

Chapter 2

Background to and purpose of the bill

2.1 The bill gives effect to initiatives to enhance the security of Defence bases, facilities, assets and personnel within Australia. This chapter considers the main security threats to Defence personnel and property in Australia and the government's legislative response.

The Department of Defence and its estate

2.2 The mission of the Department of Defence (Defence) is to 'defend Australia and its interests' and:

Defence resources, including equipment and personnel, will be directed to support this mission as first priority.¹

2.3 In sustaining its mission, Defence's primary focus is to 'protect and advance Australia's strategic interests by providing support to the Government and the Australian Defence Force (ADF) for the direct defence of Australia and its unique strategic interests'.² In this context, the Defence White Paper 2009 recognises Defence bases and infrastructure as 'enabling functions' which, together with other support mechanisms, are considered to be the 'backbone' of Defence business.³ The facilities and infrastructure of the Defence estate support the activities of over 90,000 people across the country.⁴ In relation to its estate, Defence noted that it is:

... the largest and most complex land and property holding in Australia. It provides the facilities which directly enable the generation, projection and sustainment of operational capability. The Defence estate also supports our personnel, providing them with a safe place to work and their families to live.⁵

-
- 1 Department of Defence website, <http://www.defence.gov.au/footer/contacts.htm> (accessed 2 November 2010).
 - 2 Department of Defence, 'Portfolio Overview', *Portfolio Budget Statements 2010–11*, Commonwealth of Australia, Canberra, p. 3, http://www.defence.gov.au/budget/10-11/pbs/2010-2011_Defence_PBS_02_overview.pdf (accessed 2 November 2010).
 - 3 Department of Defence, *Defending Australia in the Asia Pacific Century: Force 2030*, Defence White Paper 2009, p. 119, http://www.defence.gov.au/whitepaper/docs/defence_white_paper_2009.pdf (accessed 2 November 2010).
 - 4 Department of Defence Infrastructure Division, *A Message from HI—Infrastructure Division*, John Owens—Head Infrastructure Division, undated, <http://www.defence.gov.au/id/Message%20from%20HI.htm> (accessed 2 November 2010).
 - 5 Department of Defence, *Defending Australia in the Asia Pacific Century: Force 2030*, Defence White Paper 2009, p. 121, http://www.defence.gov.au/whitepaper/docs/defence_white_paper_2009.pdf (accessed 2 November 2010).

2.4 There are approximately 88 major Defence bases or Defence premises in Australia.⁶ The Defence estate which covers 3.4 million hectares of land⁷ comprises approximately 370 owned properties and an additional 350 under lease.⁸ The estate includes 34,000 structures and consists of training areas; command headquarters; airfields; ship repair and wharfing facilities; accommodation; depots; warehouses and explosive ordnance storehouses; training, education, research and testing facilities; and office buildings. The estimated gross replacement value of the estate is over \$64 billion.⁹

Security risks

2.5 Mr Clive Williams from the Strategic and Defence Studies Centre noted that theft by insiders as well as external parties of hard-to-obtain and valuable items stored at defence facilities was the main security threat to Defence bases, facilities, assets and personnel in Australia. He commented that:

Such items can include night vision devices, operational military equipment, weapons and ammunition, and military ordnance and explosives. The ongoing concern at some Defence facilities is the potential for an organised attempt to gain access to weapons and explosives.¹⁰

2.6 In addition, Defence cited the threat of terrorism as real, persistent and evolving and that 'Defence personnel and premises are potentially attractive targets for terrorist groups'. It informed the committee that:

To meet these challenges, Defence maintains a framework of protective security measures to safeguard its personnel and premises. This framework consists of a range of physical and personnel security measures, coupled with intelligence, to provide a layered response to mitigate threats.¹¹

2.7 Defence noted, however, that large numbers of people regularly flow in and out of Defence premises on a daily basis. Moreover, under the current regime, a

6 Department of Defence, *Submission 8*, p. 6.

7 Department of Defence, *Defending Australia in the Asia Pacific Century: Force 2030*, Defence White Paper 2009, p. 122, http://www.defence.gov.au/whitepaper/docs/defence_white_paper_2009.pdf (accessed 2 November 2010).

