

Chapter 6

Conclusion

6.1 In its 2005 report, that committee recommended two major reforms—the establishment of a permanent military court in accordance with Chapter Three of the constitution and the establishment of an ADF Administrative Review Board. Although watered down, the government accepted the recommendation about having a permanent military court and has created the AMC. The committee accepts that although the court does not fully satisfy the committee's recommendation, its establishment is a significant positive reform. The committee does not want to propose another round of recommendations. It does, however, wish to make a few targeted recommendations on matters it regards as important.

Recommendation 1

The committee recommends that the DFDA be amended to include provisions governing the conduct and protection of military jurors (paragraph 2.31).

Recommendation 2

The committee recommends that Defence undertake an audit of all legal officers in the ADF with a view to ensuring that the legal skills, expertise and experiences available to the ADF are being used to full advantage and to identify any deficiencies that may need addressing (paragraph 2.74).

Recommendation 3

The committee recommends that in 12 months, Defence report to the committee on its progress implementing reforms to improve the ADF's investigative capability (paragraph 3.34).

Recommendation 4

The committee recommends that the government commission an independent review of the ADF's investigative capability at the conclusion of the 5-year remediation period (paragraph 3.35).

6.2 In addition, the committee suggests that the government consider the following matters discussed in Chapter 2:

- legislation providing for the selection of military juries on a fully random tri-service basis; and
- the right of the DMP to appeal interlocutory points.

6.3 In 2005, the government did not accept the committee's other major recommendation dealing with the establishment of an independent ADF review board. The main reason for recommending the establishment of this body was the clear and identified need for a statutorily independent authority with appropriately qualified and

trained staff to address and resolve administrative matters in the ADF. The government instead established a streamlined fairness and resolution branch to deal with complaints and ROGs in the ADF. Evidence has shown undoubted improvements in the system stemming from this initiative. The committee does, however, make two recommendations:

Recommendation 5

The committee recommends that a specific time limit, for example 90 days, be imposed on referrals of ROGs to the service chiefs (paragraph 4.14).

6.4 The committee believes that the effective monitoring of attitudes in the ADF is critical to the success of the implementation of reforms to Australia's military justice system. Indeed, the recent inquiry into the learning culture of the ADF underlines the need for another independent and comprehensive review at some time in the near future. The committee also identifies a need to have a more effective regular reporting mechanism on attitudes in Defence toward the military justice system including the reporting of wrongdoing and aspects such as fear of reprisal.

Recommendation 6

The committee recommends that the ADF commission an independent review of the learning culture in the ADF, along similar lines as the investigation conducted in 2006. The main purpose of the inquiry would be to assess whether the recommendations contained in the 2006 report have been effectively implemented and whether additional measures need to be taken to improve the learning culture in the ADF. This review should take place within five years and the report on its findings should be made public (paragraph 4.39).

Recommendation 7

The committee recommends that the findings of Defence's attitude survey contain a greater level of detail and analysis than that provided in the most recent publication (paragraph 4.42)

6.5 The committee is firmly of the view that to ensure that Australia's military justice system is fair and effective, the system must have an open and transparent system that is accountable. In this regard it has recommended, as noted above two follow-up investigations into the ADF's investigative capability and its learning culture and an improved reporting regime on attitudes in the ADF. The committee believes, however, that permanent measures need to be introduced into the system that would improve the level of disclosure and accountability in the military justice system.

Transparency and accountability

6.6 Overall, the committee is satisfied with the current reporting regime requiring the JAG, the CMJ and the DMP to report to the parliament through the minister. Nonetheless, it is of the view that additional measures could be taken to improve

transparency and the level of public scrutiny of the operation of the discipline system. The committee argues strongly that if the AMC is to instil public confidence in the administration of military justice, it must be accessible to the public. It notes the importance of the AMC making material publicly available such as court lists, transcripts and judgements and raises the matter of having a 'military justice reporter'.

Recommendation 8

The committee recommends that the government amend the DFDA to require the AMC to publish material such as court lists, transcripts of proceedings and judgments in a readily and easily accessible form (paragraph 5.20).

6.7 In Chapter 5, the committee also highlighted the importance of the CMJ being available to provide evidence to the committee on the operation of the AMC and administration of the ADF's discipline system when invited to do so and made the following recommendation.

Recommendation 9

The committee recommends that the CMJ appear before the committee to give evidence on the operation of the AMC and matters raised in the CMJ's annual report when invited by the committee to do so. The CMJ has a vital role, through his or her appearance before the committee, to contribute to the public understanding of the administration of military justice and to build public confidence in the system. (paragraph 5.30).

6.8 In addition, the committee drew attention to the important function that the JAG has had in achieving an open and transparent military justice system. It urged the government to ensure that, with the establishment of the AMC and the CMJ, this level of independent oversight of the discipline continue.

