

DEFENCE LEGISLATION AMENDMENT BILL 2008

Second Reading

Mr ROBERT (Fadden) (11.04 a.m.)—I rise to lend my support to the [Defence Legislation Amendment Bill 2008](#). The purpose of the bill is to give effect to what was in the original Howard government bill, the Defence Legislation Amendment Bill 2007. The bill introduces wide-ranging reforms to the Australian Defence Force summary discipline system. The bill provides for a further set of changes which in part build on the changes in the Defence Legislation Amendment Act 2006. The changes are intended to provide for, and balance, the maintenance of effective discipline and the protection of those individuals who are subject to the military discipline system. It introduces another element of military justice, which reflects the fairness of civilian processes of justice but in a way that recognises the realities of applying military discipline fairly and efficiently not only in Australia but in the field of combat operations across the world.

The 2007 amendment bill was introduced by the Howard government in mid-August 2007 to give further effect to the Howard government's response to the report by the Senate Foreign Affairs, Defence and Trade References Committee entitled *The effectiveness of Australia's military justice system* by amending the Defence Act 1903, the Defence Force Discipline Act 1982 and the Defence Force Discipline Appeals Act 1955. There have been numerous inquiries over the past decade and a number of court challenges and publicly-aired complaints brought by former and serving personnel, their families and other community members suggesting that the military justice system was flawed. Significant official inquiries included the 1997 study into the judicial system under the Defence Force Discipline Act, by Brigadier the Hon. Justice Abadee; the 1998 Commonwealth Ombudsman's own motion investigation into how the ADF responds to allegations of serious incidents and offences; the inquiry into military justice procedures in the ADF by the Joint Standing Committee on Foreign Affairs, Defence and Trade in 1999; the same committee's inquiry report, *Rough justice? An investigation into allegations of brutality in the Army's Parachute Battalion*, a battalion in which I served as an officer in 1993; the 2001 Burchett QC *Report on the inquiry into military justice in the Australian Defence Force*; and the 2002-03 Western Australian Coroner's investigation of fire onboard HMAS *Westralia*.

This bill, cognisant of the inquiries that have gone before it, relates to the less serious offences and aims to modernise and redesign the summary discipline system. These less serious offences include offences peculiar to the Defence Force, such as absence without leave, disobedience of a command and endangering morale, and offences which are similar or identical to civilian offences but which relate to service personnel or equipment, such as assault of a superior or subordinate, destruction or damage of service property, or dealing in narcotic goods on a base.

As I have already stated, there have been numerous inquiries into the administration of justice in the ADF. Many inquiries made suggestions for improvements to the military justice system; some suggestions were acted upon and some were not. By the time the 2003 committee published its report in June 2005, it acknowledged:

For ten years now, there have been increasing calls from servicemen and women and their families that all is not well in the military justice system.

The 2003 committee made 40 recommendations for change. Thirty of the 40 were accepted in whole or in part by both the previous government and the

current government. This bill is a direct response to those recommendations. The 2003 committee stated in its report of 2005 that it 'believes that the military justice system in its current form clearly needs a comprehensive, ground up reform'. The 2008 version of the bill—virtually a copy of the Howard government bill—delivers that ground up reform. It creates a new system with many built-in safeguards. There is a system of review and appeal which, on its face, should deliver outcomes that are fair, informal and timely. The ADF has asked for simpler rules of evidence. Although the formal rules of evidence will not have to be applied, the bill requires that summary authorities comply with the rules of natural justice and the basic principles of the rules of evidence relating to relevance, reliability, weight and probative value. The bill is very welcome.

I am one of only three former serving military officers in the House of Representatives. I have previously felt the weight of an unjust military justice system. In my time at the Royal Military College Duntroon I was—and I know that you will be shocked—charged for being absent without leave. I am appalled to say it. I missed a night-time lecture. The fact that I was at the college and was indeed not absent, and not absent without leave, was deemed irrelevant. The rules of evidence are somewhat loose when one is an officer cadet. As a military officer, I have defended and prosecuted numerous soldiers and fellow officers. If I can use a phrase, I have stood there while the chorus has rung out numerous times to 'march the guilty bastard in'. And having previously been one of those 'guilty bastards' marched in, it is a little disconcerting to hear that my fate had been decided by the company sergeant major outside the door before indeed I had ever faced the summary authority.

Currently—prior to this bill—there is no appeal from a summary authority, be it an officer commanding or indeed a commanding officer. There is no appeal for the poor 'guilty bastard' being marched in. There is no right to apply to a single judge of the Australian Military Court. This bill seeks to right that wrong. My fellow officers have gone through a number of court martials and inquiries, not least being the one into my former battalion, the 3rd Battalion, the Royal Australian Regiment, and the one into the Blackhawk disaster. They have come out confused, scarred, disappointed, feeling they have been failed and let down by a military that they had committed their life to. Many of these officers welcome the changes being brought in today.

Colleagues, the days of Napoleon and Wellington are over. The days of marching to war and on day one hanging one to make sure that the rest will follow are over. Combat effectiveness is predicated on faith that the man next to me will do his duty; that the man sharing the foxhole with me in the dark hours of the morning will stand to, man his weapon and do what is right. Injustice weakens faith. Injustice weakens combat effectiveness. It weakens unit cohesiveness. If soldiers and officers have no faith in their commanders—who by the Defence Force Discipline Act, sit as summary authorities, both at officer commanding and commanding officer levels—and lack faith in the justice dispensed by their senior officers, they will lack faith in their ability to lead in times of turmoil.

This bill ensures that the average digger, the hardworking NCO and the commissioned officer are fairly dealt with in a way that is cognisant of their rights. It gives the poor 'guilty bastard' outside the opportunity to be fairly heard and to take their right to go to a single judge of the Australian Military Court if needed. On behalf of the diggers, the hardworking NCOs and the commissioned officers out there, I commend the bill to the chamber.