

SUBMISSION to the INQUIRY into the
DEFENCE AMENDMENT(PARLIAMENTARY APPROVAL of
OVERSEAS SERVICE) BILL 2008 (No.2)

by

THE NAVY LEAGUE of AUSTRALIA

The League supports the purpose of the Bill as stated in the Explanatory Memorandum.

The legislation must, however, be drafted to ensure that the operational requirements of the Australian Defence Force (ADF) are not adversely affected.

The Committee is no doubt familiar with the commentary and debates that have occurred in the United Kingdom in relation to this issue.

The League makes the following comments

* There must be clarity as to what may legally be done by ADF members when outside Australian territory

The explanatory memorandum states that “the purpose of this bill is to ensure that, as far as constitutionally and practically possible, Australian Defence Force personnel are not sent overseas to engage in *warlike actions* without the approval of both Houses of Parliament”

What actions are to be considered warlike? There is no definition of *warlike actions* in the Defence Act. The definition of War in the Act “means any invasion or apprehended invasion of, or attack or apprehended attack on, Australia by an enemy or armed force.”

The Bill itself does not use the terms war or warlike.

The present 50C of the Defence Act (in reference to Army) uses the term “serve” to apparently cover all activities, from peacekeeping, peace enforcement, aid to the civil power all the way through to total war.

It is clear that “serve” cannot have the same all purpose meaning in the Bill as it presently does in the Defence Act In the Bill 50C (11) covers deployments of a routine, non-warlike type.

Presumably “serve” and “service” in 50C(2) & (3) of the Bill are meant to cover all activities not mentioned in 50C(11).

How, to use a topical example, are anti-piracy actions to be viewed? There have been a number of occasions where there have been exchanges of gunfire. Are such incidents to be considered *warlike actions*?

Recently two RAN ships in transit to the United States and Europe were unexpectedly called on to deal with Somali pirates. Was the RAN ships' action a *warlike act*? What would have been the position if the provisions of the Bill had been in force, and there had been an exchange of gunfire. Would a Proclamation have been required?

It would be undesirable to have commanders of Australian ships in doubt as to the legality of their actions.

* Is it intended that a Proclamation have retrospective effect? It is possible to envisage situations where actions intended to be covered by the Bill would have occurred before either the Governor-General, Prime Minister or the Parliament could act.

* It is presumed that the ADF always has the right of self defence.

* The advice provided by the Prime Minister to the Governor-General may contain classified material. 50C (6) may have to be altered to allow for this.

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