

**Senate Foreign Affairs, Defence and Trade
References Committee**

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P5C

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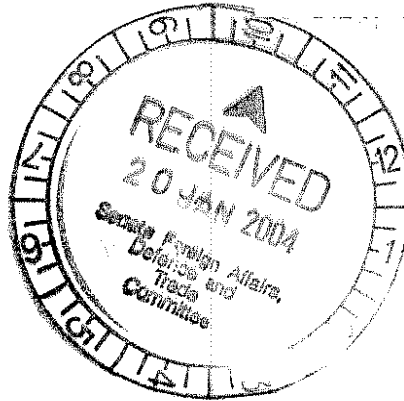
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15 January 2004

Mr B Holmes
Secretary,
Foreign Affairs, Defence and Trade
References Committee
Department of the Senate
Parliament House
Canberra
ACT 2600



Dear Secretary:

Re: Senate References Committee Inquiry into Military Justice System

1. The purpose of this submission is to address the Inquiry's Terms of Reference (1)(a) and (1)(b)(ii). It details how Defence is able to use alleged safeguards of process for the protection of ADF personnel to abuse personnel and maintain continuing harm and injury to the individual. It also details how this abuse continues through the structures of ministerial decision-making, including the Office of the Prime Minister.
2. In the Major Warren case the Australian Defence Force violated both responsibility and accountability to the Responsible Minister(s). In turn the Responsible Minister(s) avoided and abused responsibility to the individual. Certainly, this case reeks with political and bureaucratic manoeuvring to evade accountability in military justice procedures and fairness, integrity and transparency in government.
3. In 1981 Major A K Warren's officer career was improperly terminated. Then followed more than a dozen ministerial investigations into the circumstances of his termination. All ministers gave decision that Army's conduct to bring about a dishonourable termination of Warren's career was strictly according to "the letter of the law" and delivered "natural justice." Eventually, in 1993, the Administrative Appeals Tribunal (AAT) found otherwise. It found not one scintilla of evidence to support Defence's action against him. The AAT also found to be false, ministerial decisions that Warren's case had been comprehensively and objectively investigated several times. In the wake of these findings Defence, under direction of the then Minister for Defence, Senator R Ray, appointed an Army QC to investigate the implementation of procedural fairness in bringing about the destruction of Major Warren's career. His superior officers had fabricated evidence to falsely charge him with unprofessionalism and gross incompetency. They corrupted both legal and administrative process to achieve their end.
4. The QC's report "white-washed" all those involved in using legal and administrative procedures in a deliberate design to dishonourably terminate Warren's

officer's career. The QC's investigation used a clear ploy of interpreting "fairness" in the general moral sense of the word. He was well aware of what he had done. As stated in his own words, he confirmed with the Director of Army Legal Services on 8.12.94:

"As I was inquiring into the propriety and fairness of Defence administration, I was not called upon to make decisions concerning the strict application of the rules of "procedural fairness".

5. A genuine investigation of the "process" or the rules of "procedural fairness" would expose how senior military officers corrupted safeguards designed to protect personnel from abuse of power and authority within the ADF. Furthermore, the Army QC, by choosing to investigate the "moral" sense of fairness had cunningly avoided the detailed documented evidence that had been used to force the termination of Major Warren's career. In particular it protected, by blatant omission, the key role played by the then Military Secretary. Any proper investigation would have included an examination of how individual officers were involved in abuse of the military justice system, including termination procedures used against Warren.

6. But worse was to follow.

7. In April 1995, several months after Army's QC had delivered his investigative report, the Director of Army Legal Service (DALs) sent a brief to the Chief of General Staff-Army titled 'Investigation into Allegations by Mr A K Warren'. It read:

"1. following a complaint to the Minister for Defence (flag A) about unfair, misleading, or improper Defence administration which ultimately caused Mr Warren to lose his career and livelihood, you appointed an IQ (flag B) to investigate the allegations made by Mr Warren."

