

- (b) at approximately 3.30 pm, Senator Cook may make a valedictory statement for not longer than 20 minutes;
 - (c) the routine of business from 6 pm to 11 pm shall be valedictory statements; and
 - (d) the question for the adjournment of the Senate shall be proposed at 11 pm.
- (4) On Wednesday, 22 June 2005, the routine of business from 9.30 am till not later than 2 pm and from not later than 4 pm till not later than 6.50 pm shall be valedictory statements.

Senator LUDWIG (Queensland—Manager of Opposition Business in the Senate) (10.00 am)—by leave—Just by way of explanation, I think it is helpful to put this on the record. This motion has been moved because people are going to engage in valedictory speeches on Wednesday and we do not know how long that will take. The objective is to ensure that we have question time, motions to take note of answers and then time for legislation and government business if needed. We can then allow the program to be moved to accord with that and then go back to a predominantly normal Wednesday, as the case will allow. I think senators need to understand that. Of course, in the last week of sitting, we need to ensure that there is sufficient flexibility in the system to ensure that people can make their contributions, but we must also ensure that the legislative program can be dealt with and we do not allow ourselves to be too fixed.

Question agreed to.

NOTICES

Postponement

Senator ELLISON (Western Australia—Manager of Government Business in the Senate) (10.02 am)—I move:

That government business notice of motion No. 4 be postponed to the next day of sitting.

Question agreed to.

(Quorum formed)

COMMITTEES

Foreign Affairs, Defence and Trade References Committee

Report

Senator GEORGE CAMPBELL (New South Wales) (10.05 am)—On behalf of Senator Hutchins, I present the report of the Foreign Affairs, Defence and Trade References Committee on the effectiveness of Australia's military justice system, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator HUTCHINS (New South Wales) (10.05 am)—I seek leave to move a motion in relation to the report.

Leave granted.

Senator HUTCHINS—I move:

That the Senate take note of the report.

On 30 October 2003 the Senate referred to the Senate Foreign Affairs, Defence and Trade References Committee an inquiry into the effectiveness of the military justice system. Seventy-one public submissions, 63 confidential submissions, 11 public hearings and seven confidential hearings across Australia later, we have reached some stark conclusions about the limits of justice afforded to members of the ADF. We received witnesses ranging in rank from cadets and recruits to the CDF and every rank in between. One of those witnesses, General Cosgrove, said:

... the control of the exercise of discipline, through the military justice system, is an essential element of the chain of command ...

The committee agree, but we part ways where General Cosgrove feels he can have 'every confidence that, on the whole, the military justice system is effective and serves the interests of the nation, the Defence Force and its people'. The committee cannot share this assessment. The sheer volume of the evidence this inquiry has heard leads us in the other direction. Our military justice system is failing the members that it should be protecting. In short, the system is broke and needs fixing. On both sides of politics we have lost faith in the ability of the ADF to appropriately investigate serious incidents, discipline its members through a just process and maintain a necessary level of independence. Over the last few years the ADF has provided Australia with an exceptional service and dedication to duty. Now, in reforming the military justice system, it is time to repay that debt. The service men and women of Australia deserve the military justice system that this report recommends.

One of the greatest disappointments for the committee has been that time and time again, in inquiry after inquiry and report after report, the ADF has remained obstinate in the face of gaping shortcomings in the military justice system. The ADF has simply squibbed the chance for change. We have had nearly a decade of rolling inquiries on the one hand and only inertia from defence on the other. This report draws a line in the sand. Unlike its predecessors, it cannot be discounted as referring to an isolated incident or a series of discrete events. Its evidence is too persuasive and its recommendations are too strong for that. What is more, our soldiers, sailors and airmen deserve better.

The committee has been compelled by the evidence of bereaved families. Defence has been dragging the chain for far too long. There was the 1997 Abadee study into the legal basis of the military justice system. There was the 1998 Ombudsman's own motion investigation into the ADF's poor handling of serious incidents. There have been previous joint committee in-

quiries on brutality in the Parachute Battalion and selected justice procedures. In 2001 there was an inquiry by Burchett QC into military justice. At every stage, defence has blundered, obfuscated, frustrated, blurred and denied its responsibility for the shortcomings that each and every one of these reports has found.

At the same time, the PR effort has been unmatched, with up to 30 uniformed and civilian personnel shadowing the committee's recent inquiry. I note that they were called the 'tiger team'. Defence got off to a bad start with the leaking of the now infamous Hogan email. That email instructed members of the tiger team to place 'internal working documents' at every page relating to correspondence with our inquiry. The purpose of this move was to stop any adverse information being subject to freedom of information requests. I could not help but think at the time that defence must have had something to hide. What became immediately obvious was just how serious the last decade of stalling has been. The result has been a mishmash of half-measures and overlapping agencies, all with their own glossy brochures. One could easily lose track of where a particular matter should go or where is the next level of appeal. Even *Army News*, which, along with the other service papers, has been following the inquiry with some interest, needed to publish a story with the subheading: 'It might seem complex, but the Military Justice System is relatively straightforward'. I can only presume to know what 'relatively' means.

