

To Army's Command Teams

- There has recently been widespread discussion of the charging of Army personnel, in connection with an incident in Afghanistan. Some of our people have been contacted by a range of media and other interests, and by service associations seeking support, including by signing a petition.

- The Director of Military Prosecutions has acted in accordance with her duty to prosecute service offences, taking action after considerable deliberation and incorporating the opinions of senior Defence officers. In this regard, the Director of Military Prosecutions has acted in an independent and deliberative way as she is required to do by law. This is no different from how her civilian Commonwealth and State/Territory Directors of Public Prosecutions function. To undertake any course of action that is disrespectful, and not supportive, of this process would be to undermine the integrity of the military justice system.

- Many will have views about whether or not charges should have been brought. Many may hope that those who have been charged will be cleared. Some, armed with ill-informed opinions and good intentions, have made public comment in response to the media and public interest.

- We must not be party to the pressures being applied by individuals external to our organisation, or by the vocal individuals within our organisation. The Army is simply not above the law.

- In executing your responsibilities, I ask you to be mindful of several important matters.

- First and foremost, it is completely inappropriate, and more importantly, unlawful, to engage in any conduct that might influence the outcome of the charges. This includes public comment, in any capacity, about the merits of the charges; or by vilifying the prosecutor; or by otherwise influencing, directly or indirectly, the course of the prosecution including by joining in petitions.

- This is not about going outside the chain of command or making public comment about an issue; it is about undermining the integrity of our military justice system and potentially about denying proper legal process to our soldiers.

- By publicly discussing the merits or vilifying either party for bringing or defending the proceedings, such conduct may prejudice the discipline of, or bring discredit on, the Defence Force, which may amount to an offence under section 60 of the *Defence Force Discipline Act 1982* and which carries a maximum punishment of three months imprisonment. Certainly, once a service tribunal is convened, such conduct may amount to contempt of that service tribunal. Under section 89 of the *Defence Act 1903* and section 53 of the *Defence Force Discipline Act 1982* this is a serious offence punishable by up to six months imprisonment.

· I reiterate that these are not novel provisions and do not herald any new reality in law. They are no different from provisions covering contempt of court for conduct that might influence the outcome of pending prosecutions in the civil courts.

· Secondly, at this stage, whatever views we may hold can only be based on a very imperfect understanding of the evidence. None of us, including me, know all of of the evidence that the Director of Military Prosecutions has considered in deciding to lay the charges.

· We must respect the legal process and its independence from the chain of command. This level of legal independence was agreed and enacted by our Parliament after a number of inquiries including a Senate Inquiry with public submissions.

· Thirdly, the fact that charges have been preferred does not mean that the members will be convicted. The charges will be heard by Courts Martial, constituted by service personnel who understand the exigencies of the circumstances with which soldiers on operations can be confronted. If the Courts Martial Panel finds that there is [a](#) reasonable doubt with respect to a charge, the soldier will be acquitted of that charge.

· The soldiers are being fully supported by Army, as they have been throughout this process.

· I ask that you remain acutely aware of these matters in exercising your Command responsibilities. Army has a responsibility to protect the integrity and professionalism and to respect the legal obligations inherent in our service.

K.J. GILLESPIE AO, DSC, CSM

Lieutenant General

Chief of Army