

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

**SUBMISSION COVER SHEET**

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**Inquiry Title:** Effectiveness of Australia's Military Justice System

**Submission No:** P42

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*The Australian Peacekeeper & Peacemaker Veterans' Association  
Submission for the Senate Estimates Committee Hearing for an  
Inquiry into the effectiveness of Australia's Military Justice System.*

**Introduction**

1. The Foreign Affairs, Defence and Trade (FADT), Legislation Committee have invited the Australian Peacekeeper & Peacemaker Veterans' Association (APPVA), to provide a submission into an Inquiry into the Effectiveness of Australia's Military Justice System.

**Background**

2. The APPVA is an arms and services focussed association, with a potential constituency of 65,000 Regular, Part-Time Australian Defence Force (ADF) Personnel and Police Force veterans, who have served on Peacekeeping, Peacemaking, and Humanitarian operations since 1947. The APPVA does not include the veterans of the British Commonwealth Occupation Force (BCOF) – Japan, The Korea War, Malayan Emergency, the Borneo Confrontation, nor the South Vietnam conflicts. Those operations are already well represented by their respective associations.

3. The APPVA was established in Brisbane on United Nations Day, 26th of October 1997, and has been in operation for over six years. It is a fledgling association, which is gaining growth and recognition from various Ex-Service Organisations and from the Department of Veterans' Affairs.

4. The APPVA has Training Information Program (TIP) qualified Advocates, Pension and Welfare advocates and also specialises in the Military Compensation Rehabilitation Scheme (MCRS). Our main focus is to assist veterans, with regards to providing a welfare network and a focal point of contact for serving and ex-serving ADF and AFP personnel, Peacekeepers, Peacemakers, Gulf War, Afghanistan and Iraq War veterans. The APPVA also raises and represents the interests of Veteran and Defence issues in many forums, including Senate Hearings and Veteran Consultative Forums.

**Aim**

5. The aim of this submission is to convince the Senate Foreign Affairs, Defence and Trade Legislation Committee (FADT Committee), to provide recommendations for improvements to the Australian Military Justice System.

**TOR (1) (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.**

6. The APPVA believe that the current Military Justice System is unfair and unjust, in that it does not provide impartial, rigorous or fair outcomes. APPVA believes that there are a number of factors, which contribute to this outcome, however, at the heart of the issue, APPVA believes that the Military Justice System treats not all military members equally. The foundation of the Military Justice System is the *Defence Force Discipline Act (Commonwealth) (DFDA)*.

7. There are significant differences in the way 'other ranks (OR), 'senior non-commissioned officers (SNCO)' and 'officers' are treated by the Military Justice System. These differences in treatment are related to the Military culture as well as the DFDA where references to the rights of each rank group and the available punishments differ. The bottom line is that ORs are more likely to be charged, less likely to receive competent legal advice, more likely to be found guilty and more likely to receive harsher punishments. The inequalities within the DFDA mean that not all members are equal, which is unacceptable for the basis of any justice system that is to be fair or just. The APPVA recommends that the committee recommend that Defence undertake a comprehensive review of the *DFDA*, with view of assuring that all defence members are treated equally before the law.

8. Secondly, the APPVA believe that there is a significant power imbalance in the application of the Military Justice System, which results in abuses. This imbalance of power is closely associated with the internal power dynamics of the uniformed services and their culture. The net effect of these factors is frequent abuses of justice against individuals by individuals. These abuses include a 'bricking' approach to military justice with cases being creatively built against defence members considered unworthy or non-conformist. As an example an APPVA member reported that during an operational deployment a case was built against a fellow soldier who had a personal grievance with a SNCO. The SNCO in question built a case against the individual through bullying and threats of other members of the unit. In a further example an APPVA member raised an issue with respect the marking of an annual performance report, through the command reference, which resulted in a counselling session with the unit's Officer Commanding (OC). The OC then told the soldier that their complaint showed poor judgement and would result in being marked down on the next report.

9. The APPVA recognises that the ADF has gone to some effort to address abuse and injustice on a case-by-case basis. We also recognise that the ADF has also developed a number of information campaigns in support of cultural change. Regardless, the APPVA believes that abuses of power and the miscarriage of justice by Officers and SNCO continues to occur on an all too frequent basis because of cultural issues. It is worthwhile noting that in many cases this injustice is carried out by Officers and SNCO who consider that their actions are encouraged by the military although strictly speaking

illegal. Furthermore many also believe that their actions are in the best interest of the victim. It is the APPVA's belief that many Officers and SNCOS are unaware of their available powers. It is this ignorance that has contributed to some cases of injustice and harassment such as the eight-hour solitary confinement of an Army Officer Cadet without charge. This withstanding most cases of abuse and injustice are more associated with cultural encouragement of harassment of junior members of the ADF rather than ignorance.

