

Executive Summary

Following the findings of the committee's 2005 report into Australia's military justice system, Defence has implemented significant reforms that, without doubt, have improved the system. The committee's primary concern, however, is with ensuring that the reform program maintains its momentum and the gains made to date are not lost. Defence's history of failed reforms heightens this concern.

This report marks the end of the committee's undertaking to report on the implementation of reforms to Australia's military justice system. It contains 13 recommendations and a number of suggestions. Some are of a more technical, legal nature indicating that changes to legislation may be required, particularly as the AMC and the new summary authority procedures become fully operational. The committee starts with the five major recommendations.

Transparency, accountability, independence and scrutiny

Any measures that strengthen disclosure, public accountability, transparency and the independence of the military justice system will enhance its effectiveness. The committee's key recommendations are intended to make Australia's military justice system more open, transparent, accountable and independent.

Recommendation 8

The committee recommends that the government amend the Defence Force Discipline Act to require the Australian Military Court (AMC) to publish material such as court lists, transcripts of proceedings and judgments in a readily and easily accessible form (paragraph 5.20).

The committee believes that the Chief Military Judge (CMJ) 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.

Recommendation 9

The committee recommends that the CMJ appear before the committee to give evidence on the operation of the AMC and matters raised in the CMJ's annual report when invited by the committee to do so (paragraph 5.30).

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.

Recommendation 10

The committee recommends that the *Defence Act 1903* be amended to include in section 110 the requirement for the IGADF to, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament a report relating to the functions of his office as set out in section 110C(1) (paragraph 5.59).

This recommendation is a necessary first step in restoring credibility to the office of the IGADF when it comes to his independence and function as an effective oversight authority. Other measures should also be considered using the provisions that apply to the CMJ and DMP as a model.

Recommendation 11

The committee recommends that the government consider additional measures to strengthen the independence of the IGADF using the provisions governing the CMJ and the DMP as a template (paragraph 5.61).

The committee also believes that commissions of inquiry need greater transparency.

Recommendation 12

The committee recommends that the regulations governing the establishment of Commissions of Inquiry (COIs) be amended to require that COIs be conducted in public except in circumstances where the president deems there to be a compelling reason for privacy. In cases where the president makes such a decision, the regulations should require the president to issue a public statement containing the reasons for this decision (paragraph 5.63).

The committee is most concerned about Defence's failure to consult with external and independent experts when considering reforms on military justice. 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 wider consultation produces better legislation and ultimately a more effective military justice system.

Recommendation 13

The committee recommends that the government undertake a comprehensive consultation process on any future proposed legislation, including subordinate legislation, that is intended to make significant changes to Australia's military justice system. The committee cites in particular the importance of consulting with the Law Council of Australia (paragraph 5.91).

Monitoring and reviewing

The ADF's inability to make lasting change is clearly demonstrated by the continuing problems 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.

The need for regular monitoring, review, independent assessment and reporting, however, applies to all aspects of Australia's military justice system. The committee recognises that over time refinements or adjustments may be required to the reforms implemented during the last two years. The remaining recommendations are concerned with the necessary reviews of the ADF's investigative capability and its learning culture and some other matters including the conduct and protection of military jurors, an audit of legal services in the ADF and appeals to service chiefs.

Recommendation 1

The committee recommends that the Defence Force Discipline Act be amended to include provisions governing the conduct and protection of military jurors (paragraph 2.31).

Recommendation 2

The committee recommends that Defence undertake an audit of all legal officers in the ADF with a view to ensuring that the legal skills, expertise and experiences available to the ADF are being used to full advantage and to identify deficiencies that may need addressing (paragraph 2.74).

Recommendation 3

The committee recommends that in 12 months, Defence report to the committee on its progress implementing reforms to improve the ADF's investigative capability (paragraph 3.34).

Recommendation 4

The committee recommends that the government commission an independent review of the ADF's investigative capability at the conclusion of the 5-year remediation period (paragraph 3.35).

Recommendation 5

The committee recommends that a specific time limit, for example 90 days, be imposed on referrals of redresses of grievance to the service chiefs (paragraph 4.14).

Recommendation 6

The committee recommends that the ADF commission an independent review of the learning culture in the ADF, along similar lines as the investigation conducted in 2006. The main purpose of the inquiry would be to assess whether the recommendations contained in the 2006 report have been effectively implemented and whether additional measures need to be taken to improve the learning culture in the ADF. This review should take place within five years and the report on its findings should be made public (paragraph 4.39).

Recommendation 7

The committee recommends that the findings of Defence's attitude survey contain a greater level of detail and analysis than that provided in the most recent publication (paragraph 4.42).

The committee also notes that Sir Laurence Street and Air Marshal Les Fisher (Retd) have been appointed to assess the effectiveness of the reform program. The committee welcomes the establishment of this review team and, in the course of the report, has identified matters that the team may wish to examine as part of their inquiry, including:

- the jurisdiction of the Australian Military Court (AMC) and the appropriateness of the AMC to hear civilian cases;
- the random and tri-service basis for the selection of military juries;
- code of conduct for military jurors;
- the rules of evidence for summary trials;
- the adequacy of the information made available on the work of the AMC including the proposal for the AMC to produce 'a military justice reporter' or similar publication;
- the accountability of the CMJ to parliament, including his or her appearance before parliamentary committees;
- the functions and future role of the Judge Advocate General (if any);
- the role of the Inspector General of the ADF (IGADF) and how the IGADF's independence could be strengthened to ensure the positive results of reforms to the military justice system, especially to the administrative system, do not dissipate with the passage of time;
- the relationship between the Australian Defence Force (ADF) and state and territory coroners;
- the potential for command influence in ADF investigations;
- the ADF's tracking system for handling complaints;
- the *Defence Force Discipline Act 1982* (DFDA) and whether it is in line with comparable and up-to-date legislation including provisions governing people found unfit to stand trial or not guilty of an offence on the grounds of mental impairment (paragraphs 2.34–2.36); and
- the role of the Law Council and adequacy of Defence's consultative process.