

Chapter 2

Overview

2.1 In a joint statement that forms part of the Department of Defence's first six-monthly report to the committee, Air Chief Marshal, Angus Houston, and the Secretary of Defence, Mr Ric Smith, informed the committee that a Military Justice Implementation Team (MJIT) had been established. This team, under the direction of Rear Admiral Mark Bonser, is responsible for implementing the recommendations contained in the government's response to the report on the effectiveness of Australia's military justice system tabled in June 2005. It also has the task of implementing 'ongoing enhancements from a number of previous internal and external reviews of the military justice system'. The main part of Defence's report consists of a spread sheet that provides an overview of the progress made to date with Defence's reform program (see appendix 4).

2.2 This chapter examines the evidence presented to the committee in the six-monthly report and during the public hearing held on 19 June 2006. The committee's intention is to examine and report on the progress Defence is making in implementing reforms intended to redress identified shortcomings in the military justice system.

General findings of the progress report

2.3 The six-monthly report informed the committee that a total of seven full recommendations and significant elements of a further two recommendations contained in the government's response to the report on Australia's military justice system had been completed on, or ahead of, the Implementation Plan schedule.¹ These measures included:

- the establishment of the Director of Military Prosecutions (DMP) as a statutory position under legislation assented on 12 December 2005;
- the DMP appointed at one star rank;
- a determination made by the Commonwealth Remuneration Tribunal on the DMP's remuneration (the determination also covered the Inspector General ADF, Chief Judge Advocate and Registrar of Military Justice);
- the completion of the first of a series of regular reviews into the Defence Whistleblower Scheme—the operation of the Scheme is to be reported annually in the Defence Annual Report;
- the publication of a report of wrong-doing in the 2004–05 Defence Annual Report—a practice that will continue;
- the clearing of the backlog of Redress of Grievance cases; and

1 See *Report on the Progress of Enhancements to the Military Justice System*, 13 April 2006. See Appendix 2.

- a number of amendments to the Defence (Inquiry) Regulations 1985(D(1)R 33 completed as at 31 March 2006.²

2.4 A further nine recommendations were expected to be completed over the next reporting period. At the public hearing on 19 June, Rear Admiral Bonser provided an update on the implementation of these recommendations. He told the committee that the following eight recommendations had been completed:

- the establishment of a director of defence counsel services to coordinate and manage the access to, and availability of, defence counsel services by identifying and promulgating a defence panel of legal officers, permanent and reserve;
- amendments to the administrative inquiries manual clarifying and improving guidance on the use of quick assessments;
- amendments to the administrative inquiries manual improving guidance on the selection of inquiry officers;
- amendments to the administrative inquiries manual requiring inquiry officers to produce statements of independence;
- amendments to the administrative inquiries manual requiring the provision of evidence to an affected person who is not present at hearings;
- amendments to the administrative inquiries manual requiring the provision of a reasonable opportunity for familiarisation to be provided to those coming before a board late in the proceedings;
- the engagement of an expert to examine whether the human rights of children—that is, in the ADF, cadets—are being respected; and
- the filling of final additional administrative positions across all three cadet organisations.³

2.5 The ninth recommendation requires changes to regulations and was expected to be considered by the Federal Executive Council on 22 June. This involves an amendment to the ADF cadet regulations to ensure that the rights and responsibilities of defence and cadet staff are defined.

2.6 Rear Admiral Bonser indicated that steps had been taken to implement other recommendations including:

- The provision of additional resources to the office of the Director of Military Prosecutions to ensure that it can fulfil its functions, additional capacity to review the training requirements of the Office of the Director of Military Prosecutions, and oversight and reporting of the military justice system. These measures include amendments to the defence inquiry regulations to provide

2 *Report on the Progress of Enhancements to the Military Justice System*, April 2006.

3 *Committee Hansard*, 19 June 2006, p. 10.

for an annual report on the operation of the DIR, which is expected to be considered by the federal Executive Council.⁴

- An initiative to audit ADF schools and training establishments, with the results expected to inform the basis for any change in training systems that may be necessary.
- An audit of the service police investigative capability to establish the best means for its development. A senior retired Australian Federal Police (AFP) officer has been seconded to assist with that audit.

2.7 Overall, the CDF was pleased to report that, in the first six months of the two-year implementation period, significant achievements had been made in reforming this system to deliver impartial, rigorous and fair outcomes through enhanced oversight, greater transparency and improved timeliness.⁵ The Defence Force Ombudsman, Professor John McMillan, was confident that the Department of Defence had responded positively to the recommendations contained in reports made by his office:

...nearly all of the recommendations made in the joint report about the review of the redress of grievance system were accepted, all but one of the recommendations in the report about the management of service personnel under the age of 18 years were accepted and other recommendations that have been made in individual investigations—even in cases that were quite sensitive—have received a positive response and hearing from the defence department.⁶

2.8 The following chapters consider in more detail some of the measures taken to improve Australia's military justice system.

4 *Committee Hansard*, 19 June 2006, p. 10.

5 See *Report on the Progress of Enhancements to the Military Justice System*, 13 April 2006. See Appendix 2.

6 *Committee Hansard*, 19 June 2006, p. 3.