

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

LEGISLATION COMMITTEE

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

SUBMISSIONS

Submission No: 8

Submittor: Mr Stephen Brown

Address: PO Box 4228
KINGSTON ACT 2604

Telephone No: 6295 1968

Fax:

E-Mail

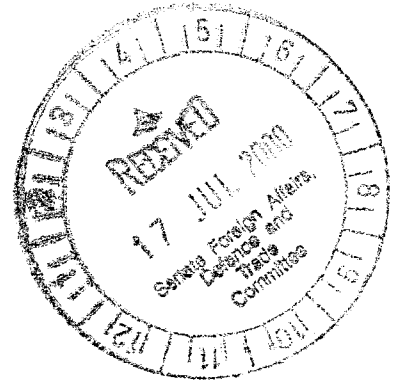
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Attachments Nil

P.O. Box 4228
KINGSTON A.C.T. 2604

12 July 2000

The Secretary
Senate Foreign Affairs, Defence and
Trade Legislation Committee
Parliament House
CANBERRA A.C.T. 2600



Dear Secretary

Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000

I enclose a submission to the Committee's inquiry into the above Bill.

If desired, I can be contacted on phone 6295-1968.

Yours sincerely

A handwritten signature in cursive script that reads "Stephen Brown".

(Stephen Brown)

DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN AUTHORITIES) BILL 2000

SUBMISSION TO AN INQUIRY BY THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

The purpose of this submission is to support the Bill and the provisions it contains to authorise and control the use of the Australian Defence Force (ADF) in assisting civil law enforcement authorities.

The Constitution clearly recognises the responsibilities of the Commonwealth for the maintenance of lawful authority and order, both in the Commonwealth's own area of interest (sections 51(vi) and 61) and when requested by a State (section 119). Thus, successive governments have required the ADF to provide a capacity to assist civil authorities in extreme law enforcement circumstances.

However, the existing legislative framework for implementing these responsibilities is incomplete and out-of-date. It is oriented almost entirely towards the least likely of the possible scenarios for the use of the ADF in assisting civil authorities, ie, controlling riots and civil disorder in a State. Moreover, the existing legislation is framed around obsolete concepts – traceable, indeed, back to the Jacobite Rebellion.

Thus, the existing legislation is silent on the procedure for initiating use of the ADF in a law enforcement situation where Commonwealth interests predominate. Nor does the existing legislation provide the sorts of powers likely to be needed in the circumstances which are now most likely to require use of the ADF in support of law enforcement, such as terrorist attacks or sieges.

It follows that there is a need to provide a contemporary legislative framework to give effect to the Commonwealth's Constitutional powers and responsibilities for the use of the ADF in assisting civil authorities. Such legislation should be oriented towards today's needs and be based on modern concepts.

In the absence of provisions such as are embodied in this Bill, exercise of those powers and responsibilities in the most likely scenarios will proceed either in the dangerous uncertainty of a legislative vacuum or distorted by the obsolete concepts in the existing legislation.

In providing suitable legislation, I submit that the Parliament should seek to achieve a number of important objectives, consistent with the respective roles of the ADF and law enforcement agencies in a democratic society:

- ensure that unambiguous procedures are laid down, with appropriate pre-conditions;

- . identify responsible authorities and specify their relationships when procedures are exercised;
- . provide for accountability in the exercise of the procedures;
- . confer the powers necessary for the role of the ADF, together with safeguards in their exercise;
- . maintain the primacy of ministerial and civilian authority when the procedures are invoked.

In addition, and of critical importance, the existence of a legislative framework must ensure that there is both guidance and protection for ADF members who are engaged in assisting civil law enforcement authorities. Because ADF members involved in such tasks continue to be subject to the Defence Force Discipline Act and to the ordinary criminal law, the absence of a legislative framework for the tasks could have adverse and unfair consequences for members performing their duties in assistance situations.

In my submission, this Bill meets the objectives indicated above, in both its underlying concepts and its detailed provisions. It would introduce a long overdue legislative framework for implementing Constitutional responsibilities in contemporary circumstances.

I submit that the Committee's report should recommend passage of the Bill.



(Stephen Brown)
12 July 2000