However, all these initiatives remain squarely within the ADF's chain of command. Time and time again in evidence to the committee, bias and perceptions of bias became the reasons why both the disciplinary and administrative systems were seen to be failing. In many cases levels of appeal are located immediately within a defence member's chain of command at their base. In addition, the Director of Military Prosecutions has expressed significant concern that his office is under-resourced and its independence is not protected by legislation. An audit of the 1st Military Police Battalion found that not only is it under-resourced but its staff are often without adequate training or direction regarding their investigation work. Is it any wonder that ADF members feel suspicious at best about statements that the system is working in their best interests?

The committee have made the hard decision to recommend that service discipline investigations, when they relate to criminal matters, should be handled by civilian police, who are for the most part a few kilometres beyond the barracks gates. On operations and for military related offences, the service police will still take charge. But, from the evidence the committee have heard, we cannot trust the service police to investigate what are simple and ordinary criminal matters. In some cases, investigations have lasted for several years, with a poor quality of investigation throughout.

Often there is a lack of independence in pursuing matters and even less so in the decision to prosecute.

The most striking example of this is a former SAS soldier who was investigated in secret for nearly two years due to spurious allegations of war crimes. He found out that he was being investigated only on the day that he was charged. He had to endure the rumour mill, the slur and innuendo, whilst performing his already difficult duties. Even the top brass jumped on the bandwagon, rolling out the media releases to demonstrate how they were cracking down on brutality and ill discipline. However, those sound bites cannot describe the woeful inadequacy of the investigation. Poor evidence collection, inept handling of witnesses, inordinate delay and dubious use of forensic evidence culminated in the trial being abandoned and adverse administrative action being taken instead. It is an all too common example of: 'If the discipline system doesn't get you, the administrative system will.' The SAS soldier's case finished with a public apology by the CDF to the soldier concerned. It is difficult to believe that even after that incident the ADF still feels that the system is sound.

The government has stalled on legislation that will provide independence to the Director of Military Prosecutions, or DMP. Despite promising and promising, no legislation has been forthcoming from the government to give real independence to prosecution decisions. Whilst the workload of that office has increased enormously, its resources and independence have not been guaranteed. The DMP is still within the chain of command. Problems continue with the administrative investigations and inquiries that defence must undertake into serious incidents, such as boards of inquiry, the redress of grievance and the review of command decisions. Again, we have heard that untrained investigators, poor investigation, delay and a lack of independence and impartiality all contribute to a loss of faith in the system. One witness who had been through the strain of pursuing a complaint understood how a person's resolve could be worn down by stress and subtle pressure and how he or she would give up as a result of having been delayed to death by the military justice system. Another witness who had experienced obstruction, lack of information and confusion about the procedure surmised:

Imagine an ordinary soldier: most of these kids cannot handle all this kind of stuff ... The diggers are just overwhelmed by this.

Many of those subject to allegations have endured long periods of uncertainty and anxiety. One witness has yet to be formally advised of the outcome of a four-year investigation. In his mind, the delay clearly rests with the Army, which he says:

... has at great time and expense afforded itself every opportunity to bring a case against me. It has had lawyers repeatedly review decisions and has employed a dysfunctional

process that contravenes the fundamental human rights of justice delayed is justice denied.

The committee found that missing or misplaced documentation; poor record keeping; the withholding of information; conflicts of interest; lack of support in processing a complaint; and investigating officers who lacked the necessary skills, experience or training to conduct a competent inquiry all contributed to unnecessary delays.

What is even more concerning is that for many serious incidents a decision was made not to hold a board of inquiry. These incidents included: systematic brutality and harassment in at least two training schools; several suicides and breakdown of morale; two cadet incidents involving female minors, including the tragic suicide of Cadet Sergeant Eleanore Tibble; and major drug problems in a unit. All those incidents occurred after a massively publicised ADF-wide stand-down on 5 February 2001 by Admiral Barrie. Despite having been told by the then CDF that the behaviour mentioned above was unacceptable, a few months later, suicides were occurring.

The PRESIDENT—Order! Senator, your time has expired.

Senator HUTCHINS—Mr President, I have 15 minutes.

The PRESIDENT—I am sorry, but the standing orders say 10 minutes. I was not informed that anything else had been agreed to. I can only go on the standing orders.

Senator HUTCHINS—(*Extension of time granted*) Why were the suicides occurring? Because the brutality and bullying had not stopped. It is clear that there is a wider disciplinary and cultural problem inside Defence. Those bad apples are not being weeded out and dealt with. At the same time, ordinary hardworking soldiers and defence personnel are getting caught in a system which does not guarantee basic rights and does not give them an adequate means of redress. It is not a question of more rights or more cracking down: we demand that the ADF simply ensures that the rights of all its members are respected.

The sheer weight of this report, at more than 300 pages, defies any suggestion that these incidents are isolated matters. This reflects a systematic breakdown of both the administrative and discipline arms of the military justice system. The committee's reforms make the case for independence. They now set the bar for Defence to match. The committee proposes that a statutory independent board called the ADF administrative review board have oversight of all administrative complaint matters. If these matters cannot be resolved internally within Defence, then the board would have an appropriate team to investigate complaints and a process of redress. If the chair thinks a more formal inquiry is required, then they can refer matters on to

the Administrative Appeals Tribunal—a body with an impeccable reputation.

