

The Senate

Foreign Affairs, Defence and Trade
Legislation Committee

Provisions of the Military Court of Australia
Bill 2012 and the provisions of the Military
Court of Australia (Transitional Provisions
and Consequential Amendments) Bill 2012

August 2012

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Senate Foreign Affairs, Defence and Trade Legislation Committee

Report into the provisions of the Military Court of Australia Bill 2012 and the provisions of the Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012

1.1 On 29 June 2012, pursuant to the Selection of Bills Committee Report, the Senate referred the provisions of the Military Court of Australia Bill 2012 and the provisions of the Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012 to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report. The provisions of both bills were also referred to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 14 August 2012.

1.2 The reason for referring the provisions of the bill to the Senate Foreign Affairs, Defence and Trade Legislation Committee recognised that the committee had 'extensive knowledge, background and history on the military justice debate'. The Selection of Bills report recorded further:

Given that experience, and the fact that the new model is so different from that it replaces, it would be prudent to have the Bills considered by that Committee.¹

1.3 In anticipation of the proposed legislation being referred to both committees, the Senate Foreign Affairs, Defence and Trade Legislation Committee met privately on 28 June. The committee decided that it would not duplicate the work of the Legal and Constitutional Affairs Legislation Committee by conducting a parallel inquiry. Instead, it resolved to provide a background paper to the committee based on its experience with the establishment of the Australian Military Court of Australia in 2006 and the subsequent decision of the High Court on its invalidity.

1.4 The paper provided to the Legal and Constitutional Affairs Legislation Committee explained that in its 2005 report on Australia's military justice system the committee recommended that the government establish an independent permanent military court. The court was intended to extend and protect a Service member's inherent rights and freedoms, leading to impartial, rigorous and fair outcomes.² It would be staffed by independently appointed judges possessing extensive civilian and military experience.

1 Selection of Bills Committee, Report no. 8 of 2012, 28 June 2012, Appendix 2.

2 Senate Foreign Affairs, Defence and Trade References Committee, *The effectiveness of Australia's military justice system*, June 2005, p. xxii.

1.5 On 14 September 2006, the then Minister Assisting the Minister for Defence, the Hon Bruce Billson MP, introduced the Defence Legislation Amendment Bill 2006 into the House of Representatives (the bill). The main purpose of the proposed legislation was to give effect to the government's undertaking to enhance Australia's military justice system as outlined in its response to recommendations contained in the committee's 2005 report.

1.6 The provisions of the bill were referred to the committee for inquiry. In its report, tabled in October 2006, the committee recommended that the government review the bill based on the evidence presented to it and amend or re-draft the proposed legislation accordingly before proceeding with it.³ The government decided to delay debate on the bill to allow time for amendments to be drafted and presented to parliament. On 29 November 2006, the government introduced amendments, which were to give effect to some of the matters raised by the committee in its consideration of the bill. The bill as amended was passed by parliament and received assent on 11 December 2006.

1.7 In its background paper to the Legal and Constitutional Affairs Legislation Committee, the committee outlined the key findings in its report on the establishment of the court. The committee then drew attention to its continuing interest in, and monitoring of the operation of the court until, in August 2009, the High Court found that it was constitutionally invalid.

Senator the Hon Ursula Stephens

Chair

3 The Senate Standing Committee on Foreign Affairs, Defence and Trade, *Defence Legislation Amendment Bill 2006 [Provisions]*.

