

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

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P25

Date Received: 13.02.04

Submitter: Group Captain Behm

Organisation:

Address:

Phone:

Fax:

Email:

Name/Contact: Group Captain Anthony Behm

Date Authorised:



**SUBMISSION
TO
THE SENATE INQUIRY INTO THE EFFECTIVENESS OF THE
AUSTRALIAN MILITARY JUSTICE SYSTEM**

Background

1. This submission refers to Terms of Reference 1(a) regarding mechanisms to improve the transparency and public accountability of military justice procedures, in particular the provision of adequate legal support to Investigating Officers. Defence (Inquiry) Regulation 71 provides that the procedure to be adopted by an Investigating Officer should be as the Appointing Officer directs.

Discussion

2. As an Investigating Officer appointed to investigate a number of matters involving Number 3 Airfield Defence Squadron at RAAF Base Amberley, I have been constrained in pursuing certain lines on inquiry because of the inability or refusal of the Tri-service Defence Legal Service (TDLS) to provide me with appropriate legal assistance.

3. TDLS is of the view that the Investigating Officer, or for that matter, the Appointing Authority, does not have the authority to determine the methodology to be applied to an investigation, and/or the level of legal support required by the Investigating Officer in the conduct of an inquiry under the Defence (Inquiry) Regulations. In other words, the position taken by TDLS is that the Appointing Authority, in this case the Commander Combat Support Group, is not entitled to decide how to manage the complex legal issues which arise in the performance of his command functions and responsibilities.

4. Ensuring the interests of command are met by the proper conduct of inquiries according to law, and ensuring procedural fairness to Australian Defence Force members being investigated is the responsibility of the Appointing Authority, not TDLS. The view taken by TDLS that legal support for inquiries is to be determined by TDLS outside of the control of the Appointing Authority means that proper legal advice to me as the Investigating Officer was not available, which compromised my investigation.

3. I respectfully ask the Committee to consider provision of legal support to Appointing Offices and Investigating Officers pursuant to the Defence (Inquiry) Regulations, and recommend that Appointing Officers have the authority to determine the level of legal support to be made available to Investigating Officers independently of the TDLS.

Anthony Patrick Behm

13 February 2004