Recommendations have also been made to increase independence and fairness in the investigation and prosecution of service offences. By allowing service police to concentrate on their job in the field, not only will the quality of investigations be improved but the MPs can get on with their core business. In the same way, with an independent DMP ADF members will be assured that prosecution decisions will be made in a fairer manner. Moreover, the committee also recommends the establishment of a permanent military court to replace ad hoc and inadequate courts martial and Defence Force Magistrate trials.

The committee has balanced these recommendations in light of the special demands placed on members of the ADF, especially those serving on operations. We remain firm in our conviction that the service men and women who fight for our ideals should not be denied them by virtue of their service. They deserve the rights and respect which the military justice system has denied them for too long.

I would like to thank, in the first instance, Saxon Patience and her successor at the secretariat, Dr Kathleen Dermody, as well as the staff: Ann Flynn, Peta Leemen, Jessica Shaw, Jenene James, Pam Corrigan and Angela Lancsar. Without all their work, this report would not have been possible. The CDF—General Peter Cosgrove—and the three service chiefs all deserve my thanks for participating in what was no doubt a difficult inquiry for them. No-one likes to have their processes put under the glare of the media spotlight. Throughout that time, they kept a constructive approach and no doubt recognised in their own way the very important reforms that needed to take place. I am heartened by their comments. We look towards the committee exercising some degree of oversight of this in the future.

Finally, the numerous witnesses—the ordinary ADF personnel, family members and high-ranking officers—who made submissions to the committee deserve our thanks. They and their families are on the front lines in an ever uncertain world. I can only offer solemn hope that this bipartisan report offers some comfort to those families who have lost their serving members through suicide or accident and have found the subsequent inquest not deserving of their relation's memory. It is my sincere hope that such incidents never happen again. It is for all those families that these recommendations must be adopted.

The PRESIDENT—I thought there may have been some informal arrangements made about the time for speeches, but perhaps that is not case.

Senator Chris Evans—Mr President, there were.

The PRESIDENT—According to Senator Bartlett, there were not. As it is not the wish of the Senate that we adhere to the informal arrangements that were made by some senators, we will stick to the standing orders, which is 10 minutes.

Senator SANDY MACDONALD (New South Wales) (10.21 am)—The report of the Foreign Affairs, Defence and Trade References Committee is a comprehensive report which deals with our existing military justice system—both the disciplinary system and the administrative system. Defence is a large and mostly highly effective organisation employing around 70,000 Australians in uniform and many thousands in support. Wives, husbands and children of serving personnel also play a unique role in support of the ADF. It is an organisation charged with the most fundamental of tasks: the defence of our country. They defend the air-sea gap surrounding the Australian mainland, help secure our regional neighbourhood, stand ready for civilian assistance both at home and abroad, join international efforts to serve world peace and also deal with many other contingencies. It is an organisation spread across our country, with large blocks of real estate and disparate operations.

The men and women who make up the ADF understand their unique role and the special pressures that are placed on them. In the main, they understand the difficulty of an effective disciplinary administrative system for such a large and diverse organisation charged with such an important job. However, many understand the considerable shortcomings as well. The report highlights the shortcomings and ineffectiveness of the present system. It is not that the decision makers in the ADF are unaware of the problems; it is just that, despite considerable effort from them and considerable effort from the parliament over the last 10 years or so, as identified by Senator Hutchins, the weaknesses remain.

It has become increasingly apparent to the committee that the disciplinary system is not striking the right balance between the needs of a functional Defence Force and the service members' rights. Both suffer accordingly. In the broad, it is simple to understand why. You have an organisation that must be trained and prepared to win wars but, at the same time, must be a sympathetic employer which sometimes has to apply discipline to its work force which may be unacceptable in a workplace elsewhere. The committee believes it is time to consider another approach to military justice. It considers that all criminal activities should be referred to civilian authorities for investigation and prosecution. It also considers that the creation of a well-resourced statutory independent director of military prosecutions is a vital element of an impartial and fair military justice system.

The committee considers the establishment of an independent permanent military court, staffed by independently appointed judges possessing wide civilian experience, would extend and protect service members' rights, leading to more impartial and fairer outcomes. The committee also recommends that reform is also needed to give greater independence and impartiality in summary proceedings. Summary proceedings affect the highest proportion of military personnel. The committee heard that the disciplinary process has important consequences for the mental health and wellbeing of service members and their families. The committee was very moved by many of the experiences brought before us by way of submission and in person. The terms of the inquiry and the very nature of some complaints make it impossible for the committee to address the heartache expressed in some of the submissions, but I hope that those families will gain some relief from the extensive nature and subsequent recommendations of the report.

