in the New Zealand Permanent Mission to the UN in New York from January 2002 until July 2006. He was nominated for a position within the Department of Peacekeeping Operations at the UN in 2006. He started a six-month appointment with the UN in October 2006.
- 6.3 On 19 September 2006, before Officer 4 was seconded to the UN, the new Military Adviser<sup>C</sup> wrote to the Chief of Defence Force<sup>C</sup> about alleged financial irregularities at the Military Adviser's post that had occurred during the term of the Military Adviser<sup>B</sup> from January 2002 until July 2006. The Military Adviser<sup>C</sup> also advised in that letter that he had been visited by a US Customs representative from the State Department about a large delivery of duty-free goods made to the Military Adviser<sup>B</sup> in July 2006. The Military Adviser<sup>C</sup> advised that the State Department official inferred that the goods had been sold or gifted in the US or had been exported.
- 6.4 The Military Adviser<sup>C</sup> wrote to the Vice Chief of Defence Force in late February 2007 and again raised concerns about Officer 4's behaviour after he had ceased to be Military Adviser.
- 6.5 We were told that the then Vice Chief of Defence Force reviewed the letter sent by the Military Adviser<sup>C</sup> and determined that no action was necessary. So far as we know, this assessment was not communicated back to the Military Adviser<sup>C</sup>.

## Why Officer 4 did not declare his accommodation assistance

**Like the officers seconded before him, Officer 4 believed that NZDF expected him to sign the UN's declaration and receive the UN's rental subsidy.**

- 6.6 Having previously been the Military Adviser<sup>B</sup>, Officer 4 was aware of the issues about the UN's rental subsidy that the other seconded officers had dealt with. He signed the rental subsidy application form stating that he was not receiving any accommodation assistance from his home state. This was untrue, because NZDF was paying him accommodation assistance.
- 6.7 Officer 4 believed that NZDF expected him to sign the declaration to receive the UN's rental subsidy, which would be used to offset the accommodation assistance that NZDF paid. When we interviewed Officer 4, we discussed with him the email he had received from the Director of Services in November 2002 about the conditions of service for Officer 2. Officer 4 noted that this email had been sent to the Assistant Chief Personnel<sup>B</sup> and Deputy Assistant Chief Personnel<sup>B</sup> and neither had advised him to do other than he was being advised to do by the Director of Services. He considered that Personnel branch and Services directorate staff were well aware of this issue.
- 6.8 Officer 4 was also aware from discussions with Personnel branch staff amending the Defence Force Order in 2004 and 2005 that they knew that the seconded officers were not declaring their accommodation assistance and knew that this breached the UN's requirements.
- 6.9 In April 2007, Officer 4's secondment was extended for a further six months. In July 2007, the UN became aware that Officer 4 was receiving accommodation assistance from NZDF that he had not declared to the UN. NZDF was also alerted to the matter at about the same time through New Zealand's diplomatic channels. The UN's Office of Human Resources Management asked Officer 4 to explain in August 2007, and he sought advice from NZDF about how to deal with this.

## Military Police's investigation and report

**NZDF sent a Military Policeman to New York to investigate Officer 4's false declaration and alleged financial irregularities during his term as Military Adviser. The Military Policeman's report identified that three other officers may also have made false declarations, and that NZDF had paid accommodation assistance to the seconded officers in accordance with a Defence Force Order.**

- 6.10 In August 2007, NZDF sent a Military Policeman to New York to investigate the alleged false declaration made by Officer 4 to the UN and other matters involving Officer 4.
- 6.11 In September 2007, the Military Policeman, in his report to the Vice Chief of Defence Force, identified that Officer 4 had been paid accommodation assistance in accordance with Defence Force Orders. He also stated that there had been three other NZDF officers who had also been similarly paid while seconded to the UN.
- 6.12 The Military Policeman also identified several matters of concern relating to Officer 4's conduct while Officer 4 had been the Military Adviser or shortly after he had ceased being the Military Adviser. In particular, these matters included the alleged purchase of a large amount of duty-free alcohol on behalf of another person, which breached US Federal Regulations. In his report, the Military Policeman advised that he considered that there was sufficient information to lay several charges against Officer 4, including one in relation to the false declaration he had made to the UN. The other charges related to Officer 4's conduct during his term as the Military Adviser or shortly after.
- 6.13 The US Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau had been investigating the allegations that Officer 4 had purchased duty-free alcohol and cigarettes and supplied them to a third party. Directorate of Legal Services staff told us that US Federal officials had indicated to them that they would ordinarily have sought to prosecute Officer 4. They agreed not to on the basis that he would be dealt with by NZDF and removed from the US at the end of his secondment to the UN. Officer 4 returned to New Zealand in October 2007.
- 6.14 Once Officer 4 returned to New Zealand, he was posted to his service but was, in effect, placed on leave. In October 2007, the Vice Chief of Defence Force directed that an audit be carried out of the General Ledger of the Military Adviser during Officer 4's tenure in that role. This was done and the Military Policeman then carried out further interviews as a result of the audit. In December 2007, the Military Policeman prepared a further report recommending the laying of further charges against Officer 4.

## Charges laid against Officer 4

### **NZDF did not lay any charges against Officer 4 relating to the false declaration he had made to the UN.**

- 6.15 The charges that the Military Policeman had recommended be laid against Officer 4, in his first and second reports, were referred to the Directorate of Legal Services for legal advice to determine whether they could be laid. Under the Armed Forces Discipline Act 1971, where it is alleged that a service member has committed an offence against that Act, the service member's commanding officer must charge them with that offence unless they determine that the allegation was not well founded.
- 6.16 To determine whether a charge is well founded, the commanding officer must first determine that there is sufficient evidence, in relation to the allegations made to support charging the service member with that offence. The commanding officer must also determine that there are no other reasons, such as a valid defence, that would not support charging the service member with that offence.
- 6.17 In January 2008, Directorate of Legal Services staff reviewed the list of proposed charges and advised Officer 4's commanding officer that the proposed charge relating to the false declaration that Officer 4 had made to the UN was not well founded and that Officer 4 should not be charged in relation to the false declaration.
- 6.18 Directorate of Legal Services staff advised that Officer 4 could rely on claim of right<sup>6</sup> in his defence to a charge in relation to making the false declaration, and therefore such a charge was not well founded and a charge relating to that allegation should not be laid. This advice resulted from the realisation that Personnel branch staff knew that seconded officers had not been declaring their accommodation assistance to the UN and that Officer 4 had been acting in accordance with tacit or explicit advice from Personnel branch staff.
- 6.19 On 7 February 2008, Officer 4 met with his commanding officer and was told which charges he would face. These did not include any charges relating to the false declaration to the UN. He was advised at that meeting that he would not be charged with any offences relating to the false declaration.
- 6.20 NZDF held a court martial for Officer 4 at the end of June 2008. He was not charged with any offences relating to making a false declaration to the UN. He pleaded guilty to two charges under the Armed Forces Discipline Act that relate to bringing discredit to the Armed Forces and was reprimanded and fined \$1500.

<sup>6</sup> Claim of right is defined in section 2(1) of the Crimes Act 1961 as "a belief that the act is lawful, although that belief may be based on ignorance or mistake of fact or any matter of law other than the enactment against which the offence is alleged to have been committed".

- 6.21 None of the four seconded officers have been charged with offences relating to the UN allowances. In the next Part, we explain that this issue was examined through a military Court of Inquiry, after which each officer received a letter of censure from the Chief of Defence Force<sup>c</sup>.
- 6.22 The court martial of Officer 4 related solely to the other matters that had arisen while he was posted to New York and shortly after his posting ended. In this regard, it was clearly appropriate that he was treated differently from the other seconded officers.
- 6.23 In relation to the false declaration made to the UN, he was treated differently primarily because it was his declaration that brought the problem to light and because it was initially intertwined with the investigation into his conduct during his time as the Military Adviser and shortly after. Once NZDF determined that it was not going to lay any charges against Officer 4 in relation to the UN allowances in February 2008, it treated Officer 4 in a similar manner to the other officers.





