

# Chapter 1

## Introduction and conduct of the inquiry

### Referral of the inquiry

1.1 On 30 October 2003, the Senate referred the matter of the effectiveness of Australia's military justice system to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report by 12 May 2004.

1.2 On 1 April 2004, the Committee sought and was granted an extension of time to report on 5 August 2004. Given the nature, complexity and volume of information received, the Senate, on 23 June 2004, granted an extension of time to present an interim report by 9 September 2004. Following the prorogation of Parliament on 31 August 2004, the Committee tabled a short interim report on 8 September 2004. In that report, the Committee explained that it would present a final report as soon as practicable.

1.3 On 6 December 2004, the Senate adopted the Committee's recommendation that the Committee re-adopt the inquiry into the effectiveness of Australia's military justice system with a reporting date of 17 March 2005. On 15 March, the Senate agreed to an extension to report to 10 May 2005 that was further extended to 16 June.

### Terms of reference

1.4 A number of inquiries into aspects of Australia's military justice system have been held over recent years. They clearly identified shortcomings in the system and made recommendations to improve it. Despite assurances from the ADF that measures have been taken to correct these failings, reports have continued to surface suggesting that problems persist. Against this background, the Senate adopted the motion:

- (1) That the following matters be referred to the Committee for inquiry and report:
  - (a) the effectiveness of the Australian military justice system in providing impartial, rigorous and fair outcomes, and mechanisms to improve the transparency and public accountability of military justice procedures; and
  - (b) the handling by the Australian Defence Force (ADF) of:
    - (i) inquiries into the reasons for peacetime deaths in the ADF (whether occurring by suicide or accident), including the quality of investigations, the process for their instigation, and implementation of findings,
    - (ii) allegations that ADF personnel, cadets, trainees, civilian employees or former personnel have been mistreated,

- (iii) inquiries into whether administrative action or disciplinary action should be taken against any member of the ADF, and
  - (iv) allegations of drug abuse by ADF members.
- (2) Without limiting the scope of its inquiry, the committee shall consider the process and handling of the following investigations by the ADF into:
- (a) the death of Private Jeremy Williams;
  - (b) the reasons for the fatal fire on the HMAS *Westralia*;
  - (c) the suspension of Cadet Sergeant Eleanore Tibble;
  - (d) allegations about misconduct by members of the Special Air Service in East Timor; and
  - (e) the disappearance at sea of Acting Leading Seaman Gurr in 2002.
- (3) The Committee shall also examine the impact of Government initiatives to improve the military justice system, including the Inspector General of the ADF and the proposed office of Director of Military Prosecutions.

1.5 On 12 February 2004, the Committee sought a variation to its terms of reference in relation to Cadet Sergeant Eleanore Tibble. The Committee's original terms of reference referred to the handling by the ADF of the investigation into her death. When the Committee was informed that the investigation undertaken by the ADF was into the administrative processes and procedures surrounding the *suspension* of Cadet Sergeant Tibble, it sought successfully to have its terms of reference address the investigation undertaken by the ADF.

## **Conduct of the inquiry**

### ***Advertisement***

1.6 The Committee advertised the terms of reference and called for submissions in *The Australian* on a number of occasions leading up to the close of submissions on 12 February 2004, as well as placing an advertisement in two issues of *Navy News*, *Army News* and *Air Force News*.

### ***Submissions***

1.7 The Committee received 71 public submissions, 63 confidential submissions, and many supplementary submissions. Public submissions are listed at Appendix 1.

1.8 The submissions came from a wide variety of backgrounds and experience. They represent the interests of people of all ranks ranging from a 15-year-old female cadet to a 50-year-old male two-star general equivalent. They include serving and ex-serving personnel, general service and specialist officers and other ranks from the three services, legal officers and health professionals, police and convicted persons, civilian Defence employees and Equity officers, mental health and social workers,

community and returned service groups and the next of kin of deceased members. Both complainants and those complained about have lodged submissions.

1.9 It is beyond the remit of the Committee to determine the veracity or otherwise of each and every claim, or to pursue individual remedies for all of the complainants. Even so, the Committee considered carefully all the evidence and from the specific experiences of individuals was able to gain an appreciation and understanding of how Australia's military justice system operates and to identify its strengths and weaknesses.

1.10 The committee notes from the outset that although many witnesses who gave evidence to this inquiry were highly critical of aspects of the military justice system, they, nonetheless, continued to hold the ADF and its members in the highest regard. Their primary motive in raising their concerns was to ensure that shortcomings in Australia's military justice system were identified and rectified.

### ***Public hearings***

1.11 The Committee held eleven public hearings and seven *in-camera* hearings. Public hearings were held in Canberra, Brisbane, Hobart, Melbourne and Adelaide. A list of the Committee's public hearings, together with the names of witnesses who appeared, is at Appendix 2.

### ***Confidential material***

1.12 The committee received a number of submissions and additional information in confidence and took some evidence in camera. Much of this information was of a highly personal nature and in some cases reflected adversely on named individuals. The committee was of the view that the experiences of people or information related to the committee in confidence should be appropriately represented in the report. To do so, the committee used different approaches. In some cases, the report contains quotes taken from this confidential material without identifying the source, in others, where the author agreed for sections of his or evidence to be made public, the report identifies the author. The committee also received staff-in-confidence documents from the ADF. Where the committee felt that material contained in such reports was relevant to the terms of reference and should be disclosed in the public interest, it has reproduced this material. It has taken care, however, to ensure that the disclosure of this information does not infringe privacy rights nor cause unnecessary embarrassment to any individual.

