

Senate, Monday 21 June 1999

COMMITTEES: Foreign Affairs, Defence and Trade Committee: Joint: Report

Senator CALVERT (Tasmania)(3.40 p.m.) —On behalf of Senator MacGibbon, I present the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on *military justice procedures in the Australian Defence Force*, together with submissions, *Hansard* record and minutes of proceedings.

Ordered that the report be printed.

Senator CALVERT —by leave—I move:

That the Senate take note of the report.

I seek leave to have the tabling statement incorporated in *Hansard* .

Leave granted.

The statement read as follows—

I have great pleasure today in presenting, on behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade, the Report on *Military Justice Procedures in the Australian Defence Force*, together with volumes of evidence and minutes of proceedings. The current military inquiry and discipline systems of the Australian Defence Force have been in operation for several years and the legislation underpinning the systems has provided a sound framework for the application of military justice. However over the past few years, a number of military inquiries, and disciplinary matters conducted by the Australian Defence Force, have become the subject of considerable public interest and media comment. Predominantly these cases involved the loss of lives of Service personnel or seeming injustices to members of the Australian Defence Force in their dealings with the military disciplinary system.

The considerable public attention focused on such cases has included criticisms of the efficacy of the current military inquiry system and questions of natural justice and human rights. Additionally, there has been considerable public support behind calls for external inquiries, or at the very least external reviews of inquiries, in cases involving the death of an Australian Defence Force member. Less public attention has been focused on the systems of discipline and administrative action employed by the Australian Defence Force although aspects of the Defence Force Discipline Act have been challenged, on several occasions, in the High Court of Australia in recent years.

The Senate, in referring this inquiry to the Committee on 25 November 1997, and re-referring it on 10 March 1999, asked the Committee to examine the existing legislative framework and procedures for the conduct of military inquiries and Australian Defence Force disciplinary processes. During the course of the inquiry, the Committee identified a third, interrelated component of the military justice system: administrative action. The report addresses these three distinct components of the military justice system employed within the Australian Defence Force: military inquiries, military discipline and administrative action.

Each of these components is expansive and the Committee has not attempted an exhaustive examination of every detail of the military justice system. Rather the Committee has sought to examine the existing legislation, policies and framework of the system of military justice employed by the Australian Defence Force and to evaluate their effectiveness and relevance in practice.

Independence and impartiality in the military justice system was a strong theme throughout the conduct of the inquiry. In cases involving the death of an Australian Defence Force member, the Committee was aware of a strong feeling, particularly from some family members of the deceased, that the military justice system lacks independence. While the

Committee received no evidence to support an allegation of a lack of independence in the military justice system there is no question that this perception exists in some quarters. The Committee was cognisant that while the military justice system must, so far as possible, conform with community norms, the Australian Defence Force has unique requirements for the administration of justice commensurate with its role in the defence of the nation. Moreover, these unique requirements exist as constraints and standards additional to the justice system that pertains to all citizens of Australia. Notwithstanding that members of the Australian Defence Force voluntarily accept the imposition of an additional layer of justice when they choose to serve their country, the military justice system must be demonstrably independent, impartial and fair.

The Committee acknowledged the considerable changes, made by the Australian Defence Force, to the military justice system during the course of the inquiry. Indeed the Committee inquiry was conducted in a somewhat dynamic environment with the Australian Defence Force moving to address the recommendations of Brigadier the Honourable A R Abadee's 1997 report, *A Study into Judicial System under the Defence Force Discipline Act* and the Ombudsman's 1998 Investigation into how the Australian Defence Force responds to allegations of serious incidents and offences .

Given these circumstances of significant change in the military justice system, it is a persuasive argument that time should be allowed for the benefits of these changes to be realised before further change is contemplated. However the Committee was of the view that Australian Defence Force initiated changes to procedures and practices will not fully address both the perceived and actual independence and impartiality of the military justice system. The principal question confronting the Committee was how to redress this shortfall in the military justice system without impeding the workings of the Australian Defence Force. Indeed foremost in the Committee's considerations was the need for any system of military justice to function effectively across the whole spectrum of conflict in which the Australian Defence Force can be expected to operate.