## Part 7

# Revoking the Defence Force Order

- 7.1 In this Part, we describe:
- how the non-compliant arrangements for Officer 3 were allowed to continue after the UN became aware that Officer 4 had made a false declaration;
  - how NZDF finally revoked the Defence Force Order in June 2008;
  - whether NZDF refunded the rental subsidies that the UN had paid to all four seconded officers; and
  - the Court of Inquiry held by NZDF.

### Continued non-compliant arrangements for Officer 3

#### **NZDF continued to pay accommodation assistance to Officer 3 until the applicable Defence Force Order was revoked.**

- 7.2 As discussed in Part 6, NZDF sent a Military Policeman to New York to investigate the issues raised by the UN and other matters about Officer 4. The Military Policeman, in his report to the Vice Chief of Defence Force in September 2007, identified that Officer 4 had been paid accommodation assistance in accordance with a Defence Force Order. He also stated that three other NZDF officers had also been similarly paid while seconded to the UN.
- 7.3 Officer 3, who had been seconded to the UN before Officer 4, was still on secondment to the UN when the UN became aware that Officer 4 was not declaring his accommodation assistance. Officer 3's secondment continued until 22 July 2008. As discussed earlier, he was also receiving NZDF accommodation assistance, while his wife (also a UN employee) was receiving the UN's rental subsidy.
- 7.4 NZDF continued to pay accommodation assistance to Officer 3 until the Defence Force Order was revoked. As a result of the Military Policeman's report in September 2007, senior NZDF staff must have known that continuing to pay NZDF accommodation assistance to Officer 3 without him or his wife declaring that assistance may have meant that Officer 3 was breaching his UN contract. Despite this, NZDF continued to pay him. We saw no evidence that NZDF considered after September 2007 how it could continue to provide accommodation assistance to Officer 3, for the remainder of his secondment, in a way that complied with the UN's requirements.
- 7.5 Officer 3's employment with NZDF ceased at the same time as his secondment with the UN finished on 22 July 2008. The Defence Force Order was revoked on 16 June 2008. NZDF did not pay him any accommodation assistance after 16 June 2008 because he could only be paid accommodation assistance if there was a

Defence Force Order in force that permitted that payment. Because Officer 3 put his claim for NZDF accommodation assistance the month after he paid rent, he did not receive NZDF accommodation assistance for the last two months of his secondment.

## Defence Force Order revoked in June 2008

### **On 16 June 2008, NZDF revoked the Defence Force Order that provided for the payment of accommodation assistance to officers second to the UN.**

- 7.6 On 16 June 2008, the Chief of Defence Force<sup>c</sup> revoked the Defence Force Order that provided for the payment of NZDF accommodation assistance to UN seconded officers. This was four months after Directorate of Legal Services staff had advised Personnel branch staff in February 2008 that the Defence Force Order needed to be revoked. Directorate of Legal Services staff followed this up with Personnel branch staff on several occasions. Despite this, the Minute from the Personnel branch recommending that the Chief of Defence Force revoke the Defence Force Order was not sent until 4 June 2008.
- 7.7 Assistant Chief Personnel<sup>p</sup> advised us that the delay was in part because the Defence Force Order provided for a number of entitlements other than accommodation assistance, and there was concern that cancellation of the order could have removed legitimate entitlements. Changing the Defence Force Order therefore required substantive work at a time when the branch was busy. The branch was primarily occupied with implementing a new remuneration system throughout NZDF.
- 7.8 Since these events, NZDF has not seconded any other officers to the UN.

## Repaying the United Nations' rental subsidies

### **NZDF has repaid to the UN the rental subsidy that was paid to Officer 4.**

- 7.9 In July 2008, the Chief of Defence Force<sup>c</sup> announced that the UN's rental subsidies paid to all of the seconded officers were to be repaid to the UN and directed the Military Adviser<sup>c</sup> to arrange this. The UN had requested that Officer 4 repay the amounts it had paid to him in rental subsidies. NZDF repaid that amount to the UN.
- 7.10 The Military Adviser<sup>c</sup> met with UN officials to arrange repayment of the UN rental subsidies for the three other seconded officers. We were told that the UN officials were reluctant to engage on this matter, because the three officers were no longer UN employees and the UN Secretariat had no method by which it could accept the repayment. The Chief of Defence Force<sup>c</sup> visited the UN in September 2008 and was unable to progress the matter.

## The New Zealand Defence Force's Court of Inquiry

### **NZDF's Court of Inquiry was held nine months after NZDF was formally advised that the seconded officers might have made false declarations.**

- 7.11 There was some media interest in the court martial of Officer 4, which took place at the end of June 2008, and some commentary about the UN accommodation assistance issue, even though Officer 4 was not charged with any offences for the false declaration to the UN.
- 7.12 The Chief of Defence Force<sup>c</sup> convened a Court of Inquiry on 1 July 2008 into the circumstances in which the conditions of service for officers seconded to the UN were developed and implemented. We note that the Military Policeman had sent his report identifying issues about the declarations and accommodation assistance to the Vice Chief of Defence Force in September 2007, and the internal advice within NZDF recognised that there was a general problem with the payment of accommodation assistance in February 2008. However, it was not until July 2008 that NZDF held a Court of Inquiry into the matter to formally investigate what had gone wrong.
- 7.13 Officer 3 was still on secondment and still receiving accommodation assistance from NZDF until July 2008.
- 7.14 NZDF advised us that it does not assemble a Court of Inquiry into any matter into which a disciplinary investigation is being conducted until that investigation is complete. This is because the evidence gathered in a Court of Inquiry cannot be used in any disciplinary or criminal proceeding and as a result the effect of a Court of Inquiry may be to make evidence inadmissible. We note that NZDF had determined in February 2008 that it could not charge Officer 4 with any offences relating to the UN allowances he had received. In our view, NZDF could have started the Court of Inquiry process from the point when the two sets of issues were separated.
- 7.15 The process and requirements for Courts of Inquiry are established by the Armed Forces Discipline Act 1971. They have traditionally been used to enable a quick and practical investigation of what has gone wrong in an operational context, to ensure that any mistakes are not repeated. They are usually swift and confidential. As noted, the evidence gathered cannot be used for any other purpose. The Court of Appeal in *NZDF v Berryman* [2008] NZCA 392 referred to an earlier decision of the Courts Martial Appeals Court in *Neave v R* (1995) 9 PRNZ 40, where the role and process of Courts of Inquiry were discussed:

*The Court of Inquiry has been part of the regular procedures of the armed forces for many centuries. We agree with Mr Stainton's submission that the present day*

*provisions in the Act and the Rules of Procedure when read together disclose an intent to give a superior commander an expeditious fact finding procedure so that a matter can be promptly investigated and if necessary, prompt, remedial action can be taken. Expedition, frankness, and the minimisation of legal niceties are the underlying themes.*

