



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

BILLS

**Military Justice (Interim
Measures) Amendment Bill 2011**

Second Reading

SPEECH

Wednesday, 22 June 2011

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner
Speaker Mr ROBERT

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(Fadden) (NaN.NaN pm)

Mr ROBERT (Fadden) (13:33): The Australian Military Court, by virtue of background and history, was established in 2007, in legislation that had the bipartisan support of both sides of the parliament. The court's establishment followed a series of Senate committee reports, over a number of years, recommending extensive changes to the system of military justice.

On 26 August 2009, however, the High Court of Australia handed down its decision in the case of Lane v Morrison. The case challenged the constitutional validity of the Australian Military Court. The High Court found unanimously that the provisions of the DFDA 1982, establishing the Australian Military Court, were indeed invalid because the Australian Military Court purported to exercise the judicial power of the Commonwealth but did not meet the requirements of chapter III of the Constitution.

The current interim military justice system was established following the High Court's decision. The interim military justice system was established under the Military Justice (Interim Measures) Act (No. 1) 2009. We were told by then Minister Faulkner—second out of a line of three defence ministers in this government over four years—when it was introduced that rectifying the military legal problem would be 'afforded the government's highest priority'. If it was afforded the government's highest priority, then why are we back here two years later extending the provisions with the Military Justice (Interim Measures) Amendment Bill 2011?

I was here under the almighty reign of the former Prime Minister, the member for Griffith, where he had wars on everything—a war on Indigenous disadvantage, a war on obesity, a war on unemployment—

Dr Southcott: A war on inflation.

Mr ROBERT: and a war on inflation. It got to a point where, over a month, there were 10 wars that he was fighting across the domestic continent of Australia. But, not content to just stop at the war fighting, he then said, 'My No. 1 priority is dealing with obesity; my first priority is dealing with X.' He had 10 No. 1 priorities. Is it any wonder that, 12 months ago to the date in two

days time, the Labor Party rose up in historic form and knifed him, not because he was behind in the polls but because they, frankly, hated him? That is a statement of fact: 10 wars, 10 No. 1 priorities, none of them going anywhere; and here we have another highest priority, military justice.

Two years ago, the Minister for Defence said, 'It's our highest priority.' When a Minister for Defence speaks in the House of Representatives, the world listens. Not only is there a \$26 billion budget but, when you add on \$12 billion in terms of vets, you are talking about \$38 billion worth of expenditure and the senior elected representative of a middle power with significant regional interest. When the Minister for Defence speaks, the world listens. When he says it is his highest priority, we would expect that to be honoured.

Then again, 12 months ago, when the government had lost its way, the Prime Minister outlined three of her highest priorities. Where are we on those highest priorities? Where are we on the issue of asylum seekers? We had East Timor. We had Manus Island. We had Malaysia announced almost eight weeks ago and we still have nothing. Where are we on the carbon tax? Where are we on the MRRT? It seems that whenever this government rolls out this contemptuous line, 'It is our highest priority,' hoping that the nation listens and says, 'Perhaps the government is interested and this is important to it,' it ends up nowhere.

Keeping military matters in mind, in 2007—I look at the member for Moreton, who came in in 2007—the government said in the election campaign that one of its highest priorities was to address the fairness of the indexation of defence pensions. Where are we after four years of that being a high priority? Where are we, Member for Moreton? Where are we, Member for Fremantle? Where are we on that high priority? In fact, to save your bacon, the coalition introduced a private senator's bill in the Senate. When we went to the election saying it was our highest priority, we actually acted on it. We stood up and acted on our highest priority. We put a private senator's bill into the Senate. Where was the Labor Party? It was voting against it, which was odd because I put a motion into the House asking the House to reaffirm its commitment to the fair indexation of military pensions and to support the Senate bill and it passed on the voices.

Where was the Labor Party then in dealing with this high priority? As we address this issue of military justice, let everyone know that we are here because this government is completely, intolerably and utterly incapable of exercising a commitment to what the defence minister said was the highest priority—not just a high priority but the highest priority. It is funny how priorities change, because here we are two years later.

Clearly the minister's statement was about buying time for a government that had lost its way, or so we were told 12 months ago. This is a government that does not have a clear strategy on how to deal with the issue of military justice. This also builds on so many other missteps and misfortunes this government has created when it comes to our fighting force. It was dragged kicking and screaming to put counter rocket, artillery and mortar into the battlefield, the C-RAM system, which was originally on the DCP for 2018 until the coalition pressured it and 43 force protection measures went into Afghanistan to further protect our troops. The government was told about the issues with the air warfare destroyer, but still there was no action until it was sprayed across the front of the papers. We are seeing \$2½ billion of the defence budget handed back because apparently the government cannot spend it. Yet, in the Howard years, an average of something like 30 projects went through first and second pass approvals. What has the government been doing in the last one, two and three years in first and second pass approvals? Seven, eight and nine, a third less than the Howard government, and you wonder why there is an underspend out there in defence industry.

Everything this government does in terms of defence has the opposite of the Midas touch. We are now at a point where Force 2030 is unachievable. Something like \$14 billion worth of defence procurement has been pushed to the right, some of it into years that have not been disclosed, so this government can try to stand up next financial year, 2012-13, and say, 'Look, we've got a wafer-thin surplus,' a surplus built on the back of destroying Australian defence industry and deferring \$14 billion worth of projects. It is one more example of a long litany of defence failures. The defence minister said fixing up the Australian Military Court issue was his highest priority. He said it two years ago and here we are back again. I could use the Treasurer's hyperbole—to use the Prime Minister's term—about how appalling this is, but let the record speak for itself: two years later we are back again.

The Military Justice (Interim Measures) Amendment Bill 2011 is a stopgap measure. It is necessary in order to provide for the ongoing remuneration along with other entitlements of statutory office holders, ostensibly the Chief Judge Advocate and two Judge Advocates, each of whom is a full-time member of

the Australian Defence Force. The amendment, at least at face value, is necessary because schedule 3 of the Military Justice (Interim Measures) Act (No.1) 2009 currently provides a fixed tenure for the statutory office holders, the Chief Judge Advocate and two Judge Advocates, of up to two years that will expire in September 2011. This bill amends schedule 3 of that act to provide for the appointment, remuneration and entitlement arrangements for an additional two years or until the Minister for Defence puts in place the legislation to establish a properly constituted court.

If it takes two years to move to reaffirm the interim measures bill, which was the highest priority, frankly I am not holding my breath on the government's capacity, capability, courage and conviction to actually get a proper bill before the House. It is 12 months since fundamental injustice day, 12 months since the government lost its way. The Prime Minister's three priorities are still nowhere. All we have learnt is that the Prime Minister's highest priorities simply do not get any priority and the Minister for Defence's highest priorities get zero priority. That is a fabulous analogy for this wretched government—moribund, rotten and incapable of actually setting an agenda or a vision for the nation; setting priorities it does not keep and setting agendas it has no hope of ever reaching. It is disappointing that we once again find ourselves passing another stopgap measure. Senator Faulkner's second reading speech reads:

This is an interim measure until the government can legislate for a chapter III court ...

The question for the government is: when will we see the legislation for a chapter III court? Numerous military professionals have come out opposing some concepts of where the government is going. There is no ostensible discussion paper to provide advice as to the direction it might head and no comments out there with respect to where we might go.

The DEPUTY SPEAKER (Hon. Peter Slipper): Order! The debate is interrupted in accordance with standing order 43. The debate may be resumed at a later hour.

(Boothby) (NaN.NaN pm)

(Fadden) (NaN.NaN pm)

(Fisher) (NaN.NaN pm)