

Justice and Security

Military Justice System Reforms

Background

- 4.1 In January 2009, the Hon Laurence Street, AC, KCMG, QC and Air Marshal Les Fisher, AO (Retd) published the *Report of the Independent Review on the Health of the Reformed Military Justice System*.
- 4.2 The Australian Military Court (AMC) was established on 1 October 2007 to try serious service offences involving ADF personnel. On 26 August 2009 the High Court of Australia declared the provisions of the *Defence Force Discipline Act 1982* (DFDA) establishing the AMC were constitutionally invalid.
- 4.3 The High Court's decision (*Lane vs Morrison* [2009] HCA 29) removed the AMC from the military discipline structure. As an interim arrangement the previous MJS has been re-established.
- 4.4 The Military Court of Australia Bill 2010 is intended to implement an equivalent to the AMC and was introduced into Parliament in June 2010, then referred to the Senate Legal and Constitutional Legislation Committee. This process lapsed when the 42nd Parliament was prorogued, but the Bill is intended for reintroduction in the 2011 Spring sittings.
- 4.5 Public and Parliamentary scrutiny of the quality of some administrative inquiries conducted by the ADF has identified a need for improvement. This has been acknowledged by Defence and the CDF has issued a

Directive mandating interim measures and has commissioned a review by the Inspector General of the ADF into the administrative inquiry system.

Current Status

4.6 The Committee was interested to hear if the lack of establishment of the Australian Military Court had caused any detriment to military justice.

4.7 Defence informed the Committee that:

The current interim system is operating and functioning as it was expected that it would, because in large measure it is returning to a system that had worked in the past. The other side of that is that the initiative that had been announced and adopted over time of moving to a chapter 3 court has not occurred, but there is a functioning military justice system, which is a fully functioning system¹.

4.8 The Committee enquired as to whether there was any indication that people are not receiving fair justice under the current system of court martial:

I would not certainly suggest that for one moment. Indeed, notwithstanding the High Court in the *Lane v. Morrison* decision found the military court system to be constitutionally invalid, there was no criticism either of the quality of justice under that system. I suppose I could say whichever system we have had the indications are that the matters have been dealt with. However, I should comment that the joint standing committee did consider that it was not an ideal system, and that was why they recommended to government a chapter 3 outcome. My recollection is that was a unanimous view of that committee.²

Committee conclusions

4.9 The Committee is satisfied that, despite the issues surrounding the introduction of the Australian Military Court and its subsequent rejection by the High Court, the Military Justice System is functioning.

1 Mr Mark Cuncliffe, Department of Defence, *Transcript*, 25 March 2011, p. 41.

2 Mr Mark Cuncliffe, Department of Defence, *Transcript*, 25 March 2011, p. 41.

Security of Vital National Assets in the North West of Australia

- 4.10 The North West of Australia contains substantial natural resources and facilities to exploit them, including several ports servicing the export market.
- 4.11 Products include LNG, LPG, condensate, gold, iron ore, diamonds, alumina, mineral sands, nickel, tantalum, and salt. These assets provide a substantial portion of Australia's domestic requirements, export balance of trade and GDP.
- 4.12 The Committee noted that the 2009 Defence White Paper makes the judgment that the Indian Ocean region will become of increasing strategic importance to Australia over the next 20 years or so. Defence commented:
- To go to the issue of the assets that we have in terms of the north-west part of the country, we have the Pilbara regiment which is based at Karratha. That is a force engaged in the business of patrolling and undertaking remote surveillance activities. There is also the so-called bare bases of RAAF, Learmonth and Curtin, and in terms of operational activities the most regular presence that Defence manifests is through the support that we provide to Border Protection Command.³
- 4.13 The Committee asked how long it would take for the bare bases of Learmonth and Curtin to become operational in the event of an emergency situation.
- 4.14 Defence staff explained that "... [t]hey can be brought up to operational capability at relatively short notice, depending on the rate of effort that the Defence Force wants to put into that."⁴

Current Status

- 4.15 On 22 June 2011 the Minister for Defence Stephen Smith announced that the Government would undertake a Force Posture Review to assess whether the Australian Defence Force (ADF) is correctly geographically positioned to meet Australia's modern and future strategic and security challenges.