- 7.16 The terms of reference for the Court of Inquiry were issued on 1 July 2008, and the Court was instructed to report by 5pm on 2 July 2008. The deadline for reporting was extended until 9 July 2008 and then extended again to 17 July 2008. After carrying out further procedural steps, the Court of Inquiry finally reported on 28 July 2008. Although it interviewed a number of witnesses, and reviewed a range of documents, it did not carry out a comprehensive search of NZDF's files or give witnesses significant time to prepare before giving their initial evidence. This fitted the nature of the Court of Inquiry process. It gathered enough information to be able to form and report its conclusions on what had happened, within a month.
- 7.17 The Court of Inquiry initially interviewed the Military Adviser<sup>A</sup>. Under the rules of procedure that courts of inquiry operate under, where the conduct of an officer senior in rank to the members of the court of inquiry is or is likely to be called into question in the course of the inquiry, the court of inquiry is required to adjourn and report that matter to the assembling authority (in this case, Chief of Defence Force<sup>C</sup>).
- 7.18 The President of the Court of Inquiry advised the Chief of Defence Force<sup>C</sup> that in his opinion the conduct of the Military Adviser<sup>A</sup> may have been brought into question. The Chief of Defence Force<sup>C</sup> directed that the Court continue, but that it set aside any evidence about the Military Adviser<sup>A</sup> for a separate investigation. He then chose to investigate that issue personally and conducted an interview with the Military Adviser<sup>A</sup>.
- 7.19 The Court of Inquiry was also unable to interview the Assistant Chief Personnel<sup>A</sup>/Chief of Defence Force<sup>B</sup> as he was no longer serving with NZDF. The Chief of Defence Force<sup>C</sup> sought comment and received a statutory declaration from him.
- 7.20 The Chief of Defence Force<sup>C</sup> wrote a report to the Minister of Defence. The report considered the findings of the Court of Inquiry and the comments that the Chief of Defence Force<sup>C</sup> had received from the Assistant Chief Personnel<sup>A</sup>/Chief of Defence Force<sup>B</sup> and the Military Adviser<sup>A</sup>.
- 7.21 The Minister of Defence asked the Auditor-General to review the findings of the Court of Inquiry and in particular to inquire into two matters that the Court of Inquiry had not resolved to his satisfaction. He asked the Auditor-General to independently examine and report on these matters.

- 7.22 There was strong interest from the Minister of Defence, and the public generally, in the findings of the Court of Inquiry, because of the significance of the matters it was investigating and the publicity the issues had already received.
- 7.23 With hindsight, the Court of Inquiry was not a good fit in this situation. It is designed to provide an “expeditious fact-finding procedure”, with a minimum of “legal niceties” to enable NZDF to fix any problems quickly. Its processes are not designed to provide public accountability on complex issues. For example, that the Court of Inquiry could not pursue issues about the more senior officers was an unfortunate limiting factor.
- 7.24 As noted, the Minister of Defence then referred the Court’s findings to the Auditor-General because the Minister considered that further examination was needed “to ensure full transparency and an independent assessment of the shortcomings exposed by the Court of Inquiry”.



## Part 8

# Overall conclusions and comments

8.1 In this Part, we set out our overall conclusions and comments. We provide our summary of what happened, and our conclusions on the specific questions in our terms of reference, before discussing:

- NZDF's poor policy process;
- NZDF's organisational culture; and
- how NZDF treated the four officers who were seconded to the UN.

### Our summary of what happened

8.2 Some nine years after the fact, it has been difficult to determine what exactly occurred in the events discussed in this report. People's memories have faded over time and there is a lack of documentation within the files, making it difficult sometimes to determine what people involved knew or did, including what discussions they might have had, and with whom. Nonetheless, our inquiry has produced a clear picture of what took place:

- In 2000, Personnel branch staff did not understand the UN's requirements for "non-gratis" secondments and did not give enough consideration to what arrangements such secondments would need from NZDF's perspective.
- Personnel branch staff prepared advice for the Assistant Chief Operations that showed that an officer seconded to the UN would be significantly worse off financially compared to an NZDF officer posted to New York. On this basis, they recommended that the seconded officer be paid NZDF accommodation assistance in addition to their UN salary and allowances.
- In fact, the financial position of NZDF officers seconded to the UN was generally comparable to that of NZDF officers posted to New York. There was therefore no need to pay them additional NZDF accommodation assistance. The advice was deficient in two ways: the assistance being recommended was not only inappropriate, it was also unnecessary.
- The Chief of Defence Force<sup>A</sup> agreed in principle that NZDF would provide accommodation assistance to a seconded officer on the basis of the incorrect Personnel branch advice. The problems that later arose were a result of the incorrect advice and were entirely avoidable. There was no evidence that anyone within NZDF, including the seconded officers, was ever aware that the premise that seconded officers would be worse off without payment of the NZDF accommodation assistance was incorrect, until our work in May 2010.
- There was also no thought given to reporting or administrative command lines for the seconded officers, meaning that there was no clear responsibility for those seconded officers. Different people operated on different assumptions.

- When Officer 1 took up his secondment in early 2001, it was his understanding that NZDF expected him to obtain the UN's rental subsidy, which would then be used to offset the accommodation assistance that NZDF paid. He told us that he understood this effectively as an order to do what was needed to achieve that result, and so made a false declaration to the UN.
- Later in 2001, a Defence Force Order was finalised that reflected that approach – seconded officers would receive the UN's rental subsidy as well as NZDF accommodation assistance. The Defence Force Order was silent about whether the seconded officer was to declare their NZDF accommodation assistance to the UN.
- By late 2002, it was clear to a reasonable number of people that either the Defence Force Order was inconsistent with the UN's requirements or that the arrangements for the seconded officers did not comply with the UN's requirements and that the current arrangement in practice relied on the seconded officer making a false declaration to the UN. It was openly discussed with Officer 2 and the later seconded officers when they started in New York and was presented as "the way things were done".
- During 2004 and 2005, when the Personnel branch was amending the Defence Force Order, there was much discussion about the problems with the existing arrangements. Initial drafts of policy papers recognised the inconsistency and considered possible solutions. Personnel branch staff still did not identify that officers seconded to the UN were in a financial position that was generally comparable to that of NZDF posted officers. Therefore, Personnel branch staff did not question the underlying reason for paying the seconded officers NZDF accommodation assistance.
- The key policy paper was changed at a late stage to remove all reference to the problems and to recommend that the existing arrangements continue. Although some staff understood that this meant that the problem would continue, the Assistant Chief Personnel<sup>c</sup> told us that he thought the issue had been resolved when he sent the final paper to the Chief of Defence Force<sup>b</sup>.
- In 2007, the problems emerged when the UN received a complaint about Officer 4 and raised it with New Zealand through diplomatic channels. During the investigation carried out by NZDF, other issues with the legality and appropriateness of Officer 4's actions were uncovered. Issues about his conduct had also been raised with NZDF before his secondment.
- Officer 3 remained on secondment in the UN and continued to receive accommodation assistance, despite NZDF being aware that it was likely that his accommodation assistance had not been disclosed to the UN and that paying him accommodation assistance would probably affect the rental subsidy the UN paid to his wife.



- The Defence Force Order setting out the NZDF accommodation assistance entitlements was finally revoked in June 2008, at which point NZDF ceased paying accommodation assistance to Officer 3.
- In June 2008, Officer 4 pleaded guilty to two charges at a court martial relating to his conduct during his time as Military Adviser<sup>B</sup>. There was some associated publicity about the accommodation assistance issue in late June and early July 2008. NZDF established a Court of Inquiry in July 2008, to understand how the problems with the accommodation assistance had developed.
- The Minister of Defence considered that there were some matters that the report of the Court of Inquiry did not resolve to his satisfaction. He asked the Auditor-General to review the findings of the Court of Inquiry and to independently examine and report on matters he considered had not been resolved by the Court of Inquiry.

8.3 We have concerns about a number of points that emerge from these findings. They relate to:

- the poor process for policy development on this personnel matter, which was slow at every stage, poorly informed, and focused on the wrong questions;
- aspects of the organisational culture that appears to have been operating within NZDF headquarters and that enabled people not to recognise the seriousness of the issues involved, and to believe that it was inappropriate or not their responsibility to question a financial or administrative decision that had been made by a senior officer, even if they knew it was wrong; and
- the overall effect of this issue on the staff involved.

8.4 We comment on these concerns in more detail later in this Part.

## **Our conclusions on the questions in our terms of reference**

8.5 Our terms of reference identified three specific questions:

- how NZDF addressed the question of arrangements for staff seconded to the UN, particularly for housing allowances and consistency with UN requirements;
- whether any individuals within NZDF or parts of NZDF encouraged, condoned, knew of, or acquiesced in the practice of seconded personnel signing false declarations to the UN; and
- whether NZDF was consistent in its treatment of individuals involved in the housing allowance issue.

