

AUSTRALIA DEFENCE ASSOCIATION

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
COMMITTEE**

**INQUIRY INTO THE DEFENCE LEGISLATION AMENDMENT
(DISCIPLINE REFORM) BILL 2021**

Introduction

1. This submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee by the Australia Defence Association relates to the committee's inquiry into the Defence Legislation Amendment (Discipline Reform) Bill 2020.

2. For nearly five decades the ADA has long been a strong proponent of the machinery-of-government oversight and accountability mechanisms provided by parliamentary committees. We appreciate the opportunity to offer a submission to the inquiry.

Relevance of this issue to the ADA

3. The issues addressed in this inquiry naturally fall within the ADA's area of interest as the relevant independent, community-based, non-partisan, national public-interest watchdog organisation for strategic security, defence and wider national security issues.

4. Since our foundation in Perth in 1975 the ADA has long advocated that the maintenance of effective national defence capabilities requires the Australian Defence Force to adapt readily to changes in the society from which it comes, and which it defends.

Background to the Bill

5. The primary role of our defence force remains the protection of Australia and its national interests. This is as it should be, and few Australians disagree.

6. The defence force of liberal democracy must also be institutionally non-partisan in absolute terms, accountable to the Australian people through their elected governments, and play no part in party politics. The ADF and its operations are rightly subject to law, both domestic and international.

7. The ADF's disciplinary code, stemming from s51(vi) of the Constitution plays a large and direct part in ADF capability. Without such constitutional foundations, consequent laws, and code-based discipline the ADF would risk become just another unaccountable armed rabble.

8. As the ADA noted in its submission to the inquiry by the Senate Legal and Constitutional Affairs Committee into the Military Court of Australia Bill 2012, ADF personnel remain Australian citizens and do not somehow lose the rights of citizens when donning ADF uniform. They do, however, become subject to an additional form of law as set out in the DFDA, and the contexts where such law is applied are becoming ever more complex.

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9. As most recently seen during the 2019-20 bushfire season, and more recently during the Covid-19 pandemic, governments of both political persuasions have deployed unarmed ADF personnel to supplement state and territory emergency and police services during natural disasters and other emergencies. The range of domestic and overseas activities that ADF personnel are now expected to undertake is increasing, not decreasing. The ADF disciplinary code needs periodic amendment to keep up.

10. In his 1982 speech to Parliament introducing the DFDA Bill, the Minister for Defence noted that it replaced much older legislation covering disciplinary offences. In the Army's case this was the British Army Act of 1887. Sir James Killen noted that one of the Service offences in that Act, "defrauding an ostler" was a good example of the problem of legislation that had not kept pace with technological and societal change. The proposed inclusion of cyber-bullying as an offence in the contemporary ADF shows how keeping up with change is a continuous process.

Proposed amendments

11. As first and foremost a component of ADF capability, the defence force's disciplinary code is inter-meshed with how the force is organised and commanded, the command responsibilities and duties of care involved, and how the ADF functions at the day-to-day working levels on ships, units and bases. Especially in reinforcing accountability for serious and less serious actions by personnel where they undermine teamwork and mutual trust.

12. Aspects of the DFDA that introduced court-like proceedings down to the lowest level of hearings have been simplified progressively since 1985, particularly from 1995, with no loss to the rights of those charged or the balances of fair play and justice concerned. The tweaking of the disciplinary infringement scheme proposed in Schedule 1 of the Bill is part of that process.

13. The proposal in Schedule 2 of the Bill to remove subordinate summary authorities makes sense. It may need review down the track to check that the advantages have outweighed the disadvantages. Whatever the faults of such hearings, they do enjoy considerable confidence among junior and non-commissioned ranks. Particularly as an effective aid to individual maturation, and team-building, in circumstances where often young personnel live, work and socialise together much more than in other Australian workforces.

14. The new and specific Service offences in Schedule 3 of the Bill reflect wider change in Australian society and are fully supported.

Conclusion

15. The Defence Legislation Amendment (Discipline Reform) Bill 2020 is a commonsense updating of the ADF's disciplinary code.

16. The Bill can be safely passed in its present form.