8 Department of Defence, *Submission 8*, p. 6.

9 Defence Support Group, Department of Defence, *Overview of Facility Operations*, March 2009, p. 7, http://www.defence.gov.au/im/estate_maintenance/11/docs/gesst/11.180a%20GESST16%20FACOPS%20Overview%20090513.ppt (accessed 2 November 2010). Department of Defence Infrastructure Division, *A Message from HI—Infrastructure Division*, John Owens—Head Infrastructure Division, undated, <http://www.defence.gov.au/id/Message%20from%20HI.htm> (accessed 2 November 2010).

10 Clive Williams, *Submission 1*, p. 1.

11 Department of Defence, *Submission 8*, p. 4.

Defence Force member or Australian Public Service (APS) employee cannot be denied access to Defence premises because of a refusal to consent to a search or detained on exit unless there is a reasonable suspicion that the individual had committed an offence.¹² It identified a number of other restrictions in relation to security functions on Defence premises. For example, whilst access by contractors can be made conditional, at present the ability to conduct a search in relation to a contractor is dependent on the terms of their contract. Further, even though visitors may be subject to a consensual search on entry, any attempt to conduct a search on exit is dependent on consent being given to that action, unless there is reasonable suspicion that the individual has committed an offence. In relation to these restrictions, Defence stated:

The present lack of explicit search, seizure and related powers significantly impedes Defence's ability to reduce the risk of unauthorised items being brought onto Defence premises and dangerous, restricted or classified items and information being improperly removed.¹³

Response to new challenges

2.8 Two high profile incidents highlighted the need for Defence to review its security arrangements. In 2008, a former army captain was convicted and imprisoned in relation to 21 offences over the theft and illicit sale of ten rocket launchers between 2001 and 2003 to a convicted criminal with terrorist links.¹⁴ The case illustrated the 'risk of improper removal of dangerous, restricted or classified items from defence bases'.¹⁵ Similarly, in 2007 seven M72 shoulder-fired launchers were stolen from an ADF depot at Orange Hills.¹⁶

2.9 The second major public incident happened on 4 August 2009 when five individuals were arrested on allegations of planning an armed attack on the Holsworthy Army Base.¹⁷ The alleged plan involved storming the barracks with automatic weapons and shooting army personnel or others until they had used up their

12 Department of Defence, *Submission 8*, p. 6.

13 Department of Defence, *Submission 8*, p. 6.

14 Sally Neighbour, 'No sign of stolen rocket-launchers', *The Australian*, 17 October 2009, <http://www.theaustralian.com.au/news/no-sign-of-stolen-rocket-launchers/story-e6frg606-1225787746734> (accessed 1 October 2010), 'Terror arms soldier Shane Della-Vedova jailed', *The Daily Telegraph*, 16 May 2008, <http://www.dailytelegraph.com.au/news/nsw-act/terror-arms-soldier-jailed/story-e6freuzi-1111116354690> (accessed 1 October 2010).

15 The Hon Stephen Smith MP, Minister for Defence, Second Reading Speech, *House Hansard*, 29 September 2010, p. 11.

16 Sally Neighbour, 'No sign of stolen rocket-launchers', *The Australian*, 17 October 2009, <http://www.theaustralian.com.au/news/no-sign-of-stolen-rocket-launchers/story-e6frg606-1225787746734> (accessed 1 October 2010).

