



Medical  
Association for  
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(Australia)

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**To: Senate Foreign Affairs, Defence and Trade Legislation Committee**

**Re: Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020**

MAPW (Australia) appreciates the opportunity to provide this submission. Our organisation has previously [expressed concern](#) about the above bill.

MAPW works for the elimination of all weapons of mass destruction and the prevention of armed conflict. We are the Australian affiliate of International Physicians for the Prevention of Nuclear War (Nobel Peace Prize 1985), and in 2007 launched ICAN, the International Campaign to Abolish Nuclear Weapons (Nobel Peace Prize 2017).

We would be pleased to take part in oral hearings on the bill, which we consider are necessary.

Dr Sue Wareham OAM

President, Medical Association for Prevention of War (Australia)

## **SUMMARY AND RECOMMENDATIONS**

MAPW believes that a need for the above bill has not been demonstrated.

If passed, it would:

- Fail to clearly define the circumstances in which ADF troops could be used within Australia
- Provide an extremely easy process for a Defence Minister to initiate the use of ADF troops within Australia, thereby tending to normalise a military presence in civilian life.

AFFILIATE



FOUNDER



- Fail to explicitly rule out the use of force by ADF or even foreign troops or police within Australia
- Provide an unacceptable degree of immunity for ADF or foreign personnel in the event of civilian harm
- Distract the ADF from their core business of the military defence of Australia
- Militarise problems that demand non-military responses, and divert focus from the urgent needs for climate action and far greater civilian firefighting capacity.

The current process of examination of this far-reaching bill is inadequate and rushed.

MAPW urges that the bill be rejected and that the above concerns be given the time for exhaustive scrutiny that they require. At the absolute and very least, any new provisions for ADF callout for emergency operations in Australia must *explicitly* apply only to operations that exclude the use of force. Under no circumstances should the use of force by foreign military or police be permitted in Australia.

## MAPW CONCERNS

### 1. NEED FOR THE BILL NOT DEMONSTRATED

ADF troops were deployed to assist in the 2019-2020 bushfires, the current COVID pandemic, the 2019 floods in Townsville and the 2009 Black Saturday bushfires in Victoria – all of which occurred without the proposed legislation. While it is claimed that the bill is needed because problems were identified during the 2019-2020 bushfire deployment, the provisions in the bill go far beyond the problems that have been cited<sup>1</sup>.

A need to override state control of emergency situations has not been demonstrated. The current proposal is unnecessary and should be opposed.

### 2. WHO DEFINES A “NATIONAL EMERGENCY”?

Under the provisions of the bill, an ADF callout could be triggered by a “national emergency” - words that can mean whatever one wants them to. Political discourse is already shut down in Australia by the increasing tendency to use the label of

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<sup>1</sup>In relation to last summer’s bushfire response, it is worth noting that the NSW Rural Fire Service chief [learnt](#) of the ADF deployment not from the Prime Minister but from the media, suggesting that even basic communication - a key requirement in any disaster response - was not employed on that occasion.

“national security” in order to evade scrutiny of important matters. “National emergency” is similarly open to politicisation. The label could be applied to unwanted political protests, industrial disputes etc.

The bill, if passed, would exacerbate a slippery slope to a more militarised society, where ADF roles could be created in situations that require civilian responses. The APH briefing on this bill notes the risk of “*encouraging the executive to generate ‘emergencies’*”.

MAPW notes the comment of Justice Hope in his 1979 Protective Security Review, that “*...troops should never, in any circumstance, be used to confront political demonstrators or participants in industrial disputes. Whatever logistical support they render, they must be protected by police who alone must deal with any violence arising from objection to their support*”.

### **3. RELAXING THE PROCESS OF DEPLOYMENT WITHIN AUSTRALIA**

The bill proposes simplifying to an extremely easy level the process whereby the ADF can be deployed within Australia. A Defence Minister would simply need to “consult with” (not necessarily get the agreement of) the Prime Minister and then advise the Governor-General who would then act on his advice. Any role for the Executive Council would be removed. The notion that this change is now needed to ensure that there are no delays, in an age when instant communications across the country have become normal practice, is absurd.

The concentration of such power within virtually one pair of hands, with no checks and balances, is anathema to a democratic society.