The committee also identified serious problems with the administrative component of the military justice system. The committee has made a number of recommendations in this area. The key one is designed to establish an independent grievance and complaint review body. This initiative is intended to remove from the system the main problems that undermine its integrity and credibility at present. The committee hopes that it will encourage ADF personnel to report wrongdoing or to make a complaint. It will enable those who feel unable to pursue a matter through the chain of command to seek redress through an independent and impartial body. The independent review body will take on an important oversight role to ensure that investigators are better trained, that inquiries preserve the principles of procedural fairness and that delays can be minimised. It will make the position of those persons caught up in the military justice system more comparable with the rest of the Australian community, and I think we should expect that.

The recommendations of the committee are designed to put the ADF community in reach of a justice system that is vigorous, impartial and directed to fair outcomes and also to ensure that the transparency of the justice system is apparent to all. I would like to acknowledge the considerable effort that the ADF made in cooperating with the committee. They are good people, in the main, and they are determined to improve the system. But problems are sometimes so overwhelming that the participants do not know where to start. That was often the case when problems were identified. It was not because of a lack of goodwill from the ADF; rather, it was an inability to respond because the system itself was in need of a complete overhaul.

This inquiry was a mammoth effort. The staff on the committee should be given an enormous pat on the back for the consistency of their effort and for the report. The inquiry has extended over nearly two years. I would like to personally thank all the members of the secretariat who worked so hard on the report. It was headed by Dr Kathleen Dermody, who has been the secretary since November. I also thank the other members of the secretariat who played an extraordinarily large part in this: Ms Jessica Shaw, who did a great job; Peta Leemen; Pam Corrigan; Jenene James; Angela Lancsar; and also Saxon Patience, who was the acting secretary until November 2004. She, like Dr Dermody, brought an intellectual rigour to this report that was quite extraordinary.

I also thank my fellow senators—Senator Hutchins, Senator Evans and Senator Johnson. I would particularly like to thank Senator Payne, who cannot be here today because her mother is ill. Senator Payne's contribution to this report was considerable. She has a special interest in the wellbeing of the people who serve in the ADF, and she brought her very considerable legal knowledge and intellectual horsepower to this report. I do not think the report would have had the same weight of importance if she had not been on the committee. The committee should thank her and other members of the committee for a job well done. I commend the report to the Senate and I look forward to the government's response.

Senator BARTLETT (Queensland) (10.28 am)—I would also like to speak to the report of the Foreign Affairs, Defence and Trade References Committee on the effectiveness of the military justice system. It is an important report, and for that reason it is pleasing and appropriate that so many people wish to speak to it. I also add my congratulations to the secretariat for the work they did and to the other senators—some of whom have just been mentioned—who put a lot of work into the inquiry. It is an area that is very important and it is one that I followed as closely as possible as well. I was not able to put in as much work as many of the other senators, simply because, as a smaller party, we do not have the resources or people to do so. But I and my staff followed the submissions and the evidence quite closely, and the broader principles involved that are outlined in the final report are ones that I hope people will take seriously.

I also hope the families of those who were affected by many of the tragedies that were examined by the inquiry take some comfort from it, because the group that needs to be most thanked contains some of the so-called ordinary people. It is always misleading to use the phrase 'ordinary people', but in this context it means the families, mums, dads, siblings and friends who participated in the inquiry, in some cases on be-

half of those who lost their lives through various incidents.

The imagery of one of the public hearings that I did go to was a reminder of just how imposing it can be for a so-called ordinary person to appear before a Senate committee, particularly when you have rows and rows of senators, Hansard and Broadcasting staff, military brass in their uniforms and medals et cetera and everything else there. For a person to come forward in that context, not just to speak and take questions but to talk about incidents that, for some of them, are still immensely painful, takes a special type of courage, and it should be recognised, because they do it on behalf of those who no longer can and for the sake of trying to ensure that others do not have to go through what they have gone through. Their effort must be especially recognised.

It has to be emphasised that this is a strong report. It is a difficult area. The Defence Force is a unique body, unlike any other. In that sense, it is special, but the people who serve in it are also special, and they certainly deserve justice wherever possible. It must be emphasised that the view of the Defence Force that the military justice system is sound was not concurred with by the committee. That is the fundamental issue. There are a lot of good, strong recommendations to address that which I hope the government and the Defence Force take very seriously, because they were put forward in good faith. This inquiry was conducted in a way that did not seek to score political points, point the finger at people or appoint blame by finding one or two scapegoats. It was an inquiry conducted seriously to try and find a better approach around an issue that is never going to be perfect. In that context, I hope the government and the Defence Force take those recommendations seriously.

That is the core of this report. There are many details I will not go into; I will let others do that. However, the single message I want to reinforce on behalf of the Democrats is that the important aspect was the process that was followed by this inquiry. As I mentioned, it was very thorough. That is a sign of how seriously the Senate, the senators and, in the main, the Defence Force took the inquiry. The next stage is that the report's recommendations and findings be seriously considered, and, unless there are very good reasons to the contrary, that the recommendations be adopted. My interest from here, on behalf of the Democrats, is to follow and monitor that to try and ensure that that happens. I think we as a Senate owe that to all of the people in the Defence Force, but in particular we owe it to the families and the people who have been touched by some of the incidents that were specifically examined by this inquiry.

