

Chapter 1

Annual reports

Judge Advocate General

1.1 The Judge Advocate General's (JAG) annual report for the period 1 January 2014 to 31 December 2014 was tabled in the House of Representatives on 25 June 2015 and in the Senate on 10 August 2015. Section 196B of the *Defence Force Discipline Act 1982* (DFDA) requires the JAG, as soon as practicable after 31 December each year, to provide the Minister with a report relating to the operation of the DFDA.¹

1.2 The office of the Judge Advocate General of the ADF was created by s 179 of the DFDA. The current JAG, Rear Admiral the Hon Justice M J Slattery RANR, was first appointed on 14 May 2015, having acted in the position since 30 July 2014. His current appointment is until 29 July 2017.²

1.3 The functions of the JAG are prescribed by the DFDA. The JAG is responsible for the following functions:

- (a) reporting annually to Parliament on the operation of the DFDA, the Regulations, the Rules of Procedure, and the operation of any other law of the Commonwealth or the ACT insofar as that law relates to the discipline of the Defence Force;
- (b) making Procedural Rules for Service tribunals, being Court Martial and Defence Force Magistrate Rules, and Summary Authority Rules;
- (c) nominating the judge advocate for a court martial and Defence Force magistrates;
- (d) nominating to a Service Chief officers to be members of the judge advocate's panel;
- (e) appointing Defence Force magistrates from officers appointed as members of the judge advocate panel;
- (f) nominating to a Service Chief legal officers for the purposes of DFDA s 154(1)(a); and
- (g) if requested, providing a final and binding legal report in connection with the internal review of proceedings before Service tribunals.³

1 Judge Advocate General Annual Report, 2014, p. 1.

2 Judge Advocate General Annual Report, 2014, p. 2.

3 Judge Advocate General Annual Report, 2014, pp. 2–3.

Operation of the Superior Military Tribunals

1.4 The JAG noted that during the reporting period, trials by court martial and DFM continued in accordance with the *Military Justice (Interim Measures) Act (No 1) 2009*, as amended by the *Military Justice (Interim Measures) Amendment Act 2011* and the *Military Justice (Interim Measures) Amendment Act 2013*.⁴

Appeals to the Defence Force Discipline Appeal Tribunal

1.5 During the reporting period, there were no appeals determined by the Defence Force Discipline Appeal Tribunal.⁵

Legislation

1.6 The JAG observed that the *Military Justice (Interim Measures) Act (No 1) 2009* as amended continues the appointment of the former Chief Military Judge and military judges as Chief Judge Advocate and full time judge advocates respectively. The legislation remains in force only until 21 September 2015 unless further amended.

1.7 In the previous annual report, the then JAG recommended that while the interim measures are working satisfactorily, a final decision should be taken as to whether the interim measures will continue indefinitely, or whether a Chapter III court is to be created.⁶

1.8 The current JAG agreed that, 'there is no more important a decision for maintaining ADF members' confidence in the ADF's military justice system than for Parliament now to express in legislation its own confidence in a permanent system.'⁷

1.9 The JAG also discussed two matters of law reform. First, that the maximum available fines for non-defence members under the DFDA should be revised. Currently, the only punishments available are imprisonment or a fine not exceeding \$500, which was inserted in the legislation when it was enacted in 1982. This fine has not kept pace with inflation and should be adjusted automatically.⁸

1.10 Secondly, that the same reviewing authority which reviews twice whether punishments are excessive is undesirable. The legislation does not preclude a reviewing authority considering a petition lodged after that same authority had already conducted a review. The JAG recommended the legislation be amended to preclude the reviewing authority from reviewing a severity of punishment twice.⁹

4 Judge Advocate General Annual Report, 2014, p. 5.

5 Judge Advocate General Annual Report, 2014, p. 6.

6 Judge Advocate General Annual Report, 2013, pp. 7–8.

7 Judge Advocate General Annual Report, 2014, pp 6–7.

8 Judge Advocate General Annual Report, 2014, p. 7.

9 Judge Advocate General Annual Report, 2014, p. 10.

Conclusion

1.11 In conclusion, the JAG stated that:

...I reemphasize Major General Tracey's conclusion to his 2013 report and add: it is now highly desirable in that a final decision be taken as to whether the interim measures are to be made permanent or whether for instance, a Chapter III military court is to be created. While the measures in place remain 'interim' it is difficult to address the much-needed reforms that this and previous JAG report have suggested for improving the operation of the military justice system.¹⁰

Other reports

1.12 Other portfolio authorities, agencies and/or companies which had their annual reports examined by the committee, but were not otherwise commented upon in this report, include:

- AAF Company—report tabled in the Senate on 1 December 2014.
- Royal Australian Air Force (RAAF) Welfare Recreational Company—report tabled in the Senate on 1 December 2014.
- Royal Australian Navy Central Canteens Board (RANCCB)—report tabled in the Senate on 26 November 2014.

1.13 The committee considers that the annual reports of the above-mentioned organisations adequately met their respective reporting requirements.

Senator Chris Back
Chair

