

Overview

In June 2005, the Foreign Affairs, Defence and Trade References Committee tabled a comprehensive report on Australia's military justice system. It found that the system needed a radical overhaul. Since then, the Australian Defence Force (ADF) has embarked on an intensive reform program to improve the system including the establishment of the Australian Military Court (AMC) and the streamlining and restructuring of its complaints handling system.

The committee recognises the positive contribution that the reforms have made to the system. Its primary concern, however, is with ensuring that the reform program maintains its momentum and that the gains made to date are not lost. The committee is aware, however, of Defence's history of failed reforms: of its inability to make lasting change. Indeed, it was that history that forced the committee in 2005 to call a stop and to seek major reform at all levels.

To help break this cycle of failed reforms, the committee believes that there needs to be a set of inbuilt safeguards.

Four pillars: transparency, accountability, independence and scrutiny

It believes that transparency, accountability, proper independence and continuing scrutiny are the four pillars that will preserve and promote the integrity of Australia's military justice system. If any one falters, the effectiveness of the system once again comes under threat. With this in mind, the committee makes the following findings:

- The AMC needs to be more transparent and recommends that its disclosure regime be improved.
- The Chief Military Judge of the AMC has a vital role, and responsibility, to contribute to the parliament's understanding of the administration of military justice by agreeing, when invited, to give evidence before the committee.
- Without doubt the administrative system needs a strong independent and critical oversight authority responsible for identifying problems in the military justice system and for auditing and reporting on matters such as the progress of complaints and the implementation of recommendations arising from investigations. Although the Inspector General Australian Defence Force (IGADF) is a statutory appointment, the committee believes that his position needs to be, and perceived to be, more independent from command. A first step would be to change the reporting requirements of the IGADF.
- Commissions of inquiry (COIs) are presided over by a civilian with judicial experience, which has to some degree removed the perception of Defence inquiring into itself. They could, however, be more open and accountable for their proceedings and decisions by conducting their hearings in public.
- Defence's failure to consult with external and independent experts when considering reforms to Australia's military justice system is most concerning. This attitude indicates that Defence is not only reluctant to be open and

receptive to constructive criticism and new ideas but does not appreciate that wide consultation and open debate produces better legislation.

The ADF's inability to make lasting change is clearly demonstrated by the problems that persist with the ADF's police service and learning culture. The process of building the ADF's investigative capability and improving its learning culture must be regularly monitored and assessed. In this regard, the committee recommends independent reviews of the ADF's investigative capability and its learning culture within 5 years and more analysis and informative reporting on attitudes in the ADF.

The committee also accepts that over time refinements or adjustments may be required to the reforms implemented during the last two years. It cited for particular consideration, the conduct and protection of military jurors, an audit of ADF legal services, and the appeal process to service chiefs.

Monitoring and review

The need for regular monitoring, review, independent assessment and reporting applies to all aspects of Australia's military justice system including staffing and resources. In this regard, the committee notes:

- the delays establishing the facilities necessary for the efficient and effective operation of AMC;
- current problems staffing the ADF Investigative Service which need urgent attention—it is manned at only 58 to 60 per cent of strength;
- slowness in appointing officers to the Office of the Director of Military Prosecutions (DMP);
- COIs and the suggestion that Defence resources 'are very stretched';¹ and
- the need to ensure that the Fairness and Resolution Branch has the appropriate level of staffing to prevent a return to the pre-2005 administrative system which was plagued by lengthy delays in processing complaints and ROGs.

The committee welcomes the appointment of Sir Laurence Street and Air Marshal Les Fisher (Retd) to assess the effectiveness of the reform program. In the course of the report, the committee has identified matters that the team may wish to examine as part of their inquiry.

1 *Committee Hansard*, 20 June 2008, p. 42.