I will soon stop in the interests of allowing sufficient time for others to speak. However, I might say to oth-

ers that, if they want to make arrangements to allocate certain amounts of time for people to speak, it would be nice if they actually consulted with all of the parties beforehand—we might then get a little more certainty about what will happen here. Naturally, the smaller parties always have fewer resources and people, and obviously the Democrats will have even fewer people again after July, but that does not mean that we do not take these issues seriously. Certainly, my and the Democrats commitment is to continue to monitor this.

Work has been done on this on all sides, and, as I said, particular effort has been made by some individuals, families and others who took that confronting and difficult action of appearing before a committee and opening up their personal pain and lives to public scrutiny. That was a necessary but also particularly important action. So I think for their sake—perhaps even more than for anyone else's—and for the sake of everybody who is part of the military, we owe it to them to continue to monitor this issue. I am sure that all the senators who took part in this inquiry would not have put in the amount of time they did to then just table the report and forget about it. A big part of the task is done, but there is still work to be done, and the Democrats certainly commit to do what we can to monitor that in a cross-party way to ensure that, as much as possible, our military justice system can do what any military justice system must do, which is deliver justice. The people in the Defence Force deserve that as much as everybody else in the community.

The ACTING DEPUTY PRESIDENT (Senator Marshall)—I understand that there is now agreement about speaking times, and I have asked the clerks to set the clock accordingly.

Senator CHRIS EVANS (Western Australia—Leader of the Opposition in the Senate) (10.36 am)—Last year the Chief of the Defence Force, General Cosgrove, said:

The military justice system is sound, even if it has sometimes not been applied as well as we would like.

... ..

I have every confidence that on the whole the military justice system is effective and serves the interests of the nation and of the Defence Force and its people.

General Cosgrove, you were wrong—dead wrong. The military justice system is a shambolic, dysfunctional mess and it is failing the young men and women who enlist in the ADF to serve their country. This report is a damning indictment of a system that fails to provide 21st century standards of justice for our service personnel. The report comes out of some 20 months of evidence gathering. It details flawed prosecutions and failed investigations into suicides, accidental deaths, major illicit drug use and serious abuses of power in training schools and cadet units.

The unanimous recommendations of this report call for a major overhaul of our system of military justice. This report demands action—not at the edges or periphery but at the centre of the system. It demands that military justice be taken out of the hands of the military and replaced with a transparent, independent system which ensures our service people have the same right to justice as all other Australians—a good justice system that is based on the notions of impartiality, transparency and accountability. We do not seek to interfere in the command system or its capacity to meet its military objectives, but we are certain that it is best that the military justice system be made independent of that process.

If these recommendations are implemented, it will mean that for the first time all criminal investigations will be handed to the civilian police in the first instance and dealt with in the civilian courts, giving our service people access to the same principles of justice that are available to every other Australian. Criminal activity is criminal activity, and if it occurs it should be treated as such. Criminal activity occurring during overseas operations is obviously a different matter, and we recommend that it be investigated by the Australian Federal Police. The recommendations call for an independent director of military prosecutions and the establishment of an independent military court staffed by independently appointed judges.

If the recommendations are implemented, complaints such as mistreatment, abuse and bastardisation will be referred to an independent review board outside of the military chain of command. This will ensure impartiality, transparency and independence. It will also expose such incidents to public scrutiny. This will make sure our service people do not continue to suffer through systemic or arbitrary abuse. Too many times the committee heard evidence which showed that the military fails to address major issues of bastardisation and mistreatment. This will ensure that soldiers will put greater pressure on the chain of command to be accountable for what happens in their units. Parents who see their children join the ADF will have confidence that they will be treated properly. This will also assist us in addressing recruitment pressures that occur.

These are the principal recommendations that the committee have unanimously agreed to. The committee have worked hard to make sure we had a unanimous report, because we want to make sure change occurs. The unanimity of the recommendations underlines the depth of the rot in our system of military justice and the committee's view of the urgent need for substantial change. If respect for the sacrifice of our servicemen and servicewomen means anything it means that these recommendations will be enacted without revision and without delay.

The establishment of this inquiry followed extensive representations from the families of service personnel. They drove this report. It would not have been possible without their courage and their candour. It was difficult for many of them. The stories of these families are detailed within the report. These are heartbreaking stories of young people victimised by the very people who are charged with their care. There are stories of suicide, attempted suicide, verbal and physical abuse, racial and other discrimination, and they reflect some of the worst aspects of our society. No-one pretends that the ADF can be free of these things, but they can deal with them appropriately and meet modern standards of accountability and justice. The submissions tell of parents sidelined and given false information by the military following the deaths of their children. These are awful stories that really troubled all committee members.

Unfortunately, the committee were not able to investigate the circumstances of the submissions. We were not a court and we could not make findings on each of the deaths or each of the incidents brought before us. It was this that troubled the committee in agreeing to this report and this process, because we knew we could not deliver what a lot of the families wanted from us. But what we hope we have delivered is an answer for them that will make the system better. The submissions show patterns of wholesale abuse and a systemic failure to ensure natural justice for service people. The families who have contributed to this report deserve our respect and we must ensure that their pain is not visited upon the families of Australian service people in the future. We must use their experiences to make the system better and to make it work for future personnel.