Madam President, the report tabled today contains 59 recommendations. Forty five of these recommendations relate to the military inquiry system, seven to the system of military discipline and a further seven recommendations relate to the administrative action process employed by the Australian Defence Force. The most consequential of these recommendations relate to the conduct of military inquiries.

The Committee was of the view that the issues of independence and impartiality would not be fully addressed by the changes proposed, by the Australian Defence Force, to the military justice system. To redress this the Committee has proposed a number of significant changes. Perhaps the most important of these proposals is for a latent power within Defence (Inquiry) Regulations, the prerogative of the Minister of Defence to convene a General Court of Inquiry, to be mandatory for all inquiries into matters involving the accidental death of an Australian Defence Force member. This will serve to remove the Department of Defence from the investigative process thus negating any conflict of interest and ensuring independence in the inquiry. The Committee accepted that the conduct of an inquiry by an authority external to the Australian Defence Force will involve some costs in time, resources and perhaps capability. However, the Committee was of the view that the need to demonstrate the independence of the inquiry outweighs concerns about the conduct of the inquiry by an external authority.

The Committee considered the option of proposing that a General Court of Inquiry be convened by the Minister in all cases involving major capital loss. However, the Committee acknowledged the difficulties in determining what is major capital loss and perhaps more significantly the problems with the operation of such arrangements during conflict. The Committee accepted that in most cases a Board of Inquiry would provide a suitable avenue to

investigate major capital loss and that the Minister currently has, under Defence (Inquiry) Regulations, the discretion to convene a General Court of Inquiry where an issue was of such gravity to warrant independence greater than that offered by a Board of Inquiry.

To demonstrate the independence and impartiality of the system of military inquiries, the Committee was of the view that Department of Defence should publicly account for its decisions in discharging the recommendations of General Courts of Inquiry and Boards of Inquiry. In addition, the Committee has recommended that the Australian Defence Force should publicly account for the operation of the military justice system by the provision of an annual report to the Minister of Defence. Furthermore, that the annual report be tabled in the Parliament by the Minister.

With regard to General Courts of Inquiry, the Committee has recommended that following the conduct of a General Court of Inquiry, within the limitations of privacy and secrecy, and at the conclusion of all resultant disciplinary and administrative action, the Minister of Defence should table in the Parliament:

- a) the inquiry report;
- b) the recommendations of the investigating body;
- c) details of action taken to adopt those recommendations; and
- d) where a recommendation is rejected, the reasons for that action.

The Committee did not believe that the public accountability requirements for Boards of Inquiry should be any less than those for General Courts of Inquiry. To this end, the Committee has recommended that, within the limitations of privacy and secrecy, and at the conclusion of all resultant disciplinary and administrative action, the Australian Defence Force publicly account for its actions and decisions in discharging the recommendations of the Board.

The Committee accepted that the post-Abadee arrangements will significantly improve the impartiality and independence of the military discipline system. While the alternative of an independent prosecution authority was examined in detail, the Committee concluded that the option for the creation of such a body should be re-examined after the impact of the post-Abadee arrangements could be effectively assessed. For this reason, the Committee recommended that, after the proposed post-Abadee arrangements have been in operation for three years, the issue of institutional independence in relation to prosecution in Courts Martial and Defence Force Magistrate trials be reviewed.

The Committee has also proposed some changes to the administrative action process employed within the Australian Defence Force. Perhaps of most significance, the Committee recommended that the Australian Defence Force consider the implementation of a revised framework administrative censure and formal warning that makes the process applicable to all members of the Australian Defence Force and that incorporates a separation between the roles of initiating officer and decision-maker.

