

Appendix 4

Additional questions based on a submission received by the committee on 3 October from Mr Douglas McDonald

26. Mr Douglas McDonald raised concerns about the eligibility of jurors as proposed in the bill. He noted that: 'The proposed Defence Force Discipline Act section 122 will require a military jury to consist of six members with at least one holding a rank not lower than Lieutenant Colonel (E). The proposed Defence Force Discipline Act subsection 123(1) will state that in order to be eligible as a member of a military jury, a juror must be an officer of not less than 3 years service and at a higher rank than the Defendant. If the Defendant is not an officer, the proposed Defence Force Discipline Act subsection 123(2) will specify that a juror must be an officer or a Warrant Officer Class One (E) for a period not less than 3 years service and at a higher rank than the Defendant.' He surmised:

Undoubtedly at the commencement of these trials by Military Judge and Jury, the Military Judge would address members of the jury on all aspects of the decisions that have to make and the process of how they determine a Defendant's guilt or innocence. If this is the jurors' preparation for a trial, then a case exists to allow Warrant Officers Class Two (E), Sergeants (E) or even Corporals (E) to also become members of a military jury. I believe that the reason this has not been considered may well be due to their lack of an appropriate level of seniority, military experience and credibility to make decisions on military justice matters.

- Could you explain the reasons for the proposed eligibility criteria including the reasons for excluding 'Sergeants or even Corporals'?
- Was the criteria based on an existing model for military juries?

27. Mr McDonald also suggested that there was the potential for junior officers—Captains or Lieutenants—to be influenced or even dominated by the more senior officer on the jury and their votes of Guilty or Not Guilty, may be based on the views held by the Lt. Colonel.

- Could the committee have your views on the potential for junior ADF members on military juries to be unduly influenced in their decision-making by a senior officer?
- One of the major concerns expressed by the committee on a number of occasions has been the influence of the chain of command in the operation of the military justice system. What are the safeguards in the proposed military jury that would prevent this influence from happening?

28. Mr Douglas was also concerned that the level of training required for jurors was inadequate.

- Would you like to comment on his views?

