

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

**LEGISLATION COMMITTEE**

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

**SUBMISSIONS**

**Submission No: 2**

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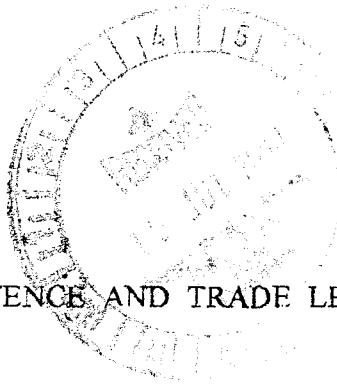
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**Attachments 4**



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## MILITARY AID TO THE CIVIL POWER IN AUSTRALIA

### INTRODUCTION

1. My father was born in May 1895 and entered the Royal Military College, Duntroon (RMC) in March 1914. At the start of his service he swore allegiance to King George V and his successors. He retired as Brigadier L.E.S.Barker, CBE.DSO.MC. in 1949. I was born in November 1926 and entered RMC in March 1944. At the start of my service I swore allegiance to King George VI and his successors. I resigned as a lieutenant-colonel in the Royal Australian Engineers in 1974. Between us, we served loyally Prime Ministers from Joseph Cook to Gough Whitlam. However our professional loyalty was to the Crown as represented by our Commander-in-Chief, the Governor-General of the day.

2. While both of us from time to time had cause to be critical about what the Australian Governments did or did not do for the Army, I am not aware of any time that the Permanent Army did not do what was required of it by the Government of the day. Nor was I aware of any Party political bias in the Permanent Army - the same could not be said of the Citizen Army, particularly in the 1930s.

3. After I left the Army I served as Liberal Party staffer in the Federal Parliament for a decade from 1977. During that period and since, I have taken an interest in the relationship between the military and the Parliament, the Executive and the Governor-General as Commander-in-Chief.

4. It is relevant that in the UK, since the time of the Cromwell Republic, the British Army has been the servant of the British Parliament with Army officers swearing allegiance to the Crown. It is no accident that the UK, Canada, New Zealand and Australia are four of the very few countries in the world that, for some time during the 20th Century, did not have a dictatorship from either the loony Left or the rabid Right.

### AUSTRALIAN AID HISTORY

5. The military has been used on many occasions such as:-
- \* Natural disasters - flood, fire, cyclones, pollution .
  - \* Bomb disposal.
  - \* Saving lives at sea, in the bush, deserts and in the snow.
  - \* Provision of engineer services for Aborigines living in remote areas.

Generally these do not raise many problems although sometimes there is criticism that the military is too slow to react or does not do enough.

6. However, other uses of the military do attract adverse comment. Attached as Annex A is a brief history of some of these uses of the Australian military in aid to the civil power since WW1. It is to be noted that most of these events involve either using the military in industrial unrest (which may be acceptable) or involving the military in the domestic Party political process (which is unacceptable). Also attached, as Annex B, is a sample of some of that adverse comment.

7. In particular, during the Hawke years as Prime Minister, it became common for the military to become involved in domestic politics. And this tendency has not stopped, as is evident from recent statements by the new Secretary of the Department of Defence that the loyalty of members of his Department should not be to the Commander-in-Chief (the Governor-General) nor to the nation - but to the Minister for Defence. Such a relationship may be acceptable for departmental bean-counters although some would say that the Parliament has considerable responsibility in that area. However if the Secretary is referring to operational matters as well, the developing situation is dangerous. Furthermore the military swear an oath of allegiance to the Crown not to the Minister. It reminds me of Hitler's Germany - see Annex D.

#### LEGAL MATTERS

8. I am not a lawyer so my comments are confined to bringing to the attention of the Committee three articles which may be of relevance and useful.

\* Australian "DEFENCE FORCE JOURNAL" Nov/Dec 1981.  
"Defence Powers under the Constitution" by C.M.Doogan.

\* "PACIFIC DEFENCE REPORTER" Feb 1985.  
"We must bring the unions into defence planning" by Anthony Bergin.  
"Serviceman's dilemma in defence of the civil power" by Brigadier Maurice Ewing.

#### THE GOVERNOR-GENERAL AS COMMANDER-IN-CHIEF (C-in-C)

9. Last year during the Republic Referendum debate I can only recall one passing reference to this topic and that was by Professor Cheryl Saunders in the Weekend Australian of 30-31 Oct 1999.

