

Chapter 1

Introduction

Referral of the bill

1.1 On 3 December 2014, the Assistant Minister for Social Services, Senator the Hon Mitch Fifield, on behalf of the Minister for Defence, introduced the Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Bill 2014 (the bill).¹ On 4 December 2014, on the recommendation of the Selection of Bills Committee, the bill was referred to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 3 March 2015.²

Purposes of the bill

1.2 The Inspector-General Australian Defence Force (ADF) was established by the Chief of the Defence Force (CDF) in 2003 to provide a means for internal audit and review of the military justice system independent of the chain of command.³ The Inspector-General ADF was made a statutory position in 2005.⁴ The bill amends the *Defence Act 1903* (Defence Act) to broaden the role of Inspector-General ADF as part of wider reforms to Defence's systems of inquiry, investigation, review and audit.

1.3 The Minister's second reading speech states that the bill:

- makes it clear that the Inspector-General ADF mechanism for internal audit and review of the military justice system is independent of the ordinary chain of command;
- provides that the Minister or the Chief of the Defence Force may utilise the Inspector-General ADF as a mechanism to inquire into or investigate any other matters concerning the ADF;
- places beyond doubt that the privilege against self-incrimination for witnesses is abrogated in relation to inquiries conducted by the Inspector-General ADF and inquiry officers or assistants appointed by the Inspector-General ADF;
- places beyond doubt that the witness evidence use immunity in subsection 124(2C) applies in relation to Inspector-General ADF inquiries and Inspector-General ADF inquiry officer inquiries. Witness evidence use immunity prevents a witness's evidence given to an inquiry from being used against them in a service tribunal or civilian court;

1 *Journals of the Senate*, 3 December 2014, p. 1966.

2 *Journals of the Senate*, 4 December 2014, p. 1986; Selection of Bills Committee, *Report No. 16 of 2014*, 4 December 2014.

3 This followed a recommendation made in Mr James Burchett QC, *Report of an Inquiry into Military Justice in the ADF*, July 2001, Recommendation 55.

4 *Defence Legislation Amendment Act (No. 2) 2005*, Schedule 2.

- requires the Inspector-General ADF to prepare an annual report relating to the Inspector-General's functions for tabling in Parliament; and
- further strengthens the independence of the Inspector-General ADF by making it clear that, where the Inspector-General ADF is directed to conduct an inquiry or investigation by the Chief of the Defence Force, or where an Inspector-General ADF is acting on their own motion or at the request of another party, the Inspector-General ADF may cease the inquiry or investigation if the Inspector-General ADF forms a belief that the continuation of the inquiry or investigation is not otherwise warranted, having regard to all the circumstances.⁵

Conduct of inquiry

1.4 The committee advertised the inquiry in *The Australian* newspaper and on its website. The committee also wrote to individuals and organisations likely to have an interest in the bill, drawing their attention to the inquiry and inviting them to make written submissions.

1.5 The committee received 8 submissions to the inquiry, with one received as a confidential submission. Public submissions are listed at Appendix 1, and are available on the committee's website: www.aph.gov.au/senate_fadt.

Structure of report

1.6 Chapter 2 provides an overview of the provisions of the bill. Chapter 3 outlines issues raised in submissions and contains the committee's view and recommendations.

Acknowledgements

1.7 The committee thanks all those who assisted with the inquiry, including by making submissions.