

Senate Inquiry Submission

Defence Legislation (Miscellaneous Amendments) Bill 2008

My concerns are specifically about section 3 of the Bill, regarding the provisions for the Joint Defence Facility at Pine Gap. This legislation appears to be a brazen attempt by Defence to escape scrutiny of the activities undertaken at the Pine Gap facility.

There is already an excessive level of secrecy surrounding the activities of Pine Gap, and a resulting lack of transparency in what is conducted there and why. It is particularly unclear how the activities of Pine Gap are essential to the Defence of Australia and its interests. The Australian Parliament is not privy to such details, yet there is no such secrecy regarding US government officials. This is clearly an unequal relationship, despite the fact that the facility is on Australian soil.

I believe that, being a joint facility with the US, it is in fact detrimental to the Defence of Australia and its interests. It is a facility which aligns us unequivocally with the United States and its global military domination and its illegal and immoral wars. It erodes our sovereignty, as any actions there which are detrimental to Australia's national interest cannot even be scrutinised let alone sanctioned. Actions taken under the cover of national secrecy have included war crimes and massive human rights abuses, including by the United States and its military, actions in which Australia is complicit due to allowing Pine Gap to be used for such purposes. Who is going to effectively police the actions at Pine Gap if there is no transparency? I understand your job is to ensure that such scrutiny is applied, and applied rigorously, or failing that, setting up official structures whereby such scrutiny can be applied.

I also find it strange that this section is tacked on the end of a bill that is primarily about the Red Cross symbol. One wonders if this is an attempt to avoid scrutiny of the final section.

You would be aware of the recent test case of the Defence (Special Undertakings) Act 1952 (*The Queen v Law & Ors* [2008]), in which the four defendants were acquitted under that legislation on appeal. As the judge herself mentioned, this was the first time this legislation was invoked for unauthorised entry to the facility despite many such entries in the past by protesters. This Miscellaneous Amendments Bill appears to be specifically aimed at closing such a loophole and ensuring that protesters can be prosecuted under the draconian Defence (Special Undertakings) Act. This is an Act which was drawn up before the facility at Pine Gap existed, and does not appropriately apply to it today. The defendants in the above case (*Bryan Law et al*) were attempting to undertake a citizen's inspection of the base since there is no publicly available information. Their trial allowed them to question whether the facility is in fact necessary to the Defence of Australia (which the Defence (Special Undertakings) Act 1952 requires for successful prosecution). The prosecution failed in its case largely because it was unable to prove that the Pine Gap facility was necessary for the Defence of Australia because it desired the secrets of Pine Gap to remain secret. This new legislation appears

to render such proof unnecessary, thereby allowing the Defence Department and the US government to escape scrutiny of the actions of the Pine Gap facility.

It certainly renders unusual and unnecessary levels of punishment for those legitimately expressing dissent at the facility. The land is already protected by Commonwealth Land trespass legislation, and any further measures would be excessive.

In introducing this bill, Defence Minister Joel Fitzgibbon said, “The methods used for collecting intelligence at the facility are sensitive and their public exposure could threaten their effectiveness and thereby diminish their contribution to national security. It is therefore important that the Joint Defence Facility Pine Gap is protected with effective legislation to deter unauthorised access to the facility.” It is neither sufficient nor acceptable for the government to continue to invoke national security as an excuse for lack of transparency, particularly where the potential for Australian sovereignty to be eroded and human rights abuses to be carried out exists. Pine Gap is already protected by Commonwealth law which is sufficient deterrent for unauthorised access. I urge you to reject this legislation, and conduct a full inquiry into the clandestine activities of the US at the Joint Facility Pine Gap.

Rev. Simon Moyle