17 Milanda Rout, 'Jihad's motley crew', *The Australian*, 30 October 2009, <http://www.theaustralian.com.au/news/features/jihads-motley-crew/story-e6frg6z6-1225792580038> (accessed 1 October 2010).

ammunition, were captured or killed.¹⁸ On 23 December 2010, three of the men were found guilty of conspiring to prepare for or plan a terrorist act. The two other men were acquitted.¹⁹

2.10 Exposure of the planned attack raised concerns regarding the security of Defence bases. Mr Clive Williams, for example, argued that terrorism, and particularly Australian home grown extremism, was one of the main security threats to defence facilities. He noted, moreover, that at least three of the Islamic extremist terrorism cases in Australia since 9/11 have involved plans to attack defence facilities using explosives or firearms.²⁰

2.11 Following the arrests in relation to the planned attack on the Holsworthy base, then Prime Minister the Hon Kevin Rudd MP convened a meeting of the National Security Committee of Federal Cabinet the same day. Whilst noting the advice from the Chief of the Defence Force (CDF) Air Chief Marshal Angus Houston that security arrangements were 'adequate', Mr Rudd requested that the CDF and Defence undertake an 'immediate and comprehensive review of adequacy, given these new developments'.²¹

2.12 Reports suggested that within hours of Mr Rudd's order for an inquiry into security arrangements, two employees of the *Daily Telegraph* newspaper were caught by Defence personnel taking photographs inside the Holsworthy base for which they were charged.²² The incident prompted fresh calls for unarmed private security guards who provide frontline security at defence bases to be replaced with armed soldiers.²³

2.13 The Review of Defence Protective Security Arrangements (the review) produced a number of recommendations concerning both policy and physical security

18 Cameron Stewart and Milanda Rout, 'Somali extremists on a 'fatwa order' from God', *The Australia*, 5 August 2010, <http://www.theaustralian.com.au/news/nation/somali-extremists-on-a-fatwa-order-from-god/story-e6frg6nf-1225758010718> (accessed 1 October 2010). Paul Anderson and Norrie Ross, 'Three Melbourne men guilty of planning terror attack on NSW army base', *The Daily Telegraph*, 23 December 2010, <http://www.dailytelegraph.com.au/news/nsw-act/three-melbourne-men-guilty-of-planning-terror-attack-on-nsw-army-base/story-e6freuzi-1225975368101> (accessed 23 December 2010).

19 'Three guilty of planning terror attack', *ABC News*, 23 December 2010, <http://www.abc.net.au/news/stories/2010/12/23/3100126.htm> (accessed 24 December 2010).

20 Clive Williams, *Submission 1*, p. 1.

21 The Hon Kevin Rudd MP, Prime Minister, Transcript of Interview, *ABC Radio AM Program*, 5 August 2009, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/9ZBU6/upload_binary/9zbu60.pdf;fileType=application/pdf (accessed 1 October 2010).

22 'Holsworthy review 'will take one month'', *The Age*, 6 August 2009, <http://news.theage.com.au/breaking-news-national/holsworthy-review-will-take-one-month-20090806-eadp.html> (accessed 1 October 2010).

23 Sean Rubinsztein-Dunlop, 'Journalists caught inside Sydney army base', *ABC News*, <http://www.abc.net.au/news/stories/2009/08/05/2647236.htm> (accessed 12 October 2010).

measures. The need to clarify legal issues surrounding Australian Defence Force (ADF) members acting in self defence in the event of a no-warning attack was one such recommendation.²⁴

2.14 On 22 October 2009, the Secretary of Defence, Dr Ian Watt, stated that the department was in the process of implementing a range of measures in accordance with the findings and recommendations of the review. He stated in this regard that:

These initiatives include strengthening Defence's protective security alert system and other policy underpinning security arrangements, additional patrolling presence by the Australian Federal Police and contracted security guards, and a range of physical security measures.²⁵

2.15 The same Defence media release also noted that no further details about the security review, its recommendations and enhanced security measures would be released.²⁶

2.16 In its submission, Defence noted that the review led to the introduction of a number of policy and security initiatives to complement pre-existing arrangements at Defence premises. It noted:

