

**SENATE STANDING COMMITTEE ON  
FOREIGN AFFAIRS, DEFENCE AND TRADE**

**LEGISLATION COMMITTEE**

**LEGISLATION AMENDMENT BILL  
(AID TO CIVILIAN AUTHORITIES) BILL 2000**

**SUBMISSIONS**

**Submission No: 1**

**Submittor: Major-General Alan Stretton AO CBE**

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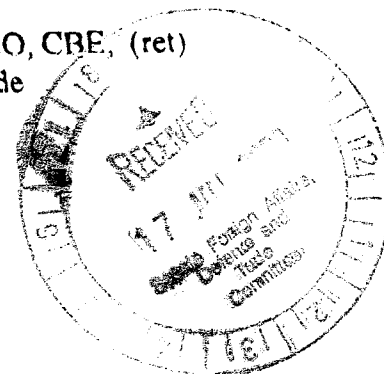
**Fax:**

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**Attachments Nil**

From : Major-General Alan Stretton AO, CBE, (ret)  
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Secretary  
Senate Foreign Affairs, Defence and Trade Reference Committee  
Parliament House  
Canberra  
FAX 62775818

*Dear Paul,*

**Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000**

Thank you for forwarding me a copy of the Defence Act. After further consideration I would be pleased if you could destroy my original submission and substitute the three pages that follow.

I hope this will not inconvenience you too much but, without the Defence Act or any other resources, I realise that my first submission was inappropriate.

I will be available to attend the Committee on Friday 21st July and will be coming to Canberra on Thursday afternoon. Until then I will be available on the above number and on Friday will be available on my Canberra number 62956977.

Yours sincerely,

*Alan Stretton*

**SENATE FOREIGN AFFAIRS AND TRADE LEGISLATION COMMITTEE**  
**DEFENCE LEGISLATION AMENDMENT BILL 2000**  
**Submission by Major-General Alan Stretton AO CBE (ret) (revised 17/7/00)**

**General**

1. A few weeks ago I was invited by the Committee Secretariat to make a submission to the Committee. I have had no consultation with any member of the Defence Force, the Department of Defence or the Attorney General's Department. Also I have no link with any political party. Therefore, I feel that I am in a position to make an objective submission.

**Definition of "Domestic Violence"**

2. Under the provisions in Division 1 of the proposed Bill, Ministers can only make an order utilising the Defence Force to aid Civilian authorities if they are satisfied that "domestic violence" is occurring or likely to occur, and provided that they are satisfied that the State or Territory is not, or is unlikely to be, able to protect itself against the domestic violence. (secs 51a, 51B & 51C)

3. The whole question of utilising the Defence Force evolves around the definition of "domestic violence" which is defined in Sec 51 (page 3 -lines 27 & 28) of the proposed Bill as :

"domestic violence has the same meaning as Section 119 of the Constitution"

4. However Sec 119 of the Constitution does not define "domestic violence". It merely states :

"119. The Commonwealth shall protect every State against Invasion and on the application of the Executive Government of the State, against domestic violence"

5. The use of the term "domestic violence" is unfortunate. It would hardly seem an appropriate term to describe a situation where armed overseas terrorists seize Olympic competitors and hold them in a building as hostages. Certainly this would constitute "violence" but could hardly be described as "domestic"

6. The term "domestic violence" is mentioned 15 times in Division 1 of the Bill yet despite the draftsmans effort to imply that a definition is contained in Sec 119 of the Constitution, a look at Sec 119 shows that the term is not so defined. There is therefore no guidance to Authorising Ministers

**7. It is recommended therefore that the term "Domestic Violence" be defined as "danger or threatened danger to life and property that is beyond the resources of State or Territory Police Forces".**

**Powers of the Minister**

8. Sec 51E of the Amending Bill (page 11 lines 9 - 12) gives the Minister authority to direct "the way in which the Defence Force is to be utilised"

2.

9. Defence Force lives could clearly be at risk if the Minister for Defence overrules the Chief of the Defence Force and directs the way the operation is to be conducted. After the Minister gives the Chief of the Defence Force the task it should be up the Defence Force to decide the best way to carry it out. To give authority to the Minister to direct the way the task is to be performed is a major departure from normal practice. A Minister for Defence is unlikely to have the knowledge or skill to direct the tactics of a military operation.