3 Mr Peter Jennings Department of Defence, *Transcript*, 25 March 2011, p. 42.

4 Mr Peter Jennings Department of Defence, *Transcript*, 25 March 2011, p. 43.

- The Force Posture Review will be undertaken by the Department of Defence and overseen by an expert panel made up of two Australian national security specialists: Dr Allan Hawke and Mr Ric Smith.
- The results of the Review and the views of the Expert Panel will help provide a strategic context for the next scheduled Defence White Paper in the first quarter of 2014.
- The Review will address the range of present and emerging global, regional and national strategic and security factors which require careful consideration for the future, including:
 - ⇒ the rise of the Asia-Pacific as a region of global strategic significance;
 - ⇒ the rise of the Indian Ocean rim as a region of global strategic significance;
 - ⇒ the growth of military power projection capabilities of countries in the Asia Pacific;
 - ⇒ the growing need for the provision of humanitarian assistance and disaster relief following extreme events in the Asia Pacific region; and
 - ⇒ energy security and security issues associated with expanding offshore resource exploitation in our North West and Northern approaches.
- The expert panel will provide a progress report to the Minister before the end of 2011, with its Report provided to Government during the first quarter of 2012.⁵

Committee conclusion

- 4.16 The Committee is pleased to see that its concerns in relation to the Security of Vital Assets in the North-West of Australia will be addressed by the Government's Force Posture Review.

5 The Hon Stephen Smith MP, Minister for Defence, Australian Defence Force Posture Review', Media release, 177/11, 22 June 2011.
<<http://www.defence.gov.au/minister/Smithtpl.cfm?CurrentId=12013>> viewed 8 August 2011.

Border Protection Command

- 4.17 Border Protection Command provides security for Australia's offshore maritime areas.
- 4.18 Combining the resources and expertise of the Australian Customs and Border Protection Service and the Department of Defence, and working with officers from the Australian Fisheries Management Authority, the Australian Quarantine and Inspection Service, and other Commonwealth, State and Territory agencies, Border Protection Command delivers a coordinated national approach to Australia's offshore maritime security.
- 4.19 The Command is responsible for coordinating and controlling operations to protect Australia's national interests against the following maritime security threats:
- Illegal exploitation of natural resources;
 - Illegal activity in protected areas;
 - Irregular maritime arrivals;
 - Prohibited imports/exports;
 - Maritime Terrorism;
 - Piracy;
 - Compromise to Bio-security; and
 - Marine Pollution.⁶
- 4.20 Headquarters Northern Command (HQNORCOM) is the Australian Defence Force operational headquarters in Darwin that coordinates and controls military operations in Australia's north.
- 4.21 Its major operational responsibility is Operation Resolute, the Australian Defence Force's contribution to the Australian Government's efforts to deal with the maritime security threats.
- 4.22 Operation Resolute is commanded by Commander Border Protection Command; however day-to-day operations have been delegated to Commander Northern Command with further assistance provided by a number of Commonwealth, State and Territory agencies.
- 4.23 The Committee asked Defence to detail what the 'real cost' of Operation Resolute was. Defence replied:
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6 See <<http://www.bpc.gov.au/>> viewed 12 October 2011.

It is Government policy to supplement Defence for the net additional costs of major operations it is involved in.

Defence does not estimate the full cost of operations as this would not enhance budget processes as Government seeks only to supplement Defence funding for the net additional costs of conducting operations.

The net additional cost of an operation includes such things as any movement costs, additional personnel costs such as rations and allowances, extra fuel used by assets deployed, and remediation costs on completion of the operation, including repair and overhaul of equipment and replacement of consumables.

The full cost associated with Operation Resolute is not specifically captured within Defence's financial systems.⁷

4.24 The Committee asked Defence to provide a list of the assets in terms of equipment and manpower that have been force assigned from various agencies to Commander, Protection Command. The Committee asked:

(a) Commander NORCOM is the Deputy Commander of JTF 639. Is he Deputy Commander of Border Protection Command as well, or is that a Customs officer?

(b) How much of Headquarters NORCOM's current tasking comes through JTF 639, and how much is through the normal tasking that comes down to them? In other words, how much of their time is taken up by Operation Resolute? If you could come back with the detail for the last five years with the percentage of his time that has been taken up with Operation Resolute.

(c) What is the Commander NORCOM, and Headquarters NORCOM as an entity, now not doing because of the substantial requirement for Operation Resolute?

4.25 Defence responded:

(a) Commander Border Protection Command (BPC), also Commander Joint Task Force 639 (CJTF 639), has two deputies: one ADF officer and one Customs officer. Commander Northern Command (COMNORCOM) is Deputy Commander JTF 639 (DCJTF 639). A Customs Officer in BPC is Deputy Commander BPC.

(b) (Commander NORCOM duties include DCJTF 639 (OPERATION RESOLUTE); Senior ADF Officer Northern

7 Department of Defence, *Submission 4*, p. 13.

Territory; Senior ADF Officer Larrakeyah Barracks and Defence Establishment Berrimah; and ADF Principle contact for Defence Aid to the Civil Community in the Northern Command Area of Operations. COMNORCOM is also prepared to command ADF and Whole of Government operations in the northern approaches as directed by Chief of Joint Operations.

