

Senate Standing Committees on Foreign Affairs, Defence and Trade  
Parliament House  
Canberra ACT 2600

27 January 2015

Submission: Defence Legislation Amendment (Military Justice Enhancements - Inspector General ADF) Bill 2014

- I commend the thrust of the Legislation, but from my own experience, fear that it does not go far enough to be probus in appearance and/or effect.
- The Inspector-General ADF already produces an Annual Report, which I have obtained the last three<sup>1</sup> with the assistance of Defence FOI.
- I was actually after three other reviews, that were reported to the Senate<sup>2</sup> as being internal to Defence, and Defence FOI is still attempting to get their release.
- Ensuring that the Minister has a copy of the IG-ADF report, and that it is tabled, is laudable, but still only window dressing,<sup>3</sup> until it is sold as credible to its client base.
- The Senate has an opportunity to examine various items including those items in the Senate Estimates process<sup>4</sup>, but to my dismay there is minimal scrutiny and consideration to a lot of the answers given. One such ramification, detected fraud, will be attached.<sup>5</sup>
- Many questions have been asked in Senate Estimates over the last twenty years and, and in my opinion, answered minimally by Defence on many occasions.

Would it be appropriate, if not advisable, for the IG-ADF to assist the Minister and the process of the Senate that the IG-ADF review the questions supplied in Senate Estimates and the answers supplied by Defence and to intercede where deemed necessary.

- When the opportunity occurred, I did a submission to the IG-ADF's 2011 [Review of the Management of Incidents and Complaints](#)<sup>6</sup>, it might be me, but I am not really seeing a lot of pro-active follow up on the IG-ADF's Review. Firstly having seen the Parview of Senator's Xenophon and Lambie asking questions of Mr. Earley on the 13th of August 2014<sup>7</sup>, and secondly wondering whether the focus groups that are mentioned in his Annual Reports actually contained any 'real' victims that he is the Inspector General for.
- In the IG-ADF Annual Report for 2013, mention is made of the [Chief of Army Directive 21/13](#), (it is of note that DART was not aware of it, nor could they locate it when told about it).

In a parallel line of inquiry, Senator Xenophon asked in the [2014 Supplementary Estimates](#) about 'purporting' to act as a member of the Reserves.

Defence's answer to the Senator's question and the explanation ascribed from [Chief of Army Directive 21/13](#), appear different and confusing.<sup>8</sup>

Am I happy with my past experiences with the Inspector-General ADF ... *no, not really!*

Do I have hope for the future of how Military Justice is reported in the Australian Defence Force ... *yes, I do! I have too!*

Thank you for the opportunity to make this submission.

Michael Wunderlich

## References:

1. IG-ADF Report/s for the period 01 January to 31 December 2011/2012/2013
- 2.1. **Rethinking Systems of Inquiry, Investigation Review and Audit in Defence. (The Re-thinking Inquiries review)**  
Referred to in DoD Senate Budget Estimates, May 2012 Q69 and referred to as an 'an internal Defence review'.
- 2.2. **Review of the Notifiable Incidents System (IGADF)**  
Referred to in DoD Senate Budget Estimates, May 2012 Q69 and referred to as an 'an internal Defence review'.
- 2.3. **Five Year Audit of the Australian Defence Force Investigative Service**  
Referred to in DoD Senate Supplementary Estimates, October 2012 Q58 and referred to as an 'an internal Defence review'.
- 3.1 Government House - 03 April 1998  
"It is an integral part of the established conventions of our federal parliamentary democracy that, in matters such as this, the Governor-General acts upon the advice of the responsible Ministers of the elected government of the day."
- 3.2 20th January 2010 - Meeting with then Minister and Secretary at Community Cabinet Meeting.  
'Mr. Wunderlich, I have read your file, you have been to everyone, there is nothing that I can do!'
4. PM&C Requirements for Annual Reports Written ([PDF 13KB](#)) 11/7/14  
"The Department notes that, once the annual reports are tabled, the Senate scrutinises annual reports of departments and agencies under Senate Standing Order 25 (20)."
- 5a. [Senate Budget Estimates, June 2014 Written Finance Q. F147](#)  
" Agencies reported 12,798 instances of non-compliance with the financial management framework in 2011-12 and 14,027 instances in 2012-13. This aggregate number includes serious issues such as fraud, financial errors and minor technical breaches. The nature of the information collected does not enable an overall figure for fraud to be determined."
- 5b. Department of Defence [Supplementary Estimates December 2004 Q29](#) and [Q33](#)  
29 " a) – f) The current Commonwealth Fraud Control Guidelines define fraud as 'dishonestly obtaining a benefit by deception or other means' and specifically include theft as a sub-set of fraud."