The Committee identified that one of the major sources of dissatisfaction with the military inquiry process were next of kin, or close family members of personnel killed while engaged in ADF activities. It was impossible to hear the evidence given by family members who had lost a loved one in such circumstances without gaining a very strong view that the system of military justice needs a degree of fine tuning to allow the next of kin greater access to the inquiry process.

Without doubt there is a strong perception amongst many family members that the present military justice inquiry process lacked independence. We were not provided with any evidence to support this claim. But the fact that the perception persists indicates that some part or parts of the inquiry process are inadequate in terms of demonstrating to family members that: the process is transparent; all necessary steps have been undertaken; and where necessary, accountability measures are instituted.

The Committee acknowledged the need for these families who have lost a husband or wife parent or child to have some closure for their own grief. While the changes recommended in this report will help relatives in the future it will not have a retrospective effect. But families who have already lost a lost one during service in the ADF can take some comfort from having brought about the changes recommended in this report.

Those changes recommended by the Committee include:

. Attendance at Inquiry. The next of kin, or other immediate relatives, of an ADF member whose death is the subject of an inquiry, should always be permitted to attend that inquiry regardless of whether the inquiry is conducted in private or is open to the public. Exclusion of these next of kin, or other immediate relatives from the inquiry should only be on a temporary basis, from those sections of the inquiry dealing with matters of national security.

. Informed of Outcomes. Next of kin or other immediate relatives of personnel killed in military incidents should, within the provisions of the Privacy Act and relevant security considerations, be provided with a copy of the inquiry report and advice on all actions taken as a result of the inquiry. Where a recommendation from the inquiry report is not implemented, next of kin should be provided with the reasons underpinning the decision not to adopt that recommendation.

. Advised Prior to Press Release. Next of kin or other immediate relatives of personnel killed in military incidents should be warned prior to the release of information to the press regarding the inquiry.

. Legal Representation. Where a deceased member of the ADF is likely to be affected by an inquiry, the next of kin or other immediate relative should be afforded the option to have the interests of the deceased member represented, at Commonwealth expense, by Service legal counsel.

. Counselling Services. The ADF should establish processes to ensure that counselling services are available to witnesses to a military inquiry and to next of kin and close relatives of ADF members killed in the incident.

While the Committee is of the view that the recommendations of this report will serve to improve the independence, impartiality and overall operation of the system, it is acknowledged that the report will be disappointing for some who saw the inquiry as an avenue of review for individual cases. It should be emphasised that this function was not within the Terms of Reference for the inquiry, nor was it within the powers of the Committee. Where the Committee touched on individual cases it did so solely to examine the procedures employed and the effectiveness of the military justice system.

The inquiry created a lot of public interest, and I would like to thank all of the people who took the time to write submissions, to appear at the public hearings or simply made contact with the secretariat. I would like to acknowledge the hard work of the Defence Sub-Committee in this Parliament and also in the 38th Parliament.

Finally on behalf of all Committee members I would like to acknowledge the efforts of the excellent Secretariat staff so ably led by Joanne Towner and Margaret Swieringa and our military advisers Paul Hislop and Michael Ward.

Madam President, I commend the report to the Senate.

Senator SCHACHT (South Australia)(3.41 p.m.) —The report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on military justice procedures in the Australian Defence Force is very important—all reports from the committee are very important. I have been a member of the committee for most of my time in this parliament and I have been a member of the defence subcommittee, which prepared this report on behalf of the joint committee, for most of that time. This may not be a report which the large bulk of the Australian population would find interesting reading or would queue at the government

bookshop to purchase, but the issues which it has dealt with are very important for the morale and the operation of the Australian Defence Force in the 21st century.