Approximately 65 per cent of NORCOM workload is dedicated to OPERATION RESOLUTE. A breakdown of the commitment between the two roles is detailed below including significant events/ activities for the year:

NORCOM			OP RESOLUTE	
2006	TC Monica / Mounting HQ OP ASTUTE	35 %	FFV surge activity	65 %
2007	TC George	35 %	FFV surge activity	65 %
2008	TC Helen	40 %	Low FFV/SIEV activity	60 %
2009		35 %	SIEV surge activity	65 %
2010		25 %	SIEV surge activity	75 %
2011 ¹	TC Carlos	25 %	SIEV surge activity	75 %
			Five year average	67.5%

¹ Figures for 2011 are estimates only.

(c) Commander NORCOM manages his resources to meet his organisational priorities. The organisation has had an operational role in the border protection domain (through Operations RESOLUTE, RELEX and CRANBERRY) since the inception of the Headquarters in 1988. Throughout this period successive incumbents of the Commander NORCOM position have balanced the roles abbreviated in the answer to part (b).⁸

ADF Base Security

- 4.26 In August 2009 five men were arrested after a joint operation between Australian Federal Police, Victoria Police, NSW Police, the NSW Crime Commission and Australian Security Intelligence Organisation (ASIO).
- 4.27 These men (allegedly connected with the Somali-based terrorist group al-Shabaab) intended to gain access to Holsworthy Army Base, then use semi-automatic weapons to kill as many Army personnel as possible, probably as a suicide Mission. Their motivations are understood to be anger at the presence of ADF troops in Iraq and Afghanistan, and a desire to further the cause of Islam.

⁸ Department of Defence, *Submission 4*, pp. 14-15.

- 4.28 Three were found guilty by the Victorian Supreme Court in December 2010 of conspiring to do acts in preparation for or planning a terrorist act, and the other two were acquitted.
- 4.29 The Base had limited physical protection with security provided only by lightly-armed civilian security guards. The large number of Army personnel on the Base had no ready access to weapons or legal grounds to fire in self-defence.
- 4.30 This incident had potential for grave embarrassment and risk to ADF personnel. Of note is that very soon after the arrests were made, and despite heightened concerns over security, Daily Telegraph journalists gained access to Holsworthy Army base and were only arrested after a period of wandering freely around the base.
- 4.31 ADF base security has been under review for an extended period, particularly since 9/11 and the Bali Bombings. Defence is currently implementing its Base Security Improvement Program. Some heightened measures have been put in place, but some bases are still only lightly protected. For example, Lavarack Barracks in Townsville is only partly fenced, and RMC Duntroon is an open base where numerous ADF senior leaders reside in unsecured premises.
- 4.32 In August 2009 the Government asked Defence to conduct a comprehensive review of base security. The Review of Defence Protective Security Arrangements subsequently recommended a number of policy and physical security initiatives to complement and strengthen existing security at Defence bases.
- 4.33 One of the recommendations of the Review was to bring forward a number of legislative amendments. The resulting Bill was introduced into Parliament just prior to the last election, then re-introduced in September 2010.
- 4.34 It was the subject of an inquiry by the Senate Foreign Affairs, Defence and Trade Legislation Committee which proposed certain amendments, but recommended passing the Bill. This Bill provides enhanced powers for ADF employment of force (including lethal force), search and seizure and surveillance to secure Defence bases.
- 4.35 A total of \$339 million was allocated for base security enhancements, starting with \$10 million in 2009-10, and then the further \$329 million to financial year 2013-14. The Committee sought information on how much has been spent so far and what has it been spent on?

We have committed approximately \$24 million to date to implement a series of security enhancements at a number of bases, most notably Holsworthy, Russell, Duntroon and also the Garden Island complex. The types of improvements implemented include some improvements to fencing, also increased security patrols, installation of closed circuit TV systems, intruder alert devices, security lighting upgrades, and also upgrade of emergency operations centres.⁹

- 4.36 The Committee were interested in Defence's policy relating to on/off base location for Defence support activities. To relieve accommodation on base and strengthen security several state and local governments invested in industrial subdivisions adjacent to Defence infrastructure. The Committee asked whether the Department of Defence will continue to support this regional investment by encouraging Defence contractors to establish off base, and to assure these investors that there is no policy by the Department of Defence to concentrate Defence support activities back on base in certain locations:

The 2009 Defence White Paper – Defending Australia in the Asia-Pacific Century: Force 2030 outlined the Government's strategic basing principles to meet the future needs of Defence. One of these principles is that Defence should aim to group bases near strategic infrastructure and industry to promote knowledge sharing, innovation, and to maximise the effectiveness of industry support to the Australian Defence Force (ADF).

