

DEFENCE LEGISLATION AMENDMENT (DISCIPLINE REFORM) BILL 2021

SUBMISSION TO INQUIRY BY THE FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

Senator the Honourable Eric Abetz
Chair
Foreign Affairs, Defence and Trade Legislation Committee

Dear Senator Abetz,

Thank you for the opportunity for me to make a formal submission to the recently announced Senate Inquiry into the Defence Legislation Amendment (Discipline Reform) Bill 2021 being undertaken by your Committee.

Prior to leaving the Australian Army in September 2018, I had the privilege to serve our Nation for almost 40 years, commencing my career as a Trooper (Private soldier) and, for the final three years, having the enormous honour of being the 10^h Regimental Sergeant Major of the Army. One of the core responsibilities, throughout my career and in this latter appointment as the Army's most senior enlisted soldier, was to ensure that Army's members had access to and were served by a military discipline system that was simple to use, timely, fair and, above all, one that they trusted.

Military service involves the people in our Defence Force living and working cheek by jowl, and training, operating and fighting together in close knit teams. All Defence Force members have a perfectly reasonable expectation that any wrong doing or breach of discipline will be dealt with quickly and fairly. Failure to do so may put the lives of others at risk, erode morale and adversely impact the cohesion of a unit and its fighting ability.

The significant improvements in this Bill will allow commanders to more simply and quickly address poor behaviour, and create opportunity for early intervention to better support the people in our Defence Force, enabling them to continue as a positive contributor to their Service. Of particular note in this Bill, is the strong emphasis on not only ensuring that existing safeguards are retained, but also that they are significantly reinforced. This approach is at the heart of delivering a military discipline system that I know our soldiers will view as fair, trusted and one that they believe in.

Most importantly, the proposed expansion of the already proven discipline infringement scheme will allow our Sailors, Soldiers and Aviators greater choice to have minor discipline breaches to be resolved simply and quickly, to the benefit of everyone involved.

The reforms included in this Bill are the result of the year-long review of the Summary Discipline System conducted in 2017. The review was commissioned by the former Chief of the Defence Force. During that Review I had firsthand experience of the widespread consultation with, and extremely positive engagement by, a broad cross-section of all ranks throughout the Army. The soldiers and officers clearly identified that the current system was too complex and difficult to use. All of this resulted in unnecessarily long delays in dealing with minor discipline breaches. Defence's people found these delays to be detrimental to their wellbeing and welfare. By addressing delays in dealing with their minor transgressions, the stress on the troops and their families will be reduced. I was also aware, through my regular engagement with Army's people, that senior non-commissioned officers and junior officers were reluctant to use the summary discipline process, as they lacked confidence in their ability to do so and did not feel that they clearly understood the complex court like requirements of the adversarial summary proceedings. In short, the current system was no longer fit for purpose and was failing them.

These changes to the *Defence Force Discipline Act* are a direct result of the consultation and follow improved policy and procedural guidance progressively introduced since 2019 which included the inaugural Commanders' Guides to Discipline and Punishment, New Joiners' Guide, Discipline Officer and Summary Discipline manuals. During my frequent visits to units as the Army's Regimental Sergeant Major, junior ranks and those in more senior positions responsible for administering the discipline system, expressed their support for the significant improvements that these policy and procedural changes had delivered.

I fully support the enhanced Disciplinary Infringement Scheme which will eventuate from this Bill. The current scheme is widely trusted by Army. I most strongly commend the totality of these changes which will:

- enable a wider range of minor breaches of military discipline to be managed quickly and simply as disciplinary infringements, rather than service offences where complex, adversarial court-like procedures apply
- introduce a new senior discipline officer position creating a two-tier infringement system alongside the existing single discipline officer level
- preserve and reinforce the right of anyone facing a disciplinary infringement to make an informed decision and elect to be dealt with under the scheme
- mandate the requirement for any reasonable excuse to be considered before an infringement notice can be issued
- enable either level of discipline officer to dismiss an infringement if they consider that the member has a reasonable excuse for committing the infringement
- require a commanding officer to formally review any punishment imposed by a senior discipline officer

The Review also identified the requirement for a military discipline system that is fair in terms of the rank of the accused member, the seriousness of the breach of military discipline, the level of punishment that may be imposed and the seniority of the summary authority. This Bill delivers such a system by:

- ensuring that Commanding officers and superior summary authorities remain to deal with more serious discipline transgressions and offences
- increasing the punishments that can be imposed on more senior ranks by superior summary authorities to align with those at a more junior level
- re-aligning the rank and punishment jurisdiction of Commanding officers and superior summary authorities

In respect of the new service offences which will also be introduced by this Bill, I strongly support the emphasis that these have on the values and professional standards expected of our Defence Force members by the Australian people. I would commend, in particular, the new cyber-bullying offence. By targeting bullying, belittling or harassing texts and posts, it will provide protection to the people who choose to serve in our Defence Force through early intervention and putting a stop to such behaviour before it gets out of hand.

Cyber-bullying conduct is corrosive to discipline and has an extremely adverse effect on the mental well-being of its victims. The new cyber-bullying service offence will send a very strong message to the people in our Defence Force that the use of social media to cyber-bully another person is unacceptable and will not be tolerated.

I regard the welfare of our ADF members to be the highest priority. The people in our Defence Force are legally bound to follow all lawful commands, including orders that can involve considerable risk to their own life and others, or may require them to use and apply lethal force

against an enemy. At the same time commanders have a duty of care to all the people under their command all of the time, whether at home in Australia or deployed overseas. This Bill will assist them to provide a safe workplace where poor discipline is dealt with quickly and fairly to ensure the well-being of all service women and men.

I am extremely pleased to observe that the changes introduced by the Bill address the very issues raised by Army's people, across all ranks, as part of their contribution to the 2017 Review. As a result of this Bill, ADF members will benefit from a military discipline system that:

- is easier to use, particularly at the lowest levels, and especially when deployed on operations
- is more timely and responsive, enabling commanders to effectively manage their people and address behavioural concerns at the earliest opportunity and most appropriate level
- continues to be fair and just towards all people involved in disciplinary processes
- is trusted by the people in the Defence Force and the Australian community
- is responsive to contemporary technology and how it is used

I commend this Bill to your Committee.

Mr Don Spinks AM

1 Sep 21