

A new military court

In a significant milestone for military justice, in October this year, the first ever Australian Military Court (AMC) commenced and the inaugural military judges were sworn in to preside over the court. The new court provides members of the Australian Defence Force (ADF) with a fair and impartial military justice system reflecting world's best practice for military court administration. The AMC replaces Courts Martial and Defence Force Magistrate trials.

By Cristy Symington

This is one of many reforms to our military justice system. The enhancements ensure a modern and effective system of military justice, while striking a balance between effective discipline to allow our people to operate safely and effectively, and protecting individuals and their rights.

Brigadier Ian Westwood AM was sworn in as the first Chief Military Judge at a ceremony in Canberra on October 3. He has 24 years of military law experience gained through full-time Army service, and will be responsible for ensuring the orderly and expeditious discharge of the business of the AMC and managing the administrative affairs of the court. He will also sit as a military judge on the court and report to Parliament annually through the Minister.

Two permanent military judges, Colonel (COL) Peter Morrison and Lieutenant Colonel (LTCOL) Jennifer Woodward were also sworn in. COL Morrison has extensive legal experience spanning more than 26 years, combining private and military practice. He was a Judge Advocate and Defence Force Magistrate prior to his appointment.

LTCOL Woodward has been a commercial litigation practitioner, and held the position of senior prosecutor for the ACT from 1991 to 2004. Prior to becoming a military judge, she was the Director of Advising, General Counsel

The selection of the Chief Military Judge and military judges was through an independent merit process. They were selected from current qualified Permanent and Reserve ADF legal officers and the process was open to any other person who satisfied the statutory selection criteria.

Branch. She also spent seven years as a permanent legal officer in the Army.

At the swearing in ceremony, the Chief of the Defence Force (CDF), Air Chief Marshal Angus Houston said Defence was strongly demonstrating its commitment to improving the military justice system and delivering impartial and fair outcomes through enhanced oversight, greater transparency and improved impartiality.

“Since the beginning of my tenure as CDF, I have been absolutely delighted

with the progress we have made with our military justice system,” he said.

“It is critical to ADF operational effectiveness and the protection of individuals and their rights that we have a strong military justice system – one that not only underpins our discipline and command structures, but also enables our personnel to work in a fair and just environment.”

The new court is judicially independent from the military chain of command and executive and, although based in Canberra, is fully deployable and able to conduct court hearings within Australia and overseas, including operational areas.

The AMC has the same jurisdiction that Courts Martial and Defence Force Magistrates did previously. It only exercises jurisdiction under the *Defence Force Discipline Act* (DFDA) where proceedings can reasonably be regarded as substantially serving the purposes of maintaining or enforcing discipline. The AMC meets the disciplinary needs of the ADF in maintaining and enforcing Service discipline by trying more serious or complex Service offences.

How does it work?

As well as the Chief Military Judge and two permanent military judges sworn in recently, there will be a panel of part-time (Reserve) military judges.

Military judges are independent from the military chains of command and executive in the performance of their judicial functions. Military jurors perform a role akin to jury members in a civilian court system and determine on the evidence whether an accused person is guilty or not guilty of the Service offence.

Essentially, the trial procedures of the AMC are similar to those of civil courts exercising criminal jurisdiction. The general principles and laws of criminal responsibility as provided for within the Criminal Code (Commonwealth) apply in respect of Service offences prosecuted before the AMC. The presumption of innocence to the accused applies as it does in a civil court, which means that the

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The first Chief Military Judge of the Australian Military Court, Brigadier Ian Westwood AM, swears in one of two permanent military judges Lieutenant Colonel Jennifer Woodward.

prosecution is obliged to prove the case against an accused beyond reasonable doubt.

All prosecutions are conducted through the office of the statutorily independent Director of Military Prosecutions (DMP). A new Director of Defence Counsel Services provides legal representation for the accused.

The Registrar of the AMC, who is statutorily independent, assists the Chief Military Judge with the administration of the court and discharges statutory functions.

Changes to the military justice system include introducing rights of appeal from decisions of the AMC to the Defence Force Discipline Appeals Tribunal (presided over by tribunal members who may be Federal Court, State or Territory Justices or Judges). In the case of the accused it is available on both conviction and punishment or court order. In the case of the DMP, it is available for punishment or order only. An accused now has the right to elect trial by the AMC for certain categories of disciplinary offences.

If an accused is found guilty, punishment as provided for by the DFDA is imposed by the presiding military judge taking into account the sentencing

principles applied by civil courts and the need to maintain discipline in the ADF.

Enhancing impartiality and fairness

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Key features of the AMC include:

- statutory appointment of legally qualified military judges;
- security of tenure (10 year fixed terms);
- remuneration set by the Commonwealth Remuneration Tribunal;
- mid-point routine promotion during tenure;
- appeals on conviction or punishment to the Defence Force Discipline Appeals Tribunal;
- the necessary para-legal support to be self administering; and
- judges to sit alone or with a jury in the

case of more serious offences (military judge presiding).

The AMC proceedings are open to the public except where the court decides it would be inappropriate to do so (for example, if it is contrary to the interests of security or defence of Australia, the proper administration of justice or public morals).

Further enhancements to the military justice system

The AMC is one of a range of enhancements to the military justice system being introduced by Defence. With the two year implementation schedule due to finish at the end of this year, Defence is on track in putting in place the most significant changes its military justice system has seen in more than 20 years. Twenty-three of the 30 agreed recommendations from the 2005 Senate Report 'The Effectiveness of Australia's Military Justice System' are now complete.

Major achievements to date include:

- A new joint ADF investigative unit now investigates serious incidents with a service connection.
- There is no longer a backlog of complaints and redresses of grievance due to the additional resources being provided and the hard work of Defence personnel.
- A civilian with judicial experience now presides over CDF Commissions of Inquiries into deaths of ADF members in Service or other matters as determined by the CDF. A civilian president enhances the impartiality and thoroughness of such inquiries.
- The Learning Culture Inquiry Report into ADF Schools and Training Establishments was released in December 2006. It followed the military justice inquiry, which found that some aspects of ADF culture may be related to deficiencies in the military justice system. Action to reinforce ADF culture consistent with core values has reduced the risks of inappropriate behaviour, improved the care and welfare of trainees, and improved the management of minors in particular. More than half of the agreed recommendations are now underway.

For further information about the range of enhancements to the Military Justice System visit: www.defence.gov.au/mjs