The inquiry was initiated in 2003, following 10 years of inquiries of various sorts into the ADF's justice system—inquiries that recommended changes but that failed to provide the impetus for substantial change. Events surrounding the mistreatment of Private Amos and the death of Private Jeremy Williams brought the issue to a head and were the main impetus for this inquiry. I drafted the terms of reference after finally spending time with Jeremy Williams's family and examining their case. At the end, I could not do anything but ensure that the Senate got involved in these issues. Because their case was so compelling and the failure of the military to respond was so breathtaking I agreed that we would launch the inquiry. I am very grateful for the cross-party support we got for the inquiry and for the conduct during it.

In early 2000, Private Amos was subjected to illegal and intimidating behaviour during initial training at the School of Infantry. His parents alerted authorities to their son's treatment, but nothing was done. They contacted the minister's office in the hope that senior officers would fix the problem. But Private Amos remained locked up in the guardhouse, imprisoned with-

out reason or charge, and segregated from other detainees. He was deprived of his liberty without recourse to legal advice and without being charged. No wonder he was discharged from the Army later at his own request. After reading about separate allegations of bastardisation in the 3rd Parachute Battalion, his parents wrote again to the minister requesting an investigation into the events surrounding their son's treatment at the School of Infantry. Private Amos's father wanted to ensure that the mistreatment that their son experienced would not be experienced by other recruits in the ADF.

An internal Army investigation was carried out, recommendations were made and Mr Amos was informed that the problem had been fixed. But this was not true. No changes were implemented at the School of Infantry—the report was filed. In 2001 there was an external inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade, which completed its examination of bastardisation in the 3rd Parachute Battalion, and there was the Burchett inquiry into military justice. But in early 2003 fresh allegations were made of abuse, denigration and bullying of young soldiers at the School of Infantry. Despite three separate official investigations and comprehensive recommendations, nothing changed—there was no accountability, no responsibility and no justice. The system just could not bring itself to change. The inertia drowned out the serious calls for fundamental change.

This series of allegations at the School of Infantry indicated a range of areas of concern. Young soldiers were unable to access a sympathetic administrative and reporting system that encouraged exposure and proper conduct. As the committee report states:

Young men chose to remain silent about abusive behaviour; seriously concerned parents raised concerns which were not acted upon; and, more importantly, members of the ADF in command positions were either blind to, or ignored warning signs.

In February 2003, Private Jeremy Williams committed suicide at the School of Infantry after a period of extensive bullying and in spite of a phone call by his father, Mr Williams, warning unit staff of the family's concern for their son. Mr and Mrs Williams were treated very poorly after their son's death. Like many other families, they experienced anguish, distress, helplessness and agony. The Williams' determination and courage helped drive the impetus for change. It is now our duty to respect their courage, their pain and their experience, and that of many other families who have suffered in similar ways, and ensure that real changes are made. We cannot allow these circumstances to continue. Those serving and future Australians who volunteer to serve the nation deserve to be reassured that they will be treated better than those who feature in this report.

I thank all the families and concerned Australians who made submissions and I thank the committee secretariat for their great work. It is not normal to single out persons, but I do want to make special mention of former committee secretary, Saxon Patience, and Anne Flynn, who left during the inquiry. Their dedication and commitment helped make this process work. I also wish to thank Kathleen Dermody and her team who have helped bring it all together. They have all worked particularly hard, and their commitment to the issues is public service at its best. I would also like to make special mention of Mary Wood, a former employee of mine, who, luckily, had her uncle released from Iraqi kidnappers yesterday. She has been under enormous personal stress. Mary drove this inquiry. She was the one who worked with the families. She was the one who finally badgered me into making sure that we had this inquiry. Her work has been extraordinary.

This is a unanimous report across party lines. That is a credit to the senators who are on the committee and it is a credit to their goodwill and determination to help fix the problem. But it also reflects the seriousness of the problem in our military justice system and the urgent need for change. As a parliament, we cannot allow the recommendations of this report to be lost—as the joint standing committee's recommendations were lost and the Burchett report's findings were lost. We cannot wait until another young person is dead and until another family suffers the same misery as the Amos and the Williams families.

The ADF is manifestly incapable of performing its military justice role. The conflict between the command structure and the demands of a modern justice system seem unable to be reconciled. We believe very strongly that it is now time to create a new independent system, separate from the ADF's chain of command, that will ensure that the legal rights of ADF members are protected from now on. The Minister for Defence must use these unanimous recommendations to take action. Time should not be wasted. Urgency is one of the messages in this report. Service men and women are entitled to the standards of justice these recommendations would bring for them.

I will not go through individual cases, because time does not allow it, but the committee are keen for those families to know that their contributions and their experiences are what drove us and drove this report. The report is complex and goes to mechanisms to make the system better, but it is driven by the personal experiences of those who came before the committee. We cannot allow these injustices to continue. The report demands major change now. It demands a new and better system which provides the same rights to our service people as every other Australian enjoys. Joining the ADF does not mean that you have to give up any of your legal rights. It does not mean that you have

to give up your right to justice, to fair treatment and to access legal advice and normal procedures. Joining the ADF is a huge commitment, and one should not have to sacrifice one's legal rights in making that commitment.

