Senate Foreign Affairs, Defence and Trade References Committee

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: **P5E**

Date Received: 31.01.04

Submitter: Mr Warren

Organisation:

Address:

Phone:

Fax:

Email:

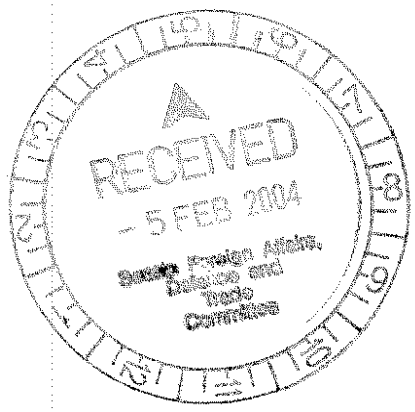
Name/Contact: Mr Allen Warren

Date Authorised:

[redacted]

Allan Warren

31 January 2003



Mr B Holmes
Secretary,
Foreign Affairs, Defence and Trade
References Committee
Department of the Senate
Parliament House
Canberra
ACT 2600

Dear Secretary,

Re: Senate References Committee Inquiry into Military Justice System

The purpose of the attached submission is to address the Inquiry's Terms of Reference (1)(a) and (1)(b)(ii). It provides further detail how senior military officers thwarted the military justice system in the Major Warren case. It is disturbing reading because it goes to the very heart of the integrity of those who are responsible for the protection of the review and appeal system designed to protect the rule of law within the ADF. In turn it is meant to protect service personnel from abuse of superiors' power and authority over them. This document shows how the 'experts', i.e. the military professionals, don't do their job.

Originally submitted, on invitation, to Admiral Barrie's Audit Team, it was then refused as a submission because events occurred 1980-1981. It was argued this put it outside the post 1985 time scale of their Terms of Reference. This decision ignored the documentary evidence in the submission, of Defence's detailed abuse of due process well past 1985 up to and including the 1994 Army QC's investigation into the process of Warren's career termination.

Given that senior military officers are so blatant in their abuse of military justice it is incumberant on this, yet another Committee of Inquiry, not only to ferret them out but as individual representatives, take action to resolve the Warren case.

Yours sincerely,

A K Warren

Allan Warren

Attachment 1

12 March 2001

The Secretary
Military Justice Audit (Level 14)
Locked Bag 18
Darlinghurst
NSW 2010

MILITARY JUSTICE AUDIT OF THE ADF

SUBMISSION BY EX-MAJOR ALLAN WARREN

In 1981, pursuant to Section 16 Defence Act 1903, Major Warren was charged with gross incompetence and unprofessionalism. Five performance reports, 1978-1980, and four letters of warning were cited as the evidence. Major Warren was given 14 days Notice To Show Cause Why Your Appointment Should Not Be Terminated (NTSC).

Warren's defence reply to the NTSC of 26 February 1981 did "Show Cause". It identified THEN that the evidence used to make the allegations against him did not do so.

From 1981 to 1994 several ministerial investigations and decisions by the Office of the Defence Force Ombudsman, several Ministers for Defence, the Prime Minister and the Governor-General failed to identify any evidence whatsoever that Army had acted unfairly and improperly to bring about Warren's forced resignation in disgrace. Successive higher military leadership and their responsible ministers repeatedly asserted that their decisions were based on

thorough, comprehensive and objective investigations of Warren's ministerial representations. They also gave decisions that natural justice had prevailed, as had the rule of law, in bringing about Warren's forced resignation.

Nothing was further from the truth. Their decisions were based on insidious lies. Instead, what occurred and continues to occur is the rise of the "rule of corruption" to override and destroy the rule of law. Every Defence audit of the Warren case to date has been an enforcement by higher military leadership of this "rule of corruption".

Systemic abuse of power, including avoidance of due military process as revealed in this case, has exposed how higher military leadership and 'old boy' networks have combined to abuse power to subvert the rule of law. Reasonable people of good conscience must outrightly reject any notion of the "rule of law" been violated by officials who are unaccountable and subversive of democractic order and principles.

