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Mr David Sullivan
Committee Secretary
Senate Standing Committee on Foreign Affairs, Defence and Trade Legislation
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Sullivan

Thank you for the invitation to make a submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade Legislation's Inquiry into the *Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Bill 2014* (the Bill).

The Inspector-General of the Australian Defence Force (Inspector-General ADF) plays an important role within Defence to preserve and promote the integrity of the military justice system. The Bill proposes to expand this internal role and enhance the independence of the Inspector-General ADF.

Among the proposed changes, the Bill will clarify that the Inspector-General ADF is independent of the ordinary chain of command, and allow regulations to be made for the Inspector-General ADF to investigate service related deaths and review service related complaints.

The Defence Force Ombudsman and the Inspector-General ADF have worked cooperatively since the establishment of the Inspector-General.

The Defence Force Ombudsman's jurisdiction encompasses the administrative actions of the Inspector-General ADF. Members of the Defence Force who are dissatisfied with an outcome provided by the Inspector-General ADF may complain to the Defence Force Ombudsman.

I welcome the recognition, in the Bill's second reading speech, of the Defence Force Ombudsman as an important external oversight mechanism for members of the Defence Force who are dissatisfied with the outcome of an internal review.

I support the establishment of a single internal review mechanism within Defence as proposed in the Bill, and anticipate this change will lead to more consistent and efficient outcomes.

A stated aim of the Bill is to clarify and enhance the independence of the Inspector-General ADF. I note that while the Inspector-General ADF is independent of the ordinary chain of command, the key function provided by the Inspector-General remains one of *internal* audit and review.

The Bill provides that the Inspector-General ADF must conduct an inquiry or an investigation if directed to do so by the Minister for Defence or the Chief of the Defence Force. The Inspector-General ADF may decide to end an inquiry or investigation if, having regard to all the circumstances, the Inspector-General is satisfied that the inquiry or investigation is not warranted. However, the Inspector-General ADF is not able to exercise this discretion where the inquiry or investigation was commenced at the direction of the Minister.

These limitations on the Inspector-General's independence mean that it is important that the statutorily independent *external* review mechanism of the Defence Force Ombudsman be maintained.

I note that the Bill will enable regulations to be made that would provide the Inspector-General ADF with co-extensive jurisdiction with the Defence Force Ombudsman over service related complaints and own motion investigations into service related matters.

Any proposed regulations would need to be carefully considered and subject to consultation with the Defence Force Ombudsman to ensure the effect of the regulations on the Defence Force Ombudsman's role and their interaction with the *Ombudsman Act 1976* are properly understood.

For example, if regulations were proposed that would make the Inspector-General ADF the decision maker in redress of grievance matters, the Defence Force Ombudsman's ability to decline to investigate certain Defence related complaints could be affected. This is clearly not what is intended by the Bill, but highlights the importance of early and detailed consultation in relation to any proposed regulations.

The Inspector-General ADF complements the Defence Force Ombudsman's role to safeguard individual members of the Defence Force and provide assurance of Defence integrity to the public and the Parliament through independent external oversight.

I look forward to continuing to enjoy a productive relationship with the Inspector-General ADF, including in implementing the enhancements provided for by the Bill should it be passed by the Parliament.

I would be happy to expand on any of the points I have made if that would be of assistance to the Committee.

Yours sincerely

Colin Neave
Commonwealth and Defence Force Ombudsman