



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

PROOF

BILLS

**Defence Legislation (Enhancement
of Military Justice) Bill 2015**

Second Reading

SPEECH

Thursday, 18 June 2015

BY AUTHORITY OF THE SENATE

SPEECH

Date	Thursday, 18 June 2015	Source	Senate
Page	47	Proof	Yes
Questioner		Responder	
Speaker	Lambie, Sen Jacqui	Question No.	

Senator LAMBIE (Tasmania) (13:54): I rise to speak on the Defence Legislation (Enhancement of Military Justice) Bill 2015. As you may be aware, I served in the Australian Army as a military police officer and worked within the Australian military justice system. I am aware of its good parts and its failings. I am happy to support this legislation because I believe overall it will improve the system of military justice. However, I maintain that in order to truly reform Australia's military justice system, which has failed tens of thousands of victims of abuse since at least the 1960s, a royal commission into defence abuse must be established. The perpetrators of abuse must be held to account, and the victims must have a chance to tell their stories and receive justice. Importantly, those who covered up and turned a blind eye to crimes must all be held to account for their dereliction of duty. The lessons that we will learn during this painful but necessary royal commission process will ensure that, eventually, the best soldiers in the world will have the best military justice system in the world. There are some specific concerns I have received from the Defence community in relation to this legislation, which I will speak to shortly.

I now turn to a short summary of the Defence Legislation (Enhancement of Military Justice) Bill 2015. In summary, these measures will: clarify the character and status of service convictions for Commonwealth purposes; remove the provisions in respect of the trial of old system offences, offences under the law prior to the DFDA; create a service offence of 'assault occasioning actual bodily harm'; create a service offence of 'unauthorised use of a Commonwealth credit card'; clarify the elements of the service offence of 'commanding or ordering a service offence to be committed' under section 62 of the DFDA; enable the fixing of non-parole periods by service tribunals to overcome the problems associated with recognisance release orders; correct a technical error in the charge referral process; correct a technical error in the discipline officer scheme; replace dollar amounts as maximum fines in the DFDA with the more contemporary penalty units system; statutorily recognise the Director of Defence Council Services, DDCS; and extend the period of appointment of the current CJA and full-time judge advocate.

As I foreshadowed, I have received some feedback and concerns from the defence community that I would like the minister to investigate and take on board. I am going to protect the identity of the person who sent me a very well written letter, for obvious reasons. It reads as follows:

Dear Senator Lambie, I wish to raise with you a number of concerns regarding the Defence Legislation (Enhancement of Military Justice) Bill 2015, particularly Schedule 2 in relation to the Director of Defence Counsel Services, which is to be an amendment of the Defence Act 1903.

As you are probably aware, the main function of the Directorate of Defence Counsel Services ... is to arrange legal assistance and representation for accused ADF members who are facing a Court Martial or a Defence Force Magistrate trial.

This is achieved by using Reserve Legal Officers (RLOs) who are outside the chain of command.

Unlike the other two arms of the military justice system, namely the Office of the Director of Military Prosecutions and the Registrar of Military Justice/Office of the Judge Advocate General ... the DDCS has never been statutorily independent and in fact up until March 2014, remained within the chain of command and reported directly to the Director General ADF Legal Service and through him to Head Defence Legal (HDL).

In March 2014 the Chiefs of Service Committee agreed to implement recommendations that came out of a number of reports, including HMAS Success, that DDCS should not be within the chain of command.

As such, Directorate of Defence Counsel Services or DDCS was moved to report directly to the Chief Operating Officer (COO) (now renamed to be the Associate Secretary and Defence Legal ... in fact reports to him as well), with the National Practice Manager and his area "hosting" DDCS for administrative purposes (such as budgets, staffing, signing off on the Director's leave and travel etc).

Whilst the Deputy Director initially had ... (Chief Operating Officer) as his second line supervisor, this was altered by HDL so that ... (Head Defence Legal) is the second line supervisor.

DL (Defence Legal) has always been reluctant to completely let go of ... (Directorate of Defence Counsel Services) and the present Bill is designed to placate a growing number of calls, particularly by ... (Reserve Legal Officers), the staff of DDCS and others, that it is not reasonable to have the one arm of the military justice system that attempts independently to look after the interests of the members outside the chain of command not be statutorily independent.

The Bill gives statutory recognition which in effect does little to enhance the perceptions of a decreasing control by the chain of command.

Debate interrupted.