6.9 The committee is also aware of the need to ensure that the administrative system continues to build on the recent improvements by having a more open, transparent and accountable system. In this regard, it made two recommendations.

6.10 The first recommendation is based in the committee's firm belief that, as fully and comprehensively argued in its 2005 report, the administrative system needs a strong independent and critical oversight authority. This authority would have the responsibility for identifying and reporting on any problems in the military justice system including delays in the system or resource or staffing deficiencies in the Fairness and Resolution Branch, the Office of the IGADF and other sections of Defence involved in the ADF's administrative system such as the legal branch. It would also audit and report on matters such as recordkeeping, the progress of complaints and the implementation of recommendations coming out of administrative inquiries.

6.11 At the moment the IGADF has this responsibility but the committee believes that although the IGADF is a statutory appointment his position needs to be, and

perceived to be, more independent from command. A first step would be to change the reporting requirements of the IGADF.

Recommendation 10

The committee recommends that the *Defence Act 1903* be amended to include in section 110 the requirement for the IGADF, as soon as practicable after each 31 December, to prepare and give to the Minister, for presentation to the Parliament a report relating to the functions of his office as set out in section 110C(1) (paragraph 5.59).

6.12 This recommendation is a necessary first step in restoring credibility to the office of the IGADF when it comes to his independence and function as an effective oversight authority. Other measures should also be considered using the provisions that apply to the CMJ and DMP as a model.

Recommendation 11

The committee recommends that the government consider additional measures to strengthen the independence of the IGADF using the provisions governing the CMJ and the DMP as a template (paragraph 5.61).

6.13 The committee is also concerned with improving the transparency of COIs.

Recommendation 12

The committee recommends that the regulations governing the establishment of COIs be amended requiring COIs to be conducted in public except in circumstances where the president deems there to be a compelling reason for privacy. In cases where the president makes such a decision, the regulations should require the president to issue a public statement containing the reasons for this decision (paragraph 5.63).

6.14 In this report, the committee has noted the importance of and recommended independent follow-up reviews of the ADF's investigative capability and the ADF's learning culture. The committee has also welcomed the establishment of Sir Laurence Street's review team. The committee has compiled a list of matters that this review team could examine and report on which include:

- the jurisdiction of the AMC and the appropriateness of the AMC to hear civilian cases;
- the random and tri-service basis for the selection of military jurors;
- code of conduct for military jurors;
- the rules of evidence for summary trials;
- the adequacy of the information made available on the work of the AMC including the proposal for the AMC to produce 'a military justice reporter' or similar publication;
- the function and future role and of the JAG (if any);

- the role of the IGADF and how the IGADF's independence could be strengthened to ensure the positive results of reforms to the military justice system, especially to the administrative system, do not dissipate with the passage of time;
- the relationship between the ADF and state and territory coroners;
- the potential for command influence in ADF investigations;
- the ADF's tracking system for handling complaints;
- the DFDA and whether it is in line with comparable and up-to-date legislation including provisions governing people found unfit to stand trial or not guilty of an offence on the grounds of mental impairment (paragraphs 2.34–2.36); and
- the role of the Law Council and adequacy of Defence's consultative process.

6.15 The review team could also consider the recommendations that the committee has made in this report and especially comment on one of the most difficult reform areas for the ADF—improving its investigative capability.

Consultation

6.16 In this report, the committee once again underlines the importance of wide consultation during the drafting of legislation dealing with Australia's military justice system. Indeed, the committee is most concerned about Defence's failure to consult with external and independent experts when considering reforms on military justice. This attitude indicates that Defence is not only reluctant to be open and receptive to constructive criticism and new ideas but does not appreciate that wider consultation produces better legislation and ultimately a more effective military justice system. The committee repeats the following recommendation which it has made on a number of previous occasions.

Recommendation 13

The committee recommends that the government undertake a comprehensive consultation process on any future proposed legislation, including subordinate legislation, that is intended to make significant changes to Australia's military justice system. The committee cites in particular the importance of consulting with the Law Council of Australia (paragraph 5.91).

Final report on the implementation of reforms

6.17 This report marks the end of the committee's undertaking to report on the implementation of reforms to Australia's military justice system. It is not the end of the committee's responsibility to make the system open and accountable. The committee will continue to monitor the operation of the system through its examination of the annual reports of the JAG, CMJ, DMP, IGADF and Defence. It will also consider future reviews including the review by Sir Laurence Street and former Chief of the Air Force, Air Marshal Les Fisher (Retd). It particularly notes the

importance of ADF ensuring that there are follow-up reviews of the ADF's investigatory capability and the learning culture in ADF schools and training establishments. The committee requests that Defence provide the committee with these reports.

6.18 The key recommendations, however, are directed at ensuring that Australia's military justice system has appropriate and effective monitoring, disclosure and reporting regimes that should produce an open, transparent and accountable system. If implemented they should assist the ADF maintain its reform momentum and achieve a fair and effective military justice system.

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