

SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE

LEGISLATION COMMITTEE

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

SUBMISSION

Submission No: 9

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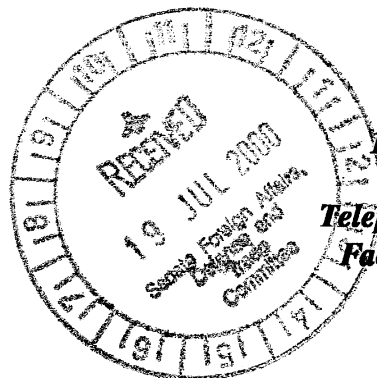
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The Secretary
Senate Foreign Affairs, Defence and Trade
Legislation Committee
CANBERRA

**Defence Legislation Amendment(Aid to Civilian Authorities) Bill 2000
Submission by Warwick S Johnson**

"Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a Court of Law or otherwise discussed in public." See the note by Isaacs J, in Farey v Burnett 21 CLR 433 at 456.

I was a private soldier in the Citizen forces (Militia) in 1939 when called up for full time duty, about 7 days before war was declared. This may be the only time the Reserved Forces have been called out for full time duty in Australia's history in peace time.

After that war I re-enlisted in Citizen Force and served in that Force until 1968. My final posting was in the Directorate of Infantry with the rank of Major. In February 1955 when floods occurred in the Hunter River, I was appointed as the army advisor to the civilian authorities in Maitland before the flood peaked and for some days thereafter.

I submit for your considerations the following:

- 1 The subject of the present bill is completely covered in the Protective Security Review of 1979 by Mr Justice R Hope.
- 2 A motion to add the proviso to Section 51 of the Defence Act 1903, was put to the Senate on 19 November 1914 and agreed to on that day. See Hansard p.785 to 812. It read in its present form:
"Provided always that the Citizen Forces of the Commonwealth shall not be called out or utilised in connection with an industrial dispute."
There was much debate on that occasion on when does an "industrial dispute" become "domestic violence".
- 3 Section 119 of the Commonwealth Constitution provides:
"The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence."

- 4 The advice given to the Secretary, Department of Defence, dated 22 October 1920 by the then Solicitor General, Mr R R Garran, dealt with the relationship between the two pieces of legislation referred to in the two preceding paragraphs. The final paragraph of that advice is very relevant. [A copy of that advice is annexed to this submission]
- 5 The police power of the States and their relationship with the Commonwealth is well explained in "The Constitution of the Commonwealth of Australia" by Moore 1997 reprint at pages 337 to 344.
- 6 A Referendum to widen the powers of the Commonwealth was put to the electors, on 4 September 1926, who rejected the proposed amendment to insert in Section 51 of the Constitution the following paragraph:
 "(v) A. *Protecting the interests of the public in case of actual or probable interruption of any essential service.*"
- 7 I am aware that there is an emergency management agreement between the State of New South Wales, and the Department of Defence. I understand the agreement has limited scope. I have not seen the agreement.
- 8 I assume that each State and Territory has similar legislation to the N.S.W. "State Emergency and Rescue Management Act 1989" which should be considered to avoid legislation conflict.
- 9 The failed amendment to the Constitution referred to above in paragraph 6 leaves national disasters uncoordinated unless by agreements noted in paragraph 7 above.
- 10 The eastern states electricity grid is an essential national service which transcends State boundaries as does national interests in merged towns like Tweed Heads and Coolangatta. An earthquake or an industrial dispute in these towns, which turns into a rampaging riot and looting to and fro across the border would require each State to concurrently call for Commonwealth aid under the proposed legalisation.
- 11 The proposed amendments are mainly directed at terrorists and like activities but are not limited and extend to such anti social behaviour as amounts to domestic violence. My experiences in Maitland in 1955 demonstrated the problems facing a member of the Defence forces who is subordinate to a civilian of whatever rank and usually with no experience in command or controlling an uncontrolled situation.
- 12 The action by the N.S.W. parliament in passing State Emergency Service legislation was a direct result of the Maitland flood problems.
- 13 Most of these problems have been solved by the said State Emergency legislation and its Regulations and the emergency management agreement referred to in paragraph 8 above.

- 14 There were grave administrative problems in the Maitland disaster:
- (a) lack of a controller of all of the civilian authorities and private charitable organisations, Surf clubs, Rotary clubs and Red Cross;
 - (b) lack of communications, telephones were not always working, travel was only possible by water, mobile telephones had not been invented and my wireless set and operators were lost on the first morning as will be related later;
 - (c) electricity in East maitland was cut off by its local authority on its own initiative. This led to a mistaken belief that all electricity in the Maitland area was cut off and resulted in 3 deaths;
 - (d) the delay in the appointment of an experienced advisor from the time the need was obvious to the State and the approval of the Commonwealth to the use of the Army personnel.

