

# Chapter 1

## Introduction

### Reference

1.1 On 16 August 2007, the Senate referred the provisions of the Defence Legislation Amendment Bill 2007 (the bill) to the Senate Standing Committee on Foreign Affairs, Defence and Trade for report by 5 September 2007. The committee tabled a four-page interim report on 5 September indicating that it would be tabling a final report on or before 10 September 2007.

1.2 In accordance with the usual practice, the committee advertised the inquiry in *The Australian* on 22 August 2007, calling for submissions by Monday 27 August 2007. The committee also directly contacted a number of relevant organisations and individuals to invite submissions.

1.3 Eight submissions were received as listed in Appendix 1. A public hearing was held in Canberra on the morning of 5 September 2007. The witnesses are listed in Appendix 2.

1.4 Having examined the proposed legislation, the committee prepared written questions on notice to Defence. These questions, included as Appendix 3, were sent to Defence on 30 August 2007. They dealt largely with minor drafting matters or were seeking clarification on terms used in the legislation. Rear Admiral Bonser and the Military Justice Implementation Team replied to the committee's inquires. Their responses are included as Appendix 4.

### *Acknowledgments*

1.5 The committee thanks all those who contributed to its inquiry by preparing written submissions and giving evidence at the hearing. Their work has been of considerable value to the committee. The committee particularly thanks Hansard staff for their efforts in producing a proof copy of the transcript of the committee's public hearing in a very short timeframe.

### **Background to the bill**

1.6 The purpose of the Defence Legislation Amendment Bill 2007 is to give effect to key elements of the government response to certain recommendations of the June 2005 report, *The Effectiveness of Australia's Military Justice System*, by the Senate Foreign Affairs, Defence and Trade References Committee. The changes are intended to ensure the right balance between the maintenance of discipline, which is

critical to operational effectiveness, and the protection of the rights of Australian Defence Force (ADF) members.<sup>1</sup>

1.7 The bill will amend the *Defence Act 1903* and *Defence Force Discipline Act 1982* to streamline and restructure summary discipline procedures, with simplified rules of evidence, a right of appeal from a summary authority to the new Australian Military Court (AMC) and a right to elect trial by the new AMC instead of a summary authority.

### **Outline of the bill**

1.8 The bill is divided into 8 Schedules:

- Schedule 1 introduces amendments for the election for trial by the AMC;
- Schedule 2 introduces amendments for appeals to the AMC;
- Schedule 3 introduces amendments regarding evidence in summary proceedings;
- Schedule 4 provides a mechanism for a review of all levels of summary proceedings;
- Schedule 5 amends various offence and punishment provisions in the *Defence Force Discipline Act 1982*—this includes changes to definitions of illegal drugs;
- Schedule 6 introduces amendments regarding minor disciplinary infringements;
- Schedule 7 introduces other amendments; and
- Schedule 8 deals with application, saving and transitional provisions as the other new amendments take effect and supersedes old legislation.

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1 Explanatory Memorandum (EM), p. 2.