10. It has been some centuries since the British or Australian Crown led his or her (remember Boadicea?) troops into battle. In Australia, as I understand it, the C-in-C has two vital roles, in addition to obvious ceremonial functions.

a. CONTROL OF POTENTIAL MILITARY DICTATORS. The prior approval of the C-in-C should be required before the promotion of any officer to lieutenant-colonel (or equivalent in the RAN or RAAF) as this is the rank where Army officers have sufficient power to be a nuisance, if that way inclined. Such approval would follow a thorough satisfactory briefing of the C-in-C by appropriate senior Service officers on the annual reports of the officer recommended for promotion. The Secretary of the Department should be invited to comment if the Secretary so desires. It follows that any subsequent promotions of the officer concerned should also be subject to close scrutiny by the C-in-C before granting approval.

b. **CONTROL OF POTENTIAL POLITICAL DICTATORS.** Any use of the military in peacetime in Australia for any purpose should have the prior approval of the C-in-C. In some urgent cases, such as help in natural disasters, an initial phone call approval could suffice with subsequent written progress reports to the C-in-C. However in potentially contentious cases as referred to in paragraphs 6 and 7 above, the C-in-C should be briefed in writing and personally by the Minister for Defence with his Secretary and the Chief of the Defence Force in attendance. If not satisfied, the C-in-C could refer the matter to the Parliament for advice.

#### CONCLUSION

11. The Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000 could be used as a vehicle to formally state some of the responsibilities of the C-in-C as outlined in paragraph 10 above - particularly paragraph 10.b.

Yours Sincerely



Trevor Barker

#### ANNEXURES

- A. Military Aid to the Civil Power in Australia.
- B. Some press cuttings about the use of the military.
- C. Some detail of the troop call-out in Victoria in 1923.
- D. Foreword by Captain Sir Basil Liddell Hart in the book "The German Army and the Nazi Party 1933-1939" written by Robert J. O'Neill.

MILITARY AID TO THE CIVIL POWER IN AUSTRALIA

YEAR	EVENT	PRIME MINISTER
1923	Victorian police strike. Permanent troops from Fort Queenscliff called out in Melbourne. For details see Annex C.	Bruce
WW2	Troops used to overcome delays to resupply of our forces in PNG caused by Maritime unions - principally in Sydney.	Curtin
1949	NSW coal strike. Troops called out to work in the mines.	Chifley
1966 (?)	To overcome opposition by Maritime unions in Sydney to resupply of our forces in Vietnam, two Australian merchant ships were "conscripted" into the RAN as HMAS JEPARIT and HMAS BOONAROO.	Menzies
1978	"Siege of Bowral" after the Hilton bombing	Fraser
1980s	<ul style="list-style-type: none"> <li>* Spy flights over Tasmanian dams by F111 ordered by Attorney-General Gareth Evans )</li> <li>* The Major-General commanding the 1st Division saw fit to criticise in public the coalition shadow Minister for Defence. Instead of giving the general a rocket, the Minister for Defence quoted the comments in Parliament with relish. Other senior military officers have spoken out on policy matters with no sign of concern by the Minister. )</li> <li>* In the 1987 Election campaign the Prime Minister used a RAAF chopper for a photo opportunity at the Daintree and arranged an Army task force parade at Townsville. Finally he used the Admiral's barge to cross from Kirribilli House to deliver his policy speech at the Opera House. )</li> <li>* Army engineers constructed a floating bridge at Wellington NSW as a temporary replacement of a bridge over the Macquarie River, damaged by a civilian excavator being moved by road. )</li> <li>* RAAF used during the pilots' strike. )</li> <li>* Troops ordered in to help Federal and State police control a demonstration at the joint facility at Nurrungar. )</li> </ul>	Hawke
1991	RAAF ordered to help passengers stranded around Australia by the collapse of Compass Airlines.	Keating

Note. In both 1923 and 1949 live ammunition was available to the troops. I do not recall whether live ammunition was issued in 1978.

# When a party calls out the troops

AUST 20/2/93

TWO statements show how deadly serious Dr Hewson and the Liberal/National Coalition are about smashing unions and breaking up the award system in favour of low wage/poor condition individual contracts.

