

To Whom it may concern

The following is my submission on the provisions of the Defence Legislation (Miscellaneous Amendments) Bill 2008

Thank You

Benjo Keaney
Research School of Pacific and Asian Studies
Australian National University

Submission on Pine Gap by Benjo Keaney

Schedule 3 of this legislation amends the *Defence (Special Undertakings) Act 1952* to provide that the Joint Defence Facility Pine Gap is a special Defence undertaking and a prohibited area.

A new section states that the Act is intended to provide for the “protection of works, undertakings and areas required for the defence of Australia or for the defence of Australia” and to “enable Australia to fulfil its international obligations”

Disproportionate

Breach of the *Defence (Special Undertakings) Act 1952* carries a jail sentence of up to seven years.

This is a grossly disproportionate sanction for acts of non-violent civil disobedience by citizens opposed to the presence and functions of the Pine Gap military facility, especially given that the majority of the Australian community are opposed to the majority of the functions carried out at and/or through Pine Gap.

Legislation already exists to deal with trespass, to protect communications facilities and more. The base is located 7 kms from the main entrance gate and legislation already exists that forbids citizens to approach within 1 km of this gate.

Ensuring the applicability of the 1952 legislation (something brought into question by a recent court case) to protests against Pine Gap looks more like retrospective revenge than a genuine concern with security.

This legislative change denies the democratic rights of our citizens -- one of the most important elements of the defence of Australia.

Foreign military installation

It should be remembered that the military base being protected by this draconian legislation Pine Gap is a foreign military facility on Australian soil.

Despite the official title of “joint facility”, areas of Pine Gap are not accessible even by the Prime Minister of Australia. The breach of our national sovereignty is flagrant.

The tasking of the satellites for which Pine Gap serves as a ground station is a matter for United States agencies and not Australian military or surveillance bodies.

In a debate of a Treaties Committee Report in October 1999, Senator Schacht asked how the committee could “overview an agreement when we were not given full information about what was in the agreement”.

He continued: ... until the executive government agrees to allow the members of the Treaties Committee to have a classified briefing on the details of what is in the agreement and the operation of Pine Gap, as well as allow us to visit and see the operation of Pine Gap on Australian soil, we should not sign the agreement...”

“If you are an American congressman or senator on the appropriate committee of the American parliament, not only do you get a briefing about what goes on at Pine Gap on an operational basis in broad terms; you are invited to go to Pine Gap, on Australian soil, and get a conducted tour to show you what goes on inside that facility. But Australian members of parliament at any level — other than members of the executive on the national security committee — are denied access to visit a facility on Australian soil. I find that particularly objectionable. On our own soil we are precluded from visiting a facility which members of a foreign parliament, albeit a friendly one, are able to get a briefing on. They have been getting regular briefings and visits for the last 20-odd years, and we are denied that request.”

Defence of Australia

It is suggested that the *Defence Legislation (Miscellaneous Amendments) Bill 2008* is necessary for the “defence of Australia”.

This proposition is dubious because:

- <!--[if !supportLists]-->a) The supply of intelligence from Pine Gap to Australia is entirely at the discretion of the United States Government. It is not guaranteed. The United States has threatened to withhold intelligence on terrorism from the UK Government if British courts release details of torture inflicted on a British citizen at Guantanamo Bay. Much of this intelligence will come from Menwith Hill, the US base in England usually seen as the “sister” base to Pine Gap. <!--[endif]-->
- <!--[if !supportLists]-->b) Pine Gap has been used in the past to spy on nations ostensibly allied to the United States for economic and diplomatic purposes. There is no reason to assume that Australia is exempt from these forms of surveillance.<!--[endif]-->
- <!--[if !supportLists]-->c) The role of Pine Gap in military events in Iraq, Afghanistan and Pakistan has drawn threats from terrorists and has been specifically linked to the Bali bombings.<!--[endif]-->

<!--[if !supportLists]-->d) The significance of Pine Gap for United States military activities is considerable. Since these activities potentially include the (pre-emptive) use of nuclear weapons, Pine Gap makes Australia a nuclear target.<!--[endif]-->

Aboriginal rights

Prime Minister Rudd has made widely welcomed and publicly supported commitments on behalf of his government to reducing the gap between Aboriginal and non-Aboriginal in our country.