Section 51D of the Bill uses the words "*reasonable and necessary*" in sub-clauses (1) and (2). I am of the view that the word "*necessary*" is the only word required.

Section 51I of the Bill does not take into account that the need for taking the actions therein set out always is in driving rain, during a cyclone or bush fire and at night. In my experience it is impracticable and impossible if one has lost his pencil.

In Division 2, I suggest the words "*defend or*" be inserted before the word "*recapture*" wherever it appears.

It is usual in all riots or natural disasters in a city, looting occurs. This must be stopped instantly. It is like dysentery very catching and spreads quickly and without any warning. It can only be stopped by very tough physical restraint or as a last resort the firing of a weapon. In such a situation I would ask the civilian controller to fire the first shot at the target he had designated to me.

To expect any authorising officer in the heat of an incident to carry out the paper work envisaged by paragraphs 32, 33, and 35 on page 7 of the Information Memorandum is unrealistic.

- 15 The automatic appointment of members of the Defence Force as special constables was recommended by Mr Justice Hope on page 342 of his report. I commend this step as a solver of most of the problems which arise at the "*coal face*" or the "*waterfront*".
- 16 The administrative steps which are envisaged by the proposed legislation, if adopted, must be incorporated in preplanned procedures to permit instant implementation at both the Commonwealth and State levels. To find Ministers and departmental officers on a Friday afternoon is often difficult. I know because it happened to me and confirmed by a departmental officer last week.
- 17 The Maitland floods 24 February to 1 March 1955 demonstrated the need for a State body to co-ordinate and control natural disasters.

- 18 At that time I was a Reserved Forces officer serving in the Infantry Brigade Head Quarters at Newcastle. At about 11 am on 25 February I agreed to act as the army's advisor to the civilian authorities at Maitland. I was informed that the State had asked the Commonwealth for assistance.
- 19 I reported in about 2 pm and was allotted an amphibious vehicle (DUKW) and driver plus a Sergeant and Corporal from a signals unit. It was 2 or 3 hours later before my appointment was approved.
- 20 It was either my Brigadier or my General who told me that I had no authority over the civilian organisations I was only their advisor.
- 21 I reported to the police station at Maitland where I was accepted as if I commanded the area. This attitude was one which all the civilian authorities adopted and all my suggestions were taken as orders. They were desperate for a leader. My uniform indicated that I had served during the war in the paratroops. Everyone called me "Sir".
- 22 That evening I established a control centre on the main road entrance to the town to control and direct the inflow of food, blankets and clothing from unco-ordinated charities. The local motor service station agreed to supply petrol and oil for the DUKW on my signature. The Army honoured his account very promptly.
- 23 I arranged for an early morning recognisance of the area with a local doctor, an Air Force padre and two policemen on board.
- 24 The only movement in the town was by water. Surf boats were under no control but were performing remarkable rescue feats in otherwise inaccessible places.
- 25 At about 9 a.m. on Saturday 26 February the tall vertical aerial of the wireless set touched the wires of the State electricity grid and the two signallers who were sitting beside me were killed as was a policeman. The Padre and I rescued the other policeman who was floating some distance away.
- 26 I had been told at the police station that all electricity to the town had been cut off.
- 27 This accident left me without any means of communication except for those few working telephones on high ground.
- 28 That afternoon the senior police officer reported to me that looting had started in the town and asked what did I wish. I said to him "*stop it quickly*". He then asked if I wanted them arrested and I replied "*I want it stopped now - how is a matter for you.*" He said "*can you do anything?*" I replied "*yes I can put in my report that looting had been stopped by prompt action of the police or I can report that the police were unable to handle looting.*" He then asked if I could do a Lord Nelson. I replied "*all I can do is put in my report.*" He told me later the looting had stopped, no charges had been necessary and it would not reoccur.

29 The following days were spent co-ordinating routine collections from roof tops, taking food and clothing to isolated houses, setting up on central feeding facilities and sanitary facilities as the sewerage system was under water. The only difference of opinion I had was with the town's engineer. He told me I should stick to soldiering and leave engineering to him.

By Tuesday 1 March the waters in the main town area had subsided and the town hall was again running the town. I returned later that day to my practice with a bandaged left hand.

I trust that the latter part of this submission will provide some insight into situations which face a member of the Defence Forces, in peace time. when considering the practical applications of the legalisation for which you are responsible. Particular emphasis must be given to the need for speed in the initiating procedures.



WARWICK S. JOHNSON