First, Hewson's promises about a youth wage of \$3 an hour for 15-17-year-olds and \$7.50 an hour for 18 to 20-year-olds

Second, the threat by Dr Hewson to use troops on the waterfront as a last resort made in March 1991 and repeated in the Great Debate and on Monday.

In the two years since Dr Hewson first made his threat to "put troops on the waterfront" there has been a major success in waterfront reform that has resulted in waterfront efficiency comparable with our trading partners.

Productivity at container terminals has doubled, turn-

around times for ships have been slashed and the waterfront workplace has been reduced by 58 per cent. Unlike the destructive confrontation in UK and New Zealand, Australian waterfront reform which has reduced port costs by \$300-400 million was achieved by co-operation between the Federal Labor Government, stevedoring employers and unions.

Dr Hewson's troops-on-the-waterfront threat is the opening shot in a war on workers' wages, conditions and industrial rights achieved over the past 100 years.

Australia needs Dr Hewson and his youth wage and troops on the waterfront like we need a hole in the head.

**VIC SLATER**  
Assistant General Secretary  
Waterside Workers  
Federation  
Sydney

I READ in Tuesday's Straits Times that Paul Keating said that "Hewson was... confirming that in... industrial relations he would resort to troops. It just gives you some idea of the kind of Australia he would give us".

As far as I know, troops have been used twice in industrial relations in Australia. The first time was in 1949-50 during the coalminers' strike. Ben Chifley was the Labor Prime Minister.

The second time was in 1989-90 during the pilots' dispute. Bob Hawke was the Labor Prime Minister.

I hope there are enough Australians who remember events as they happened - not as Paul Keating would want to re-write them.

**JAN WRIGHT**  
Mandarin Gardens  
Singapore

## Bomb tactics

JAN Wright of Singapore may be right when she says she can remember two occasions when troops were used on the wharves in Australia.

I can tell her of a third, during June 1942, when we were threatened by the Japanese: an English merchant ship with 500-pound bombs was at dock in Melbourne.

This ship had run the German U-boat gauntlet to get these bombs to Australia.

Yes, you guessed it, the waterside workers would not unload it. I was sent with

other members of the RAAF to put these bombs in railway trucks to go north.

The waterfront workers played poker at tables under a verandah while we did the task. They got paid and there was no mention of this in the newspapers.

Later on the message came from Mother Russia: "Defeat the common enemy first and we will do the capitalists later." We had no more trouble till the war was over.

**J. W. CARROLL**  
Nambrook, Vic

## Dictatorial echoes

THE sending-in of troops against unarmed protesters at Nurrungar combined with a media blackout should send shivers down the soul of all truly democratic journalists who prize freedom of the press. The troops arrived at Nurrungar and the media was either arrested or turned back if they followed the protesters. In fact, what has happened has echoes from the worst dictatorship in the world. Ironically, no such outrage has been expressed. Instead, in its haste to support the Government, your paper has even committed errors of fact.

Troops do not guard Australian military bases, military police do. Units from the armoured cavalry do not guard bases nor are they trained for dealing with civil disobedience. The potential for catastrophe was enormous as well as the trampling of democratic liberties.

The over-reaction at Nurrungar and the refusal of the major parties to debate in the Senate prove what the anti-bases movement has been saying for years. The hosting of United States bases here makes it necessary for Australians to be denied democratic rights. The reaction of Government and certain media further strengthen our case. This is that the bases are involved in war preparation, collecting information and research for Star Wars and as such are destabilising the world scene.

**DENIS DOHERTY**  
Co-ordinator  
Australian Anti-Bases  
Campaign Coalition  
Sydney

## Ultimate control

I READ with some concern the recent press reports which allege that the Defence Minister, Mr Beazley, "ordered" the military into the field in South Australia to provide protection for a restricted area. AUST

I do not have any dispute with the use of troops, subject to all constitutionally legal processes being observed. There is, however, the rights as to who has ultimate control of the military.

Has the Australian Constitution been amended to remove the Governor-General's power to be the only constitutionally authorised person to exercise sole total command over the armed forces? If it hasn't changed, did the Governor-General issue the orders to the troops that were reportedly issued by a politician? If not, how is it possible for a politician to apparently usurp the powers of the Australian Constitution? 12/10/87

If this is a fact what penalties are appropriate to call the minister's illegal action to account? Are all other politicians by their silence conspiring against us as Australian voters, by giving such illegal powers to a fellow politician?