The effect of that brief was to "re-birth" the QC's report, written as fairness in the moral/general sense, to be reported to the Chief of Army as fairness in the legal sense. This significant "twist" in the meaning of the QC's report had the full weight of the DALs' power and authority. The DALs' misrepresentation of the report was then fed by the Chief of Army into the system of ministerial decision-making against Warren. This system is at the apex of the appeal process within the rule of law and within the executive arm of government for which the Minister is responsible. This is especially so when the minister has made personal decisions on Warren's case. In effect Army had been successful in using its 1994 investigative report to the minister to cover-up for the improper conduct of Major Warren's superior officers, the then 1981 Director of Army Legal Services and the Military Secretary. And this is what Defence and its Responsible Ministers 1981 to-date have upheld as the rule of law within the military justice system. .

8. The Army QC's report was released to Warren 10 May 1995. He raised detailed concerns about Army's investigation with the Prime Minister, John Howard. A full copy of that Prime Ministerial representation is printed in Military Justice

Procedures into the Australian Defence Force, Submissions Vol 4 pages 752 to 759. Warren wrote that the QC's Investigating Officer's Report was poor. The relevant extract of Warren's representation to the Prime Minister reads in part, that the report is poor because it:

i concedes that which has already been identified by the AAT

ii fails in its internal cohesion to substantiate the statement

"Examining the records in 1994, and taking into account everything I have learned during my investigation, it is quite impossible to find any deliberately unfair or improper behaviour by those involved in the events."

para 48 p.9

iii violates fundamental investigative procedures in that Salmon is prepared to make assertions based on heresy to find 'T-Scores' and their gradings correct

iv fails to identify Department of Defence deliberate and malevolent administration as exemplified up to and inclusive of Maj Gen Carter's testimony before the AAT as late as December, 1993

v fails to expose 'motive' by those determined to get Warren out of the system but internally identifies those elements who succeeded in using administrative procedures to achieve this end.

vi deliberately edits relevant material in favour of material that is out of context thereby reducing persons and events to a farcical pettiness.

Vii fails to recommend the four basic requirements of Redress of Wrongs demanded by natural justice and understood by ordinary people:

- 1. the righting of the wrong*
- 2. proper and just compensation for the injuries perpetrated*
- 3. punishment of those officials who by their actions or inactions cause or aggravated harm*
- 4. take genuine administrative action to prevent occurrences of such bureaucratic wrongdoing.*

9. The above insights into the deceit and malevolence of the Army QC's report would have been well understood by the Prime Minister.

10. The Prime Minister's Office kicked this representation around to the Minister for Defence's Office. In due course Warren was sent a copy on 22 November 1997 of correspondence dated 2 April 1997, from the Minister for Defence, Science and

Personnel's Office. These letters entrenched the Responsible Minister's primary-decision making in that the case was closed. These decisions were an arbitrary evasion of the facts and evidence of the case. But as far as the Prime Minister was concerned process and appeal systems had been followed 'according to the letter of the law'! As far as the Howard Government was concerned natural justice had prevailed! Yet "due process" in this case has been nothing more than a continuation of deliberate violence against the individual 1981 to-date.

11. Since 1981 Warren has patiently made more than a score of ministerial representation to be treated fairly. Warren's representations have included specific detail showing how senior army officers distorted or corrupted their reports so as to mislead or dupe the Responsible Minister. This process has continued since Army QC's 1994 investigation to-date. In spite of this politicians have and continue to evade the principle of preserving ministerial responsibility for the years of systematic corruption in the military justice system. They have also acted to minimise accountability AND responsibility of the army generals to the minister.

12. On 18 May 1998 Senator Jocelyn Newman tabled in the Senate 'Answers to Questions on Notice' asked on 31st October 1997 by then Senator Dee Margetts, re the ex-Major Warren case. The relevant question reads:

"2) Is the Minister aware of any investigations into, or information existing with regard to, the role of Ex-Brigadier J A Hooper in the termination of Ex-Major Warren's armed services career? If not, can the Minister detail the history of any such investigations?"