We have seen consistent controversy over a period of time about the way the Defence Force handles issues where people are stood down while they are charged under various offences. This is an issue where philosophically you have a conflict between the need for a defence force to provide discipline and arrangements to maintain the good organisation of a military unit, and the right of the individual to make sure that, in a civilised and democratic society, even though they are members of the Defence Force, they receive due process and fairness in military tribunals if they have been charged with any number of matters under the military code of Australia. That code is part of an extensive document which has been built up not just over recent years but over decades, beginning with what we inherited from Great Britain.

I want to pay particular tribute to the members of the committee; to David MacGibbon, the chair of the committee, whose interest in defence matters is well known in this place and elsewhere; and also to the Deputy Chair, my colleague Roger Price. This report—as I say, it will not be a best seller—will be very important in outlining arrangements for the military in coming years. At this stage, people in the broader community and particularly in the military community will be able to respond. I think there will be proper debate. Those of us on the defence subcommittee look forward to debate on the recommendations. I do not believe that any of the recommendations in themselves are unduly controversial, though they total nearly 60, nor would they be hard for the Department of Defence to digest and put into practice. Of course, they will respond and we will wait for the government's response on behalf of the Department of Defence in the next three months.

I want to say to the government that I hope that they do respond in a thorough manner to these recommendations within the three months required and not just put this off as too difficult or not as pressing as maybe some other issues. When we get the response of the government, the Senate and House of Representatives can have a further debate about these recommendations. I am not going to go through these recommendations one by one—I do not have the time—and I am not going to try to just speak to one or two. In my view these recommendations update and make more contemporary the processes of handling justice in the military. They are, as I say, not radical: we do not throw the baby out with the bathwater. Members of the Defence Force can, I think, get a better process and, if they are charged and dealt with, they can believe that they have every right to get full justice and an independent hearing.

It is clear that what we accepted as reasonable in the past in the operation of the military will not be able to be sustained totally in the first decade of the next century and into the future. If we want to attract the best quality young people in our community with tertiary qualifications—and we are going to need them in view of the highly complex and technical equipment now available in the Defence Force—we have to show that they will be treated in the Defence Force in a manner that the rest of the community thinks is reasonable. And that will mean some adjustment. If we do not make these adjustments and improvements in process, on such issues as military justice and the procedures thereof, I think we will run the risk of not being able to attract the best and the brightest into our defence forces. There would be a deficiency in our national security if we could not attract the best into the system.

Certainly I, like other members of the committee who have had dealings with Defence and opportunities to visit Defence establishments, have met both formally and informally with the staff and service people of Defence. All of us have been impressed by their quality, particularly the young people coming through the Australian Defence Force Academy and the various service colleges. We have been impressed by their quality and want that quality to be not only maintained but consistently improved in line with improvements in the community. As I have said, this is an important document. I think it proves that the standing committees of the parliament can be extremely useful in putting forward recommendations in areas of

sensitivity and making recommendations that governments in a measured way can respond to. You should note that in these recommendations, as far as I can see, there is no dissenting report. Clearly, the opposition members have accepted the government's majority view and so, as far as I am aware, there is no dissenting report. I think that is an excellent outcome. I think the minor parties were represented on the committee, as well as—

Senator Margetts —No, I got kicked off, remember.

Senator SCHACHT —Senator Margetts, the full committee of the Joint Foreign Affairs, Defence and Trade Committee is represented by Labor, Liberal, Democrats and Independents. As far as I can see, there is no dissenting report in the report that has been tabled today. I want to point out to the government and the Defence Force that the recommendations have quad-partisan or quin-partisan support—whatever the appropriate word is—and therefore they have the full weight of the committee behind them, and I hope the government and the Defence Force accept them in that spirit. This is, I think, a good example of the work of the standing committees of the parliament dealing with sensitive issues. A bi-partisan approach can be reached to the advantage of the Defence Force. I commend the report to the parliament, the government and the defence forces.

