

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE**

**LEGISLATION COMMITTEE**

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

**SUBMISSION**

**Submission No:** 13

**Submitter:** Cabinet Office NSW

**Contact:** Ms Vicki Mullen  
Justice Branch

**Address:** Level 39,  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

**Telephone No:** (02) 9228 4942

**Fax:** (02) 9228 4325

**E-Mail** [vicki.mullen@mail.ccsu.nsw.gov.au](mailto:vicki.mullen@mail.ccsu.nsw.gov.au)

**No. of Pages:** 2

**Attachments** Nil

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THE CABINET OFFICE

NEW SOUTH WALES

FACSIMILE



TO: Mr Paul Barsdell  
Committee Secretary  
Senate Foreign Affairs, Defence & Trade  
In Committee.

FROM: Vicki Mullen  
Justice Branch

Fax: 02 6277 5818

Fax: 9228 4325  
Tel: 9228 4942

Email: vicki.mullen@mail.ccsu.nsw.gov.au

DATE: 20/7/00.

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SUBJECT: Inquiry into Defense Legislation Amendment (Aid to  
Civilian Authorities) Bill 2000.

Paul

Please find attached a copy of a letter from the  
Director-General of The Cabinet Office, on behalf of  
the Premier in relation to the Committee's inquiry.  
The original will follow in the mail.

Regards

Vicki Mullen  
Principal Policy Officer

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THE CABINET OFFICE  
NEW SOUTH WALES

TCO/13333 - JB

Senator John Hogg  
Acting Chairman  
Legislation Committee  
Foreign Affairs, Defence and Trade  
Parliament House  
Canberra ACT 2600

Dear Senator Hogg

I refer to your letter to the Premier of 29 June 2000 inviting the NSW Government to make a written submission to the Committee in relation to the Committee's inquiry into the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000.

The Premier has asked me to write to you to inform you of concerns that the NSW Government has with the Bill.

In practical terms, the NSW Government is concerned that the Bill may operate to override the National Anti-Terrorist Plan, which I understand was intended to operate over the period of the Olympics. The plan involves consultation with relevant States at all stages throughout the call-out process. The Bill, however, contemplates unilateral Commonwealth action, without any State consultation or agreement. This approach leaves open the possibility of conflict between State police and Commonwealth Defence Forces, which should obviously be avoided at all cost.

The NSW Government also has legal concerns with certain provisions of the Bill, as follows.

1. *Clause 51A*

There is no express power for the Commonwealth Parliament to legislate to permit the Defence Forces to take action in a State to deal with domestic violence, other than upon 'the application of the Executive Government of the State'.

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It is therefore presumed that the constitutional power necessary to support clause 51A is the incidental power in section 51(xxxix) of the Commonwealth Constitution, to the extent that the law is incidental to the executive power in section 61 or perhaps an implied nationhood power.

Clause 51A is directed at the protection of 'Commonwealth interests'. However, the scope of the term 'Commonwealth interests' is unclear, and the clause could therefore extend beyond constitutional support insofar as it may be used in relation to matters having only a tenuous connection with Federal affairs. In short the scope of the provision is too uncertain.

Further, the Attorney-General has expressed concern that the provision applies where it is considered that domestic violence is merely 'likely to occur'. Again, this broadens the scope of the Commonwealth's power in a manner which gives rise to doubts about its constitutional basis.

2. *Clause 51B*

Clause 51B is possibly inconsistent with section 119 of the Commonwealth Constitution. Section 119 provides that the Commonwealth Government shall protect every State against domestic violence, on the application of the Executive Government of the State. Clause 51B qualifies this obligation by requiring the authorising Ministers to be satisfied of certain matters before exercising a discretion to protect the State by calling out the Defence Forces.

The New South Wales Government would appreciate the reconsideration of the terms of the Bill, in light of the above comments.

The Premier would be grateful if you could inform him of the findings and recommendations of this inquiry.

Yours sincerely

  
RB Wilkins  
Director-General



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