10. It is recommended that the senate committee recommend that Defence engage independent expert advice on cultural change in order to develop more effective information campaigns. In addition it is recommended that research be undertaken to explore the power dynamics of the Military Justice System in comparison to the state/commonwealth legal systems from which strategies for combating injustice can be developed.

11. The application of military justice is at times unfair and unjust in that it is often used to counsel administrative problems to the detriment of the individual. The Justice System and negative reinforcement are often used as a means to coherse defence members to conform. The use of power and the military justice system in this manner is well beyond their intended use. In one case in 2003 a member of the APPVA was given the option of taking 14 extra duties (an illegal punishment involving the person undertaking seven continuous days of overnight duties) or receives a charge by a unit Commanding Officer (CO). The member, much to the annoyance of the CO, opted for the charge for which there were no grounds and no further action transpired. This is a common situation for junior members of the Defence force, where the power imbalance is used to 'bully' members into accepting illegal punishments. It is worthwhile noting that an individual who takes actions to call a CO's bluff and opt for a charge, are often punished through negative personal reporting in annual performance reports. The APPVA recommends that the committee recommend that Defence undertake substantial measures to eradicate the practice of illegal punishments.

12. Of particular concern to the APPVA is the practical application of the ADF Redress of Grievance (ROG) process. In practice it is arbitrary in application and its outcomes almost always appear to be in favour of the organisation. The practice ultimately results in poor performance counselling of complainants by unit CO. Defence members who wish to submit a ROG will be strongly advised against doing so by peers and superiors on the basis of its unlikely success and negative impact on careers. Then the member must wait the extended periods of time before a decision is made. It is recommended that the senate committee recommend that Defence significantly review the ROG process to ensure greater transparency of Defence decision-making processes.

### ***Recommendations:***

- a. ***The APPVA recommends that the committee recommend a complete review of the Australian Defence Force Discipline Act with the view of***

*assuring that all defence members are treated equally before the law.*

- b. The APPVA recommends that the committee recommend that Defence engage independent expert advice on cultural change in order to develop more effective information campaigns.*
- c. The APPVA recommends that the committee recommend that Defence engage independent research be undertaken to explore the power dynamics of the Military Justice System in comparison to the state/commonwealth legal systems from which strategies for combating injustice can be developed.*
- d. The APPVA recommends that the committee recommend that Defence undertake substantial measures to eradicate the practice of illegal punishments.*
- e. The APPVA recommends that the committee recommend that Defence significantly review the ROG process to ensure greater transparency of Defence decision-making processes.*

**TOR (1) (b) (iii) The handling by the ADF of inquiries into whether administrative action or disciplinary action should be taken against any member of the ADF.**

13. The APPVA believes that the Military Justice System is far too slow in undertaking inquiries into whether administrative action or disciplinary action should be taken against an individual. A number of APPVA members have reported waiting long periods, of up to eighteen months, for decisions to be made. In many cases this has been from slow incomplete investigations because of inadequate availability of qualified military investigators. Furthermore in many cases state and territory primacy must be addressed firstly, which slows the process. These long waiting periods result in significant personnel pressures for those accused. Also of concern is that statements are not taken early enough which results in inadequate and incomplete evidence. In many cases Defence members are isolated from their peers. In other cases the members are posted or moved from their units to perform tasks non-related to their training. This is in effect a punishment without being found guilty of any offence. The APPVA recommends that the committee recommend that Defence address their shortfall in qualified investigators to clear backlogs of inquiries. It is also recommended that any inquiry that lasts longer than 12 months should be reported to the Defence Minister for probity.

***Recommendations:***

- a. The APPVA recommends that the committee recommend that Defence address their shortfall in qualified investigators to clear backlogs of inquiries.*

- b. *The APPVA recommends that the committee recommend that Defence report the details of any inquiry that lasts longer than 12 months to the Defence Minister review for probity.*

## **Conclusion**

14. In conclusion, there have been significant improvements to the ADF legal system in the last five years. There have also been a large number of Defence initiatives and measures to address cultural issues. These measures withstanding, have experienced continued reports from APPVA members and the media of abuses of the Military Justice System by Defence members against junior members. If this system is to have integrity it must treat all before it in an equal and just manner with punishments only being applied where guilt has been proven. The APPVA believe that Defence must be held accountable for all its actions, that the legal system must be applied fairly and evenly across all ranks with discipline being maintained but not at the cost of the individuals' rights. Furthermore although the military culture calls for loyalty and obedience the individual should have a right to redress any decision that affects them.