Senator QUIRKE (South Australia)(3.49 p.m.) —I do not want to take up too much time of the Senate today, but I think it is very important for us to understand that processes of justice not only have to be seen but have to be seen to be done fairly and properly. There are many examples in this country, over many years, where the judicial processes which we take for granted in civilian life have not been extended to the military. Mind you, I think one or two of the provisions that apply to the military—and, in fact, recommendations have been made in the report to strengthen them—could be something that the rest of the community needs to deal with as well. Great improvement could be made to many of the issues concerning the justice system in this country which come under scrutiny.

I want to have a look at a couple of the recommendations in the report, namely recommendations 18 to 21, and draw them to the attention of the Senate. One would hope that, with a report as all encompassing as this one—namely, a 60-recommendation report of this type—the military and the minister and his office would take a close look at the recommendations and that in fact we will see considerable progress made on these by the time we get to estimates next year or possibly the year after.

Recommendations 18 through to 21 deal primarily with the processes by which a person is notified if there is a complaint against them and the procedures by which those complaints are dealt with. What it really does is set down some basic principles of natural justice which will apply to soldiers, sailors and airmen—and I use those terms for both male and female these days, because there are large numbers of females in all three arms of our services—so that, if a complaint is made against them, they are properly informed of that allegation and they are told what procedures will follow from that complaint. The principles also mean that, if a report is made which is critical of an ADF member, that person is accorded the proper procedures for answering that complaint and that, ultimately, when it comes to legal recourse within the military, the investigating body thoroughly and properly advises the parties concerned of the course of action that is going to take place and of the entire nature of the allegation against the person.

The report is a full one. Indeed, I think it deals with many aspects of justice within the military which have not been dealt with before. I am only a new member to the committee so I cannot give any historic perspective on that, in the way that, say, my colleague Senator MacGibbon no doubt will in his address here today. From my knowledge, it is the first time that the committee has made recommendations on these points and has dealt with them at all in any manner.

Without saying too much more I would like to draw the Senate's attention to a few other recommendations in the report and then let some of my other colleagues make a couple of comments on it. I think it is rather interesting that recommendations 25 through to 28, respectively, deal with the military's approach with regard to the next of kin of a person who unfortunately has been killed in a military incident. I think it is rather a shame in many respects that it has taken a report of this nature to deal with what is, it must be said, a very difficult but necessary issue. It has been some years since we have had any combat related deaths in the Australian ADF but, as I understand it, each year there are persons who are killed by way of training or other incidents in the Australian Defence Force. Some of these instances lead to charges of negligence against the person concerned and in fact against the person who has been killed or against that person and others.

So I think that these recommendations are commonsense and important and that they really need to be taken up. I suspect that senators from all sides will be keen to ask the Defence personnel when they come before us for estimates about what progress is being made on these recommendations. We look with interest to see how the Defence establishment accepts this report.

Senator HOGG (Queensland)(3.56 p.m.) —Being a member of the Senate legislation committee which deals with defence matters at estimates, I find that the issues in this report of the Joint Committee on Foreign Affairs, Defence and Trade are of real concern. I have addressed them in past estimates without the availability of a comprehensive report such as the joint standing committee have put together. On that basis, I firstly put on the record my congratulations to the joint committee for undertaking this vast report and for making it available for someone like me at Senate estimates.

I noticed in the brief time in which I have been able to look at the report that it does get to the fundamentals of basic justice within the military. Of course, that should apply whether it is military or whether it is in the civilian world. In particular, I noted the comments in respect of mischievous allegations and the fact that there was evidence presented to the committee that false accusations are presented in some military tribunals. The report says:

. . . false or misleading accusations were used to the detriment of individuals, even where the resultant investigations failed to prove any offence committed by the individual.

One can see that the military do close ranks in the strictest sense of the terms but, of course, no-one has the right to destroy anyone's career by way of misleading allegations or accusations. One would hope that, as a result of this report, every effort is undertaken to ensure that this practice is eliminated and the careers of some very promising people within the military are not destroyed.