### How NZDF addressed arrangements for staff seconded to the UN

- 8.6 The Court of Inquiry report identified failings in the policy process and administration of the housing allowances issue. The preceding Parts of this report have set out the facts we have established about how NZDF addressed this issue, as a matter of policy and practice. Our work has confirmed the overall factual picture described by the Court of Inquiry, which the Minister of Defence described as institutional failure.
- 8.7 Our inquiry produced one further significant finding – that the payment of NZDF accommodation assistance to the seconded officers was unnecessary. NZDF officers seconded to the UN were in fact in a financial position that was generally comparable to that of NZDF officers posted to New York. However, all Personnel branch advice since May 2000 had incorrectly shown that it was necessary to pay the seconded officers NZDF accommodation assistance as without it they would be significantly worse off financially than NZDF posted officers.
- 8.8 We note that the current Chief of Defence Force has accepted from the outset that this issue has arisen from poor policy development and other failures at critical points.
- 8.9 We agree with his assessment. We set out our comments on the deficiencies in NZDF's policy process later in this Part.

### Did anyone in NZDF encourage, condone, know of, or acquiesce in the practice of signing false declarations?

- 8.10 This is a complex question. As the preceding Parts make clear, different people had different levels of knowledge and understanding at different points in time. At several points, those who knew of the practice interpreted decisions as effectively condoning the practice. However, those who were taking the decisions do not appear to have been aware of the practice or to have understood how the decisions would be interpreted.
- 8.11 The seconded officers themselves obviously all knew about the practice. Along with the Military Adviser<sup>B</sup>, some encouraged it in that they advised their successors that this was the accepted practice. During the policy review in 2005, the Military Adviser<sup>B</sup> also openly supported this practice as a simple way through what was by then recognised as a difficult issue in the UN community. The Personnel branch staff working on that policy review also knew about the practice, which informed their initial advice on the need for change.
- 8.12 A number of other staff also had some understanding that the general approach being taken did not meet the UN's requirements, even if they may

not have realised that false declarations were being signed. They included Services directorate staff, the Deputy Chief of Defence Staff, the Chief of Air Force, Assistant Chief Strategic Commitments and Intelligence, Assistant Chief Personnel<sup>b</sup>, Assistant Chief Personnel<sup>c</sup>, Deputy Assistant Chief Personnel<sup>b</sup>, and other Personnel branch staff. The Military Adviser<sup>a</sup> also reviewed the proposed policy in 2001, and advised Services directorate staff that it did not comply with UN requirements. He then moved to another role and had no further involvement in the issue.

- 8.13 The practice was unwittingly encouraged when the first Defence Force Order was made in 2001 and when the revised Defence Force Order was issued in 2005. Both Defence Force Orders confirmed the status quo of the officers receiving a rental subsidy from the UN, which was then topped up by an accommodation allowance from NZDF. The Defence Force Orders were therefore understood by those directly involved as endorsing the way in which that was being achieved in practice. The bulk of the evidence we have received, however, is that in both cases neither the relevant Assistant Chief Personnel giving the advice nor the Chief of Defence Force making the Defence Force Order were aware that this was how the Defence Force Order would be understood.
- 8.14 We comment later in this Part on the reasons why these different layers of misunderstanding were able to occur and to persist for so long, without being addressed.

### **Did NZDF treat the four seconded officers consistently?**

- 8.15 There had been some public questions, at the time of Officer 4's court martial, that he had been treated unfairly on this issue. We set out our detailed findings on his treatment in Parts 6 and 7. We conclude that he was treated differently on the housing allowance issue primarily because it was his declaration that brought the problem to light and because it was initially intertwined with the investigation into his conduct during his time as the Military Adviser and shortly after. Once NZDF determined that it was not going to lay any charges against Officer 4 in relation to the UN allowances in February 2008, it treated Officer 4 in a similar manner to the other officers.

### **Poor policy process**

- 8.16 In our view, the policy process used by NZDF on this issue was poor in several ways:
- Personnel branch advice that seconded officers would be significantly worse off financially compared to NZDF posted officers without payment of the NZDF

accommodation assistance was incorrect. This mistake was made in May 2000 and was never identified by NZDF. Had the mistake not been made in the May 2000 advice, it is unlikely that all of these problems would have arisen.

- Personnel branch took a long time first to develop the policy, then to implement it by way of a Defence Force Order, and finally to revoke that Defence Force Order.
- In developing the policy in 2000 and 2001, the Personnel branch did not understand the UN's requirements and incorporate them into that policy and subsequent Defence Force Order.
- When Personnel branch staff worked on the amendments to the Defence Force Order in 2005, they were aware that the Defence Force Order did not comply with the UN's requirements, but they failed to promote the necessary changes or to raise or document concerns about the amended Defence Force Order that still did not address the inconsistency.
- The policy focus on ensuring that seconded officers' conditions of service and entitlements achieved parity with those of posted officers meant that Personnel branch failed to adequately consider the nature of a "non-gratis" secondment and what it might require from an NZDF perspective.

8.17 The deficiencies in this process have to be seen in the context of how busy the branch was. Personnel branch is the branch in NZDF headquarters responsible for developing and implementing policy for NZDF personnel, as well as for dealing with personnel issues. Therefore, developing personnel policy is only one aspect of their work. We note that, during 2000 and 2001, alongside its usual work, it was deploying personnel, often at short notice, to a number of overseas locations, including to East Timor. It was also involved in carrying out a major upgrade of Personnel Policy and a review of overall remuneration. We also note that, during 2005, the branch was affected by high staff turnover in senior positions. Staff in some positions were posted to other parts of NZDF and were not immediately replaced. In 2005, the Personnel branch was also working on significant projects in a short time frame – in particular, a Strategic Human Resource Plan, a Strategic Human Resources Framework, and a Human Resources Implementation Plan.

### **Delays in sorting out entitlements and conditions of service for individual officers**

8.18 There were long delays in Personnel branch providing advice to some of the seconded officers about what their conditions of service and entitlements would be. For example, NZDF had not clarified the conditions of service or entitlements for Officer 1 before he accepted his UN offer or before he started his secondment. The Defence Force Order was not finalised until some 11 months after Officer 1 started his secondment.

- 8.19 Similarly, Personnel branch did not decide whether Officer 3 would be paid accommodation assistance until six months after his secondment started. NZDF continued to pay Officer 3 that accommodation assistance for nearly a year after the UN had found out about Officer 4's undeclared accommodation assistance. This was also several months after it had received legal advice that the payment of accommodation assistance did not comply with the UN's requirements and that the Defence Force Order needed to be revoked.
- 8.20 In both these instances, because Personnel branch delayed providing advice to the two officers about their conditions of service and entitlements, the officers had no idea how their NZDF conditions of service and entitlements would fit with their UN contracts and whether to accept their UN contracts.
- 8.21 It may be common in an operational context for NZDF to deploy personnel overseas urgently and before the conditions of service for that deployment have been finalised. But, in that situation, there is a practical need for urgency, the staff member is still working for NZDF, and it is possible for people to proceed on the basis that NZDF will look after its personnel appropriately. There is no need for NZDF to negotiate with the individual or another organisation before deploying them.
- 8.22 A long-term secondment to a different organisation, where the connection with NZDF is effectively suspended during the secondment, is quite a different context. It needed a different approach. NZDF had been considering a secondment nine months before the first seconded officer took up his role. In our view, it should have been able to consider properly how the secondment would work and its effect on an officer's NZDF conditions of service and entitlements in that time. It needed to work through in detail the conditions of service and entitlements for the seconded officers with the UN and with the individual officer.

