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IPAN's Vision: An Independent and Peaceful Australia

14th October, 2020

SUBMISSION:

To the Foreign Affairs, Defence and Trade Committee Department of the Senate on the "Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020".

This submission is made by IPAN, the Independent and Peaceful Australia Network, a network of organisations (community, faith, peace groups and trade unions) and concerned individuals, from all regions of Australia who are united by our support for an independent Australian foreign policy based on peaceful resolution of conflicts (www.ipan.org.au). Upholding human rights as expressed in the United Nations Charter of human rights and safeguarding of our democratic rights are integral to the beliefs of IPAN and its constituents.

IPAN has five areas of concern to raise with the Senate Committee regarding this Bill 2020.

These will be numbered for clarity.

1. IPAN is concerned that this proposed legislation would give the Defence Minister authority to call out the troops for an emergency as determined by him/herself without reference to Parliament and is only required to consult with the Prime Minister. The Defence Minister only has to require the Governor-General to act on his/her advice in order to actuate the call out of the Defence/Reserve Forces for assistance in an emergency situation which the Defence Minister alone decides justifies this action. The Governor-General is required to act on the advice of the Defence Minister.

IPAN has concerns that under the proposed legislation, the Defence Minister, alone, decides when this call-out is to be terminated and that the Defence Minister is not required to obtain the agreement of the States or Territories and to even consult with them in regard to deployment of the Defence Forces in their state or territory jurisdictions.

IPAN sees this process as by-passing Parliament and the normal democratic processes giving the Defence Minister undue and unsupervised power.

Recommendation:

IPAN urges amendment to the Bill to ensure that before the Defence Minister can initiate a troop call out for assistance in emergencies, that such actions be approved, by Parliament and subsequent to such a call-out these actions will be regularly reviewed by Parliament and terminated by Parliament when it considers that necessary.

This amendment could be implemented by adding the words, in red, to 123AA (2):

“The Minister may, in writing, **subject to approval, review and termination by the Australian Parliament**, direct the provision of assistance in relation to a natural disaster or other emergency ifetc”

2. IPAN is concerned that the term “emergencies” is not clearly defined and is left to the judgement of the Defence Minister. Defence Forces assistance to fire fighters in a large scale bush fire can be understood and many would agree that such a natural disaster would justify such a deployment. However, it could be argued that Government should put sufficient effort into planning to cope with such natural disasters by organised civilian effort with adequate training and resources being provided by government making Defence Force assistance unnecessary. IPAN accepts that even with a well-funded and equipped emergency and health service agencies, there may still be occasions in future where ADF personnel and resources are needed in civil emergencies, however the use of the ADF should never be a replacement for the building up the appropriate capacity of emergency services and their use should be the exception, rather than the rule.

IPAN also believes that if the ADF and Army Reservists are deployed in emergencies, that the use of force always be prohibited and that the preclusion of use of force must be embedded in the legislation, which is currently not the case – refer also to point 5 below.

IPAN also has concerns that, as stated earlier in 2020 by the Defence Department that the ADF is "not trained, equipped or certified to undertake ground-based or aerial bush firefighting"¹, and believes that if and when deployed, ADF (and Army Reservists) are placed under the supervision and direction of the state based regional and local emergency personnel responding to the emergency.

In light of the above IPAN conditionally supports the deployment of the Australian Defence Forces and Army Reservists being deployed (under the proposed legislation) in the event of natural emergencies only, to assist state based regional and local communities who co-ordinate and lead the response to bushfires for example; placing the ADF and Army Reservists under the supervision and direction of local communities (local fire brigades and volunteer organisations).

Another significant issue is that Clause 123AA (2) (a) refers to “other emergencies” without clarification. Is it possible that the Minister might see an industrial dispute or mass public protests as being “an emergency” which requires the use of Defence Forces/Reserves to oppose and control them? Since industrial action and public protests are inherent rights in a democracy, any move to use the Defence Forces/Reserves to interfere with these rights would be seen as a serious threat to our human and democratic rights.

IPAN agrees with the warning given by Justice Robert Hope in the Hope Review into the use of armed forces in relation to the Hilton Hotel Bombing in 1979 saying:

¹ Parliament of Australia, Operation Bushfire Assist 2019-2020 6 February 2020, p. 12 (Overview section)
https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/7169203/upload_binary/7169203.pdf;fileType=application%2Fpdf#se arch=%22media/pressrel/7169203%22

“It was particularly important to subject the domestic use of the military to critical 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” and he agreed with a previous report to the government concerning the use of large numbers of armed soldiers that “.. the over-riding principle governing all such activity... that troops should never, in any circumstances, be used to confront political demonstrators or participants in industrial disputes.”

