

## Privacy Commissioner's Submission to the Foreign Affairs, Defence and Trade Select Committee on the Military Justice Legislation Amendment Bill

1. The Military Justice Legislation Amendment Bill ("the Bill") is an omnibus bill that amends the Armed Forces Discipline Act 1971, the Court Martial Act 2007 and the Court Martial Appeals Act 1953. The purpose of the Bill is to update the military justice system and to align it with the criminal justice system by enhancing victims' rights.
2. The Bill makes amendments to ensure that victims of specified offences (certain serious offences of a sexual nature or that involve violence) have rights and protections in the military justice system that are equivalent to those in the civilian criminal justice system under Part 3 of the Victims' Rights Act 2002.
3. These amendments involve an element of disclosure of personal information, namely that the individual has allegedly been the victim of a serious offence. These offences, particularly sexual offences, carry with them a high privacy weight and the victim may very well wish to keep this personal information private or to have an element of control in selecting who is notified.
4. My comments relate solely to the amendment made by clause 7 of the Bill. This clause inserts section 102A into the Armed Forces Discipline Act:

### **102A Commanding officer must determine whether offence is specified offence**

- (1) *If the commanding officer of an accused causes an allegation to be recorded in the form of a charge, the commanding officer must determine whether the alleged offence has 1 or more victims.*
  - (2) *If the commanding officer of the accused determines that the alleged offence has 1 or more victims, the commanding officer must determine whether the alleged offence is a specified offence.*
  - (3) *If the commanding officer of the accused determines that the alleged offence is a specified offence,*
    - (a) *the commanding officer of the accused must, for each victim,*
      - (i) *advise the commanding officer of the victim and the Director of Military Prosecutions of that determination; and*
      - (ii) *if the victim does not have a commanding officer, appoint a member of the Defence Force to assist the victim.*
5. I recognise that this amendment is intended to provide victims of serious offences better support and representation, and to reflect so far as possible Part 3 of the Victims' Rights Act in a military justice context.

6. I consider the requirement to notify the victim's commanding officer to be inappropriate in the circumstances. This has the effect of notifying the victim's immediate employer, which may be contrary to the victim's wishes. Significantly, this section does not create a requirement for the commanding officer of the accused to notify the victim before their commanding officer is notified.
7. The equivalent provisions in the Victims' Rights Act require the Commissioner of Police to determine whether the offence is a specified offence (section 29A) and to provide to the Secretary for Justice the victim's name and address. The Police and/or the Secretary must then inform the victim (and the victim's support person, if relevant) that the victim may appoint a representative under section 40. This section permits the victim to appoint "any other person" to act as their representative. It is not the role of the Police to select a representative for the victim.
8. Rather than the commanding officer appointing a support person, it is more appropriate to allow the victim to express a preference as to whether a member of the Defence Force or a civilian support person should be appointed, particularly in cases where the victim does not have a commanding officer.
9. In my submission the victim's commanding officer should not be notified without the consent of the victim.
10. To better align the Bill with the Victims' Rights Act, section 102A should be amended as follows:
  - (b) *the commanding officer of the accused must, for each victim,*
    - (i) *advise the Director of Military Prosecutions of that determination; and*
    - (ii) *if the victim consents, advise the victim's commanding officer of that determination; and*
    - (iii) *advise the victim that they may appoint a representative, and this representative may be the victim's commanding officer, another member of the Defence Force, or a civilian representative.*
11. **I recommend** that clause 7, section 102A should be amended to:
  - a) **require the commanding officer of the accused to obtain the victim's consent** before advising the victim's commanding officer; and
  - b) **permit the victim to select their own representative**, who may be their commanding officer, another member of the Defence Force, or a civilian representative.
12. I do not intend to submit in person. However I would be pleased to speak to this submission should the Committee find that helpful in its consideration of this Bill.



John Edwards  
**Privacy Commissioner**