This is a timely report in another sense. The defence forces are undergoing a period of upheaval under the Defence Reform Program, and that sets a lot of things in train which would see people jealous of what others have achieved under the Defence Reform Program by way of promotion or changes in their status whilst others may be standing still marking time. So we need to ensure that the processes that are in place will protect the integrity of those people who have rightfully achieved and to ensure that those people are not subject to any false or wrongful accusation as a result of a process that is turning the Defence Force on its head at the present moment.

The only other issue that I want to comment on is one that I have always been concerned about, and that is the training of Defence Force personnel. The report at paragraph 3.151 specifically refers to the need for there to be a degree of competence of ADF officers, such that:

. . . the effective and efficient conduct of military inquiries calls for considerable knowledge and judgement of those involved. The ADF acknowledged that relatively few officers are

called upon to either personally inquire into a matter as an Investigating Officer or to participate as a member of a BOI and there is a lack of experience.

The report goes on to further recognise that there is a need to have these people trained to a degree and level of competence which will enable them to participate in the processes that are necessary within the defence forces.

I believe that the report is a breakthrough. It will be something that will be subject to greater scrutiny at the estimates process—because, at the end of the day, one must be assured that justice is not just being seen to be done but is being done within our defence forces. Where on some occasions defence inquiries can be suppressed, hushed up to protect the interests of a few, that should not be allowed. The processes outlined in this report will undoubtedly guarantee integrity for all.

Senator MacGIBBON (Queensland)(4.01 p.m.) —I would like to thank Senators Schacht, Quirke and Hogg for their enthusiastic and genuine support for this inquiry, which, as Senator Schacht said, produced a unanimous report from all the members of the Joint Standing Committee on Foreign Affairs, Defence and Trade and not only of the defence subcommittee. Towards the end of 1997, Senator Schacht moved in this chamber that the subject of military justice be referred to the joint committee and now, some years later, this report is tabled before us.

As a longstanding member of that committee, I can say that I have never been involved in any inquiry as complex as this one. It is a very detailed and technical subject to inquire into, and what is tabled today in the Senate is no light reading before you go to sleep at night. But I believe that it is a very constructive report and that it will be very beneficial to the morale and conduct of operations of the ADF in the years ahead. I believe that the ADF will have no difficulty in accepting all the recommendations that we have made.

At the outset, the committee recognised the need for military justice. Most of the justice that is administered within the Australian Defence Force is administered under civilian law and has been so for many years. Major crimes like rape, murder, theft and things of that nature are always referred to the civilian courts and, wherever possible, if there is a way of referring a matter to the civilian courts the defence department does so. But we do need military justice because we require the defence forces to do perverse actions—actions that have no parallel at all in civilian life.

At the end of the day, the members of the Australian Defence Force are different from all of us in this chamber, because they literally die on orders, and no-one in this room does that. We require them to perform acts of extreme violence but to do so in a very disciplined way, and so the existence of a highly disciplined code of behaviour is essential to a defence force. If you do not have that, then you have such tragedies as befell the Canadian army on its deployment to Somalia, where it became involved in torture, murder and theft. Discipline is absolutely essential. If a force is not disciplined, it is a threat to a democratic society and to the members of its own ranks.

The need for a military justice system to see that discipline is fairly, impartially and independently exercised is absolutely paramount. In the Australian Defence Force, that justice system is mediated through three broad streams: the Defence Force Discipline Act, the Defence (Inquiry) Regulations, and administrative action.

The Defence Force Discipline Act was brought down in 1985 and replaced a hotchpotch of old British military legislation, some of which had in fact been abandoned by the United Kingdom defence forces many years previously. The Defence Force Discipline Act of 1985 was an Australian approach to the legislative requirement for discipline within the Defence Force and it covers, as its name says, matters of discipline, trials of members of the ADF and all the things in the way of penalties from that.