**10. It is recommended that the proposed amendment at 51E be deleted.**

### **Industrial Disputes**

11. At the second reading of the Bill, the Minister for Defence stated (page 6 of Second Reading Speech)

"The Bill also preserves the current prohibition set out in Section 51 of the Defence Act regarding the use of Defence Force elements in connection with industrial disputes"

12. This prohibition applies to the Emergency Forces or the Reserve Forces only. It does not prevent the Permanent Forces of the Navy, Army or Airforce being called out to deal with industrial disputes.

13. Sec 51G (a) of the proposed Bill (page 11 line 31) states that the Defence Force must not "stop or restrict any lawful protest or dissent;". It is not understood why this sub section is required. The Defence Force can only be made available in cases of domestic violence. Surely any domestic violence cannot be lawful and therefore this sub section is a non-sequitor.

14. There have been cases in the past where the Defence Force has been called out in Industrial Disputes which does not involve domestic violence e.g. the unloading or loading of ships during a strike on the waterfront or the maintenance of essential services during an industrial dispute. The amendment to the Act does not seem to give Authorising Ministers the power to call out the Defence Force in these circumstances.

15. It is recommended :

**(a) That the Amending Bill should give Authorising Ministers the power to call out the Defence Force in situations short of domestic violence.**

**(b) That the proposed amendment at 51G(a) be deleted from the Bill**

### **Division 3 - Restrictions on the Defence Force**

16. Under 51A(4)(c) (page 6 at lines 4 & 5) any order to utilise the Defence Force against domestic violence "must state that Division 2 or Division 3 ,or both, and Division 4 apply in relation to the order".

17. Division 2 gives the Defence Force the necessary authority to operate in its counter terrorist assault role such as the rescue of hostages or the re-capturing of premises.

3.

18. Division 3 provides for the declaration of a general security area but severely restricts the operations of the Defence Force, particularly if it were operating in a counter terrorist role. It requires the Defence Force to wear uniform (page 20 line 6) with their number attached to the front of their uniform. Under this Division of the Amending Act, before the Defence Force can enter premises a copy of the authorisation must be shown to the occupier (page 15 lines 24 - 29).

19. It is important, therefore, when issuing the necessary order for the Defence Force to operate in a counter terrorist assault role that the order does not include reference to Division 3. If it does, the Defence Force would have to comply with the restrictions in Division 3 and the lives of members of the Defence Force could be placed at risk.

20. The circumstances envisaged in Division 3 seem more applicable to normal policing duties and should not apply to members of the Defence Force who can only be used in a domestic violence situation that is beyond the resources of the State or Territory Police Forces.

21. **It is recommended that Division 3 be removed from the Amending Bill**



**(Major-General (ret))**  
**17th July 2000**

## **PROFILE**

### **MAJOR-GENERAL ALAN STRETTON ,AO,CBE.(Rtd)**

**Alan Stretton joined the Australian Army as a Private in 1940 just after his 18th birthday and is one of the few Generals to have risen from the ranks.**

**After graduating from Duntroon he saw Active Service on four separate occasions - commanding a platoon in the Pacific in World War 2, a company in Korea, the Australian Battalion in Malaya and in 1969/70 he was the Army Chief of Staff in Vietnam.**

**He holds the Infantry Combat Badge and is one of the most highly decorated Australians being awarded the MBE in 1955, the OBE in 1964, the CBE in 1970 and the Order of Australia in 1975. He has also been decorated by the President of the United States and was awarded the DSO by the Republic of Vietnam. In 1975 (after Cyclone Tracy) he was presented with the Australian of the Year Award by Prime Minister Whitlam. He was also the NSW Father of the Year in 1975.**

**Alan Stretton played VFL Football for St Kilda in 1946/7 and in 1947 was in the Victorian Basketball squad.**

**In April 1994, General Stretton was appointed the first Director-General of the Natural Disasters Organisation (now Emergency Management Australia). When Cyclone Australia destroyed Darwin at Christmas 1994 the Prime Minister placed him in charge of the devastated City and the conduct of the Relief Organisation. Under his leadership the essential services were restored, 36000 residents were evacuated and Darwin returned to normal administration - all within 6 days and without any further loss of life.**

**During his Army service and in his own time he took out a law degree from the University of Queensland and was admitted as a Barrister of the High Court of Australia in 1972. After his retirement from the Army in 1978 he practised as a Barrister and Solicitor in the A.C.T. until his final retirement in 1997.**

**He is also the author of two controversial books - "The Furious Days - the Relief of Darwin" and an autobiography "Soldier in a Storm"**