### **Delays in the policy development process, and in amending and revoking the Defence Force Order**

- 8.23 The Personnel branch had known since October 2000 that Officer 1 was to be seconded to the UN. Officer 1 started his secondment in early 2001, but it took until November 2001 to finalise the policy for seconded officers' entitlements and conditions of service. In our view, that was too long. It meant that arrangements were developed as they went along for Officer 1. As already outlined, the absence of arrangements that were clear and properly thought through at that time started this chain of events.
- 8.24 We accept that the policy was originally intended to apply to only one officer at a time, and therefore the development of this policy was likely to take lower

priority in the Personnel branch compared to policies that affected all NZDF staff. We also understand that other urgent operational matters would have had priority. Nonetheless, the policy still took a very long time to be developed and implemented as a Defence Force Order.

- 8.25 In mid-2004, Personnel branch staff had identified that the Defence Force Order did not comply with the UN's requirements and were aware that Officer 2, who was then on secondment, was not complying with the UN's requirements. However, they did not finalise the review of the Defence Force Order until December 2005, more than a year later. NZDF should have addressed this more promptly.
- 8.26 There were further delays in revoking the Defence Force Order after the Military Policeman had advised the Vice Chief of Defence Force, in September 2007, that there were three other officers who received accommodation assistance in accordance with the Defence Force Order. They were possibly not complying with the UN's requirements by not declaring that accommodation assistance to the UN. The Defence Force Order was not revoked until June 2008, some nine months later. We understand that the Directorate of Legal Services had provided advice to Personnel branch in February 2008 that the Defence Force Order should be revoked. However, this was not done until just two weeks before the Court of Inquiry on 1 July 2008 and Officer 4's court martial at the end of June 2008.
- 8.27 As a result of Personnel branch's delay in revoking the Defence Force Order, Officer 3 continued to be entitled to be paid accommodation assistance under the Defence Force Order, which he in fact was paid.
- 8.28 In our view, Personnel branch took too long to determine the conditions of service and entitlements for seconded officers and to implement those decisions by way of a Defence Force Order. Once the UN became aware that NZDF was providing accommodation assistance and that this was not being declared by the seconded officers, Personnel branch again took too long to revoke the Defence Force Order. We conclude from the delay that Personnel branch did not regard the non-compliance as significant.

### **Personnel branch failed to understand the UN's requirements**

- 8.29 As we discussed in Part 2, in 1999, the UN had changed the way it seconded employees from states. NZDF had seconded officers under the previous system, but not under the new system. The two systems were fundamentally different. Under the old system, seconded employees were paid by their state, so their normal terms and conditions continued. Under the new system, the UN paid the seconded employees, so their terms and conditions had to change. This required specific agreement with the UN and the individual.

- 8.30 There was some information on the requirements of the new system in the various UN documents that the Military Adviser<sup>A</sup> sent to NZDF in 2000 and that were brought to the Personnel branch's attention again in June 2001. We understand that some staff at NZDF were aware that the system had changed, but none of the people we interviewed appeared to understand the details of that change.
- 8.31 Personnel branch, in providing advice to the Assistant Chief Operations in 2000 that the payment of accommodation assistance to seconded officers was acceptable to the UN, had either failed to refer to the UN documents that the Military Adviser<sup>A</sup> had sent or did not understand them. Services directorate staff advised Personnel branch in June 2001 of the existence of the UN's requirements and the fact that the Military Adviser<sup>A</sup> had sent these documents to NZDF, including to staff in Personnel branch in 2000.
- 8.32 In our view, Personnel branch staff in 2000 and 2001 simply failed to understand that the UN's secondment system had materially changed in 1999. In particular, they failed to understand the UN's requirements for paying its rental subsidy and to translate that into a Defence Force Order that complied with the UN's requirements. Nor did they address how the seconded officer would fit into NZDF administration command lines while employed by the UN.
- 8.33 We expected Personnel branch staff to have obtained copies of the UN's requirements under the new system and considered in detail how the conditions of service and entitlements of an NZDF officer who was to be seconded would need to be changed. This analysis was done by the Military Adviser<sup>C</sup> in New York, in consultation with UN staff, after the problems emerged in 2007. It showed that the changes needed to an NZDF officer's conditions of service and entitlements to fit with the UN's requirements would not have been difficult to achieve, if they had been clearly identified in advance.

#### **Personnel branch failed to amend the Defence Force Order in 2005**

- 8.34 Personnel branch staff were aware from around mid-2004 that the Defence Force Order did not meet the UN's requirements, and that the seconded officers were not complying with the UN's requirements by not declaring their accommodation assistance. However, when the Personnel branch finally referred the amended Defence Force Order to the Chief of Defence Force<sup>B</sup> for approval, the Defence Force Order did not refer to the non-compliance and did not change the Defence Force Order so that it required the seconded officers to comply with the UN's requirements.

- 8.35 Personnel branch also failed to identify that NZDF officers seconded to the UN were in fact in a financial position that was generally comparable to that of NZDF officers posted to New York, and that there was therefore no need to pay the seconded officers NZDF accommodation assistance.
- 8.36 We consider that, once Personnel branch had identified that the Defence Force Order did not comply with the UN's requirements and that seconded staff were not complying with those requirements, it should have acted promptly to deal with the issues.
- 8.37 Personnel branch had the opportunity in 2004 and 2005 to amend the Defence Force Order to comply with the UN's requirements, and to make compliant arrangements for Officer 3 and for any later seconded officers. NZDF could have done so without adversely affecting seconded officers who had been paid under the existing Defence Force Order.
- 8.38 This opportunity was missed because of miscommunication or inadequate understanding of the issues.

### **Policy was overly focused on parity**

- 8.39 It is clear from the documentation and our interviews that the key focus of Personnel branch staff as they developed the initial arrangements and later policy was on ensuring parity between seconded officers and posted officers – largely to the exclusion of other matters.
- 8.40 There is a requirement in section 45 of the Defence Act 1990 that, in setting conditions of service for members of the Armed Forces, the Chief of Defence Force is required to have regard to the need to:
- achieve and maintain fair relativity with levels of remuneration received elsewhere;
  - be fair to both the member and the taxpayer; and
  - recruit and retain competent people.
- 8.41 The same general provision is in the Remuneration Authority Act 1977, which sets the approach the Remuneration Authority takes to setting salaries for senior office holders in the state sector.
- 8.42 It appears to us that Personnel branch translated this requirement into a simpler focus on fairness to and between staff, leading to their overriding concern to ensure parity in conditions of service and entitlements between seconded and posted officers. In our view, that is an overly simplified view of what section 45 requires, and does not adequately consider the difference between an ordinary posting within NZDF and a secondment to another organisation.



- 8.43 In our view, parity was only one consideration that should have been taken into account in making the arrangements for Officer 1 and in drafting the Defence Force Order. A more significant consideration should have been whether the arrangements for Officer 1 or the Defence Force Order complied with all legal and administrative requirements both in New Zealand and the UN.
- 8.44 It is also important to note that a secondment to the UN brings with it benefits that were not necessarily financial. The UN, through its salaries and post adjustment, recognises the high cost of living in New York and provides for that in the salary package. As we discussed earlier, there was no need for NZDF to pay seconded officers NZDF accommodation assistance, as their UN remuneration was generally comparable with what they would have received from NZDF if they had been posted to New York.
- 8.45 It would have been possible for NZDF to prepare a Defence Force Order for seconded officers that complied with the UN's requirements.

### Policy process review

- 8.46 As a result of the Court of Inquiry, NZDF is reviewing the way it makes policy. It has sought assistance with this from the State Services Commission. We also understand that the Evaluation Division of the Ministry of Defence carried out a review of NZDF's systems and processes for managing orders and instructions issued for the direction and management of NZDF and the services. In that report, the Ministry has recommended that all draft Defence Force Orders be reviewed by the Directorate of Legal Services. We understand that the policy process has recently been amended so that any draft Defence Force Orders now require signed approval from the Directorate of Legal Services before they are approved by the Chief of Defence Force.

