

DEFENCE LEGISLATION AMENDMENT (DISCIPLINE REFORM) BILL 2021

SECOND READING SPEECH

I am pleased to introduce the Defence Legislation Amendment (Discipline Reform) Bill 2021.

This Bill will reform the system of military discipline for those who serve in our Defence Force by improving the way Discipline Officers and Summary Authorities operate under the *Defence Force Discipline Act 1982*.

To defend Australia and our national interests, we must maintain an operationally capable Defence Force which demonstrates high levels of discipline, professionalism, competence and commitment.

The women and men who join the Australian Defence Force are subject to military law, in addition to civilian law, which has its own discipline system and capacity to impose punishments and orders under the *Defence Force Discipline Act*.

The *Defence Force Discipline Act* provides a comprehensive system of military discipline that must be trusted by the Australian people, and

most importantly by those who serve in our Defence Force, to be applied fairly and effectively, in all circumstances.

The system of discipline administered by the Australian Defence Force must encourage the men and women of our Defence Force to be accountable for their actions, and importantly, to learn and grow from their mistakes.

Because the people in our Defence Force work and live with one another and within teams, they 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, erodes morale and adversely affects unit cohesion and fighting capability.

Military service and the need to maintain discipline places constraints and responsibilities on the people in our Defence Force.

These challenges are unique and experienced by few of their fellow Australians.

A separate system of military discipline is essential to enable the Defence Force to deal with matters that relate directly to its discipline, morale and operational capability.

It is in this context of a disciplined fighting force that, in some cases, breaches of military discipline by the people in our Defence Force are

dealt with more severely than would be the case if a civilian engaged in similar conduct.

The military discipline system operates in Australia and overseas, in times of peace, conflict and war.

Enforcing military discipline is essential at all times – both in training for operations and during conflict, in often difficult and dangerous circumstances.

Those in the Australian Defence Force are legally bound to follow all lawful commands, including orders that involve considerable risk to their own life and others, or may require them to use lethal force against an enemy.

The military discipline system administered under the *Defence Force Discipline Act* has three tiers:

- At the lowest level is the disciplinary infringement scheme. This enables minor breaches of discipline to be dealt with by the issue of an infringement notice. A person can choose to admit the breach of discipline and be dealt with by a Discipline Officer who may impose a low-level punishment such as a fine or reprimand. This has some similarity to being issued with a speeding ticket by the police; you can accept the ticket and pay the fine, or you may choose to contest the matter in court.
- The second tier is the summary system. This comprises of: subordinate summary authorities; commanding officers; and

superior summary authorities. These proceedings are adversarial in nature with criminal law-like procedures within the disciplinary infringement scheme and are not administered by legally trained personnel.

- At the highest level are superior tribunals. These comprise of Defence Force magistrates, restricted and general courts martial, which deal with more serious matters and apply criminal law procedures.

As early as 1989, The Defence Force Discipline Legislation Board of Review, chaired by the Honourable Xavier Connor AO, QC, reviewed the operation of the newly enacted Defence Force Discipline Act on behalf of Parliament.

He observed, “For the most part...service discipline, particularly as administered by summary authorities, has to do with matters which do not contain any element of criminality and which would not constitute an ‘offence’ under civil law...Many of them...are of quite a minor nature and probably in more than 90% of these the facts are not in dispute.”

These matters referred to by the Review Board range from actions such as those relating to operations against an enemy force, not attending duty on time, the unauthorised discharge of a weapon, and having dirty boots on parade.

Discipline lies at the heart of service in any defence force.

In 2005 the Senate Committee commenting on change within the Australian Defence Force military discipline system noted: '*...military command is in many ways defined by obedience and conformity. Discipline is, along with leadership, a crucial underpinning of command.*'

At the same time, Australian Defence Force commanders have a duty of care to all the people under their command all of the time, 24/7, whether at home in Australia or deployed overseas.

The priority is not just about maintaining discipline – equally important is the welfare of our sailors, soldiers and aviators who serve in the Australian Defence Force.

By simplifying the disciplinary processes – the time required to resolve commonly occurring minor breaches of military discipline will be significantly reduced.

This will ease the stress on those involved with the disciplinary action process.

A 2017 review directed by the Chief of the Defence Force found that aspects of the discipline system were overly complex and difficult to use.