The number of incidents of fraud<sup>(1)(2)</sup> detected against the department were:

2000-01	2001-02	2002-03	2003-04
393	494	399	475

1. The current *Commonwealth Fraud Control Guidelines* define fraud as 'dishonestly obtaining a benefit by deception or by other means' and specifically includes theft as a sub-set of fraud.

33 " 2. Based on the number of closed fraud investigations.

b)

2000-01	2001-02	2002-03	2003-04
\$1m	\$1.5m	\$1.1m	\$1.2m

Has Defence been reporting all fraud, or just the subset of theft in its Annual Reports for the last decade?

Here, I can but ask the question but it is the Parliament that should be demanding the answer of the IG-ADF and Defence!

This was within weeks of the ANAO declaring that Defence's audited inventory was shy \$8bn.

6. [Review of the Management of Incidents and Complaints in Defence including Civil and Military Jurisdiction](#)

13. A former senior non-commissioned officer claimed that, when in 1995 he became aware of an apparent travel fraud—with Defence-wide accountability ramifications—there was no complaint avenue to report his concerns. His subsequent attempts over the next 16 years to investigate the likely scale of fraud were not supported by his chain of command, by the Service police or in 2010 by the then-Minister for Defence, who the senior non-commissioned officer claimed had been misled by the Department. The senior non-commissioned officer's attempts to have the matter looked into by the Inspector-General Defence, by the Defence Force Ombudsman, and to obtain departmental documents on the issue of fraud using Freedom of Information processes had all met with failure.

7. [http://parlview.aph.gov.au/mediaPlayer.php?videoID=234060&operation\\_mode=parlview](http://parlview.aph.gov.au/mediaPlayer.php?videoID=234060&operation_mode=parlview)  
with time stamp from 02:52:11 through to 03:41:10 - IG-ADF

8. [Chief of Army Directive 21/13](#)  
Standard of behaviour

4. Through adhering to these core values, behaviours and rules I expect that all Army personnel will, at all times, endeavour to:
- Act ethically and professionally in all circumstances.
  - Uphold the standard of behaviour contained in Defence Instructions and orders, on and off duty, when **purporting** to act as a Defence member and in any activity with a connection to Defence.

[2014 Supplementary Estimates](#)

- (a) Defence have previously given explanation to the term 'suspend' and 'terminate' with regard to Australian Defence Force discipline. Could Defence now advise an explanation on the sub-paragraph of the definition of defence member relating to the service and ethics requirements of Reserve Defence members:
- '4(b) a member of the Reserves is taken to be on duty while acting, or **purporting** to act, in his or her capacity as a member of the Reserves.'

Response:

(1) (a) The definition of a 'defence member' is contained in sub-sections 3(1) and 3(4) of the Defence Force Discipline Act 1982(Cth).

The definition of when a person is a 'defence member' represents the outer limit of when that person is subject to military discipline jurisdiction. The definition is especially important for a person who is a defence member in the reserve forces (a reserve member) given the part-time nature of their military service.

According to paragraph 157 of the Explanatory Memorandum to the Defence Force Discipline Bill 1982, the reasons for the extended definition of 'on duty' in sub-section 3(4) are to potentially bring reserve members within the jurisdiction of the Defence Force Discipline Act 1982 in two types of situations. The first is where a reserve member is required to attend for duty to perform service but fails to do so.

The second is where a reserve member is acting, or purporting to act, in their capacity as a reserve member. In either situation, the person could not be charged under the Defence Force Discipline Act 1982 without the extended definition of 'on duty' for the purposes of being a 'defence member'.

Whether a person is acting or purporting to act in their capacity as a reserve member, such that the person is subject to military discipline jurisdiction, will depend upon the factual situation in each case. The Explanatory Memorandum provided the example of where a person who is a reserve member is making out a report at home.