

**Senate Foreign Affairs, Defence and Trade
References Committee**

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P22

Date Received: 12.02.04

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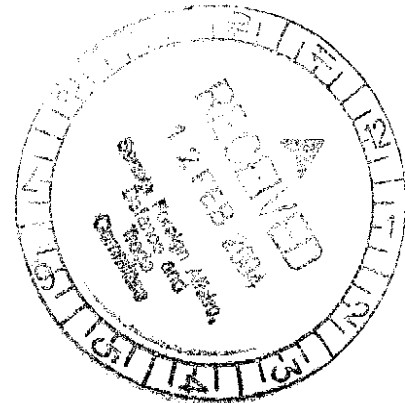


CC LAW

ATTORNEYS & ADVOCATES

Our Ref: BC:KMP

11 February 2004



The Secretary
Senate Foreign Affairs, Defence and Trade References Committee
Suite S1.57
Parliament House
CANBERRA ACT 2600

Dear *Secretary*,

RE: INQUIRY INTO MILITARY JUSTICE

Our law firm represents the families of the deceased personnel following the tragedy aboard HMAS Westralia on 5 May 1998. We also represent the widow and family of Squadron Leader Anthony Short who died in a F111 crash in the South China Sea on 18 April 1999. We have also represented other defence personnel who have filed Redress Grievances, and who have defended disciplinary proceedings. Much of the advice and court representation given in cases of this nature has required us to examine and deal with the records of proceedings within the military justice system, particularly Boards of Inquiry.

We agree with the comments of Senator D J MacGibbon, Chairman of the 1999 Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Military Justice in the Australian Defence Force, namely, that there are strong feelings, particularly from family members of the deceased, that the Military Justice System lacks independence. The MacGibbon Inquiry essentially accepted an argument that the Military Justice System should be given time to address the recommendations of the Abadee Report and to further implement changes the ADF itself recognises as necessary.

Writing now in 2004 we are of the respectful view that the MacGibbon Committee's optimism that the ADF would be able to significantly improve the impartiality and

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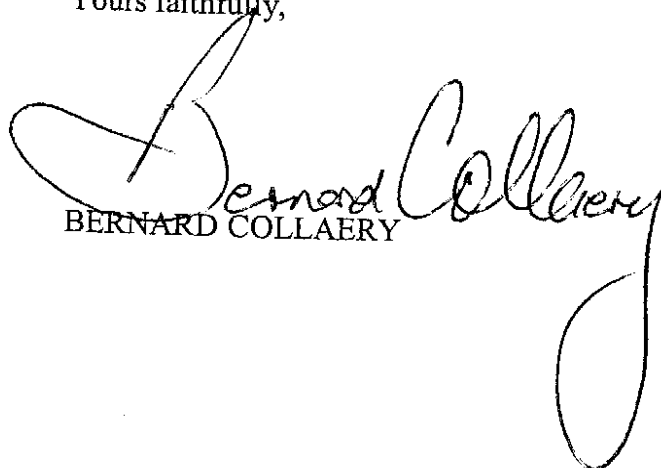


independence of the Military Discipline System was in part misplaced. We wish to address the committee orally on the following issues:

1. Boards of Inquiry and Inquests – The interaction of Coronial Law and Military Justice Procedures – The gap between Defence Terms of Reference for BOIs and the jurisdiction of the Coroner under State/Territory legislation (The *HMAS Westralia* BOI and the *HMAS Westralia* Inquest)
2. Appointments to Boards of Inquiry
3. Terms of Reference of Boards of Inquiry
4. Legal representation at Boards of Inquiry
 - (a) Independence and qualifications of Defence Reservist lawyers
 - (b) Unsatisfactory aspects of the Burchett Inquiry including the finding that the use of psychological evaluation to find medical incapability was unproven and a “slur” on commanders
 - (c) Use of interview material from Critical Incident Debriefing without post-traumatic counselling
5. Failure to advise dependants on compensation rights

We have case studies to put to your Committee. Before we can address you further we wish to deal with a number of legal professional privilege issues with our clients.

Yours faithfully,


BERNARD COLLAERY