

Chapter 6

The Defence Force Disciplinary Act

Call for a review of the Defence Force Disciplinary Act

6.1 *The Report of an Audit of the Australian Defence Force Investigative Capability* found the Defence Force Disciplinary Act (DFDA) had 'simply had its day'. It described the document as 'outdated and anachronistic' and suggested that it 'does not match modern disciplinary, legal and policing requirements'.¹ The audit noted that the DFDA had not undergone a fundamental review for over a quarter of a century.

6.2 The call for a review, however, is not new. The audit finding that the DFDA needs to be updated is consistent with those of previous reports dating back to the 1989 Report of the Defence Force Discipline Legislation Board Review. It was concerned about bringing the DFDA in line with comparable and more modern legislation in relation to 'the need to extend the proscription of evolving classes of illicit drugs which are now widely available and used in society and from which the ADF is unlikely to be immune'.²

6.3 The 2001 *Report of an Inquiry into Military Justice in the Australian Defence Force* (the Burchett Report) also noted the need to update the DFDA. It recommended, *inter alia*, that consideration be given to reviewing the nature of the punishments that may be imposed under the DFDA in the light of contemporary standards.³

6.4 The references committee's 2005 report on Australia's military justice system was particularly concerned about the grey areas that had developed between the disciplinary and administration systems. It concluded that:

...it appears that a review of the penalties imposed under the military justice system is long overdue. The time for review is also fortuitous in that a significant body of work has recently been done by the Australian Law Reform Commission on criminal, civil and administrative procedures and penalties.⁴

1 Department of Defence, *Report of an Audit of the Australian Defence Force Investigative Capability*, July 2006, paragraph 4.8.

2 See Foreign Affairs, Defence and Trade References Committee, *The effectiveness of Australia's military justice system*, June 2005, paragraph 13.13.

3 Report into Military Justice in the Australian Defence Force, conducted by Mr J.C.S.Burchett, QC, An Investigating Officer appointed by the Chief of the Defence Force, under the Defence (Inquiry) Regulations 1985, p. 32.

4 Foreign Affairs, Defence and Trade References Committee, *The effectiveness of Australia's military justice system*, June 2005, paragraph 13.17.

6.5 In light of the findings of previous reports and evidence presented to it, the references committee recommended that:

Building on the report by the Australian Law Reform Commission, *Principled Regulation: Federal Civil and Administrative Penalties in Federal Jurisdiction*, the committee recommends that the ADF commission a similar review of its disciplinary and administrative systems.⁵

6.6 The committee further notes the findings of the Inspector General ADF based on the Defence Attitude Survey 2005 supplement. Survey responses showed that:

- 61% agreed, 20% disagreed and 19% were uncertain about whether the DFDA is an effective and efficient tool for the maintenance of discipline; and
- 25% agreed; 28% disagreed and 47% were uncertain about whether the act is not easy to understand.

6.7 The surveys also indicated that 76% agreed, 12% disagreed and 12% were uncertain that minor breaches of discipline would be better dealt with by counselling and warning rather than charging under the DFDA.⁶

6.8 In its response to the recommendation of the audit of the ADF's investigatory capability to review the DFDA, Defence stated that it would amend a number of offences as part of the Defence Legislation Amendment Bill 2007 and continue a more detailed review.

Committee view

6.9 The committee supports the call for a comprehensive review of the DFDA. It notes Defence's response and its intention to 'continue a more detailed review'. The committee would hope that the intention is for an independent, thorough and complete review of the DFDA and not ad hoc changes to it. The committee suggests further that the independent review be made public.

5 Foreign Affairs Defence and Trade References Committee, *The effectiveness of Australia's military justice system*, June 2005, paragraph 13.19, p. 273.

6 Department of Defence, *Annual Report 2005–2006*, p. 258.