



## INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE

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**Mr D Sullivan**  
Committee Secretary  
Senate Foreign Affairs, Defence and Trade Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Sullivan

1. Thank you for the opportunity to make a written submission to the Committee concerning its inquiry into the *Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Bill 2014* ('the Bill'). I support the Bill and all of its provisions. The following paragraphs provide additional comment about aspects of the Bill that concern my office.
2. The Bill, if enacted, will implement the Chiefs of Service Committee-directed arrangements to enhance perceptions of the independence of my office, and to consolidate arrangements which were effected administratively in July last year to transfer responsibility for inquiries into Service-related deaths and the internal review of Australian Defence Force members' complaints to my office. The Bill will allow inquiries into Service-related deaths and also, where the Chief of the Defence Force or the Minister directs, the most serious of other matters affecting the Australian Defence Force, to be conducted by the Inspector General Australian Defence Force (IGADF). The IGADF is independent of the ordinary chain of command and has, over the last 12 years of operation, developed considerable experience and expertise in inquiring into incidents and complaints.
3. The establishment of an agency like IGADF to review and inquire into matters affecting the military justice system was one of the principal recommendations of the inquiry into the military justice system completed by Judge Burchett in July 2001. IGADF commenced operation in January 2003 and has been a statutory office since December 2005. While IGADF's operations are conducted independently of the chain of command, the office remains within the broader Defence umbrella. Structurally, this arrangement has many advantages, including the benefit of access to Defence's files, personnel, and information for the purpose of its independent inquiries, audits and reviews. It also facilitates the maintenance of IGADF staff currency in all aspects of the Australian Defence Force military justice system and associated policy issues.
4. Since January 2003 IGADF has received over 730 submissions concerning aspects of the military justice system, including complaints about the Service Police. Over the last 12 years IGADF staff conducting military justice performance audits have spoken directly with almost 27 000 members of the Australian Defence Force—full-time and Reserve—about their perceptions of the military justice system. The bulk of Australian Defence Force personnel and its leaders know of the IGADF, understand its independence, and have confidence in its



complaint-handling and inquiry processes. Australian Defence Force members know that if they are dissatisfied with an outcome from IGADF they can request the Defence Force Ombudsman to review IGADF's handling of their matter. Very few complainants have actually taken up this option and I am pleased to say that there have been no occasions when the handling of a matter by this office has been the subject of unfavourable review.

5. The transfer of responsibility for inquiries into Service-related deaths to a standing, independent agency like IGADF will result in more efficient inquiry processes. One of the inherent problems of the Commission of Inquiry (COI) system has been that each COI has been established and conducted on an *ad hoc* basis. Each COI has been the subject of a separate legal appointment and arrangements for its administration have been arrived at independently of other COIs. Different COI presidents have set down different rules and practice notes for the conduct of each COI, and each COI has had a different set of participants and counsel assisting.

6. While some variation in COI arrangements has no doubt been necessary depending on differences in the matters under inquiry, the outcome has been that lessons learned about inquiry processes in one COI have not always been shared with others, and COI participants have effectively had to relearn and understand an often entirely new set of arrangements for the conduct of each COI. The application of IGADF's inquiry experience, expertise and structural inquiry arrangements to the investigation of Service-related deaths will enable arrangements for inquiries into such deaths to be more consistent, and therefore inquiries to be more efficient.

7. The transfer of responsibility for the review of commanding officers' redress of grievance decisions to IGADF will also ensure that review outcomes are more consistent across the Australian Defence Force and will enhance perceptions of the independence of those outcomes. IGADF's formal, legislated involvement in these reviews as an agency outside the chain of command will enhance perceptions of the fairness of the review process for grievances presented for final decision by the relevant Service Chief. It will also reduce the propensity for some complainants to seek multiple internal reviews.

8. The Bill, if enacted, will enable regulations to remove provisions that allow commissioned and warranted Australian Defence Force officers to seek a second review by Chief of the Defence Force of redress of grievance decisions after an unfavourable outcome from a Service Chief. This was a customary right which now appears inequitable in that it provides an additional avenue of review for complaints that others cannot access because of their more junior rank. In separate reviews of the military justice system both the Defence Force Ombudsman and I have previously recommended that this additional avenue of review be removed.

9. Under current legislative arrangements, IGADF provides an annual report to the Chief of the Defence Force. The Bill, if enacted, will require IGADF's annual report to be provided to the Minister for tabling in Parliament. This, and other aspects of the Bill which are intended to enhance perceptions of IGADF's independence and address a number of technical legal issues, are legislative amendments that I have sought for some years and which are consistent with recommendations made by the Committee in its fourth progress report on *Reforms to Australia's Military Justice System* in September 2008. The Committee noted in that report that IGADF's success 'would in large measure depend on winning the trust and confidence of ADF members and of being seen as independent from the chain of command'; see paragraph 5.46.

10. In conclusion I should like to assure the Committee of my personal commitment, and that of my staff, in ensuring that the existing and proposed role and functions of the Office of the IGADF will continue to be conducted independently and in accordance with the highest standards of probity and objectivity.

11. For the reasons outline above, the new processes outlined in and enabled by the Bill will result in improvements to the Australian Defence Force military justice system that will facilitate simpler, fairer and more efficient inquiry and review processes. I commend the Bill for the support of the Committee.

Yours sincerely

**Geoff Earley, AM**  
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