



Inspector General Australian Defence Force

IGADF, Department of Defence, 91NBA-2-44, PO Box 7924, Canberra BC ACT 2610

Julie Dennett

Committee Secretary

Senate Standing Committee on Legal and Constitutional Affairs

E-mail: legcon.sen@aph.gov.au

Dear Ms Dennett,

1. I refer to your email of 3 July 2012 inviting me to make a submission to the parliamentary inquiry into the Military Court of Australia Bill 2012 and the Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012.

2. I welcome the establishment of the Military Court of Australia (the MCA) and the stability which I trust it will bring to the ADF military justice system. While I understand and support the general intention to bring aspects of the military justice system closer to what may be described as community norms, I believe it is important to keep in mind that the military justice system, of which the MCA will represent the pinnacle, is there to fulfil a specialised purpose which is not always, or necessarily, directly comparable to the objectives of a civil system. In particular, the primary role and underlying rationale of the military justice system is to assist command with the maintenance and enforcement of Service discipline in a manner that takes due regard of the individual rights of ADF members. This means that while aspects of the military justice system may be similar to the civil system, they are not interchangeable. There will be a limit therefore to the extent to which the two systems can be usefully aligned without detracting from the disciplinary purpose of the military justice system.

3. The MCA, as its name implies, will essentially serve a military purpose. It is important therefore that it should be able to accommodate, as far as possible, the fundamental requirements of the military justice system of which it will be a part. In short, these are that the military justice system must be able to function seamlessly in times of peace and war, both in Australia and, where necessary, overseas when the Defence Force is deployed. I would add to this a further requirement that matters be dealt with speedily so that their disciplinary purpose does not become lost.

4. I am aware that concerns have been expressed in some quarters regarding certain aspects of the MCA's intended operation which I simply flag as issues of note. As I understand them, these concerns include:

- a. The abolition of an ADF member's right to have questions of fact determined by a member or members of the ADF familiar with recent military service, as is presently the case under provisions for General and Restricted Courts Martial. This is essentially the so-called 'jury' issue which arises from the decision to

characterise all Defence Force Discipline Act offences as being non-indictable for the purposes of the MCA.

- b. The retention of the court martial system in recognition of the possibility that the MCA may not be able to sit in some overseas locations: While this may be a pragmatic solution, two issues have been raised in this regard. First is a concern that, on paper at least, members of the ADF will in certain circumstances be subject to parallel higher tribunal regimes, and second, that this will necessitate measures to preserve expertise in conducting courts martial for what may well be few occasions of actual need. Of course, should such a need arise, 'just-in-time' training may not be ideal.
 - c. The interface between the ADF and the Court. Clearly there will be a requirement for this to occur and therefore appropriate administrative arrangements will be required to ensure there is a smooth and harmonious interface between the Court, its registry and the ADF. Those administrative arrangements will need to cover, for example, matters such as sitting locations to ensure that the MCA's proceedings are visible and relevant to the ADF population. The administrative arrangements will also need to take into account the summary system as well as the nature of ADF offences and offending.
5. Thank you for the opportunity to make a submission on these matters.

Geoff Earley, AM
Inspector General ADF

13 July 2012