

RESOLVING MILITARY GRIEVANCES

Opinion piece by John McMillan, Commonwealth and Defence Force Ombudsman

The Senate Committee report on 'The Effectiveness of Australia's Military Justice System' is a timely reminder of the importance of this issue.

The report is one of many on this topic in recent years. A prevailing theme in the reports is that complaints and grievances lodged by members of the Australian Defence Force (ADF) can be handled better. Problems include delays in resolving complaints, inadequate primary investigation of complaints, unnecessary re-investigation of complaints, and meagre resources for grievance work.

The Senate Committee's report, and Ombudsman reports and investigations, highlight a broader concern. It is the need for cultural change in how the ADF deals with the complaints of its members.

In a uniformed organisation that is influenced strongly by tradition, rules and hierarchy, it is not easy to bring about cultural change.

Essentially, there must be clear leadership on the need for change; an acceptance at the operational level that human problems are to be solved by tact and not necessarily by a reiteration of the rules; a realisation that the officer dealing with a problem may not have the necessary skills or training; and a recognition that the performance of the organisation will later be judged by external standards and expectations.

There are encouraging signs that a process of cultural change is underway. New mechanisms have been established to bolster the investigation of complaints. These include the Inspector General of the Australian Defence Force (IGADF), the Defence Whistleblower Scheme, and the Directorate of Alternative Dispute Resolution and Conflict Management.

The Chief of the Defence Force, General Cosgrove, has affirmed this commitment to change by accepting and implementing all the critical findings in a joint review of the Redress of Grievance system conducted by Defence and the Commonwealth Ombudsman. Extra resources have been allocated by Defence to clear up the backlog of grievances. A standing committee including the Ombudsman's office has been established to ensure the findings of the joint review do not languish, as some earlier findings have.

But is more needed? The Senate Committee proposed the creation of a new mechanism titled the Australian Defence Force Administrative Review Board. The Board would be modelled on a Canadian Forces Grievance Review Board.

The Committee's proposal is worthy of consideration. It is designed to bring external oversight to the Defence grievance process at an early stage of a dispute before it festers and intensifies.

But questions need to be asked. The Canadian model could be a costly and formal alternative to the present system. The Board's budget for 2004–05 was \$8.5m, though it resolved only 152 cases in 2003–04 (less in other years). This far outstrips the Australian budget of the Ombudsman and the IGADF, who handle substantially more cases.

It is envisaged that an Australian Board would function as an administrative tribunal. If so, it is likely over time that it would be influenced greatly by legal notions of dispute settlement. Doubtless they have an influential role to play. On the other hand, an Ombudsman criticism of Defence grievance processes is that there is a growing tendency to seek legal advice at different stages of the process, often prolonging and making the process more complex and less effective.

The Committee further recommended that all grievances be notified to the Board within five working days of lodgement, and be referred to the Board if not resolved at unit level within 60 days. This would focus attention on the need for early resolution of a grievance, but would not necessarily yield a final solution. A governing principle of good complaint management is that complaints should be handled in the most appropriate manner at the lowest effective level and in the quickest possible time.

A possible alternative to both the existing system and the Committee's proposal is to require the Ombudsman or other external body to conduct a status report on every grievance that is not resolved three months after lodgement.

Another strength in the existing system is that bodies like the Ombudsman and the IGADF are well placed to undertake other activities that are essential to good complaint management. These include systemic reviews of Defence administration, periodic auditing of grievance processes, and investigation training.

There is growing agreement on the problems in the military justice system. There is need for more debate on the reform options.

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