

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

**LEGISLATION COMMITTEE**

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

**SUBMISSIONS**

**Submission No:** 7

**Submittor:** Mr S T Cumming

**Address:** 3 Coleman Street  
PEARCE ACT 2607

**Telephone No:** 6286 6481

**Fax:**

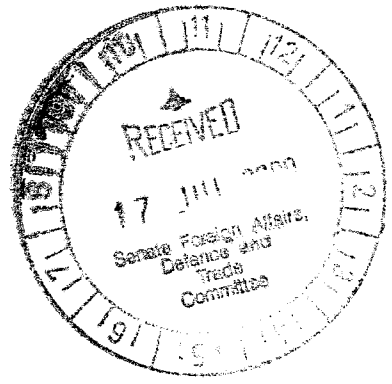
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S. T. Cumming  
3 Coleman street  
PEARCE ACT 2607

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The Secretary  
Senate Foreign Affairs, Defence and Trade  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600

INQUIRY INTO THE DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN  
AUTHORITIES) BILL 2000

The *Canberra Times* of 29 <sup>June</sup> ~~July~~ 2000 carried a short article noting that 'Australia's defence forces are to receive sweeping new powers to quell civil disturbances and curb terrorist threats in the lead-up to the Sydney Olympics **and beyond.**' (my emphasis). The proposed bill was rushed through the lower house with the support of both major parties, but the article was unclear whether the ADF could be ordered onto the streets by the Prime Minister, Minister for Defence, or the Attorney General individually, or only through the authorization of all three officials. Whether acting singly or in combination it would not matter, as they would all be members of the same political party. What alarmed me was that there was no mention whatsoever of the Governor General's role. Under Section 68 of the Constitution, and as the Queen's (Head of State's) representative, he is Commander-in-Chief of the armed forces of Australia. I contacted Yarralumla for more information, only to be told that no-one there had yet heard of this proposed legislation.

The dimensions of the proposed changes are significant - apart from completely bypassing the powers of the Governor General, it creates a precedent from which would be hard to retreat in the future, that of armed ADF members being used against other Australians. Political parties currently in government would be able to declare circumstances of 'peril' to their own advantage, or to decide what did permit used of military force 'in the national interest.' But the first problem for the legislation would be how to make it clear that the legislation was not intended to target and deal with the possibility/probability of black (aboriginal) protests during the Games, which may or may not get out of control of the organizers. Another significant problem is that the legislation clearly pre-empts decisions yet to be made on the future powers conferred upon and available to a future Australian President, in lieu of the Governor General, should the Australian electorate decide upon a republic instead of a constitutional monarchy.

The military personnel, materiel assets and finances of the Department of Defence are

already frequently employed in 'aid to civil power' emergencies and projects, ranging from real emergencies such as flood relief and rescue, bushfires, search and rescue at sea to the mundane employment of defence force personnel on state occasions, war remembrance ceremonies, and major public sporting occasions such as the recent Commonwealth Games in Perth. It has to be assumed then that the circumstances intended to be covered in the proposed amendment bill are significantly different, that the Coalition government (with the full consent of the ALP) intends to deploy *armed military personnel* within Australia.

There was an earlier attempt to do so, when security (or to provide some illusion of it) for a CHOGM meeting planned to post armed soldiers at spaced intervals along a railway line which might have been used to transport delegates interstate. This 'suggestion' was quickly ridiculed into extinction as being both completely ineffective, and likely to cause the loss of Army weapons as the widely spaced, individual soldiers could be easily overwhelmed, robbed or injured. Within the defence forces there was some concern that for the first time (presumably since Federation) armed Australian soldiers from the permanent forces might be deployed on Australian soil, and in circumstances which could lead to real violence, shooting between ADF members and Australian protesters or peace activists, (or even real foreign terrorists). Has anyone considered what the Rules of Engagement should be, or the personal liability of the individual soldiers? Will they have to be volunteers only, or can they be ordered on duty?

If the Coalition already had this power to deploy armed members of the defence forces during the recent waterfront dispute, there should be very real concerns that it would have been used, 'in the national interest.' An elected government would too easily get to control and define what is 'in the national interest,' as well as the real power to bring armed force to bear to resolve economic, industrial and law and order 'issues.' There may well have been isolated occasions when small amounts of military force and/or defence personnel have been applied (discreetly) before, and presumably the necessity explained to the Governor General within the Executive Council, and his prior consent obtained. This would satisfy the provisions of the Australian Constitution, without the need for any amending legislation such as this proposed. The national spirit and nationalism have too often become 'dirty' words, blamed for human catastrophes such as World Wars and the Holocaust. On the other hand they are cynically invoked as 'good things' when public support is called for in supporting Olympic sports, economic restructuring, and competitive exports.

The use and misuse of ADF personnel and assets by political parties for their own political purposes and advantage has already occurred - Gareth 'Biggles' Evans authorized the use of RAAF aircraft for 'spyflights' over the state of Tasmania in the Franklin Dams affair. Another occasion was when - in the political process of deregulating the airline industry - the strike of the airline pilots was broken by the use of ADF planes, personnel and finances. Presenting the public with a glossy, 'good cause' window dressing to cover the background reasons, (ie, saving the Tasmanian rivers and wilderness, and all those poor Australians whose holidays were being ruined by the greedy airline pilots) doesn't alter the fact that party political purposes were accomplished by using ADF personnel and assets intended for *national and external defence purposes*. In case anyone raises the red-herring [sorry] of Chifley's use of troops to break the coal strike shortly after WWII, history shows that that probably was a

genuine national emergency and the troops were presumably not sent in armed and ready, but used as a workforce.

I understand from the Attorney General's department that this whole amendment bill rose from recommendations dating back to the Hope Royal Commission, the inference being that it is something that should have been sorted out long before this, and was only a 'tidy-up' measure that has been precipitated by the Sydney Olympic Games. It would be simpler if the Coalition merely asked the Governor General for his consent - then the electorate would not be left with a Bill which leaves more unsaid, than said. Similarly, the main difficulty of a Constitution written so long ago is that Australians have slid too easily into accepting that if the Constitution does not specifically forbid something, it is probably allowable. Nevertheless, no legislation can be effected which undermines or alters the clear intent of the Constitution - the proper method of changing the Constitution is to seek the electorate's consent through a referendum. And the Constitution is clear on this point - ultimately the Governor General still commands the defence forces of Australia.

The essential meaning of the expression 'defence forces' may be in need of redefinition or even renaming (actually a reversion) to the more explicit and direct title of the Armed Forces. If the political intention of both major Australian parties is to start moving toward the use of our armed national military forces within our nation state, such as occurs in the United States where each state governor can call out their own militia to deal with law and order incidents or to enforce new federal laws, such as the integration of schools within the southern states - then this should be made clear to the Australian electorate first, not to establish a 'precedent' by stealth. In conclusion then:

1. The amendment is not necessary; simply ask the Governor General's consent for this deployment of *armed* Australian defence personnel within Australia's boundaries, and for single incidents only, as needed;
2. Consider the consequences for the powers of any future President and/or Prime Minister;
3. Remember the political consequences of this action being taken as directed against any possible aboriginal protests during the Sydney Olympic Games;
4. Any legislation or amendments proposed must specifically exclude and prohibit the use of Australian armed forces in 'solving' industrial relations disputes, to achieve political 'desirable' economic solutions and/or apply economic leverage;
5. The politicians concerned must accept full personal, financial and legal liabilities for their decision to use ADF armed forces within Australia, and not simply pass these liabilities onto the ADF members concerned, or to the Australian taxpayer.



S. T. CUMMING

Tel: 62866481