### Organisational culture

- 8.47 It is clear from our inquiry that, during the nine years when these events occurred, there were a large number of NZDF employees who were aware that the seconded officers were not complying with the UN's requirements, or that the arrangements that NZDF had made for them were flawed. We wanted to understand why these NZDF employees had not raised this non-compliance with other branches of NZDF, more senior staff, the Directorate of Legal Services, or the various Chiefs of Defence Force.
- 8.48 A number of the NZDF employees we interviewed told us that to raise the issues with anyone other than their immediate line manager was simply inappropriate.

The reasons why they saw it as inappropriate fell into two main cultural influences:

- a “silo” mentality, where people saw strong boundaries between organisational units and did not see any need to draw attention to the mistakes being made by others; and
- military hierarchy and the operation of command lines within the organisation, which meant that some people saw themselves as unable to raise concerns about decisions made by more senior officers.

8.49 During our work, we also identified a third strand of influence, which we characterise as inadequate recognition of when an issue may touch on fundamental public sector values of integrity and the rule of law.

8.50 We discuss each of these three cultural influences in more detail, before giving our perspective on the cumulative effect they appear to have had on the culture at NZDF headquarters. Overall, we question whether the organisational culture that we have observed in NZDF headquarters reflects a sufficiently full and balanced set of public sector values.

### **Silo mentality within NZDF headquarters**

8.51 Compartmentalised responsibility was a significant factor that emerged when we asked people why they had not raised concerns with staff in the Personnel branch.

8.52 A number of people told us that the Personnel branch sets the policy, and they just applied it. We also saw several comments in the documentation showing that people were willing to let other parts of the organisation take flawed decisions and watch the difficulties unfold, rather than take any personal initiative to put things right.

8.53 These views are symptomatic of an organisation that operates in silos and compartmentalises responsibility. We gained a clear impression from this inquiry that the separate parts of NZDF headquarters tended to work on their own and did not take a collective approach. Some of those we interviewed specifically confirmed that this was the dominant ethos when these events began.

8.54 The strength of this aspect of the culture in NZDF headquarters is shown by the fact that it prevailed even when the organisation was potentially breaking the UN’s requirements. Questions about legality and integrity were not enough to prompt people to intervene in the actions of another branch.

### Military hierarchy and command lines

- 8.55 NZDF is a strongly hierarchical organisation. It is fundamental to any military service that command lines are clear and effective: in an operational context it needs to be clear who has authority to give orders and for that authority to be respected. Lawful orders have to be followed. NZDF expects that its staff are able to and should distinguish between lawful and unlawful orders, and are only required to follow lawful orders.
- 8.56 It was explained to us that that same requirement to obey lawful orders translated through to all administrative matters as well, even in a head office context. Any instruction from the person who was effectively your commanding officer should be regarded as an order, whether the instruction was about what action to take, what administrative process to follow, or what time a meeting was to be held. Failure to comply was potentially a disciplinary matter.
- 8.57 We were repeatedly told by some of the people we interviewed that military personnel could not and would not question decisions that had been made by more senior staff. The point was made quite graphically in one interview, when we asked why a recipient of an email did not take any action when he knew that what was in it was wrong and would perpetuate the problems. He responded by counting for us the number of “stars” in the address list (that is, he pointed out how senior all of those who were party to the discussion and decision were). He regarded it as impossible for him to challenge more senior people in that way.
- 8.58 Similarly, Officer 1 clearly stated that it was not possible for him to question with a senior person in NZDF headquarters what he believed he was being asked to do when he took up the secondment in 2001. In 2005, the Director of Military Personnel Policy Development<sup>B</sup> also believed he was being instructed by the Assistant Chief Personnel<sup>C</sup> to prepare a Minute recommending the Defence Force Order be amended so that it still did not meet the UN’s requirements.
- 8.59 We do not question that hierarchy, or that clear and effective command lines are an important part of NZDF’s way of operating. However, we were surprised to find that in this case that same approach seemed to be operating so strongly in the context of the policy development, financial management, and administrative work being carried out within NZDF headquarters. In particular, we were concerned to find that some of the people we interviewed felt unable to question policy and financial decisions that they knew were inconsistent with the UN’s requirements and depended on false declarations.

- 8.60 Although some of the people involved referred to the concept of obeying only lawful orders as they reflected on their past actions, none of them appeared to have seen that as a relevant limit at the time.
- 8.61 We note that some very senior officers we spoke with disputed this view and thought personnel could and should be free to question instructions of this kind. However, our investigation showed that, at least on this issue, that was not the perception of some of those lower down in the organisation. It is clear that a number of individuals involved in this issue believed that they could not or should not question decisions or instructions that appeared to have been made by their superiors. This was explained to us as a matter of military command and discipline, but it may also have been a simple question of a strong sense of hierarchy.
- 8.62 We were also told by several people, including senior officers, that one of the advantages of employing civilian staff in critical administrative positions in NZDF headquarters was that they were more able to question and challenge senior people about the appropriateness of decisions. In our view, this is a sign of an unhealthy confusion about the appropriate boundaries of the command and control culture. The ability of an employee to debate a policy matter under consideration, or to question the appropriateness of administrative and funding decisions of this kind, should not depend on whether the employee is civilian or military.
- 8.63 We cannot extrapolate across all NZDF from a single investigation and the comments of a relatively small number of staff. It is also possible that this is primarily an issue for NZDF headquarters, where much of the work is of a different nature from general military work and requires a different way of interacting. Even within NZDF headquarters, however, we would be concerned if there was a more widespread perception that the command culture applies to this extent.

### **Responding appropriately when an issue raises questions about integrity or rule of law**

- 8.64 We noted several incidents in the course of our inquiry where the response of NZDF headquarters on a matter of integrity or legality was slow or unsatisfactory. We note three here.
- 8.65 First, the Military Adviser<sup>c</sup> raised questions about the appropriateness of some of Officer 4's financial and other activities in September 2006 with the Chief of Defence Force<sup>c</sup>. We were told that the then Vice Chief of Defence Force reviewed the letter sent by the Military Adviser<sup>c</sup> and determined that no action was necessary. So far as we know, this assessment was not communicated to the

Military Adviser<sup>c</sup>. It was not until August 2007, after the UN raised questions about the accommodation assistance Officer 4 was receiving, that a Military Policemen was sent to New York to investigate those issues. In our view, the issues raised by the Military Adviser<sup>c</sup> were such that NZDF should have immediately taken steps to investigate questions about possible financial impropriety.

- 8.66 Secondly, NZDF was slow to revoke the Defence Force Order once NZDF identified that the seconded officers had received inappropriate accommodation assistance under it. The Military Policemen had identified in advice to the Vice Chief of Defence Force in September 2007 that the four officers had acted in accordance with the Defence Force Order, and that this Order was inconsistent with the UN's requirements. In February 2008, NZDF legal staff had advised Personnel branch staff that the Defence Force Order needed to be revoked. NZDF did not revoke the inconsistent Defence Force Order until June 2008 and kept paying accommodation assistance to Officer 3 until that time. NZDF knowingly continued a financial arrangement that was inconsistent with the UN's requirements, and based on a false declaration, for four months.
- 8.67 Thirdly, NZDF did not begin its own inquiry into how this situation had come about until July 2008, some nine months after NZDF knew that there was a long-standing problem.
- 8.68 These slow responses suggest that NZDF headquarters did not see the accommodation assistance problem and the breach of the UN's requirements as a significant issue that required any immediate response. In our view, a matter that involves false declarations and breaches of UN regulations should have been recognised as raising questions about integrity and legality. Anything that raises such questions should attract a swift response from the organisation, both to stop the inappropriate arrangement as soon as possible and to investigate how the impropriety came about.
- 8.69 Anything less than a swift and clear response risks sending an implicit message to staff that such conduct is not particularly concerning. We note that some of the staff we spoke with expressed concern about what they should be reading into the apparent lack of response by NZDF on matters of legality.
- 8.70 The pattern of events and reactions caused us to question whether there was always sufficient recognition within NZDF of the importance of matters of integrity and legality, and whether NZDF might unintentionally be conveying a message to its staff that such matters were not necessarily significant.
- 8.71 We also note that, in our interviews, we were repeatedly told of the importance that is placed within NZDF headquarters on finding solutions, pragmatism,

and making things happen. This, at times, came very close to comments to the effect that the ends justify the means. We saw at least one example of where this mindset was applied even when the some of the hurdles were legal ones. Although we understand the importance of pragmatism and a practical focus on solving problems, we do not accept that it is ever appropriate for a public sector organisation to ignore legal or other formal rules or to turn a blind eye to dishonesty.

