

Chapter 1

Introduction

Background

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. The committee tabled the report, which contained 40 recommendations, on 16 June 2005.

1.2 At the time of drafting the report, the committee was aware that a number of inquiries into aspects of Australia's military justice system had been held over recent years. These various inquiries had clearly identified shortcomings in the system and made recommendations to improve it. Unfortunately, they had established a pattern of repeated failures. Serious allegations of wrongdoing would be made, an investigation undertaken, reforms implemented but within a short time concerns about the military justice system would again surface sparking yet another investigation and the cycle would start again. Concerned that the committee's inquiry and report would become part of this pattern, the committee saw a need to endeavour to break the cycle.

1.3 It wanted assurances that this time concrete and positive measures would be taken to address the identified flaws in Australia's military justice system. The committee believed that close, careful and regular monitoring was required to ensure that steps taken by the Australian Defence Force (ADF) to improve the military justice system would have the desired results. The committee recommended that the ADF submit an annual report to the Parliament on its military justice system. Recommendation 37 of the committee's report read:

The committee recommends that the ADF submit an annual report to the Parliament outlining (but not limited to):

The implementation and effectiveness of reforms to the military justice system, either in light of the recommendations of this report or via other initiatives.

The workload and effectiveness of various bodies within the military justice system, such as but not limited to;

- Director of Military Prosecutions
- Inspector General of the ADF
- The Service Military Police Branches
- RMJ/CJA
- Head of Trial Counsel
- Head of ADR.

Government's response to the committee's recommendations

1.4 In October 2005, the government tabled its response to the committee's recommendations. In this response, the ADF expressed its commitment to improving the military justice system to address the concerns of Defence, the Parliament and the community. The Chief of the Defence Force (CDF) gave his personal assurance that he would drive the reform process.¹

1.5 The government proposed what it termed 'significant enhancements' to the military justice system. In all, it accepted in whole, in part or in principle 30 of the committee's 40 recommendations. It indicated, however, that alternative solutions would be adopted 'to achieve the intent' of the committee's recommendations. The government asked Defence to implement these recommendations and enhancements within two years, and to report to the Senate committee twice a year throughout the implementation period.

Legislation committee assumes responsibility for monitoring

1.6 It should be noted that once the references committee tabled its report on Australia's military justice system, it no longer had the authority to inquire into or report on the implementation of measures designed to improve the military justice system. In light of Defence's undertaking to report to the committee, the committee held the view that, rather than seek a reference from the Senate to monitor and report on Australia's military justice system, the legislation arm of the Senate Foreign Affairs, Defence and Trade Committee should assume responsibility for the monitoring task.

1.7 As an interim measure, the legislation committee resolved to take on this responsibility. It did so under standing orders 25(2)(b) and 25(21). Standing order 25(2)(b) allows the committee 'to inquire into and report upon ... annual reports in accordance with a reference of such reports to them, and the performance of departments and agencies allocated to them'. Standing order 25(21) states that 'Annual reports of departments and agencies shall stand referred to the legislation committees in accordance with an allocation of departments and agencies in a resolution of the Senate'.

1.8 This arrangement allows the committee to receive the sixth monthly reports on the implementation process, to consider them and to take whatever measures it deems necessary to ensure that it can adequately monitor Defence's reform program. It would enable the committee to report to the Senate if it believed such action were appropriate.

1 Government Response to the Senate Foreign Affairs, Defence and Trade References Committee, *Report on The Effectiveness of Australia's Military Justice System*, Department of Defence, October 2005.

Defence's first six-monthly report

1.9 In April 2006, the committee received from the Chief of the Australian Defence Force and the Secretary of Defence the first progress report on the enhancements to the military justice system. It was dated 13 April 2006.

Public hearing

1.10 The committee considered the report and decided to hold a public hearing on 19 June 2006 in order to gather further evidence on the progress being made to improve Australia's military justice system. It called and examined the Defence Force Ombudsman; the Head, Military Justice Implementation Team; the Inspector General of the Australian Defence Force; the Acting Director of Military Prosecutions; and the Acting Director of the Fairness and Resolutions Branch, Department of Defence. The names of witnesses who appeared are at Appendix 1.

Confidential material

1.11 The committee took evidence *in camera* during part of the hearing on 19 June. Much of this information was of a highly personal nature and in some cases reflected adversely on named individuals. The committee prefers all evidence to be public, but by taking evidence in private it had the opportunity to question Defence officials on highly sensitive matters. It also allowed the committee to alert Defence to particular concerns without jeopardising the privacy rights of all parties involved in allegations of wrongdoing. The committee found that this arrangement encouraged frank and honest discussion between committee members and Defence officers.

Individual grievances

1.12 A second matter relating to the committee's inquiry concerned correspondence from aggrieved members of the ADF. Since the report on Australia's military justice system was tabled in June 2005, the committee has received correspondence from a number of people wishing to draw attention to their specific grievance. As an interim measure, the committee agreed to forward such correspondence, with the author's consent, to the Chief of the ADF for his advice and action.

1.13 During the hearing on 19 June 2006, the committee discussed *in camera* with officers from the ADF its concern about such correspondence. Although committee members wanted action to be taken on the complaints, they, as a committee, did not feel equipped to resolve individual grievances—that the committee was not and could not be a *de facto* complaints resolution agency. Aware of its own limitations, the committee wanted to determine the best way to assist those who had approached it with grievances. It discussed this matter with Defence officers.

1.14 On 22 June 2006, following this discussion and after its own deliberations, the committee agreed to clarify its position by adopting a formal motion. It resolved:

1. to take responsibility under standing orders 25(2)(b) and 25(21) for inquiring into and reporting on Defence's progress in implementing the recommendations contained in the government's response to the committee's report on Australia's military justice system;
2. that it is not a de facto complaints resolution tribunal and is not able to inquire into individual circumstances;
3. as considered appropriate by the committee and with the permission of the complainant, to forward complaints it receives:
 - through the Minister assisting the Minister for Defence to Defence for its response,
 - to the Inspector-General of the ADF for his response, or
 - to the Defence Force Ombudsman for his responsethe complaint and comments to remain confidential until the committee decides otherwise;
4. to report to the Senate regularly (after each six-monthly meeting with Defence officials) on the committee's activities with regard to monitoring the implementation of the government's reforms of the military justice system;
5. to inform the Minister regularly in writing (after each six-monthly meeting with Defence officials or as required) about the committee's activities with regard to monitoring the implementation of the government's reforms of the military justice system;
6. at the end of the two-year period, to review the implementation process in light of the committee's recommendations and the government's response to these recommendations; and
7. to publish this motion on its web site in order to make the committee's intention and the limit of its jurisdiction clear to all interested parties.

Report structure

1.15 Much of the information gathered by the committee was based on questions arising from the government's response to the committee's report on Australia's military justice system and Defence's six-monthly report. Both documents are available on the committee's web site. Appendix 3 to this report provides a list of the committee's recommendations and the government's response to them. A copy of defence's six-monthly report is at Appendix 4.

1.16 The committee also drew on evidence taken during estimates hearings on 31 May and 1 June 2006. The transcripts of these hearings together with the transcript of the public hearing on 19 June are also available from the committee's web site.

1.17 During the public hearings, a number of documents were tabled. A list of them is at appendix 2. The committee also received answers from the Department of Defence to questions taken on notice at the public hearing. They were received too late to be incorporated into the body of the report and have been attached at appendix 6.

1.18 This report examines the six-monthly progress report against the findings of the references committee's report on the effectiveness of Australia's military justice system and the government's recommendations in its response to the committee's report.

Acknowledgments

The committee thanks those who appeared before it at the public hearing.