We must act now. The ADF must be called upon to act now. This report is not a criticism of individuals or a criticism of people within the system; it is a criticism of a system that has been reformed in a piecemeal fashion over the years but which, as a whole, does not work. It just does not work. To recommend an extra bit here or a bit there would, in the committee's view, only add to the confusion, the lack of clarity and the lack of justice delivered by the system as a whole. The committee believes that we need root and branch reform. Piecemeal additions will not solve the problem and are not acceptable. We need to look at the experiences of the Canadian and British systems and say that, fundamentally, the demands of a modern society are such that we expect better of our defence forces in terms of the justice that its people are entitled to and we need a system that is transparent and accountable.

We will maintain the pressure. The report will not be filed away. I will not let the issue go, and I am sure the other senators on the committee will not either. We are going to pursue this because we think this report is a benchmark against which future actions will be held. Every failure in the future will be assessed against any failure to act on these recommendations. We cannot bring back those who have lost their lives, and there have been those who have been treated unfairly or been denied justice, but we can make it better for those who currently serve and those who seek to serve in the future. That is the responsibility of this parliament. It is the responsibility of all of us to make sure that the military justice system is reformed and that our ADF personnel get much better justice.

Senator JOHNSTON (Western Australia) (10.50 am)—In the brief time that I have been a senator, there have been two inquiries which I consider have been somewhat landmark in their impact and in the way that senators have dedicated and committed their valuable time in preparing the reports. The first was the inquiry into the DMO, the Defence Materiel Organisation—an organisation which oversees over \$50 billion worth of defence materiel acquisition. The second is the inquiry we are discussing today—the Senate Foreign Affairs, Defence and Trade References Committee inquiry into military justice in Australia. The most crucial and telling aspect of both of those inquiries was that the reports handed down were unanimous. There was no party politics and no point scoring involved in this exercise. This inquiry was undertaken wholeheartedly and earnestly for the benefit of the Australian Defence Force, its men and women and, indeed, the public of Australia.

I commence the 10 minutes that I have by paying tribute to each and every one of the committee members, including the chairman, Senator Hutchins. Special mention must be made of the tireless work, wisdom and assistance of Senator Payne and Senator Chris Evans in this very long, arduous and, at times, tortuous road since October 2003. I also pay great tribute to the secretariat. As a legal practitioner I came into contact with a broad range of events, often life-and-death related events, but the nature of the submissions received by this committee—the trauma, the stress and the graphic details of deaths, injury and abuse—was something that began, after a time, to impact on me. I have severe concerns about the impact that these graphic details of grief, loss and tragedy had on the loyal secretariat as they waded through 71 public submissions and 63 confidential submissions over the course of 18 public hearings. That was an enormous undertaking. I want to congratulate them for the professional and quite outstanding way they have endured the information.

I say to people not familiar with the life-and-death events that occur in defence: when you have 55,000 personnel, every day, week, month or year people will die. The circumstances of those deaths are often graphic, distressing and shocking. So I want to pay special tribute to the secretariat for bringing it all together in the way that they have and keeping it in a digestible form. It has been a Herculean task.

I also want to pay tribute to the Australian Defence Force and their senior officers. This has not been a welcome inquiry for the ADF, for obvious reasons. Having a group of senators putting their heads inside the ADF, seeking critical information as to how they conduct their innermost workings, has been difficult for them. It is the contemporary way, and I must say that in the service chiefs I see the new horizon; I see the new outlook and the new professionalism that goes with conducting Australian Defence Force operations on a day-to-day domestic and international basis in the glare of the media and international covenants and treaties. I think these men came to this inquiry honourably and transparently. I think they came with a view to acknowledging what had to be done and that it would be done properly. I trust and really believe that they will approach the recommendations in the same spirit.

These military men are war fighters at the ready and have had to address social welfare issues. The Defence Force's history of that interaction has not been a good one. I want to put on record my support for their seeking the new way and seeking to address the way they do business in military justice. I believe that, if they apply to this area of their operation the same expertise, professionalism, talents and skills that they apply to operational matters, they will be successful and this

will be the last review, after the five previous reviews that have been undertaken along these lines.

Lastly, I want to pay great tribute to the families and witnesses who came before the committee. They were often put through a painful reliving and re-enactment of the dreadful day, the dreadful news and all of the grief that accompanied the loss of their loved one, the incurring of an injury or the breach of justice that they experienced. We had 63 confidential submissions and I think we had nine days of in camera hearings. Those statistics alone send a very clear message that all is not well and work must be done.

In thanking those people for their earnestness and for their commitment, I say to them that they have achieved something in our report. We acknowledge that it is still our responsibility to maintain vigilance and make sure that things get better. I assure those people who are listening to me or who will read this that we will maintain that vigilance. I say to the ADF that I know that there is resentment and I know that there is a problem with this report, as reform is always going to be difficult. There are people in this parliament who actually care about them, who take an interest and who want to know about the technical matters associated with capability acquisition, with the day-to-day running of the military and with the way they do their business. With such people in this parliament you are much better off. There are many countries comparable to Australia where the military have no-one to turn to in government: the minister rules and that is it. That is not the case in Australia, and I am proud and pleased to say that.

