



**Senator the Hon John Faulkner
Minister for Defence**

19 DEC 2009

Mrs Julia Irwin MP
Chair
House of Representatives Standing Committee on Petitions
Parliament House
CANBERRA ACT 2600

Dear Mrs Irwin

Thank you for your letter of 22 October 2009 concerning a petition submitted to the Standing Committee on Petitions on Australia's military justice system.

The petition draws attention to recommendations 29 and 30 of the Senate Foreign Affairs, Defence and Trade Committee report on *The effectiveness of Australia's military justice system* of 16 June 2005 (the 2005 Senate Report), 'principles of service in the ADF'; and 'the Constitutional obligation to have an effective military justice system'. It submits that self-regulation by the Chief of the Defence Force (CDF), Air Chief Marshal Angus Houston AC AFC, and Service Chiefs is an unreliable basis for ensuring the probity of military justice and has requested the House institute changes which will require the CDF and his commanders to 'uphold Australian law and adhere to the statutes of military justice'.

Recommendation 29 of the 2005 Senate Report concerned the establishment of an Australian Defence Force Administrative Review Board, a statutory body, with an independent chairperson, to review military grievances and submit findings and recommendations to the CDF. The Australian Government of the time did not agree to this recommendation, but did acknowledge that there was a need to improve the complaints and redress of grievance management system.

Recommendation 30 of the 2005 Senate Report was to establish a task force to finalise grievances that had been outstanding for over 12 months. This was agreed and that action has occurred.

There has been significant improvement and reform to the military justice system since the 2005 Senate Report, and this is continuing. It has included streamlining the complaint and redress of grievance management system within the Australian Defence Force, improved reporting and oversight, greater education for commanders in the exercise of their administrative decision making and further education and awareness for members of the Australian Defence Force generally on their right to make a complaint, and avenues of complaint, such as the Inspector General Australian Defence Force (IGADF) and the Defence Force Ombudsman.

The IGADF, a statutorily independent position is empowered to review, inquire into and report on the health and effectiveness of the military justice system. The IGADF continues to receive submissions and undertake inquiries and audits of military justice practices and procedures at ADF units, independent of the chain of command.

An independent review of the health of the military justice system conducted by Sir Laurence Street AC KCMG QC and Air Marshal Les Fisher AO (Retd) in 2008 concluded that the military justice system is delivering and should continue to deliver impartial, rigorous and fair outcomes; has greater transparency and enhanced oversight; is substantially more independent of the chain of command; and is effective in maintaining a high standard of discipline.

A military justice system must meet the needs of Defence in terms of minimising impact to operational effectiveness, while at the same time being fair and having due regard to the rights of individual members. The present system has in place frameworks that seek to safeguard the effectiveness of Australia's military justice system, both in regard to administrative sanctions and allegations of breaches of the *Defence Force Discipline Act 1982*. Improvements can, and will, continue to be made, as is evident in the Government's current work to address the recent decision of the High Court of Australia in *Lane v Morrison* regarding the validity of the Australian Military Court.

The CDF and his commanders are required to comply with Australian law, including the rules and principles of administrative law, at all times, and it will be a matter of constant review to ensure that Australia's military justice system provides an optimal approach that protects and supports both the rights of individuals and Australia's national interest.

For the reasons outlined above, it is not considered necessary to introduce changes to the military justice system in addition to those already being progressed or considered, or to revisit recommendations made in the 2005 Senate Report, which were not accepted.

Yours sincerely

JOHN FAULKNER