Recommendation:

IPAN urges amendment to the Bill to ensure that “other emergencies” does not refer to political protests or industrial disputes.

This could be implemented by adding the words in red to 123AA (2):

“The Minister may, in writing, direct the provision of assistance in relation to a natural disaster or other emergency **excluding industrial disputes or political protests**, if the Minister is satisfiedetc ”

3. IPAN is concerned that the Bill gives the Defence Forces/Reserves immunity from civil and criminal prosecution for acts arising from the deployment in their assistance role in natural disasters or other emergencies. IPAN believes this immunity will have the practical effect of expanding the circumstances in which the ADF/Reserves can use force when deployed within Australia. In fact, this issue is highlighted in the Bills Digest (p.20), where the authors state that “The immunity may have the unintended effect of permitting the domestic use of force by the ADF without the safeguards currently required under Part IIIAAA of the Defence Act. That is, on one reading (as explored above), the provisions may allow what is, in effect, a call out of the ADF on domestic operations, without a call out order being issued by the Governor-General, and without notice to the Parliament, the states and territories or the general public of that order being made.

Further IPAN is concerned that such a provision would provide immunity to members of the ADF/Reserves who deliberately act in a way which may distress, humiliate indeed even cause bodily harm to civilians; actions which should require the individuals concerned to face civil or criminal prosecution in the courts. This type of behavior is rare but has occurred in overseas deployment and the provision of blanket immunity for their actions does not discourage such behavior. To the contrary, The Bill says that this immunity operates when the Defence Forces and Defence individuals act in “good faith”. That should be a matter which a court decides. The Defence Forces and individuals in the Defence Forces/Reserves must be responsible for their actions just as any other Australian citizen is required to be.

In the debate over the Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000, Senator Bob Brown drew attention to the then current Australian Army Manual of Land Warfare Section 543 which instructed military personnel to cover up the killing or wounding of ‘dissidents’. The section stated: “Dead and wounded dissidents, if identifiable, must be immediately removed by the police... When being reported, dissidents and own casualties are categorised as merely dead or wounded. To inhibit propaganda exploitation by the dissidents the cause of the casualties (for

example 'shot') is not reported. A follow-up operation should be carried out to maintain the momentum of dispersing crowds." It is not known whether this manual has been revised since 2000 but it does indicate an attitude not conducive to acting in "good faith" or consistent with respect for human rights.

Recommendation:

IPAN urges amendment to the Bill to ensure that no immunity from civil and criminal prosecution be given to the Defence Forces or Reserves when providing assistance in a natural disaster or other emergency.

This would be implemented by deleting Clause 123AA (1)

4. IPAN is concerned that the Minister can engage foreign military forces or foreign police to assist in addressing natural disasters or other emergencies. IPAN objects to such reliance on foreign forces or foreign police on several grounds.

The first reason for IPAN's objection is based on loss of sovereignty and control. The first loyalty of foreign troops and police is to their country and to their command structure residing in the foreign country. An example of this is the contingent of U.S. marines which are annually stationed in Darwin purportedly to train in war exercises with our ADF. Those U.S. marines are not under the control of the Australian Government. At all times they take their orders from the U.S. Indo-Pacific Command whose centre resides outside of Australia. Foreign troops and police operating on our soil compromises our national sovereignty and possibly our national security.

Secondly, it could be perceived as an affront to emergency services personnel and the Australian people as a whole as it implies that we, collectively, are unable to deal with these natural disaster or other emergencies by ourselves. Surely a population of 25 million people with our skills and ingenuity supported by appropriate planning, organisation, training and equipment can deal with these situations effectively and in a self-reliant manner independent of assistance from foreign troops and police. To do otherwise suggests the "colonial cringe" is still with us, or at least within parts of the government.

Recommendation:

IPAN urges amendment to the Bill so that all reference to foreign troops and foreign police in the Bill be deleted.

This could be achieved by deletion of the clause: 123AA (4) (b)

5. IPAN believes that the Australian population would be assured that the Defence Forces/Reserves would not use or confront the civilian population with any force and/or weaponry whilst employed in disaster/emergency assistance if those troops were deployed unarmed and the use of force expressly prohibited in the legislation. This would safeguard against misuse of their power.

Recommendation:

To this end IPAN urges an amendment to the Bill by inclusion of a new clause:

123AA (9) A protected person (see subsection (3)) in carrying out duties of assistance for the situations described in subsection (2) shall not be armed nor use any force

Yours faithfully

Annette Brownlie
Chairperson