These initiatives include strengthening security policy and arrangements relating to access control, incident response and contractor guarding, together with physical measures such as improvements in perimeter fencing, security lighting, alarm systems and increased security patrols.²⁷

2.17 In the second reading speech in relation to the bill, the Defence Minister, the Hon Stephen Smith MP, stated that one of the recommendations of the review was to 'bring forward' a number of legislative amendments. These proposals are incorporated in the bill. To this extent, therefore, the bill seeks to implement recommendations of the review pertaining to legislative reform.²⁸

24 'Defence allowed to shoot terrorists', *The Sydney Morning Herald*, 24 June 2010, <http://news.smh.com.au/breaking-news-national/defence-allowed-to-shoot-terrorists-20100624-z38y.html> (accessed 1 October 2010).

25 Department of Defence, 'Defence Base Security Review–Update', *Defence Media Release*, MSPA 361/09, 22 October 2009, <http://www.defence.gov.au/media/DepartmentalTpl.cfm?CurrentId=9612> (accessed 1 October 2010).

26 Department of Defence, 'Defence Base Security Review–Update', *Defence Media Release*, MSPA 361/09, 22 October 2009, <http://www.defence.gov.au/media/DepartmentalTpl.cfm?CurrentId=9612> (accessed 1 October 2010).

27 Department of Defence, *Submission 8*, p. 5.

28 The Hon Stephen Smith MP, Minister for Defence, Second Reading Speech, *House Hansard*, 29 September 2010, p. 11.

2.18 Defence argued that the implementation of provisions contained in the bill are required to continue to meet the challenges created by the 'changeable nature of security threats, to ensure the continued security and safety of Defence premises, personnel and assets within Australia'. According to Defence, the bill 'represents the first phase of legislative amendments and provides provisions of common application across Defence to deal effectively with the security of Defence premises, assets and personnel'.²⁹ A second phase will consider the requirement to implement proposals that raise more complex legal and practical issues including powers for the protection of naval vessels.

Objectives and scope of the bill

2.19 According to the Minister, the bill reflects 'the importance the government places on the security and safety of ADF members, defence employees and the Australian public'.³⁰ The bill will insert a new Part (Part VIA) into the *Defence Act 1903* to give effect to initiatives directed at enhancing the security of Defence bases, facilities, assets and personnel within Australia. In broad terms, the bill introduces measures in three key areas designed to:

- strengthen the legal regime for Defence Force members who may be required to use force involving death or grievous bodily harm;
- establish a statutory regime of search and seizure powers; and
- update the existing trespass offence and associated arrest power in the *Defence Act 1903*.

2.20 The powers introduced in the new Part confer security functions, including identity and authorisation checks, search and seizure powers, on three classes of officials, otherwise termed 'defence security officials' including:

- (a) defence contracted security guards;
- (b) security authorised members of the Defence Force; and
- (c) defence security screening employees who are Australian Public Service employees of the Department of Defence.

2.21 The role of (a) defence contracted security guards is principally restricted to performing the consensual security functions. The non-consensual powers are largely reserved for (b) security authorised members of the Defence Force and (c) defence security screening employees. Whilst all three classes of official are empowered to use force in restricted circumstances including that to restrain and detain a person, the principle that underlies such action is that such force shall be 'necessary and reasonable'. The power to use force likely to cause death or grievous bodily harm is

29 Department of Defence, *Submission 8*, p. 5.

30 The Hon Stephen Smith MP, Minister for Defence, Second Reading Speech, *House Hansard*, 29 September 2010, p. 89.

restricted to security authorised members of the Defence Force only in the context of a current or imminent attack on defence premises which is likely to cause death or serious injury to persons on defence premises. Other defence security officials are not so authorised.

2.22 In terms of the scope of application, the bill distinguishes between three locations: defence access control points, defence premises, and locations external to defence premises. The concept of a 'defence access control point' is introduced in the bill and defined in section 71A as:

...a point of entry to, or exit from, defence premises or a part of defence premises, where entry or exit is controlled or limited by any means, including but not limited to control by means of:

- (a) guarding by defence security officials; or
- (b) physical barriers such as security screens, locked doors or gates.