1.13 On the point of confidential material, the committee also notes that Defence has not had the opportunity to receive and respond to most of that material. This has been an inherent tension in the inquiry and the committee notes the limitations this has placed on Defence. However, the committee also notes that in several instances where public and contentious material was forwarded to Defence for comment, none was forthcoming. The committee believes that the evidence on the public record is a more than adequate representation of the actual evidence received.

## **Briefings**

1.14 The Committee received a detailed briefing from the Director General of the Defence Legal Service, the Inspector-General of the ADF and the Director Military Prosecutions on the aspects of the military justice system on 12 February 2004. In addition, the Committee visited the School of Infantry at Singleton and the Jeremy Williams Rehabilitation Facility at Holsworthy on 8 June 2004. The committee acknowledges, and expresses its appreciation for, the time and effort taken by the CDF, service chiefs and other senior ADF members as well as the Tiger team for their assistance during the inquiry.

## ***Provision of expert legal assistance***

1.15 In recognition of the nature and complexity of this inquiry, the Committee called for expressions of interest from legal experts. From this process, the Committee selected Mr Michael Griffin to assist in the analysis of its evidence.

1.16 Mr Griffin is a practicing solicitor with Spooner & Hall and holds Bachelor of Laws and Master of Laws degrees from the University of New South Wales. Mr Griffin was recently cleared for promotion to Brigadier and has 30 years military service, including 22 years regular Army. Mr Griffin is a Judge Advocate and Defence Force Magistrate and holds the appointment as Member of the Administrative Appeals Tribunal. In addition, Mr Griffin is a member of the International Association of Refugee Law Judges and was recently appointed to the Administrative Law Committee of the Law Society of NSW. He is a former Member of the Refugee Review Tribunal and the Migration Review Tribunal.

## **Scope of the inquiry**

1.17 In order to evaluate Australia's current military justice system, the Committee considered the findings of numerous previous inquiries and studies conducted over the last ten years into aspects of the system. In doing so, the Committee sought to identify any common problems prevalent throughout this period. It also wanted to assess the effectiveness of any changes made to the military justice system as a result of measures taken following the recommendations coming out of these inquiries.

1.18 Furthermore, during the course of the inquiry, the Committee became increasingly aware of important matters that bore a direct relation to the application of the military justice system. Such issues, which can be referred to broadly as 'corporate management issues', include the status and administration of cadets, the management of drugs and alcohol, the identification and treatment of post-traumatic stress disorder and other mental health issues, and overall organisational accountability.

1.19 To gain a broader understanding of how military justice systems operate in different jurisdictions, the Committee also examined recent developments in the application of military justice in the United Kingdom and Canada.

## **Structure of the report**

1.20 There are two streams to the military justice system, disciplinary processes and administrative processes. This report attempts to identify the principal issues raised in evidence in respect of each of these streams.

1.21 The evidence before the Committee ranged across many aspects of the military justice system and clear themes emerged as witnesses detailed their experiences and gave their views. The major concerns raised by participants in the inquiry determined the overall shape of the report which clearly focuses on determining the effectiveness of the Australian military justice system in providing impartial, rigorous and fair outcomes.

1.22 In taking this approach, the report, while examining all the terms of reference, does not follow the order of matters as set down in the terms of reference. The particular matters and cases referred to the Committee for inquiry are used to highlight broader concerns and are incorporated in the report where they best illustrate issues under consideration.

1.23 The report is divided into four parts and covers the following main topics.

### ***Part 1—Introduction***

- Introduction and Conduct of the Inquiry
- Background to the military justice system.

### ***Part 2—The disciplinary system***

- Disciplinary investigations conducted by the Service Police.
- Decisions to initiate and conduct prosecutions, and the legal services available for the conduct of prosecutions and the defence of Service members.
- The structure of disciplinary tribunals.

### ***Part 3—The administrative system***

- The avenues for reporting wrongdoing and making a complaint including the reporting of unacceptable behaviour relying on the Jeremy Williams case to highlight problems.
- Routine and investigating officer inquiries and the experiences of many members of the ADF and their families and friends who have been involved in an administrative inquiry.
- The review and appeal channels available in the administrative system comprising both the internal and external mechanisms of review and appeal including the Notice to Show Cause, the Redress of Grievance process, the Inspector-General of the Australian Defence Force and the Defence Force Ombudsman.

- Boards of inquiry giving particular attention to the inquiries established to investigate the fire onboard HMAS *Westralia* and the disappearance of Acting Leading Seaman Cameron Gurr.
- Offences and penalties under the military justice system.

***Part 4—Other important matters that relate to Australia's military justice system***

- The Australian Defence Force Cadets; and
- Mental health services.

**Acknowledgments**

1.24 The Committee wishes to express its appreciation to everyone who contributed to the inquiry by making submissions, providing additional information or appearing before it to give evidence. It especially acknowledges and thanks those participating in the inquiry who found giving evidence particularly difficult.