Adjudicators and scrutineers who have since 1981 to date, reviewed or audited the Warren case, have recklessly or indifferently failed to protect the safeguards against arbitrary perversions of military justice procedures and military administrative law. They have tacitedly acquiesced in the manipulation of these procedures to protect and cover-up Army's malfeasance and nonfeasance in this case.

To-date, evidence in the Warren case exposes Defence's increasing tendency, especially since 1990 to use audits, not to reform military law administration, but to regain its manipulation over it.

To-date, decision-makers on this case still refuse to grant Redress of Wrongs and continue to deny any Defence wrong-doing. They continue to deny, contrary to the evidence, that there is any improper conduct by any Army officer who has handled this case to-date. Yet Defence and responsible ministers have always held the body of substantive evidence of how Defence abused power to destroy Warren's career, reputation and livelihood.

On 27 April 1990 Department of Defence allegedly commenced an investigation or audit of Warren's case for and at the behest of the then Governor-General, B Hayden. Army was given a deadline of 22 May 1990 to complete its audit review. But documents released to Warren under the FOI Act reveal that Army did nothing to comply with the ministerial directive to report by 22 May.

Eventually, the Military Secretary did supposedly examine the case. A copy of that investigation is attached to Warren's letter of 3 February 2001 to Admiral Barrie. It is Military Secretary Minute 1566/90 of 3 July 1990 by Major W J Norton.

The only files Major Norton accessed for his investigation were Warren's two ministerial representation files, A32-8-61 and A85-8940 (see enclosed Diagrams 1 and 3).

Army and Defence Central Registry also fabricated evidence that it used in affidavit to prove to a 1991 Administrative Appeals Tribunal hearing that Warren's personal Military Secretary file - i.e.' Posting File 69-W-304, Major A K Warren' had been routinely destroyed in 1989. This file contained the Government's history records of the circumstances surrounding the forced termination of Warren's appointment from Army. A misleading Australian

Archives General Disposal Authority was quoted in Tribunal evidence to justify Defence's destruction of file 69-W-304. (see enclosed Diagrams 1 and 2).

On 30 July 1990 the then responsible Minister, Mr. Gordon Bilney gave decision to the Governor-General on Warren's case. He decisioned that the charges of gross incompetence and unprofessionalism stood and that Warren's claims of victimisation, obstruction and indifference were unsubstantiated. He apologised to the Governor-General for the delay, as it had been necessary in order to re-examine all aspects of the case.

During May, June, and July 1990 Army allegedly re-examined all aspects of the circumstances surrounding Warren's forced resignation from Army. That accords with the decision of 30 July 1990 given by the responsible minister to the Governor-General. However the truth was that Army conducted no such examination of Warren's case. Instead Defence embarked on a reckless and corrupt agenda to "lose, destroy or feign destruction" of the entire Military Secretary and Director of Army Legal Service (DALS) records of Warren's case. In particular ALL copies from ALL sources of DALS Minute L207/81 of 6 March 1981, being the legal opinion of DALS that Warren was unprofessional and incompetent warranting dishonorable dismissal from Army, were either "lost" or "destroyed" - (see enclosed Diagrams 2 and 4).

Thus Bilney's 1990 decision was made on a number of violations of military justice administrative procedures. The Military Secretary's re-examination of the case had been a violent sham.

To-date, Defence's audits of its rule of law have deliberately acted to entrench a cover-up its "rule of corruption". And the evidence is there that responsible ministers and officers of the court have acquiesced in this process. Thus, the

checks and balances underpinning the rule of law have themselves become instruments of malfeasance and nonfeasance within the administration of military justice. No longer can they have validity.

