

Pax Christi Australia

International Christian Peace Movement

14 October 2020

The Secretariat
Foreign Affairs, Defence and Trade Committee Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Submission Concerning Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020

Pax Christi Australia is a branch of the International Christian Peace Movement Pax Christi International which has consultative status at the United Nations.

This submission expresses our concerns at some of the provisions of the proposed Bill.

- Although we have no problem with the use of the ADF in natural emergencies, fires, floods, pandemics etc, we are concerned that the proposed legislation could open the way for the use of the ADF to maintain public order at the discretion of the Department. The ADF are not trained in policing. Experience in Northern Ireland and elsewhere shows that where military forces are used to deal with public order, levels of conflict and violence escalate to a point where more and more force is needed and underlying issues are lost sight of.
- We are further concerned that use of the ADF in civil policing could take us in the direction of the militarisation of the whole society as it has in the Philippines and Myanmar.
- The bill extends a very large immunity for ADF personnel from civil and criminal liability as long as their acts are done in ‘good faith.’ We believe that ADF should be subject to civil law in the same way as other citizens.
- We are concerned that responsibility for calling out of the reserves appears to sit solely with the Defence Minister without any consultation with the Executive Council or other responsible body.
- The Human Rights Statement is grossly inadequate. It does not address public rights that may well be infringed under these provisions.
- We strongly object to the provision for the use of overseas military or police forces and to their proposed legal immunity. We do not understand what situation might possibly arise where this should be necessary. It opens the way for undue involvement of foreign government in Australian affairs.
- There is no provision for parliamentary scrutiny.
- There is no time limit on the deployment of the ADF in a civil crisis.
- The bill speaks of the possibility of deployment of the ADF in the face of an “imminent” crisis. This means the definition of a crisis could be at the discretion of the minister and could be open to abuse and could be used for political purposes. This needs to be very clearly defined in the legislation.

We recommend:

- That the bill be sent to a committee where constitutional law experts can provide advice on the constitutional validity of the legislation and human rights experts properly assess the human rights impacts.
- That the civil and criminal immunity granted to defence forces operating domestically be revisited and rebalanced with the right of victims of civil or criminal misconduct to seek justice.
- That the call out powers be subject to review by parliament or a test to introduce checks and balances.
- That the defence forces be explicitly prohibited from using force domestically. The proscription should be in the legislation.
- Foreign armies or police forces should not be encompassed by this legislation, and certainly should not be given immunity for crimes or other wrongs against citizens.

(Rev) Harry Kerr

On behalf of Pax Christi Australia