### **4. USE OF FORCE**

The bill does not explicitly exclude the use of force by ADF troops against Australians - a situation that would be alarming to most Australians. Even more unacceptable would be the use of force against Australians by foreign troops or police, which the bill also allows for. [The question arises](#) as to whether ADF assistance to the civil community could be used as a disguise for ADF aid to the civil power. If the bill is not intended to do this, then it should explicitly rule out the use of force.

MAPW notes the advice within the Parliamentary Library briefing on this bill that “*The removal of criminal liability for actions taken in good faith performance of duty while providing certain assistance is likely to have the practical effect of expanding the circumstances in which the ADF can use force when deployed within Australia*”.

We should learn from the ugly scenes in the US of [militarised force against protests in Portland, Oregon](#), over the objections of local officials. Legislation that helps militarise ill-defined “national emergencies” with the use of force must be rejected.

## 5. IMMUNITY

The bill proposes simply that ADF and foreign troops or police must be “acting in good faith” for them to have immunity in the event of civilian harm. This bar is far too low and vague. The combination of the possibility of armed force, with civil and criminal immunity for those using it, creates an unacceptable threat to the rights of citizens; they would have no recourse through the courts for any harm done. This undermines human rights.

## 6. WHY THE RUSH?

The bill is being rushed to the extent that proper scrutiny is impossible. A time period of 1 week for submissions, announced when most eyes are on a hugely significant federal budget, does not represent consultation.

MAPW notes again the words of Justice Hope in his 1979 Protective Security Review: *“Use of the military other than for external defence is a critical and controversial issue in the political life of a country and the civil liberties of its citizens.”*

It should be treated as such. This process has all the markers of an attempt to lock the bill into law before most Australians even know it exists. Our democracy, and trust in the political process, are degraded even further as a result.

## 7. DISTRACTING THE ADF FROM THEIR CORE BUSINESS

The purpose of the ADF is to provide military defence for Australia.

The Defence Department itself [states](#) that the ADF is “*not trained, equipped or certified to undertake ground-based or aerial bush firefighting*”. Therefore, we should better resource those who *are* trained and certified for the job, and allow the ADF to focus on the military training and other tasks required of them.

This is not to deny that, even if we were to properly equip our fire and other emergency services, there may be occasions where ADF equipment or logistics are needed. But such occasions should be non-controversial and with the use of force absolutely excluded; they already occur under current arrangements.

## 8. MILITARISING OUR BIGGEST CHALLENGES

The bill proposes military responses to non-military problems, and thus tends to distract from real action on our biggest challenges, especially climate change.

A speech<sup>2</sup> prepared for delivery at an invitation-only event by Defence Force Chief General Angus Campbell in June 2019, gave an alarming picture of the accelerating impacts of climate change:

*“In about 10 years from now global warming above pre-industrial levels is set to rise by 50%. At 1.5 degrees of warming we can expect more significant impacts. Particularly in regards to oceans, low-lying areas and human health. The poor and most vulnerable will be hardest hit. Livelihoods lost. Food scarce. Populations displaced. Diseases spreading. And this now looks like our best-case scenario”*

An exacerbation of poverty, unemployment, hunger, large scale population movements and the spread of disease – predictions that are in line with those of virtually every authority on climate change – are not military problems. They are humanitarian problems, for which lowering the bar for military interventions is the very worst form of preparation. By focussing on such interventions, we divert attention and resources from the increasingly desperate need for genuine climate action to prevent the bleak scenarios that are coming into view.

For Australia - whose vulnerability to climate-induced bushfires and other disasters exceeds that of most other countries - the finding of new roles and ever-increasing funding for our military forces diverts attention and resources from the proper funding of our civilian fire and emergency agencies.

Similarly, in relation to pandemics, a boost to *civilian* capacity for prevention, preparation and response would be far more cost effective than a lowering of the threshold for military intervention.

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<sup>2</sup> ABC report: <https://www.abc.net.au/news/2019-09-25/australian-defence-force-angus-campbell-climate-change-speech/11543464> . Text of speech obtained by lawyer Kellie Tranter under FOI, available here: <http://kellietranter.com/2020/08/background-to-the-militarisation-of-climate-change/>

