



DEFENCE FORCE WELFARE ASSOCIATION

Patron-in-Chief: His Excellency General the Honourable David Hurley AC DSC (Retd)

NATIONAL OFFICE

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Committee Secretary
Senate Foreign Affairs, Defence and Trade References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

SUBMISSION TO THE SENATE FADT REFERENCE COMMITTEE'S INQUIRY INTO THE DEFENCE LEGISLATION AMENDMENT (DISCIPLINE REFORM) BILL 2021

INTRODUCTION

The Defence Force Welfare Association (DFWA) welcomes the opportunity to make a submission to the Senate Foreign Affairs, Defence and Trade Committee inquiring into Defence Legislation Amendment (Discipline Reform) Bill 2021.

The Inquiry is of specific and fundamental interest to DFWA because it has long contended that:

- the Defence Force Discipline Act needed to be modernised to reduce its current complexity and to improve the way disciplinary issues are managed in the Australian Defence Force;
- the current military discipline system is cumbersome, difficult to understand, and promotes unnecessary delays in dispensing justice; and
- breaches in any military justice system should be dealt with in a timely manner, particularly given that most breaches are uniquely military in nature.

DFWA's interest also derives from its agreed charter to*'foster the best interests and welfare of all members of the Australian Defence Force and their families in any matter likely to affect them during and after their period of service'*.

In essence, DFWA broadly supports the proposed amendments, particularly those that simplify unit level discipline – the expansion of offences that may be dealt with through the discipline infringement system, and the (effective) replacement of Subordinate Summary Authorities with the new position of Senior Discipline Officers.

DFWA is of the view the Bill provides adequate balance between the need to maintain discipline within the Australian Defence Force and not only a Defence Force member's rights but also as to his/her welfare.

DFWA agrees with the tenant that 'it is critical that breaches of discipline are quickly and fairly resolved' to maintain good morale and enhance the operational and professional capability of the Defence Force.

GENERAL COMMENTS

Changes to Disciplinary Infringement and Summary Authorities

Under the existing scheme, the Subordinate Summary Authority is procedurally cumbersome, often with significant delays between the offence and dealing, and imposes a significant burden on a unit. DFWA notes the enhancements to the disciplinary infringement system:

- The wider range of minor breaches which may be dealt with as disciplinary infringements.
- The (effective) replacement of the Subordinate Summary Authority with the position of Senior Discipline Officer.
- The expanded range of ranks the new Senior Discipline Officer can deal with, compared to the previous Subordinate Summary Authority.
- Mandating the requirement to consider any reasonable excuse prior to issuing an infringement notice, and the consideration of such an excuse by the Senior / Discipline Officer.
- Commanding Officer review of Senior Discipline Officer decisions.

DFWA is of the view that these changes will significantly improve the efficiency and effectiveness of the Discipline System within units.

New Offences

s 35A Failure to Perform a Duty or Carry Out Activity

DFWA notes this offence may be available to hold members, specialists, and commanders to account, where they fail to correct, report, or otherwise deal with the behaviour or actions of others, where that behaviour or action falls short of expected standard of conduct.

s 48A and s 48B Cyber-Bullying Offences

Cyber bullying is a serious issue that can negatively impact the morale, welfare, and discipline of the ADF; particularly given the relatively younger ADF workforce.

This offence will be the first specific cyber-bullying offence in any jurisdiction in Australia, and Defence ought to be commended to being at the leading edge of reform in this area.

DFWA notes the following concerns with this offence:

- The technical nature of evidence relating to social media means the evidentiary and investigatory requirements in many (if not most) cases will be beyond the scope of unit investigation (i.e. will require specialist service police/ADFIS¹ investigative capability).
- Whether a Commanding Officer or Senior Summary Authority has the capability deal with this offence.
- Given the above, whether investigating and dealing with possible offences under this section, including removal orders, can occur in a sufficiently timely manner that balances unit discipline, fairness, and the welfare of the victim and alleged offender.

¹ Australian Defence Force Investigative Service.

DFWA is of the view that the concerns outlined above can be managed effectively through command guidance and controls; however, the effect of these new offences should be monitored to ensure that any unintended consequences that arise can be identified and addressed promptly.

Rights and Welfare of Defence Members

DFWA notes that existing protections of the Discipline Infringement Scheme remain intact, and are further strengthened by:

- Requiring the Infringement Officer to consider whether a reasonable excuse exists, before issuing an infringement notice.
- The power of Discipline Officers and Senior Discipline Officers to dismiss infringements if a reasonable excuse exists or for trivial matters.
- The requirement for Commanding Officers to review Senior Discipline Officer decisions.

DFWA is of the view that the protections included in the Bill sufficiently and appropriately protect the rights and welfare of Defence Members.

CONCLUSION

DFWA is generally supportive of the amendments to the *Defence Force Discipline Act 1982* contained within *Defence Legislation Amendment (Discipline Reform) Bill 2021*.

DFWA is of the view the Bill adequately balances the need to effectively maintain discipline while protecting the rights and welfare of Defence Members.

Readiness to Appear

At the discretion of the Senate Foreign Affairs, Defence and Trade Committee, I offer to appear personally, via video conference if appropriate, at any time to answer questions about this Submission, or other questions that may be deemed relevant to the Inquiry's Terms of Reference.

Yours sincerely,

Kel Ryan
National President
Defence Force Welfare Association