Eventually, on 27 November 1990 Army was forced to release to Warren contents from File 69-W-304 or face AAT adjudication on its non-disclosure under FOI Law. However Army refused to release a copy of the Prime Ministerial investigations of the case done in 1985/1986. These were the contents of Files A32-8-61 and A85-8940. These were the only records accessed by Military Secretariat officer, Major Norton for his July 1990 report for the Governor - General. Yet, extraordinarily these same records had been simultaneously denied FOI access to ex-Major Warren, allegedly because they had been "accidentally destroyed" six months previously, in January 1990.

Defence's 1990 attempts to feign loss and destruction of the history records of government saw it violate FOI Law, Australian Archives Act Law, the Administrative Appeals Tribunal Act, the Defence Act and Commonwealth laws of propriety.

In 1991-1992 Army was again highly active in covering up its corruption so as to deny "natural justice" to Warren. Between them, the Military Secretary and the Deputy Chief of the General Staff, Major General Carter, produced a voluminous 160 pages of legal facts and decisions to prove to a third AAT hearing in 1993 that Warren had never been denied "natural justice" and that at all times Army's administration in his case was "methodical and always strictly according to the letter of the law".

Again nothing could have been further from the truth and from the evidence on the official records.

Eventually, in August 1993 Major General Carter admitted under cross-examination at the AAT hearing that Army had not properly considered Major Warren's defence reply to the NTSC. But Carter argued there had been no need to do so as Warren had clearly refused to admit to the charges and hence he could not be rehabilitated.

The Tribunal rebuked Carter by asking him was he aware that the Section 16 Defence Act NTSC was a very serious legal document. Carter replied "yes" he was aware. But his answer had revealed his state of mind by which he and the Military Secretary, Brigadier Fisher had produced 160 pages of legal facts and decisions to prove Warren was grossly incompetent and unprofessional warranting dismissal from his Army career appointment with loss of all entitlements.

The AAT hearing also ruled that the Director of Army Legal Services, Brigadier M J Ewing's legal opinion i.e. DALS Minute L207/81 on 6th March 1981, was "superficial". In layman's terms it was an incompetent and dishonest opinion. It was also illegal in law. This would account for Defence's frantic efforts to destroy or lose ALL several copies of it rather than release a copy of it to Warren in 1990.

The AAT's ruling against Carter's attempts to escalate Army's incorrect and misleading evidence against Warren provided him with a window of opportunity to finally get an honest and objective ministerial investigation and decision to redress the systemic wrongs 1980 to date. Warren petitioned many Federal Members of Parliament and Senators.

Warren's local member for Dobell, Michael Lee didn't want to touch the case. He was only prepared to function as a mail sorter.

Ted Mack, Member for North Sydney responded to Warren. He advised him to target NSW Senators for assistance as they had responsibility to all citizens of NSW. But not one NSW Senator was prepared to take up the case on Warren's behalf.

Assistance did however come from Senator John Woodley (Democrat, Queensland). On 7 June 1994 he wrote a scathing letter to the then Minister for Defence, Robert Ray. In it he gave condemnation to the 1980 conduct of Warren's immediate superior officers. No doubt this letter influenced Ray's decision to conduct yet another investigation into the circumstances surrounding Warren's forced termination.

In 1994 Lt.Col. B Salmon QC, was appointed as Investigating Officer to conduct this investigation. Yet again this Army report on Army found that no-one acted improperly against Warren.

Salmon QC handed his final report to DALS on 6 December 1994 - the same day as his retirement from the Army Reserve Legal Corps. In his report he falsely claimed that "unfair administration" had caused the destruction of Warren's career and reputation. He further falsely claimed that "it is quite impossible to find any deliberately unfair or improper behaviour by those in the events".

On 8 December 1994, two days after Salmon QC submitted his investigation report on Warren's case to DALS, Col Harvey, Salmon again wrote to Col Harvey that the Terms of Reference given to him for the investigation of

Warren's case only required him to enquire into the propriety and fairness of "Defence administration" and that he was not called upon to make decisions concerning the strict application of the rules of "procedural fairness".

Furthermore Salmon QC subsequently wrote that:

> "unfairness" is not a legal term, though it might be a value judgment.
>
> I cannot sign the report making the distinction between "legal fairness" and "moral fairness".
>
> The Terms of Reference mention "unfair Defence administration". Unfair in the general sense not as part of a decision-making process."