2.23 According to the Explanatory Memorandum, the purpose of the definition is to create identified points on defence premises where defence security officials are 'expressly authorised to exercise the identification, search and related enforcement powers proposed in the new Part' and that:

The mere presence, on Defence premises, of a sign or boundary marker, for example a fence or a painted line on a road or airport tarmac, does not of itself constitute a defence access control point for the purposes of this Part. A defence access control point will use one or more measures to limit or control access to defence premises, or a part thereof, either by identifying the person or confirming their authority to access the premises, or a part thereof. These measures may include, but are not limited to, the use of one or more of the following: the presence of defence security officials, the requirement to present access cards or other identification for inspection, electronic security barriers fitted with access card readers, electronic handheld access card readers, retinal scanners, hand scanners and comparable devices. These measures may be used in conjunction with, but not limited to, any of the following physical security controls: gates, boom gates, security bollards, locked or electronically controlled doors, and entry points to vehicles, vessels or aircrafts including gangways and stairs. In relation to the latter, a defence access control point may be established at the base of the gangway to a vessel, the stairs leading up to an aircraft or a ramp providing access to a vehicle.³¹

2.24 Defence premises is also defined in the bill to be in Australia, owned or occupied by the Commonwealth for use by the Defence Force or the Department and:

- (a) an area of land or any other place (whether or not it is enclosed or built on);

31 *Explanatory Memorandum, Defence Legislation Amendment (Security of Defence Premises) Bill 2010*, p. 4.

- (b) a building or other structure;
- (c) a vehicle, vessel or aircraft, including any fixed or moveable ramp, stairs or other means of access to, or exit from, the vehicle, vessel or aircraft;
- (d) a prohibited area, within the meaning of the *Defence (Special Undertakings) Act 1952*.³²

Views on the bill

2.25 Overall, submitters recognised the importance of this legislation and in general supported the objectives. For example, the Chief Minister, Minister for Police, Fire and Emergency Services of the Northern Territory stated:

It is quite clear that these amendments are needed and will certainly enhance the security of Defence bases, facilities, assets and personnel, which is especially relevant given the current security environment.³³

2.26 The ACT's Attorney-General and Minister for Police and Emergency Services had no concerns about the bill and emphasised that the AFP had 'substantial involvement in drafting the amendments'.³⁴ The New South Wales Department of Premier and Cabinet advised that the New South Wales Police Force also had no major concerns in relation to the bill.³⁵ The South Australia Police, the Victoria Police and Police Federation of Australia offered general support for the bill while Tasmania Police supported the proposed amendments on the basis that training and accountability provisions are put in place.³⁶ Mr Clive Williams supported an extension of the powers conferred under the bill.³⁷

2.27 Although in favour of the bill, a number of submitters raised a few concerns such as the need for delineation between the role and powers of defence security officials in relation to those of the police. They also drew attention to issues with the implementation of the provisions especially the importance of training. The Standing Committee on the Scrutiny of Bills, however, registered a number of concerns relating to undue trespass on personal rights and liberties and strict liability provisions.

32 This includes a place occupied for a special defence undertaking (section 7) and any area of land and/or water declared by the Minister to be a prohibited area for the purposes of the defence of the Commonwealth (section 8).

33 *Submission 5*.

34 ACT Legislative Assembly, *Submission 6*, p. 1.

35 New South Wales Department of Premier and Cabinet, *Submission 7*, p. 1.

36 South Australia Police, *Submission 2*, Victoria Police, *Submission 3 and 3A*, Police Federation of Australia, *Submission 4*, Western Australia Department of the Premier and Cabinet, *Submission 9*; Commissioner of Police, Tasmania, *Submission 10*.

37 Mr Clive Williams, *Submission 1*.

2.28 In the following chapters, the committee examines the provisions of the bill and key issues.

