



**Office of the Director of  
Military Prosecutions**

Building D1, Weston Creek,  
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**The Secretary**

Senate Foreign Affairs, Defence and Trade Legislation Committee  
Parliament House  
CANBERRA ACT 2600

**DIRECTOR OF MILITARY PROSECUTIONS SUBMISSION ON DEFENCE  
LEGISLATION AMENDMENT BILL 2007**

1. Thank you for notifying me by your correspondence of 17 August 2007 of the Committee's invitation to me to make submission on the subject bill.
2. Generally, I am supportive of the bill; its provisions should simplify and make more flexible the administration of military justice. From my perspective, it contains important provisions which will give me useful additional powers and enhance my ability to perform my statutory functions.
3. I make the following specific comments on certain provisions in the bill but request that they not delay passage of the bill:
  - a. **Summary trials of senior officers (schedule 1).** I support these amendments.
  - b. **Right of an accused to elect trial.** I support the right of an accused person to elect trial. The scope of the election appears to be limited; depending on how it operates in practice, this right of election may require further subsequent amendment.
  - c. **Evidence in summary proceedings.** These amendments do not directly affect my functions but I support the simplification of evidence procedures for summary trials.
  - d. **Review of summary proceedings.** These amendments do not directly affect my functions.
  - e. **Drug offences.** I support these amendments.
  - f. **Minor discipline infringements.** These amendments do not directly affect my functions. I note that Junior Non-Commissioned Officers and Senior Non-Commissioned Officers have been omitted. While this is unfortunate I am informed that the omission has been unavoidable. Other, more important, provisions in the bill make it desirable that the bill be passed notwithstanding these omissions.
  - g. **Powers of Director of Military Prosecutions.** These amendments are very important and will improve my ability to perform my statutory functions.

- (1) The amendment to section 87 of the *Defence Force Discipline Act 1982* will remove existing doubts in the procedure for me to prefer charges.
  - (2) The amendment to section 103A will legislate and restore to me the flexibility in choosing the appropriate forum for the hearing of charges.
  - (3) The amendments to the *Defence Force Discipline Appeal Act 1955* will empower me to refer questions of law, arising from Australian Military Court trials, to the Defence Force Discipline Appeals Tribunal. This will remove all doubt as to my capacity to seek judicial review, where appropriate, of Australian Military Court rulings.
- h. **Powers of the Provost Marshal–Australian Defence Force.** It will be necessary for me to observe the operation of this section before I can comment on its effects. It is intended, and may well provide, a means to expedite the trial of certain matters.



**L.A. McDADE**

Brigadier

Director of Military Prosecutions

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