



INSTRUMENT OF APPOINTMENT AND TERMS OF REFERENCE
REVIEW OF THE EFFECTIVENESS OF THE OVERHAULED MILITARY
JUSTICE SYSTEM

I, Air Chief Marshal A.G. Houston, AC, AFC, Chief of the Defence Force, hereby appoint:

Sir Laurence Street, AC, KCMG, QC and

Air Marshal Leslie Fisher (Retd), AO

to conduct a review into the effectiveness of the overhauled military justice system following the implementation of the then Government response of 5 October 2005 to the 16 June 2005 Senate Foreign Affairs, Defence and Trade References Committee Report, *'The effectiveness of Australia's military justice system'*. The review is to consider the available information and submit a written report upon the matters set out in these Terms of Reference. The review is to be guided by (but not subject to) the provisions of Chapter 4, ADFP 06.1.4, Administrative Inquiries Manual.

You are authorised to interview any member of Defence (Australian Defence Force personnel and APS Civilians) who you consider may assist in conducting the review. You are authorised to liaise and consult with other Government agencies and with business and academic communities in Australia and overseas who you consider may assist in conducting the review. You are also authorised to access any necessary material that may assist in conducting the review subject to considerations of security.

Background

1. In October 2003, the Senate referred the matter of the effectiveness of Australia's military justice system to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report. The inquiry was the latest in a series of inquiries into military justice spanning a decade. The Senate Committee tabled its report, *'The effectiveness of Australia's military justice system'* on 16 June 2005 and made 40 recommendations (the Senate Committee Report).
2. The then Government response to the Senate Committee Report, tabled on 5 October 2005, accepted in whole, in part or in principle 30 of the 40 recommendations and advised alternative solutions to meet the outcomes sought by the Report's recommendations concerning the referral of offences to civil authorities, the legislative basis of a permanent military court and the establishment of an ADF Administrative Review Board.
3. The then Government response outlined significant enhancements to the military justice system which are intended to balance the maintenance of effective discipline with the protection of individuals and their rights. Key features include an Australian Military Court independent of ADF chains of command that replace the previous Courts Martial and Defence Force magistrates, a new CDF-authorized Commission of Inquiry in respect of service deaths and suicide with an independent civilian president, a joint ADF investigation unit and a streamlined complaints system. The then Government required Defence to implement these recommendations and enhancements within two years with completion by the end of 2007.

4. The progress of implementation has been reported to the Senate Committee twice a year throughout the two year period.

Purpose

5. The then Government response to the Senate Committee Report, specifically recommendation 35, agreed to commission regular independent reviews of the health of the military justice system, with the first timed to assess the effectiveness of the overhauled military justice system at the conclusion of the two year implementation period.

6. The purpose of this review is to assess the effectiveness of the overhauled military justice system following the implementation of the then Government response to the Senate Committee Report as well as the implementation of the Government and/or ADF responses to the nine previous inquiries/reviews into the military justice system as listed in CDF/Sec Joint Directive 18/2005 dated 7 October 2005 (Enclosed). The review is to also assess whether the implementation of the Defence responses to the *Report of an Audit of ADF Investigative Capability* and the *Report of the Inquiry into the Learning Culture in ADF Schools and Training Establishments* are on track. Subject to paragraph 7, the review is to take into account that the military justice system is critical to the operational effectiveness of the ADF, but that it must be tempered with a concern for individuals and their rights.

General

7. Without limiting the general purpose of this inquiry noted in paragraph 6, the review is to:
- a. determine the extent to which the enhancements to the military justice system agreed by the then Government have been implemented;
 - b. assess the effectiveness of the military justice system, specifically the extent to which it delivers impartial, rigorous and fair outcomes through enhanced oversight, greater transparency, improved timeliness and the appropriate organisational location of military justice functions;
 - c. make an overall assessment of the health of the military justice system and determine, if appropriate, the likely future state of health of the military justice system;
 - d. determine the extent to which adequate personnel and other resources have been allocated to the military justice system to enable it to operate effectively and efficiently. The personnel resources should include, but not be limited to, legal officers, military investigators, and administrative and other support staff and the other resources should include, but not be limited to, financial and physical resources and the adequacy of military justice training;
 - e. determine the extent to which there are any identifiable irregularities within all of the elements of the military justice system; and

- f. assess the extent to which the enhancements made to the military justice system, as proposed in the then Government response to the Senate Committee Report, have had an observable effect on the disciplinary and administrative systems in:
 - (i) delivering impartial, rigorous and fair outcomes;
 - (ii) enhanced oversight, greater transparency and improved timeliness; and
 - (iii) promoting the maintenance and enforcement of discipline to assist in sustaining an operationally effective ADF.

Recommendations

8. The review's final report should make recommendations, among other things, on the following:

- a. whether the implementation of the enhancements to the military justice system could be improved or expedited;
- b. whether the enhancements to the military justice system require further reform in relation to achieving:
 - (i) impartial, rigorous and fair outcomes;
 - (ii) enhanced oversight, greater transparency and improved timeliness; and
 - (iii) the maintenance and enforcement of discipline to assist in sustaining an operationally effective ADF.
- c. whether any further changes are required to the current military justice system or to ensure the continued improvement of the system;
- d. what, if any, remedial action needs to be taken to ensure the military justice system remains in good health; and
- e. a timeline for regular, ongoing reviews of the health of the military justice system.

Where appropriate, recommendations for further change to the military justice system should include proposed changes to the capacity and capability of the various parts of the military justice system.

Other findings

9. The review's final report is not to make recommendations pertaining to criminal or Defence Force Discipline Act (DFDA) matters. Should you, in the course of the review, discover any criminal or DFDA related offences, you are to refer such matters to the commanding officer of the relevant unit or to other appropriate authorities. The Inspector General ADF is also to be informed of any such referral.

Documentation

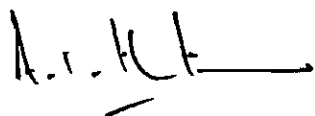
10. The following documentation is to be provided with your report:
- a. a list detailing authorities or personnel consulted in conducting the review;
 - b. copies of all submissions received;
 - c. citations for all relevant orders or publications referred to in the course of making findings or recommendations;
 - d. extracts from all relevant publications; and
 - e. this Instrument of Appointment and Terms of Reference.
11. The review's final report may include other material if it materially benefits your report. Any material gathered during the course of the review that is not included with your report is to be provided to the Office of the Inspector General ADF for retention and/or disposal as required.

Progress Reports

12. The review is to officially commence on or by 30 June 2008, albeit precursor administration may have commenced earlier. You are to keep me apprised of your progress and meet with me every two months during the duration of the review. A progress report is required by 14 Nov 08 to allow the scope of the review to be examined in order to address any particular matters that may have arisen.
13. The review's final report is required by 10 February 2009 or, if completion is delayed, you are to arrange for an appointment with me seven days before that date, at which time you are to submit to me a progress report and be in a position to justify any request for an extension of time. If completion is further delayed, you are to submit monthly reports until the report is completed.

Administration and Support

14. The review team will be provided with appropriate administrative support.



A.G. HOUSTON, AC, AFC
Air Chief Marshal
Chief of the Defence Force

6 March 2008

Enclosure:

1. CDF/Sec Joint Directive 18/2005 dated 7 October 2005.