

Chapter 1

Review of the implementation of reforms to Australia's military justice system

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.

Government's response to the committee's recommendations

1.2 In October 2005, the government tabled its response to the committee's recommendations. In all, it accepted in whole, in part, or in principle 30 of the committee's 40 recommendations.¹ 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.²

Defence's first progress report and the committee's review of Defence's progress

1.3 In April 2006, the committee received from the Chief of the Defence Force (CDF) and the Secretary of Defence the first progress report on enhancements to the military justice system. Following close consideration of the progress report and evidence taken at a public hearing, the committee tabled its review of the implementation of Defence's reform program in August 2006.

1.4 It found that at this early stage of the implementation program, the Australian Defence Force (ADF) had demonstrated a clear commitment to improving Australia's military justice system. It noted the positive observations made by the Defence Force Ombudsman (DFO), particularly the reduction in the backlog of complaints and the more efficient processing of complaints.

1 See Appendix 2.

2 For a full explanation of the committee's terms of reference see the Senate Foreign Affairs, Defence and Trade Legislation Committee, *Reforms to Australia's military justice system: First progress report*, p. 2.

1.5 The committee was also impressed with the work of the Inspector General Australian Defence Force (IGADF). As mentioned in the report, 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. The committee understands that the IGADF needs the support and commitment of the ADF and the government to ensure that he has the necessary support to carry out his functions.

1.6 The committee remained concerned, however, about the prevailing culture in the ADF. It was of the view that improvements in processes would not of themselves change the culture, which it feared could undermine the success of the current reforms. The committee stated its belief that a major shift was required in the attitudes of all ADF personnel to achieve lasting change in the military justice system. It recognised that the ADF had a challenging road ahead in turning this culture around and encouraged and commended any efforts to do so.

Defence's second progress report

1.7 The CDF provided the ADF's second progress report to the committee in November 2006 (see appendix 3). It should also be noted that during the reporting period, Defence published a number of major reports that have direct relevance to Australia's military justice system. They are:

- *Report of an Audit of the Australian Defence Force investigative capability*, July 2006;
- *Final Report of the Learning Culture Inquiry: Inquiry into the learning culture in ADF schools and training establishments*, July 2006; and
- *Report of the Board of Inquiry into the Death of 8229393 Private Jacob Kovco at the SECDET Accommodation in the Australian Embassy Compound Baghdad on 21 April 2006*, 27 October 2006.

1.8 During a private meeting on 8 December 2006, the CDF briefed members of the committee and the Joint Standing Committee on Foreign Affairs, Defence and Trade on the three reports and answered questions put to him by committee members. In preparing this second review of reforms to the military justice system, the committee has taken account of the findings and recommendations contained in these reports.

1.9 The committee has also drawn on its consideration of the provisions of the Defence Legislation Amendment Bill 2006 in preparing this review. The intention of the proposed legislation was to replace the current system of trials by Courts Martial (CMs) and Defence Force Magistrates (DFMs) with an 'Australian Military Court'. This legislation and the establishment of a permanent military court are discussed in detail in chapter three.

Conduct of the inquiry

1.10 The committee held a public hearing on 26 February 2007. Defence officers were asked questions based on the ADF's second progress report, Defence's Annual Report, the three reports mentioned previously as well as the coroner's report following an inquest into the death of Trooper Angus Lawrence.

1.11 During the hearing, the committee placed a number of questions on notice. On 1 March 2007, it also submitted to Defence a number of written questions on notice. (See appendix 4). The response to these questions was not expected before the committee was to table its report. Defence's answers, however, will be the subject of further inquiry as part of the committee's continuing role in monitoring the implementation of reforms to Australia's military justice system.

Structure of the report

1.12 This report examines the second six-monthly progress report against the findings of the references committee's 2005 report on the effectiveness of Australia's military justice system and the government's recommendations in its response to the committee's report. As noted above, it also takes account of three recent reports and the legislation introduced to establish a permanent military court. It considers:

- the investigative capabilities of the SP including the recent audit of the ADF investigative capability;
- military tribunals particularly the newly established permanent military court;
- the redress of grievance process;
- investigations into notifiable incidents—CDF commissions of inquiry, state coroners and the independence of investigators;
- the Defence Force Disciplinary Act; and
- the ADF culture.

Acknowledgments

1.13 The committee thanks those who appeared before it at the public hearing including Lieutenant General Peter Leahy, Chief of Army. In particular, however, the committee wishes to thank Air Chief Marshal Angus Houston for taking the time to brief the committee on the three reports released in December 2006 and his attendance at the public hearing on 26 February. His willingness to assist the committee in its work is much appreciated and is an indication of his commitment to improve Australia's military justice system.