However, the land beneath Pine Gap is not US territory. It must always be remembered that Pine Gap stands on the traditional land of the Arrernte people of central Australia. The original owners and custodians were never asked to cede this land and have never been compensated for its use.

Raytheon

The infamous Raytheon Corporation is responsible for maintenance at the Pine Gap base from fixing a broken tile on a roof to hi-tech repairs.

Raytheon has been exposed a number of times for defrauding or overcharging the US Government.

Australian taxpayers foot the bill for Pine Gap and the relationship with Raytheon hardly displays a duty of care by the Federal Government towards the use of our taxes.

Government Transparency and Openness

The Rudd Government has promised a new era of government openness with a commitment to respond openly and swiftly to freedom of information enquiries.

However, this new openness and truthfulness is not evident in the military and surveillance fields.

When the government both restricts information and institutes draconian measures to protect the military facility, suspicions of suspect activity at Pine Gap inevitably arise.

Greater transparency about the activities conducted at Pine Gap is in the interests of the Australian people.

The proposal before Parliament is antagonistic to good and open governance and to the rights of the citizens in a democracy.

Controversial

The new legislation imposed draconian penalties to protect a site which is deeply controversial and a foreign military facility which has never been accepted by all Australians.

The satellites controlled by Pine Gap cover significant areas of US strategic interest – China, oil fields of the Middle East and southern Russia.

Pine Gap receives from satellites and forwards to the US early warning of missile launches, information from military, economic, political and domestic telephone, microwave and VHF radio communications, photographic data on terrain, buildings, troop movements, results of bombing raids, etc.

Pine Gap has provided targeting information for guided munitions in several wars. The infamous incidents of the incineration of a bunker of civilians during the Iraq war or the milk factory destroyed in Sudan were associated with Pine Gap's satellites. The assassination of suspected terrorists in Yemen using unmanned aircraft and satellites was also linked to Pine Gap.

There is a bitter irony here. If the proposed Bill becomes law, peaceful protesters can be jailed for seven years for minor infringements while Pine Gap itself is linked to widespread death and extrajudicial killings.

Intelligence collected at Pine Gap has made a much more substantial contribution to the US "war on terror" than the efforts of the Australian Defence Force. Hence, Pine Gap makes Australia a key accomplice in any US attack and subsequent deaths, destruction and misery.

In the case of Iraq, this involvement was opposed by over 70 per cent of the Australian community.

Australian public opinion is also moving decisively against Australian involvement in Afghanistan, against the recent bombings and occupation of Gaza, and against the most recent air strikes in Pakistan.

In all these theatres, Pine Gap's military and surveillance functions are significant.

Political rights

The decisions around the establishment and operation of Pine Gap were made in the time of the Cold War and were and still are overtly political decisions just as protests against Pine Gap are.

The Federal Parliament risks infringing civil and political rights with this legislation

A right of peaceful assembly is enshrined in Article 21 of the International Covenant on Civil and Political Rights. Australia is a signatory to the ICCPR.

The right to protest is a political act which is directly linked to freedom of association and freedom of expression. It allows citizens to take democratic action without the threat of sanctions. Freedom of expression is essential in a democracy. The right to peaceful assembly and the right to protest are some of the most important and fundamental rights of a free and democratic society. Citizens must be entitled to express dissent about the government, to debate the merits of policies and to campaign for alternatives.

The right to assemble or protest is often said to be a fundamental principle of Australian society. The central place of public protest, especially political protest, in Australian democracy appears to be beyond doubt.

Benjo Keaney B Sc (REM) Grad Dip Arts (Archaeol) MPhil Sc