

The Senate

---

Standing Committee on  
Foreign Affairs, Defence and Trade

---

Reforms to Australia's military justice system

Second progress report

March 2007

© Commonwealth of Australia 2007

ISBN 978-0-642-71780-1

Printed by the Senate Printing Unit, Parliament House, Canberra.

## **Members of the Committee**

### **Core Members**

Senator Marise Payne, LP, NSW (Chair from 21 March 2007)

Senator David Johnston, LP, WA (Chair until 21 March 2007)  
(discharged 23 March 2007)

Senator Steve Hutchins, ALP, NSW (Deputy Chair)

Senator Mark Bishop, ALP, WA

Senator Alan Ferguson, LP, SA

Senator Michael Forshaw, ALP, NSW (appointed 28 February 2007)

Senator John Hogg, ALP, QLD

Senator Sandy Macdonald, NATS, NSW (appointed 23 March 2007)

Senator Russell Trood, LP, QLD

### **Participating members who contributed to the inquiry**

Senator Judith Adams, LP, WA

Senator Chris Evans, ALP, WA

### **Secretariat**

Dr Kathleen Dermody

Committee Secretary

Foreign Affairs, Defence and Trade Committee

Department of the Senate

PO Box 6100

Parliament House

Canberra ACT 2600

Australia

Phone: + 61 2 6277 3535

Fax: + 61 2 6277 5818

Email: [fadt.sen@aph.gov.au](mailto:fadt.sen@aph.gov.au)

Internet: [www.aph.gov.au/Senate/committee/fadt\\_ctte/index.htm](http://www.aph.gov.au/Senate/committee/fadt_ctte/index.htm)



# TABLE OF CONTENTS

<b>Members of the Committee</b>	iii
<b>EXECUTIVE SUMMARY</b>	
Introduction	vii
Investigative capability	vii
Independence of investigating officers	ix
Review of the Defence Force Disciplinary Act	x
ADF culture	xi
<b>CHAPTER 1</b>	
<b>REVIEW OF THE IMPLEMENTATION OF REFORMS TO AUSTRALIA'S MILITARY JUSTICE SYSTEM</b>	<b>1</b>
<b>INTRODUCTION</b>	<b>1</b>
Background	1
Government's response to the committee's recommendations	1
Defence's first progress report and the committee's review of Defence's progress	1
Defence's second progress report	2
Conduct of the inquiry	3
Structure of the report	3
Acknowledgments	3
<b>CHAPTER 2</b>	
<b>DISCIPLINARY SYSTEM</b>	<b>5</b>
Investigative capabilities of the ADF	5
The Audit of the ADF investigative capability	6
Basic skills	9
The Report of the Board of Inquiry into the Death of Private Jacob Kovco	10
Chain of command and influence on investigations	11
The referral of criminal matters to civilian authorities and the relationship between service and civilian police	13
Committee view	16
<b>CHAPTER 3</b>	
<b>MILITARY TRIBUNALS</b>	<b>19</b>
Office of the Director of Military Prosecutions	19
Director of Defence Counsel Services	20
Permanent Military Court	20
<b>CHAPTER 4</b>	
<b>ADMINISTRATIVE SYSTEM</b>	<b>25</b>
Redress of Grievance	25
Committee view	26

<b>CHAPTER 5</b>	
<b>INVESTIGATIONS INTO NOTIFIABLE INCIDENTS</b>	<b>27</b>
Commissions of Inquiry	27
The role of state coroners	28
Committee view	29
The independence and impartiality of an investigator	29
<b>CHAPTER 6</b>	
<b>THE DEFENCE FORCE DISCIPLINARY ACT</b>	<b>33</b>
Call for a review of the Defence Force Disciplinary Act	33
Committee view	34
<b>CHAPTER 7</b>	
<b>ADF CULTURE</b>	<b>35</b>
ADF culture—a demanding environment	35
Learning culture in the ADF	36
Assistance to trainees	41
Retention rate in training schools	41
Conclusion	42
<b>APPENDIX 1</b>	
<b>PUBLIC HEARING AND WITNESSES</b>	<b>43</b>
<b>APPENDIX 2</b>	
<b>THE COMMITTEE'S 2005 RECOMMENDATIONS AND THE GOVERNMENT'S RESPONSE</b>	<b>45</b>
<b>APPENDIX 3</b>	
<b>DEPARTMENT OF DEFENCE: PROGRESS OF ENHANCEMENTS TO THE MILITARY JUSTICE SYSTEM, OCTOBER 2006</b>	<b>69</b>
<b>APPENDIX 4</b>	
<b>COMMITTEE'S WRITTEN QUESTIONS TO DEFENCE</b>	<b>83</b>