

DEFENCE LEGISLATION AMENDMENT (ENHANCEMENT OF DEFENCE FORCE RESPONSE TO EMERGENCIES) BILL, 2020

This Legislation was introduced on September 3 into the Federal Parliament. It has passed the initial reading, with limited opposition or amendment in the House of Representatives. The Federal Member for Warringah Ms Steggall stated in Parliament “Our defence force should never be used for quashing internal protests or the exercise of democratic rights.” Ms Steggall goes on “We’ve seen a dangerous rise of authoritarian responses to civil protests around the world and in many neighbouring nations. Some months ago, the Prime Minister himself spoke words that I found concerning in relation to the right to protest, especially around environmental issues. It would be concerning if there were any intention to use these measures in the amendment for something that was in fact quashing democratic rights”. The Member for Warringah is correct. It is particularly worrying as it suggests a lack of keen scrutiny, suspicion of sound procedures and due process. In this case accountability, removal of barriers and so-called red tape is being sacrificed for streamlining on the altar of “we need this for the forthcoming bushfire season”.

As it stands the Defence Minister after consulting with the Prime Minister can unilaterally call out the Defence Forces and involve foreign troops and foreign police to address an Australian emergency. “Emergency” is undefined but could conceivably, include using these forces to suppress industrial action or protests such as those concerning climate change. Indeed, one wonders whether the Government is preparing to use a military response to the impact of climate change itself, instead of addressing the causes of climate change. The Legislation provides the Defence forces including foreign and reserve troops and foreign police, immunity from civil or criminal prosecution which might arise from the actions in their “emergencies”.

Human Rights lawyer Kelly Tranter said of the Bill that “there are a number of elements that are concerning and will impact on civil liberties”. In Tranter’s briefing paper she says that the Bill not only fails to properly define “other emergencies”. It also delegates too much responsibility for the call out to a single Minister, permits foreign armies and police forces to be called in, does not restrict the use of force for defence forces and extends an unreasonable level of immunity for the defence force from criminal and civil penalties.

Bushfire and flood ADF assistance may be justified in an emergency, but is already being handled satisfactorily. On January 4 this year, in response to Defence Minister Linda Reynolds, Governor General David Hurley agreed to make a special order to “call out” the ADF to assist in the catastrophic fires that were sweeping the east coast of Australia. Neither the Constitution or the Defence Act 1903 authorises the Federal Government to take control of an emergency response or move “from responding to assistance requests from States” to actively leading elements of the bushfire response. Alex Hawke the Assistant Defence Minister referred to this in the second reading speech on the Bill as follows “to respond to natural disasters and other civil emergencies”. While the Federal Government might not like this, it is most likely aimed at ensuring “States Rights” were not compromised.

Freedom of Information requests show that Defence is planning towards extreme climate change impacts, raising concerns that Government is preparing for a

militarised response to climate breakdown. The Government should be investing in civilian capacities to manage future disasters and climate impacts. Although the explanatory note in the Legislation states assistance is limited to that of “not using force”, that does not appear in the Legislation. Further, the granting of immunity, notably to institutions vested with powers to wound and kill, should cause a chill in the community. It effectively nullifies any enforceable right of instances of harm. It is also a statement of exclusion to judges that their scrutiny will not be needed. The protector knows best!

As Labor Senator Kim Carr wrote on September 22, “Hidden in the fine print of an otherwise unremarkable Bill gives legal protection to ADF personnel following lawful instruction while on service, it is an extraordinary extension of emergency Commonwealth powers.” Senator Carr goes on, “Item 4, sub section 123AA2 provides for a **general emergency power** for the Defence Minister to deploy the ADF. Such directions do not need to be published, they are not time limited and the Minister does not need to consult with the States or Territories”. Further Carr writes “On the nature of the emergency- the emergency does not need to be defined. These decisions are not disallowable by the parliament. While the extension of power has been announced, who initiates this machination, remains unclear. Was it the Executive? Or the ADF?” Our Church is concerned that broadness in executive power is the enemy of liberty.

There are legitimate actions that citizens may take and being confronted or suppressed by the ADF or Reserve would not be legitimate use of these forces in a healthy democracy. The use of foreign military forces and foreign police to assist in undefined “emergencies” is of great concern. We certainly do not want foreign forces confronting or suppressing legitimate protest actions by Australian citizens.

The Melbourne Unitarian Peace Memorial Church, endorses the following recommendations for changing the Bill.

That the Bill be sent to a Special Senate committee/Public Hearing 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 to include a guarantee that the right of victims of civil or criminal misconduct can seek justice.

That the call out powers be subject to review by parliament and that a test be introduced to provide 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 should under no circumstances be granted immunity for crimes or other wrongs against citizens.

The Melbourne Unitarian Peace Memorial Church thanks you for considering our submission.