- 8.72 Our concern about the unspoken message that staff may be receiving on legality is brought out most clearly by the fact that the four seconded officers – all highly regarded and senior people – were all willing to accept as plausible that NZDF headquarters was expecting or ordering them to complete a false declaration to manipulate financial entitlements. We have interviewed each of them on oath. They all told us that they believed they were being ordered or were expected to do this.
- 8.73 We find it extraordinary that any officer could see this as something that NZDF headquarters might require of them. The fact that they did raises a question about what values they are implicitly picking up as being important to the organisation.

### **The combined effect on culture**

- 8.74 On the issue that we investigated, these three cultural influences came together to create a very unfortunate combination of behaviours. The strong emphasis on hierarchy and command and control enabled the people who knew of the problem to believe that they could not and should not challenge what they understood had been decided by their superiors: it was not their responsibility. The silo culture enabled them to regard it as someone else's problem. The general desire for practical solutions to problems enabled people to see the end result as a pragmatic compromise. Nobody appeared to recognise as serious the problems of integrity and legality that were attached to this compromise.
- 8.75 In our view, this illustrates that NZDF needs to pay careful attention to the message it is sending its staff on values, and the importance of recognising a full and balanced set of values. Particular effort is needed to help people to recognise when seemingly small practical issues may raise more fundamental questions about integrity, and to emphasise that they can and should raise such questions when they identify them.
- 8.76 We make the point by discussing whistleblowing. NZDF is subject to the Protected Disclosures Act 2000. That Act requires organisations to maintain internal procedures that enable employees to raise concerns about serious wrongdoing within the organisation, and to regularly publicise information about the

procedures widely throughout the organisation. Employees who raise a concern using the proper processes are protected from disciplinary consequences. The Act explicitly includes NZDF personnel within the definition of employees.

- 8.77 The Act is a formal legal recognition that there has to be a limit to the normal operation of hierarchical structures, even in NZDF, to ensure that questions of wrongdoing are identified and addressed. All organisations have a duty to ensure that their staff know about their right to raise concerns without fear of sanction. The law does this to countermand the otherwise natural tendency for people to find it difficult to question what is being done by their superiors. It tries to create a cultural shift.
- 8.78 The protections of the Act apply only to raising matters of serious wrongdoing, although in a public sector organisation this explicitly includes “an unlawful, corrupt, or irregular use of funds or resources”. In any public sector organisation, we expect the general principles of the Act to form part of the organisation’s basic culture, as a practical manifestation of the organisation’s commitment to core public sector values of integrity, honesty, and commitment to the rule of law. In broad terms, we expect any public sector employee to be aware that they can and should raise well-founded concerns, particularly about legality or the use of public funds, without fear of retribution. All public sector organisations have a duty to promote this awareness and the appropriate way to raise such concerns.
- 8.79 NZDF advised us that there is a Defence Force Order on the Protected Disclosures Act, and that it has taken steps in the past and takes ongoing measures to advise all members of NZDF of the existence of the Act. NZDF also advised us that a member of the Armed Forces can make a complaint that they have been wronged in any matter under section 49 of the Defence Act. NZDF has established a process for dealing with such complaints, and this is set out in a Defence Force Order. At a formal level, therefore, NZDF has mechanisms that meet this need.
- 8.80 However, during our interviews, nobody referred to the possibility of using protected disclosure mechanisms to raise concerns about the appropriateness of the policy on accommodation assistance or what was being done under it. Nor did anybody invoke these principles as a reasonable and appropriate limit on the need to follow orders without question. We saw no evidence that the people involved recognised that the Protected Disclosures Act mechanisms were available to them, or that the issues here raised that type of concern. Nor did any of the four officers raise with us the possibility of making a complaint under section 49 of the Defence Act.
- 8.81 These individuals believed that they could not question the appropriateness of administrative and funding decisions that they knew to be wrong, despite the fact

that the formal mechanisms existed and that this issue could properly have been raised through them. There may be a written policy in place on whistleblowing, but the fact that it was not considered here raises a question about its practical effectiveness.

- 8.82 In our view, NZDF cannot assume that all of their personnel have a strong practical understanding of the full range of values that should govern their behaviour, as part of a military and public sector organisation. Given the inevitable strength of the hierarchical command culture in NZDF, we suggest that this organisation will always need to put additional explicit effort into ensuring that people understand the limits of the command discipline, and the need to balance it with a strong individual and organisational commitment to the general public sector values of operating within the law, scrupulous honesty, integrity, transparency, and accountability. These general values are vital if public respect for, and trust in, the institutions of the state are to be maintained.

#### **Steps NZDF has been taking**

- 8.83 We acknowledge that NZDF has made or is considering a number of changes that may address some of these concerns.
- 8.84 For the problem of people in headquarters working in silos, the organisational structure in NZDF headquarters has been changed to create more interaction and collaborative behaviour. We have not attempted to assess whether the silo mentality that prevailed earlier is still a problem. However, given how deep-seated it appears to have been, we recommend that NZDF take explicit steps on an ongoing basis to promote and value collaborative behaviour within NZDF headquarters.
- 8.85 NZDF has advised us that it has carried out a complete review of the military justice system and is currently considering how to address the issue of delays in the investigation of alleged offences.
- 8.86 It is also working to develop a mechanism so that concerns about administrative decisions can be rapidly elevated to a level where they can be swiftly resolved. One option being considered is providing a telephone help line for members of the armed forces who have concerns about the propriety of their conditions of service or about the actions of other members of the NZDF. They can report their concerns to an officer who has the power to conduct an initial investigation and then report the matter to the appropriate person or office.
- 8.87 NZDF has also advised us that it is considering how to strengthen the role played by the Directorate of Legal Services in legal compliance, risk mitigation, and



formulation of policy. In particular, it is considering a mechanism that requires branches of NZDF headquarters to respond in a timely manner to legal advice on any matter that identifies the existence of a legal risk to the NZDF.

### Our recommendations

- 8.88 We regard these various steps that NZDF is taking as useful. However, we doubt that on their own they will be enough to address the more subtle underlying problems with organisational culture that we have identified.
- 8.89 Our overall recommendation is therefore that NZDF headquarters actively promote a full and balanced set of values for its personnel that clearly sets the core public sector values of operating within the law, scrupulous honesty, integrity, transparency, and accountability alongside the military values that NZDF already recognises. NZDF must then manifestly live by this full set of values. In particular, all NZDF staff need to see that questions of integrity and legality are taken seriously and that transgressions attract a swift response.
- 8.90 At a more detailed level, we recommend that NZDF:
- continue its efforts to promote and value collaborative behaviour and a whole-of-organisation mindset among the staff working in NZDF headquarters, both through structure and reporting lines and through the leadership approach;
  - take steps to ensure that all personnel, wherever they work, understand that they can and should raise concerns about policy, financial, and administrative matters that they believe may raise questions of integrity or legality;
  - review the way in which command and control disciplines apply and are communicated in the context of working in NZDF headquarters and other non-operational roles – for example, when working on matters such as organisational development, policy, administration, and financial management; and
  - review the steps it takes to communicate its policies and procedures under the Protected Disclosures Act 2000, to ensure that all personnel are aware of their ability to raise concerns through appropriate channels without fear of disciplinary action or other retribution, and are aware of the types of issues that they can and should raise through these channels.

