

Chapter 1

Introduction

Referral of the bill

1.1 On 24 June 2010, the Defence Legislation Amendment (Security of Defence Premises) Bill 2010 was introduced in the Senate. On the same day, the Senate referred the bill to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 24 August 2010. On 19 July 2010, the Governor-General prorogued the 42nd Parliament and dissolved the House of Representatives. After due consideration, the committee reported to the Senate that it had resolved not to continue its inquiry into the provisions of the bill.

1.2 On 29 September, the bill was reintroduced in the House of Representatives. The following day, the Senate referred the provisions of the bill to the committee for inquiry and report by 16 November 2010. On 16 November, the Senate granted an extension of time to report to the last day of the second sitting week in February 2011 with 3 March 2011 set as the tabling date.

1.3 Apart from two minor technical additions, which do not alter the substance or intent of the legislation, the bill is substantially the same as that introduced in the previous Parliament. The amendments are intended to clarify the safeguards that would apply to the use of force where a person is fleeing and to make clear that the Secretary of the Department of Defence's approval of identity cards for Defence security officials must be in writing.¹

Purpose of the bill

1.4 The Defence Legislation Amendment (Security of Defence Premises) Bill 2010 (the bill) will insert a new Part VIA in the *Defence Act 1903* (the Act) and make associated amendments to the *Australian Federal Police Act 1979*.

1.5 The Explanatory Memorandum notes that the bill gives effect to 'Australian Government initiatives to enhance the security of Defence bases, facilities, assets, and personnel within Australia in response to the changing nature of security threats'.² The amendments to the Act would:

- clarify that appropriately authorised members of the Defence Force may use 'reasonable and necessary force, including lethal force, to prevent the death of, or serious injury to a person in connection with an attack on Defence premises';

1 Department of Defence, *Submission 8*, p. 1.

2 *Explanatory Memorandum*, Defence Legislation Amendment (Security of Defence Premises) Bill 2010, p. 1.

- establish a statutory regime of search and seizure powers to operate at defence premises to 'reduce the risk of dangerous items entering Defence facilities, or material and classified information being unlawfully removed';
- update and relocate the trespass offence and related arrest power in section 82 of the *Defence Act 1903*;
- support the enforcement of the trespass offence by authorising Defence to use overt optical surveillance devices to monitor the security of Defence premises and to disclose the information captured by these devices to law enforcement agencies and Commonwealth, state and territory public prosecution authorities; and
- clarify that this Part of the bill does not limit the exercise of powers of a defence security official, member of Defence or any other person, under the act or any other law.³

Submissions

1.6 The committee advertised the inquiry on its website and in *The Australian* on 5, 9, 16 and 30 June, 14 July, 11 August and 13 October 2010. The committee wrote to the Minister for Defence and respective federal, state and territory governments and police forces, inviting them or their departments or related agencies to make a submission. A number of other organisations, commentators, and academics were also contacted and invited to make submissions to the inquiry. The committee received 10 submissions, which are listed at Appendix 1.

Scrutiny of Bills Committee

1.7 The Senate Standing Committee for the Scrutiny of Bills considered the bill and raised a number of concerns in relation to various powers conferred on defence security officials. These concerns are detailed and discussed throughout the report. At the centre of such concerns is whether powers conferred on defence security officials, including the authority to use lethal force and perform non-consensual security functions, unduly trespass on personal rights and liberties. Underlying the concerns of the scrutiny committee was whether security interests were balanced with that of individual rights: In its view:

...the general question of whether an appropriate balance has been struck in these provisions between (1) personal rights and liberties and (2) interests in maintaining the security of Defence bases and responding to security threats is a question which may appropriately be **left to the consideration of the Senate as a whole**.⁴

3 *Explanatory Memorandum*, Defence Legislation Amendment (Security of Defence Premises) Bill 2010, p. 2.

4 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 8 of 2010*, 27 October 2010, p. 33.

1.8 This matter of appropriate balance will be central to the committee's consideration.

Acknowledgments

1.9 The committee thanks those who assisted with the inquiry.

1.10 The committee would also like to take the opportunity to note that the Explanatory Memorandum provides useful information on the intentions of the bill and its key provisions.