The Government recognises the important role that Defence industry plays in support of ADF capability. The provision of on-base facilities for Defence contractors will only be approved where there is strong operational justification for contractors to be on base. A reduction in direct project costs is not seen to be a sufficient justification for contractors to be provided with facilities. Defence contractors who are permitted to use on-base facilities will be expected, at minimum, to pay costs associated with the occupancy of those facilities.¹⁰

- 4.37 The Committee asked Defence if they would prefer contractors to be back on base:

Allowing use of the estate by non-Defence entities requires a careful balance to ensure Defence is able to continue to deliver

⁹ Mr Stephen Merchant, Department of Defence, *Transcript*, 25 March 2011, pp. 54-55.

¹⁰ Department of Defence, *Submission 3*, p. 7.

capability and support ADF personnel. Defence generally prefer contractors located off-base.¹¹

- 4.38 The Committee was interested in how the dog breeding program at RAAF Base Amberley is going, and whether it will be rolled out to other bases. Defence informed the Committee that:

The Military Working Dog Breeding Program is meeting its requirement to breed sufficient numbers of military working dogs for the RAAF schedule of training. Sufficient military working dogs are available and assessed at 'course ready status' to team with individual handlers to conduct training, which in turn meets the requirements for dogs across all RAAF Bases.

There is no plan to expand the breeding program or 'roll out' to other bases. Such a plan would not be cost effective as it would require considerable funding to support dedicated breeding facilities and personnel at each location. The centralisation of the breeding program at RAAF Base Amberley is essential to ensure best practice is maintained through one centre or location of military working dog training and subject matter expertise.¹²

- 4.39 The Committee also wanted to clarify if dog patrols used on Australian bases and, if so, which bases. Defence told the Committee that:

Military working dog teams are employed on most RAAF Bases where aircraft exist to support the overall security posture of the Base. Security duties are varied but include mobile and foot patrols. Military working dog teams are permanently stationed at RAAF Bases Amberley and Townsville in Queensland, Darwin and Tindal in the Northern Territory, Richmond and Williamstown in New South Wales, Pearce in Western Australia and Edinburgh in South Australia.¹³

- 4.40 The Committee asked if there would be any requirement for any physical building that goes to the Public Works Committee post financial year 2013-14 as a result of the Threat and Risk Assessment process. Defence responded:

Subject to Parliamentary approval, significant planned works identified during the threat and risk assessment process that was completed as part of the Base Security Improvement Program, will

11 Department of Defence, *Submission 3*, p. 7.

12 Department of Defence, *Submission 3*, p. 8.

13 Department of Defence, *Submission 3*, p. 8.

start in mid-2012 and finish in 2013. At this stage, no public works will be needed after financial year 2013-14. Some infrastructure improvements, such as upgraded vehicle and personnel entry and exit points and the construction of vehicle inspection bays, are scheduled for consideration at the Public Works Committee in early 2012.

Nevertheless, base security threat and risk assessments will be conducted periodically (beyond the Base Security Improvement Program) and new security requirements may be identified. These assessments may generate the need for public works additional to those scheduled for Public Works Committee consideration in 2012.

Also, the Base Security Improvement Program consists of more than infrastructure improvements. Other program elements include incorporating a number of mandatory security measures into base security policy and plans, establishing an enhanced self-defence capability at some larger Defence bases, increasing the police presence at Defence bases, introducing a non-consensual inspection and search regime, and improving lighting and closed circuit television. These changes are not required to go through the Public Works Committee. Some of these enhancements (such as improved lighting and boundary security) involve one-off expenditures and are on schedule to be completed within the next two years. Other improvements, such as the enhanced self-defence capability and increased police presence, will have ongoing operating costs beyond 2013-14.¹⁴

- 4.41 The Committee were curious as to who is providing security at the Scherger bare base and, particularly, who is looking after Defence assets there. The Department replied that:

RAAF Base Scherger has four permanent Air Force personnel on base who are responsible for a range of tasks, including security of all Defence assets when the airbase is not activated for Defence purposes. The Department of Immigration and Citizenship provides security at the detention compound and access control to the base at the main gate, but does not provide security for Defence assets.¹⁵

14 Department of Defence, *Submission 4*, p. 16.

15 Department of Defence, *Submission 4*, p. 17.

Committee conclusion

4.42 The Committee is concerned that, at the time of its public hearing, some 20 months after the threats to Holsworthy Barracks, the Defence Department is only very slowly moving towards decreasing the threat level of its bases.