### How the seconded officers were treated

- 8.91 As we have explained earlier, the rationale for NZDF paying seconded officers accommodation assistance was the mistaken belief that they would be significantly worse off financially without it, when compared to NZDF officers posted to New York. If this mistake had not been made, it is unlikely that NZDF

would have paid the seconded officers the accommodation assistance and the seconded officers would not have ended up in this position. In our view, this mistake was entirely preventable.

- 8.92 All of the seconded officers told us that they believed that they were not benefiting financially from being paid the NZDF accommodation assistance. As we discussed earlier, we also found no evidence that anyone in NZDF realised that this was the case until May 2010.
- 8.93 We have already explained that a key driver for NZDF's approach seems to have been the desire to look after the seconded officers and, in particular, to ensure parity between their conditions of service and entitlement, and those of other staff. We are aware that the question of how to provide appropriate support to staff seconded to the UN in New York, particularly for housing, has been a general problem for a number of countries. There have been several public examples in recent years of countries that have tried to find different ways of managing the practical problem.
- 8.94 Despite NZDF's initial concern for the welfare of these officers, the seconded officers have been adversely affected by these events. Some saw themselves as having been placed in an invidious position, and then punished for doing what they had thought was required of them. The investigative processes of the last few years, including this inquiry, have also taken a personal toll on the NZDF personnel involved. Six NZDF personnel involved in these events have received censures. Most of these six spoke about their dismay at being censured and their concern about how it will affect their future employment prospects. Although their names have been protected throughout the investigations, they are identifiable within their professional community.
- 8.95 In our view, NZDF's mismanagement of this issue from start to finish has led to this personal cost for its people. In this regard, NZDF achieved the opposite of what it set out to do.

# Appendix 1

## Timeline of events

Year	Month	Event
1999	February	The UN changes its arrangements for paying staff seconded from member states.
2000	March	NZDF is considering seconding an officer to the UN.
	April	The Military Adviser <sup>A</sup> based in New York sends NZDF copies of documents that set out the UN's requirements for payments to, and subsidies for, seconded staff.
	May	The Chief of Defence Force <sup>A</sup> approves, in principle, arrangements for paying accommodation assistance to officers seconded to the UN.
	October	Officer 1 is offered a position with the UN.
2001	January	Officer 1 is seconded to the UN.
	May	Personnel branch circulates draft policy on conditions of service and entitlements for officers seconded to the UN. The draft policy does not comply with the UN's requirements.
	June	The General Manager Defence Force Services provides advice in a Minute to the Assistant Chief Personnel <sup>A</sup> noting that NZDF can provide accommodation assistance to seconded officers, but that officers have to declare that assistance to the UN. He refers to the UN's requirements and encourages a further review of the proposed conditions of service and entitlements.
	November	Defence Force Orders amended to include conditions of service and entitlements for officers seconded to the UN. The applicable Defence Force Order does not comply with the UN's requirements.
2002	November	The Director of Services strongly suggests that the Military Adviser <sup>B</sup> not inform the UN that Officer 1 is receiving accommodation assistance from NZDF. This email is copied to the Assistant Chief Personnel <sup>B</sup> .
2003	February	Officer 2 is seconded to the UN.
	July	Officer 1's UN secondment ends.
2004	Mid	NZDF staff begin work on amending the applicable Defence Force Order so that it complies with the UN's requirements
	September	Officer 3 is told that he will not receive NZDF accommodation assistance if seconded to the UN.
	November	First drafts of Personnel branch's revised Defence Force Order circulated. Do not include any payment of accommodation assistance to seconded officers.

Year	Month	Event
2005	June	Officer 3 is seconded to the UN. Personnel branch drafts Minute to go to the Chief of Defence Force <sup>B</sup> recommending that the applicable Defence Force Order be amended. Identifies seconded officers not declaring their accommodation assistance to the UN, and that the Defence Force Order does not comply with the UN's requirements. Recommends continuation of payment of accommodation assistance, but with a requirement that seconded officers declare that assistance to the UN.
	November	Personnel branch drafts Minute to go to the Chief of Defence Force <sup>B</sup> recommending that the existing Defence Force Order be amended to extend entitlements for seconded officers with dependants. All references to non-compliance by seconded officers or by the Defence Force Order with the UN's requirements removed.
	December	Defence Force Order is amended, but continues to breach the UN's requirements.
2006	March	Officer 2's UN secondment ends.
	October	Officer 4 is seconded to the UN.
2007	July	NZDF told, through diplomatic channels, that the UN is aware that Officer 4 was receiving undeclared accommodation assistance.
	August	UN seeks an explanation from Officer 4 about why he has not declared his accommodation assistance. Vice Chief of Defence Force sends Military Policeman to New York to investigate Officer 4.
	September	Military Police reports that three other NZDF officers may have been signing false declarations to the UN, and that receiving accommodation assistance in accordance with the Defence Force Order and not declaring that to the UN contravened the UN Charter and UN Staff Regulations and Rules.
	October	Officer 4 returns to New Zealand.
2008	June	Defence Force Order is revoked on 16 June. NZDF ceases paying accommodation assistance to Officer 3. Court martial held for Officer 4 on 29 and 30 June.
	July	NZDF convenes a Court of Inquiry on 1 July. Court reports on 17 July and finds that four NZDF officers signed UN declarations that they knew to be false. Officer 3's UN secondment ends on 22 July.
	August	Minister of Defence asks the Auditor-General to review the Court's findings.
2009	March	Minister of Defence asks the Auditor-General to investigate the consistency of treatment of the four seconded officers.
2010	July	Auditor-General's inquiry report is published.

# Appendix 2

## Terms of reference for our inquiry

### **Inquiry into the New Zealand Defence Force's payment of housing allowances to personnel seconded to the United Nations**

**15 April 2009**

The Auditor-General has agreed to carry out an inquiry into matters associated with the payment of housing allowances to New Zealand Defence Force (NZDF) personnel seconded to the United Nations (UN). This document sets out the terms of reference for the inquiry.

#### **Background**

On 1 July 2008 NZDF established a Court of Inquiry under the Armed Forces Discipline Act 1971 to examine concerns which had been identified with the way in which conditions of service for NZDF personnel seconded to the UN in New York were being administered.

The Court of Inquiry reported on 28 July 2008 and found that four NZDF personnel seconded to the UN had signed declarations that they were not receiving any housing subsidy from NZDF when allowances were being paid. More generally, the Court of Inquiry found that the UN's requirements for seconded staff were incompatible with NZDF's domestic employment responsibilities for its staff. It found that this conflict had not been fully understood or addressed at an organisational level since secondments began in 2001.

The previous Minister of Defence asked the Auditor-General to review the findings of the Court of Inquiry. In particular, he asked the Auditor-General to inquire into why NZDF did not address the apparent conflict between its policy and UN requirements when the issues received some attention in 2005, and whether any officers in NZDF encouraged or condoned the practice of signing false declarations to the UN.

#### **The inquiry**

The inquiry will examine:

- how NZDF addressed the question of arrangements for staff seconded to the UN, particularly in relation to housing allowances and consistency with UN requirements;
- whether any individuals within NZDF or any parts of NZDF encouraged, condoned, knew of, or acquiesced in the practice of seconded personnel signing false declarations to the UN; and

- the consistency of treatment of individuals involved in the housing allowance issue by NZDF.

The inquiry will also consider any other matters that the Auditor-General considers it desirable to report on.

The inquiry will not examine any judicial proceedings.

The inquiry will be conducted under sections 16(1) and 18(1) of the Public Audit Act 2001. The Auditor-General will decide on the appropriate manner in which to report the findings once the inquiry has been completed.