The Defence (Inquiry) Regulations, which came in at about the same time in 1985, really are there to find out why accidents happen. Military training is always dangerous and, sadly, there will always be a mortality rate, because it must get as close to reality as possible. Everything must be done by the Australian Defence Force to make sure that people are not killed or injured on exercises but, with the best of planning, some accidents will occur. What we cannot tolerate is any negligence or incompetence in those administering training exercises which result in the loss of lives or injury or major property loss.

The Defence (Inquiry) Regulations are set up to find out why accidents happen and, therefore, the speed and accuracy of the inquiry are paramount. Because of that, the usual requirements of courts of law with respect to evidence and the fact that you can refuse to answer a question on the grounds that you might incriminate yourself do not apply. In the converse of that, the pay-off is that, if someone answers and incriminates themselves, it cannot be used against them in a subsequent court action as a disciplinary measure. The whole purpose of defence inquiries is to find out why accidents happen so that they can be prevented from happening again and, in some cases, the time span can be quite short.

The defence inquiries operate through a level of inquiries, starting with the board of inquiry, through investigating officers and down to quite minor events. One of the characteristics that is not appreciated by the civilian community is that it has never been a requirement for the inquiry process to blame someone for the accident. The inquiry process has the power to recommend that, if a prima facie case exists for the Defence Force Discipline Act to be applied against someone, that finding can be made if it is in the terms of reference setting up the board of inquiry. In recent years on major boards of inquiry that requirement has not been stipulated and, because of that, there has been a perception in the community that there is a lack of accountability in the ADF.

The final stream, the administrative action pathway, deals with professional and personal development, and it is of lesser importance than the two other streams that I have talked about. Overall, the committee found that the system was very sound—98 per cent of it is working very well and there are no problems. In its 60-odd recommendations, the committee recommended finetuning of the process. Where possible, it has introduced modern practices, some of which have been referred to by previous speakers.

The overriding impression the committee got from hearing witnesses was that there was a perception of a lack of independence from some of the relatives of deceased service personnel and, flowing from that, a lack of accountability. That is very important in a volunteer service because it affects morale and a whole range of other matters. I have to emphasise that the committee found no evidence at all that there was a lack of independence in the process but, as figures in public life, we all recognise that perceptions are very important. We decided that the perception of a lack of independence was a very major shortcoming of the present system, and we set out to find a means to overcome it. That took us a great deal of time.

We came up with the proposition that a latent power in the defence inquiry regulations—namely the ability of the minister to refer an inquiry to a general court of inquiry—be used. This has never been used since the regulations were brought into force in 1985. Referring a matter to a general court of inquiry takes it entirely out of the Department of Defence's control and refers it to either a Supreme Court judge from the states or a Federal Court judge. The process that flows from there is entirely independent of the Department of Defence. We believe that that not only will create the perception of independence in major inquiries but will also create the reality of independence. So one of our significant recommendations was that, where death occurs as a consequence of an ADF activity, the minister must refer the matter to a general court of inquiry.

I am confident that the defence department will accept all the recommendations we have made. They are all constructive; they all operate within existing systems. There is nothing

new in what we propose that is radical or will turn anything on its head. There are minimal costs involved, if any costs at all. Most importantly, the preservation of the command authority of officers in the ADF is preserved. We think we have come up with a very pragmatic approach and we are confident that the defence department, having shown a great readiness to implement the recommendations of Mr Justice Abadee in relation to the Defence Force Discipline Act within the last 12 months, will carry on with the good work and implement our findings, which I believe will be for the benefit of all.

Finally, I would like to thank very much my deputy chairman, the Hon. Roger Price, for the support he gave me on the defence subcommittee, and the other members of the committee, some of whom have spoken today. I also thank the staff: the secretary, Joanne Towner, now replaced by Margaret Swieringa, and particularly Michael Ward and Paul Hislop, who were the military advisers to the committee. I commend the report to the Senate.

Question resolved in the affirmative.