



Police Federation
of Australia

ABN 31 384 184 778

Level 1, 21 Murray Crescent
GRIFFITH ACT 2603

Tel: (02) 6239 8900

Fax: (02) 6239 8999

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Senator Payne
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

**RE: DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN
AUTHORITIES) BILL 2005**

Dear Senator Payne

Thank you for the opportunity to submit comments on the above proposed legislation amendment. I understand that the Senate Committee will be hearing from representatives from a range of community organisations, and the Department of Defence, who have been invited to attend hearings in Sydney tomorrow (31 January).

On behalf of the PFA let me express my disappointment at not being invited to make a further submission at this hearing. I believe that the Australian Defence Force Association also has not been invited to expand upon their submission at the hearing. Given the spectrum of implications and queries raised by these proposed amendments, and the strong links with police and policing operations, I am somewhat surprised that the PFA has not been called at this time.

Due to the tight timeframe allowed for written submissions over the Christmas period and the poor publicity advertising the inquiry, the PFA submitted only a

brief summary of some of our concerns which we intended to expand upon in the hearings.

In respect to the two (2) points raised in our original correspondence let me add the following:

1. Under the “expedited call out” arrangements, the ability of the Commonwealth to call out the ADF other than in the maritime or aviation environments without a request from the State or self governing Territory.

Neither the Act or the Bill specifically states how it is determined that a State is unable to deal with an emergency, merely that the person or persons authorizing an order must be satisfied that such a situation exists. A clarification of how this determination is made should be included in the Bill.

It may also be appropriate to define what constitutes ‘domestic violence’ (other than a reference to section 119 of the Constitution), and what constitutes a ‘sudden and extraordinary emergency’. We do accept however, that too prescriptive a definition may restrict the proper and flexible application of the Act. Whilst we note that these aspects are covered to some extent in the National Counter-Terrorism Handbook, it may be more appropriate for it to be included in legislation.

2. The substantive criminal law of the States and other Territories will not apply in relation to a criminal act of a member of the Defence Force purportedly exercising these powers.

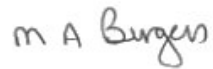
Any process in respect to the investigation and possible laying of criminal charges against ADF personnel needs to be transparent. We have concerns that making the Commonwealth Director of Public Prosecutions responsible for determining when charges under Commonwealth criminal law will be laid may lead the general public to think that such actions are not transparent.

Whilst the Explanatory Memorandum states that State or Territory police would investigate any criminal acts done, or purported to be done, by ADF members operating under Part IIIAAA, we believe that as a minimum this provision should be expressly stated in the legislation.

As we pointed out in our original correspondence, the PFA supports the overall thrust of the Bill's aims in respect to domestic security operations, however our concern is that some of the proposed clauses may have far reaching implications and unintended consequences, and need much more debate before being progressed.

If the PFA had been invited to present to the Senate Committee – and we indicated in our original submission that we were willing to cooperate on this issue – I would have been happy to expand upon our concerns and answer any questions the Committee might have had.

Sincerely yours

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, lowercase style.

Mark Burgess
Chief Executive Officer