The Governor-General's position under the Australian Constitution is vital in maintaining the rule of the Constitution and therefore democracy. If a parliament or any other group or individual operates in a way that ignores our Constitution of Australia, then the Governor-General has the power to correct the threat to our Constitutional rights.

Surely he has to be seen as holding the Constitution in one hand and the command

of the military forces in the other, with the sole purpose of ensuring that the rule of the Australian Constitution will be maintained against all comers, whether they be Ministers for Defence or any other person who thinks he can take the law into his own hands.

**JOHN M. WILKINS**  
Doncaster East, Vic.

THE  
ROYAL AUSTRALIAN  
ENGINEERS

1919 TO 1945

TEETH AND  
TAIL

BY

RONALD McNICOLL

*By early in 1945 nine per cent of the Army  
were sappers, who numbered 28,000, and  
were making essential contributions to our  
military teeth but it had*

Chapter 23, Conclusions

CANBERRA

PUBLISHED BY THE CORPS COMMITTEE OF  
THE ROYAL AUSTRALIAN ENGINEERS

1982

8 THE ROYAL AUSTRALIAN ENGINEERS, 1919 TO 1945

In the case of the Queenscliff sappers there was a notable diversion early in November 1923 when the police in Melbourne went on strike and mobs ran riot in the centre of the city. The garrison (RAA and RAE) sent a strong party of men with 24 hours' rations and 100 rounds of ammunition a man by special train to Melbourne. There, steel helmets were issued and guards were posted at Parliament House, the Treasury, the Lonsdale Street and Collingwood telephone exchanges, the Elizabeth Street and Spencer Street post offices, and the Royal Mint. The quarters and headquarters of the party were at Victoria Barracks. The RAE were concerned with the maintenance of the guards (mostly RAA) and the erection of barbed wire obstacles. 'Although no casualties were sustained by the Queenscliff detachment, their presence in Melbourne had a very beneficial effect on the situation.'<sup>17</sup>

ANNEX C

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# Foreword

by CAPTAIN SIR BASIL LIDELLO HART

THIS is a very revealing book and a highly interesting one to read—two qualities that are rarely combined in a work of history. Indeed, it is the most illuminating study that has appeared of the way in which Hitler, gaining office, by degrees gained an ascendancy over the German Army and its professional heads, who in previous generations had been the most secure as well as the strongest factor in the state. Earlier studies have tended to be an indictment of the General Staff for succumbing to Hitler, or even conniving at his ascent, while some more recent ones have tended to whitewash it, as a natural reaction.

Thus the time was ripe for a more objective study—which Captain (and Doctor) Robert O'Neill is well fitted to supply. The first serving officer from the Australian Army to come to Oxford as a Rhodes scholar, he spent four years there, two of which were occupied by work for his D.Phil. on the subject of which his book is a distillation. In the course of that task he has not only explored the documents, and unearthed some that were not available or not known to exist earlier, but has had extensive discussions with many of the generals. (The Weichs memoranda show that Hitler was planning, as early as 1934, for a European war to be fought on both the Western and Eastern fronts.) The generals interviewed included a number whom I interrogated in or soon after the war, and I know from them how much they were impressed by Robert O'Neill's high intelligence and acute grasp of the matters he was investigating or on which he was cross-examining them. He benefits by a knowledge of military technique, and a close acquaintance with military habits of mind, that are blended with the approach and basic attitude of the scholar.

This blend, and his investigation, does not lead him to exculpate the generals but does help him to understand them, and thereby to provide a convincing explanation of how they became subservient to Hitler, were turned from being his most formidable obstacle into unwitting assistance of his purpose, and eventually launched into the kind of war that all their strategic teaching had warned them to avoid. Their very qualities, and particularly their desire to become non-political, were turned to their disadvantage and Hitler's advantage. From being an obstacle they became a tool—a fact, and a change into reverse, that they realized too late

## FOREWORD

In the process Hitler was consciously aided, yet unwittingly, by a few of the leading generals who were politically interested, particularly Blomberg and Reichenau. The effect is ably traced and brought out in Dr O'Neill's book.

B.H.L.H.

ANNEX D

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