The Review found in particular that summary discipline matters were taking too long to resolve and adversely impacting the people accused of wrongdoing.

Delays in resolving breaches of military discipline also adversely affects the morale, and potentially safety, of other people.

This is particularly so in circumstances where the people in our Defence Force live, work and operate closely together.

The current adversarial court-like summary discipline system has not been serving our Defence Personnel as best it might.

Many senior non-commissioned officers and junior officers are reluctant to use it.

There has been a lack of confidence in applying and understanding the complex court-like requirements of the adversarial summary proceedings.

As a consequence, use of the summary discipline system has been in constant and consistent decline.

The operation of the summary discipline system has proven problematic in recent conflicts; the nature of modern warfare has changed significantly since the *Defence Force Discipline Act* commenced in 1985.

Our Defence Force personnel have been deployed in smaller Australian formations, often either as independent units or embedded with our allies frequently far from administrative support.

The complexities of the summary discipline system, particularly given the frequency, nature and length of operations overseas, has often resulted in unacceptable delays in resolving or finalising breaches of military discipline.

The reforms in this Bill will build on, and are consistent with the Defence Values of – *Service, Courage, Respect, Integrity* and *Excellence*.

The reforms will provide Australian Defence Force commanders, and the women and men who serve under their command, with a system of discipline that allows for minor breaches of discipline to be dealt with quickly and fairly.

More serious offending will continue to be dealt with by a superior military tribunal or referred to civilian authorities as appropriate.

This Bill will reform the discipline system in three ways:

Schedule 1 will expand the operation of the highly regarded and effective disciplinary infringement scheme.

The changes will allow a greater range of minor breaches of military discipline to be dealt with more quickly and fairly, and with less formality within the disciplinary infringement scheme, rather than by the more complex and adversarial service tribunal processes.

This Bill introduces a new senior discipline officer position creating a two-tier disciplinary infringement scheme.

Additional safeguards are included in the Bill to ensure the scheme continues to be operated fairly.

In particular, this reform to military discipline preserves the right of anyone facing a disciplinary infringement to make an informed decision whether to choose to have their matter dealt with under the disciplinary infringement scheme and appear before a discipline officer, or a senior discipline officer in a non-adversarial process.

Schedule 2 modernises the discipline system structure and reduces its complexity by removing the subordinate summary authority.

It re-aligns the rank and punishment jurisdiction of summary authorities, ensuring a logical progression in terms of the rank of the accused person, the seriousness of the breach of military discipline, the level of the punishment that may be imposed and the seniority of the summary authority.

Schedule 3 will further reform the military discipline system by introducing several new service offences. These relate to cyber bullying; receipt of a benefit or allowance; and failure to perform a duty or activity.

Cyber-bullying conduct is corrosive to discipline and can have 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 those in our Defence Force that the use of social media to cyber-bully another person is unacceptable and will not be tolerated in the Australian Defence Force.

The intention of this new service offence is to enable Defence to protect victims of cyber-bullying through early intervention and putting a stop to the cyber-bullying behaviour before it gets out of hand.

It will protect the people who choose to serve in our Defence Force.

Current safeguards for persons accused of breaching military discipline will remain.

Crucially, under the disciplinary infringement scheme a person must choose to be dealt with by a discipline officer or senior discipline officer under the disciplinary infringement scheme.

Additional safeguards included in the Bill are:

- The requirement for any reasonable excuse to be considered before issuing a disciplinary infringement notice
- The ability of a discipline officer or senior discipline officer to dismiss an infringement if the officer considers the person has a reasonable excuse for committing the infringement
- Punishments imposed by a senior discipline officer must be reviewed by a commanding officer. On review, a commanding officer will have the power to:
 - confirm a punishment decision
 - substitute a punishment decision with a reduced punishment
 - decide that no punishment be imposed; or that the discipline infringement be dismissed with no punishment imposed.

The reforms in this Bill will have a substantial and positive effect on improving the administration of discipline for all those who serve in our Defence Force.

I would like to acknowledge Rear Admiral Nigel Perry, CSC, RAN and Wing Commander Shane Carlson and their team for their commitment in progressing this legislation.

I would also like to acknowledge the Member for Fisher and his Coalition Backbench Policy Committee on Defence and Veterans' Affairs, including Senator Andrew McLachlan, CSC, for their input and assistance on this Bill. It has been most valuable.

I commend the Bill.