



RSL Media Release

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Unwarranted Delay in ADF Justice

The Returned & Services League of Australia is greatly concerned at the inordinate delay in the legal process surrounding the decision of the Director of Military Prosecutions to prosecute three members of the Australian Defence Force charged with very serious service offences alleged to have been committed during operational service in Afghanistan.

The alleged offences occurred during an operation against the Taliban in February 2009 but it was not until 19 months later on 27 September 2010 that the Director of Military Prosecutions announced her decision to charge the three soldiers. The charge sheet against the lieutenant colonel was signed at about the same time in September 2010, but those against the other two members were not signed until 14 January 2011, almost two years after the event. Then it was not until 28 March 2011 that the pre-trial hearing by the Chief Judge Advocate commenced hearing charges against the sergeant and lance corporal - during which the prosecution amended the charge sheet.

On 20 May 2011 the Chief Judge Advocate found that no service offences had been committed by the sergeant and lance corporal.

The RSL publicly welcomed the decision of the Chief Judge Advocate but expresses its concern about the charges for which there is no precedent. The RSL understands there has never been an occasion where soldiers in combat on a battlefield owe a duty of care to civilians, as alleged by the prosecution.

The lieutenant colonel accused still has not had his charges considered by a Judge Advocate or a court martial, and no date has yet been announced for this. Such delays in finalising these important matters is a denial of justice and is unacceptable to the soldiers involved, their families and the defence and veteran communities as a whole.

The pre-trial findings of the Chief Judge Advocate on 20 May 2011 are a matter of public record but they indicate significant shortcomings in the prosecution of these serious service offences which, if proven, could result in the imposition of substantial periods of incarceration and the termination of the men's careers as professional soldiers.

The League understands that as a consequence of the decisions by the Chief Judge Advocate at the pre-trial hearing, the matter has been referred back to the Director of Military Prosecutions who has the following options:

- appeal the decision of the Chief Judge Advocate to the Federal Court;
- prefer alternative charges against the two men; or
- withdraw the charges altogether and discontinue the court martial proceedings.

Even accounting for the time taken to investigate the incident by the Australian Defence Force Investigative Service and its referral to the Director of Military Prosecutions, there has been far too much time taken to process and prosecute this case. Added to this is the slowness of the Director of Military Prosecutions' response to the Chief Judge Advocate's decision of 20 May 2011. The transcript for each day's proceedings was available within 24 hours as was the Chief Judge Advocate's findings and determination. The proposed course of action should be both known and publicised by now.

It is also reasonable to assume that the Director of Military Prosecutions' decision about the way ahead could and should have previously been well researched to cover all possibilities arising from the pre-trial hearing. If this is not the case, the League asks why not? If it is the case, we ask why the Director of Military Prosecutions hasn't by now made her decision known to the accused soldiers and to the public?

Whilst the RSL believes in and supports the process of military justice and respects the independence of the Director of Military Prosecutions, we also insist on our democratic responsibility to raise concerns about what we believe is a denial of justice in this instance.

The excessive and unexplained delays in these legal proceedings is deleterious to the morale of the Australian Defence Force, is an affront to all who have previously served the nation and is the antithesis of what members of the League believe should be a robust, fair and efficient system of military justice.

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