What appears clear on the documented evidence is that DALS did not accept the Salmon QC report in its original concept but wanted it tailored and rewritten to comply with Army's own agenda. To what extent DALS was able to get Salmon QC to alter his original investigating officer's report is unknown to Warren. But the evidence exists that a Lt. Col Berkley did edit Salmon's report.

The Salmon QC report was an internal Defence audit of itself. It is testimony to the damage control by those who have led and perpetuate deliberate and continuous harm and injury to ex-Major Warren and his family.

In 1993 the AAT had in part exposed the lies within past ministerial decisions against Warren. Consequently Army needed a new line of deceit and cover-up. Salmon QC produced it. His spin on the case was to make it appear that Army

had finally come clean. But his agenda was to concede only those points Warren had won at his 1993 AAT hearing.

Lt.Col B Salmon QC, had been employed and empowered as an Investigating Officer, with Terms of Reference issued by the then Chief of Army, to determine the facts of the case. His duty of fidelity was to report properly according to the evidence. He failed to do so, opting instead to cover-up for the deliberate and ruthless maladminstration of Warren's superior officers. His report gave the public the impression that the rule of law had finally prevailed. Instead his "investigation" ensured that neither truth nor law nor justice prevailed.

Salmon QC, wilfully failed to expose the deliberate intent of Warren's superior officers to fabricate evidence to be used to destroy his career and reputation. Salmon QC concluded in his report that no-one acted improperly against Warren. Instead "unfair administration" was to blame. His report findings did not match the evidence. Nor did he address the issue of Major General Carter's voluminous effort to mislead the 1993 AAT with his 160 pages of legal facts and evidence. The Chief of Army had drawn up draft Terms of Reference for Salmon QC. to investigate this matter but then withdrew them thereby protecting Carter's behaviour before the 1993 AAT.

Based on the Salmon QC report the then Chief of Army, Lt. General Grey, reported to the responsible minister that regrettably "unfair Defence administration" had caused Warren's termination from Army.

On 2nd September 1997 Lt Col Peter M Boyd, Directorate of Military Administrative Law, reported for the responsible minister that he had examined the Warren case, including the Salmon QC report and found that "the unfairness which I found depends on the rather technical point of the wording of the NTSC

and the failure to recognise any error when considering Major Warren's response".

Boyd found that "there was an error but there is simply no evidence to suggest any impropriety on the part of any of those involved either at the time or in the reviews which followed".

Of equally grave concern is the improbity of the 1993 AAT hearing to avoid confronting the issue of Brig. Hooper's 1980/81 maladministration and deceit in bringing about the termination of Warren's appointment from Army. By 1986 Brig. Hooper had switched career from Army and was then a Non-Presidential Member of the AAT in Sydney. In 1993 he was a colleague of AAT's members who adjudicated on Warren's FOI case at the same time and place, i.e. Sydney, 1993. The AAT's non-disclosure of their closeness to Hooper transgressed from a conflict of interest to impropriety when they failed to declare Hooper's position to Warren. By non-disclosure the AAT was able to avoid impartial adjudication on Hooper's 1981 maladministration by which he brought about the destruction of Warren's career and reputation. Thus, despite the strong evidence against Hooper the Tribunal members ruled partially in his favour and against Warren.

On 25 July 1998 'The Australian', page 8, reported on the Chief of Defence Force, Admiral C Barrie's defence of military justice procedures. He dismissed critics of it for having a "fundamental misunderstanding of process". Defending ADF procedures before a Parliamentary Committee of Inquiry into military justice, Admiral Barrie claimed legal processes were evolving and improving with the introduction of new practices such as the increased use of external experts.

But Admiral Barrie's cant has failed to address the reality of higher military leadership's systemic failures to deliver honest and competent military justice in

the ADF. What the Warren case reveals is that military justice procedures in the ADF have fallen into disrepute.