The Senator's response, as advised by then Minister for Defence, Science and Personnel, Bronwyn bishop, reads:

"There has been no investigation into ex-Brigadier Hooper's role in the termination of Ex-Major Warren's Army career."

13. Brigadier Hooper, then Military Secretary, had played a key role in bringing about the termination of Warren's officer career. This answer, in the Senate, clearly identified his omission from the Army QC's 1994 investigative report into the case. That omission effectively removed the Military Secretary from any involvement in the abuse of procedural fairness of the safeguards that were supposed to protect Warren.

14. What can be clearly identified in this case is :

a. The Army QC avoided an investigation of "procedural fairness" by deciding to interpret his Terms of Reference in the moral sense so as to avoid an investigation of due process. His investigation exonerated the abuse of procedural fairness by Major Warren's immediate superior officers. His investigation removed, by omission, the abuse of procedural fairness by the then Military Secretary.

b. The Director of Army Legal Services briefed the Chief of Army, so as to create the illusion that an investigation into legal procedural fairness has been done.

- c. Ministers of the Crown accepted this information
- d. Warren exposed to the Prime Minister how the Director of Army Legal Services had misrepresented Army's investigation.
- e. Ministers of the Crown, including the Prime Minister refused to act
- f. Answers to Questions on Notice in the Senate, May 1998, confirmed that the Military Secretary, a key player in bringing about the improper termination of Warren's career, was protected by concealment or omission from the Army QC's 1994 investigation into his case.

15. Any pleas by a Responsible Minister(s) that allege initial errors were made in this affair and/or that these errors were made "in good faith" are forfeited once Defence failed to rectify them at an early stage in the review process. This certainly did not happen in the Warren case. But once cracks began to appear in Defence's malfeasance, particularly after the 1993 AAT hearing, they argued that some "technical errors" had occurred in the handling of Warren's career termination.

16. In reality Defence and its Responsible Ministers have used TIME delays as a political technique to destroy both equity and process. Throughout the entire affair, 1981 to-date, Defence has also resorted to producing a score of fraudulent investigations to protect those senior officers involved in the improper termination of Major Warren's career.

17. The above was the process used in ministerial investigations in 1981 and 1982. It was used by the Office of the Defence Force Ombudsman. In 1984 the Commonwealth Ombudsman refused to investigate the case because it was more than 12 months old. For the next 10 years Warren experienced the same delays or avoidances only to be followed by 2 years of Department of Defence and its army generals trying to destroy or feign destruction of the government history records of the circumstances of his forced termination of service. 'Time', has to date, been deliberately used as an attrition in an effort to make the case vaporise. Warren's trauma, 1981 to-date, instead ought to signal an imperative warning about the military justice system.

18. Failure of the responsible ministers to act on the evidence of abuse of procedural fairness within the ADF permeating primary decision-making has put Ministers of the Crown, including the Office of the Prime Minister above the law. By this behaviour three things are certain. They are:

bringing levels of insidious violence against the individual to an intolerable level;

rendering the laws that they have abused to be meaningless;

destroying any right of politicians to hold any form of power over other Australians, and

creating a climate of evil that dwarfs that of any would be terrorist.

And it is amazing that parliamentarians are giving senior military officers protection in the spreading of this evil-doing through the military justice system and review and appeals processes.

19. Responsible Ministers' behaviour stands in vulgar contrast to the statement made to Mr Warren, in correspondence from The Hon. Justice Michael Kirby, High Court of Australia when he wrote to him 5 September 1997. It reads in part:

"I note that you have written to members of the House of Representatives. They are much more readily able to give you relief than I can."

20. It is on the conscience of Members of Parliament, to resolve this case and bring credibility to the military justice system. Far more importantly ought to be their concerns about the very basis of our rule of law. i.e. that Ministers of the Crown accept responsibility for their decision-making. Corruption of the ministerial review and appeal process ignobly destroys ministerial commitment to justice according to law. It leaves a stark trail of the hollowness and incompetency in ministerial responsibility in its leadership and management of Defence.

Yours sincerely,



Allan Warren.