It is a very difficult balance. We produce men and women who must fight and win but, with the extended peacetime moratorium, joining the Defence Force has been viewed naively as a career. The balance between a peacetime career path and producing men and women who will defend our country and win is very difficult to achieve. I believe that this report goes some way towards laying down the law that will assist in determining that balance.

There are further things that I wish to say, but I must close by saying that my involvement with this inquiry began when the mother of a highly decorated and courageous serviceman came to me and told me her story, which has been repeated within the pages of our report. I absorbed what she said to me, and I went away and made inquiries. What I found so concerned and astounded me that I was bound in good conscience to take action. I found an outrageous level of ineptitude, ignorance, and plain, simple, naked and outrageous injustice, perpetrated against one of our most highly decorated servicemen. I and my parliamentary colleagues on the committee cannot sit, leaning back in our red leather chairs, and allow such a circumstance to continue to be a blot on what is the most proud history

of our Defence Force. So I say, in all good conscience, that this report goes a long way to ensuring that we continue that proud history and that we arrest and deal with these problems that have unfortunately been the exception to what has been a very good rule in military administration. I commend this report to the ADF and trust that they will accept it in the spirit in which it is offered.

Senator HOGG (Queensland) (11.01 am)—As a member of the committee, I rise to speak on this report which shows how this Senate really and truly operates. It really does reach out to the people of Australia and address the issues that sometimes confront many people who do not know where to turn. As Senator Evans has said, we were never going to be a court of inquiry and we were never going to resolve, in the way that many of the courts of the land would resolve, the issues that were raised, but we were going to look at the policy issues to be addressed in the particular and difficult set of circumstances that was presented to the committee.

It raised very difficult issues and, because of that, I want to thank, firstly, the families and the witnesses who had the courage to come forward and present evidence to the inquiry. Secondly, I want to thank the ADF because there was great support from the ADF in the conduct of the inquiry, and I think that has been made clear here today by those who have participated in this debate. Next, I want to thank the secretariat because they had a very difficult task in assimilating and dealing with all the evidence and putting together the coherent report that is before this place today. They have done a marvellous job and they should be highly commended for that.

Then I want to mention the Hansard and broadcasting staff because they were privy to all of the evidence and, as a result, suffered some of the emotional stress that many of us did in the conduct of this inquiry. They should not be left out. Last, but not least, I want to thank my fellow senators. I am not going to single out any individual senator, but it was one of those inquiries where there was great strength and support among the senators and it was needed, given the nature of the evidence presented to us on many occasions.

The report was unanimous, as has been said, and that should never be lost. Every senator agreed to the outcomes in the report. I hope the report is not going to be left on the shelf to gather dust, as has been said by earlier speakers today. Nor should it be given the polite 'agree'; that is the other thing. Defence, in responding, should not just say 'agree, agree, agree', because it goes beyond agreement. Action is desperately needed here to replace, not just fix, the system that is clearly broken.

In my view there is no fix for the system; it needs replacement. Attempts to repair the system have failed

in spite of the best intentions and goodwill on the part of previous senior ADF people. We found that the system was not transparent and did not deliver fairness. The ADF, in spite of several reviews and recommendations flowing from those reviews, has failed to address the systemic problems. They are systemic problems and they will not be addressed by tampering at the edges and trying to patch up a system that is in a complete state of decay. It is clearly time to take military justice out of the hands of the military and let some independent authority oversee its operation.

I never want to revisit an inquiry such as this. I certainly do not want to come back in years and say, 'We have done this inquiry before.' I have participated on this issue for the reason that I want to see the injustice, the unfairness, that exists in the system brought to an end. Whilst it will never end completely, if we can eliminate it to a substantial extent then we have made a major achievement indeed. It shows that just leaving it in the hands of the military to dispense justice is no longer an option that confronts this nation.

The report, which as I said was difficult to put together, is a chronicle of the inability of the ADF to deliver an impartial and fair military justice system. In saying that, it is a fairly thick report, so most people are not going to sit down and wade through the report, chapter by chapter—there will be some—but I encourage people to read the preface to the report. In it—and we all had a strong hand in its penning, but I believe Senator Payne did in particular—one will find the attitudes of the committee. I will quote just a couple of pieces from the preface which go to the disciplinary system, which the committee says is:

... manifestly incapable of adequately performing its investigatory function.

Then, on the administrative system, it says:

This failure to expose such abuse means the system stumbles at its most elementary stage—the reporting of wrongdoing.

Later on, on the administrative system, it says:

Poorly trained and incompetent investigating officers further undermined the effectiveness of administrative investigations. The committee found that missing or misplaced documentation, poor record keeping, the withholding of information, lack of support in processing a complaint, investigating officers who lack the necessary skills, experience or training to conduct a competent inquiry, all contributed to unnecessary delays.

I commend the preface because it will tell people precisely where to go in the report, where to see the faults and failings. I seek leave to continue my remarks later.

Leave granted; debate adjourned.