In contrast to Admiral Barrie, Rear Admiral (Ret'd) Peter Sinclair defended the existing legislation on military justice procedures. In the 'Sydney Morning Herald', 29 July 1998, he stated that the regulations were clear and comprehensive and "provided me with the authority and flexibility to deal with the complex issues involved".

Any person with a reasonable knowledge of Defence Law would know that Rear Admiral Sinclair is correct and that Admiral Barrie is merely posturing excuses for past and present failures of higher military leadership to deliver ethical and legal competency in military justice procedures. Such posturing raises serious concern about a Defence intent to maintain this same culture of improbity into the future.

In the Warren case, the rule of law with its mechanisms of checks and balances became contaminated and putrid because of the failed personal standards of military leadership who had and have power over these procedures. This would be painfully clear from this case's evidence to any senior officer holding Admiral Barrie's rank and position.

In 1996 Hugh Smith, lecturer in the Department of Politics at the Australian Defence Force Academy, Canberra, explained to journalist Laura Tingle when she spoke to him re: the Warren case:

> "I don't know how different it is now to 20 years ago but unless the person at the top of the chain has some knowledge of the individual being reported on .....the determining factor in assessing the report will be the fact you have probably appointed the person doing the reporting. Therefore it must be a good appointment and the judgments therefore universal".

Justice B O'Keefe in his 1996 ICAC 'Report on the Public Employment Office Evaluation of the Position of Director-General Department of Community Service' was more succinct when he wrote:

> "What is condoned is an organisational pathology or culture with no proper regard for the binding obligation of ethical standards".

Perhaps even more poignant to the current state of the Australian Defence Force is the statements made by the President of France, Jacques Chirac on 13 January 1998. Extracts of his apology to the descendents of Captain Alfred Dreyfus and Emile Zola were published in 'The Age', 13 January '98, page 1. In part it reads:

> "The tragedy of Captain Dreyfus still speaks strongly to our hearts. We know that dark forces, intolerance and injustice can insinuate themselves in the very highest ranks of the state. But we also know that France can recover for the better, in moments of truth becoming great, strong, united and vigilant".

In contrast, the Chief of Air Force, Air Marshall E McCormack's state of mind or perspective was recently put on public record. He asserts:

> "Any suggestion that breaches of military justice have been condoned by senior officers is wrong".

No RAAF officer working on this military justice Audit Team could feel secure knowing he would ultimately be accountable to Air Marshall McCormack for any report that focused on failures of higher military leadership in military justice procedures.

Australians are fed up with costly Defence inquiries that pretend to get to the bottom of causes of abuse of power in the ADF. Inquiries controlled by the Department of Defence have been all to frequently abused to cover-up systemic failures of higher military leadership rather than as a means of correcting weaknesses in the system and redressing injustices.

Under these circumstances there can be no doubt that the moral integrity and professional competence of higher military leadership is inadequate for their positions of power and responsibility within the ADF.

Unfortunately there is no particular evidence that this current Audit Team has any special abilities or intent to analyse or correct serious cases of military injustice or abuse of power by higher military leadership as evidenced in the Warren case.

All of the Defence maladministration in the Warren case from 1981 appears to have the deliberate intent to deny natural justice to him by covering up the prior, wilful and malicious destruction of his career and reputation. If this is not the case then Defence's "several comprehensive and objective examinations of the case" would have discovered the "errors" and "unfairness" that were exposed by the joint findings of the 1993 AAT hearing and the 1994 Salmon QC report.

It also seems that decision-makers and scrutineers of the case have put their own conveniences and self-interest above the law. This is revealed by the

shortcomings of both the 1993 AAT hearing and Salmon QC's 1994 report. These two "audits" by offices of the court covered up the wrongdoings of Warren's superior officers to bring about the destruction of his career and reputation.

