

Summary of committee's findings

The committee has reviewed Defence's first six-monthly report on the implementation of the recommendations contained in the government's response to the reference committee's report on Australia's military justice system tabled in June 2005.

At this early stage of its implementation program, the ADF has demonstrated a commitment to improving Australia's military justice system. The committee notes the positive observations made by the Defence Force Ombudsman particularly the reduction in the backlog of complaints and the more efficient processing of complaints. Not only does this mean that complaints are resolved in a timely fashion but this improvement assists the Defence Force Ombudsman in his handling of complaints.

The committee notes, however, that many of the problems that were identified in the military justice report were manifestations of a deeply entrenched culture. Improvements in process will not of themselves change the culture.

Tri-service police investigative capability audit

The committee views the tri-service police investigative capability audit now underway as a critical exercise that will lay the foundation for far reaching improvements in the service police. It awaits the completion of the audit and Defence's response to it before making any further comment. It takes this opportunity, however, to underline its concern about poorly conducted investigations by the service police, especially the preliminary investigations undertaken following a notifiable incident such as a sudden death. It urges the audit to give careful consideration to this matter. The committee notes media reports of the handling of the investigation of the unfortunate death of Private Kovco in Iraq and is concerned that, despite the Department's assurances, there are ominous signs that much remains to be done with respect to police capability. The committee will monitor the progress of the inquiry carefully.

The Permanent Military Court

The reference committee in its report on the effectiveness of Australia's military justice system made a number of specific recommendations with regard to the proposed permanent military court such as the right to elect trial by court martial before the Permanent Military Court for summary offences.¹ The committee looks forward to the introduction of the legislation in the coming months.

1 See recommendations 19, 20, 21, 22 and 23.

The Fairness and Resolution Branch

The restructuring of the Redress of Grievance (ROG) process under the direction of the Fairness and Resolution Branch is a positive step. Its effectiveness in tackling some of the long-term problems with ROGs is yet to be tested. Early indications, however, are promising. The Branch is now in a stronger position to offer advice to Commanding Officers (COs) with regard to ROGs and to monitor their progress. This would seem to indicate that the perceived conflict of interest in the process is being addressed by Defence. The committee is unsure, however, about the effectiveness of the proposed new regulations to remove the opportunities for real or perceived conflicts of interest that undermine the integrity of the ROG system. ADF's senior officers and the Parliament need to be vigilant to ensure that the changes taking place will have a lasting effect on improving the effectiveness and fairness of the system. The committee will continue to monitor this matter and requests it receive six-monthly updates on an ongoing basis.

The committee fully supports the work being undertaken by the Branch to inform ADF members about the improvements to the military justice system. The committee acknowledges the difficult task that the Branch has in restoring trust in the system. It would encourage ADF members to take full advantage of the services now offered by this Branch. The committee believes that the credibility of this Branch is critical in that it cannot afford to be compromised in its independence and thoroughness. The proof of its success will depend on not just its timeliness, but on the quality of outcomes which might not become evident for some time.

The Inspector General of the Australian Defence Force (IGADF)

The committee is heartened by the positive approach taken by the IGADF in conducting audits of the military justice system that are intended to reflect accurately the health of the system. It particularly welcomes the commitment shown by the IGADF toward ensuring that unacceptable behaviour in the ADF will be reported and especially his determination to stamp out any form of reprisal directed at members reporting wrongdoing or making a complaint. His focus groups are a practical hands-on measure encouraging ADF members to report incidents of inappropriate behaviour.

The committee, however, draws attention to the prevailing cultural environment of the ADF discussed at length in the military justice report. It notes that even where there are formal and known avenues for a person to disclose information or make a complaint about inappropriate conduct, the workplace may effectively render them useless. The committee stresses that a fundamental change in the ADF mindset must also occur to overcome the stigma attached to reporting wrongdoing or making a complaint.

Registering a complaint should not be contrived as seeking to subvert authority. Authority must command respect, not demand it.

The committee is pleased to receive the IGADF's report that the IGADF is making some headway in establishing his credentials as an even-handed and independent

authority committed to ensuring that Australia's military justice system is both fair and effective. His office has a heavy responsibility to ensure that many of the reforms being implemented will in fact result in an effective and fair military justice system. His success depends in large measure on winning the trust and confidence of ADF members. It is also totally dependent on his complete independence from the military chain of command which was of such concern to the committee in its inquiry that it recommended the abolition of the function in favour of another structure where independence could be guaranteed.

The committee repeats its concerns that a major shift is required in the attitudes of all ADF personnel to achieve lasting change in the military justice system. It will take time and persistence. The IGADF must not only be independent, but he also needs the support and commitment of the ADF and the government to ensure that he has the necessary support to carry out his functions.

The committee welcomes the additional resources allocated to the Office of the IGADF. It takes this opportunity to highlight the need to ensure that the IGADF remains well-resourced and that his capacity is further enhanced.

The committee underlines its concern about the reporting mechanism applying to the IGADF. It suggests that the government consider strengthening the independence of the IGADF by requiring him or her, as a statutory body, to furnish an annual report to the Minister for Defence for tabling in parliament.

The committee sees great potential for both the Defence Force Ombudsman and the IGADF to work together to improve Australia's military justice system.

Duty of care responsibilities in relation to people who enlist under the age of 18 years

The committee notes the implementation of the recommendations contained in the military justice report with regard to cadets in the Service.

Broader concerns

The committee continues to receive correspondence from a number of former ADF members or relatives of former ADF members drawing attention to what they believe are problems with Australia's military justice system. They touch on matters such as failure to observe procedural fairness, conflicts of interests, failure to act on reports of wrongdoing and harassment that may have contributed to a suicide. The matters raised serve as a salutary reminder of the many shortcomings identified in the report on Australia's military justice system and underline the need to ensure that the reforms already in place and those still to be implemented will be effective. They highlight the need not only for changes to procedures and processes but for fundamental changes in attitudes.

Conclusion

A dominant and recurring theme in the military justice report and in correspondence received by the committee was the prevailing culture in the ADF which may well undermine the success of the current reforms. The committee stresses that the ADF have a challenging road ahead in turning this culture around and encourages and commends any efforts to do that.