The process of the 1990 Department of Defence's examination of the Warren case, at the behest of the Governor-General, revealed the very same violations of proper exercise of authority, as did the investigations carried out by the Executive Officer, Office of the Defence Force Ombudsman in 1982. These violations were again repeated in its investigations of the case at the direction of the then Prime Minister, Mr R Hawke in 1985 and 1986.

These grave systemic abuses of authority were reported back to the Commonwealth Ombudsman, Prime Minister and the Governor-General by Mr Warren 1990 to date. These ministerial representations gave detailed facts and evidence of how higher military leadership has corrupted military justice procedures and administration so as to subvert and pervert the rule of law within our Westminster system of government.

The indifference or incapability or both of successive responsible minister's responses to Warren's representations appear to have sent a clear message to higher military leadership that they are free to abuse authority providing they are cunning enough to cover it up. This is exactly what Defence has attempted to do to-date in the Warren case. Tacit complicity by the responsible minister(s) incites systemic abuse of authority by higher military leadership as does ministerial incompetence and ineptitude. Such failings are starkly exposed in the Gordon Bilney decision of 30 July 1990 against Warren. This systemic abuse of authority is also exemplified by Major General Carter's evidence and performance at the 1994 AAT hearing on the Warren case.

Unchallenged irresponsible military leadership has been allowed to fester into a selective "rule of corruption". This is what the former Minister for Defence, Mr Moore came up against in 1998. And he was not hesitant to publicly denounce aspects of this.

The 1994 Salmon QC, Investigating Officer's report into the Warren case is far more cunning and deceitful than previous investigations done by Army. Salmon's opinions were clever to ignore the evidence of where, when and how Warren's superiors manufactured evidence and abused process and authority to deliberately destroy his career and reputation. And by Salmon's own hand on 8 December 1994 he declared that his:

> "Terms of Reference did not require me to make decisions concerning the strict application of the rule of procedural fairness".

Enclosed are a selection of case documents, which might assist your audit in its examination of this outstanding case of abuse of authority and corruption of procedural fairness 1980 to date.

Warren's case is characterised by failed standards of ethics in military leadership; systemic and long-uncorrected maladministration; official arrogance, scarcely concealing its corruption of authority and without any concern for the insidious violence it knowingly has inflicted; and the extensive use of audits or reviews to repetitiously cover-up cover-ups.

It is well known to bureaucrats and politicians that neither Parliament nor the courts have direct control of military officials. This power is exercised by the Prime Minister if that minister fails. The rule of law in Australia embodies ministerial responsibility for the commissions and omissions of his/her

subordinate officials. This particularly applies in the Warren case where ministers have made personal decisions on the case against him.

This case reveals that ministerial control and leadership over the corruption of the military commanders has been a total failure. The case also reveals that decisions by the AAT, when mateship and cronyism is involved, needs to be audited by impartial outsiders.

Department of Defence has always held the complete set of records of the circumstances surrounding Warren's forced termination from Army. It also has comprehensive records of Warren's ministerial representations and the minister's replies to them.

The Commonwealth Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade, Defence Sub-Committee, 1998 Inquiry Into Military Justice Procedures in the ADF have published 3 of Warren's 6 submissions to it. These give some details of his case history. They are to be found in Volumes I and IV as submissions Nos 5, 5.1 and 5.2

For more detailed accounts of the ex-Major Warren case see website:

http://www.uow.edu.au/arts/sts/bmartin/dissent/documents/#workplace

Once into this website click on "dissent documents" then go to "workplace problems, including bullying". Scroll down to Australia and the case study Allan Warren can be readily identified.

Your official examination, or audit of military abuse of authority cases runs in sequel to the several previous audits of my case, which involves systemic

improbity by higher military leadership. These past examinations have acted to cover-up all evidence of the improper or corrupt conduct of Warren's then-superior officers in 1980-81. I can only trust that Admiral Barrier is being honest in expecting you to handle fairly cases like mine.

I request that I be allowed to attend and give verbal evidence to your audit.

Should you consider that you require additional documentation from me on this case I would be pleased to provide it to you.

Yours sincerely,

A K Warren

Mr Allan K Warren