

Michael O’Connell



Consulting Victimologist

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Committee Secretary Senate Legal and Constitutional Affairs Committee
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Dear Secretary,

Defence Amendment (Call out of the Australian Defence Force) Bill 2018

By way of brief introduction, I received the invitation to make a submission while serving as the Commissioner for Victims’ Rights, South Australia. My term as that commissioner ended on 16 July 2018. Since then I have continued my voluntary work in the field of Victimology as a Consulting Victimologist. I, for example, am a member of the international guest faculty that lectures across the globe on Victimology, victims’ rights and victim assistance. I am also the Secretary-General for the World Society of Victimology, a member of the International Network of Services for Victims of Terrorism and a member of Victim Support Asia, which I mention only to illustrate the scope of my

voluntary work. I do not speak for these non-government organisations, rather the pointers made in this letter are mine.

The Defence Amendment (Call out of the Australian Defence Force) Bill will amend Part IIIAAA of the Defence Act 1903 (Act). It is evident the amendments address findings of the coronial inquest into the Lindt Café Siege, which found that current arrangements for Australian Defence Force (ADF) *call out* in relation to terrorist incidents are inadequate.

In broad terms, the Bill is a welcomed response to such findings.

Notably, the Bill (among other things) will repeal the ‘standard’ that the States and Territories “are not, or are unlikely to be, able to protect themselves or Commonwealth interests against the domestic violence” before calling out the ADF. Furthermore, the Bill also authorises to deploy in ‘pre-approved’ situations and to operate cross-jurisdictionally, as well as expands the ADF’s powers to search persons and property, to seize property, detain and control the movement persons. Understandably, the deployment of the ADF and use of the ADF to police the public will attract objections.

Some will differentiate the ADF and the police. The ADF deal with foreign populations and combatants whereas the police deal with the domestic civilian populations. The ADF and the police both are authorised to carry firearms and to use force, even lethal force. Mostly they are different in what they primarily use force for; however, during domestic terrorist incidents there are commonalities. In accordance with the Bill, both would seek to contain an incident then capture the perpetrator(s) or shoot them to protect the public at large.

ADF personnel and police in general receive different training. ADF personnel are trained for combat, for intervention but also peace keeping. The police are trained to enforce law, to assist people in times of emergency or crisis but also to keep the peace. ADF personnel are trained to be more aggressive than the police. Yet both co-train during mock terrorist incidents and joint training would enhance the operation of the proposed amendments.

Notwithstanding the differences, it is conceivable that circumstances will arise where the knowledge, skills and capabilities available to the ADF will provide either the better response to a terrorist or mass violence incident or enhance the police response to such. To protect every citizen’s fundamental human rights from abuse by ADF

personnel, however, there must be appropriate safeguards. These should, for instance, protect the right to security of the person, right to freedom from arbitrary detention and right to freedom of expression as well as the right to assemble. The Government (or government minister) should not be empowered to call out the ADF to suppress public assemblies, such as rallies against the Government. Such safeguards are important considerations as it seems that after a 'call out', which can only be made in circumstances involving 'domestic violence', the powers of ADF personnel are broad and correspond with state and territory criminal law and procedures. Thus, it is crucial to have adequate safeguards. Such said, I reiterate that the Bill is welcomed. On rights, my main concern crime victims' rights.

Victims of terrorism and mass violence suffer physical, emotional, and mental effects, as well as financial harm. Meeting the needs of these victims requires many tasks and various interventions, including: providing immediate emergency assistance, facilitating 'psychological first aid', material help (e.g. financial assistance), victim-survivor & community education, and informing as well as enhancing victim-survivors' social support. Victims' rights should be upheld, not overlooked.

In addition to the Universal Declaration on Human Rights, see for example, Covenant on Civil & Political Rights (eg Article 2); Declaration of Basic Principles of Justice for Victims of Crime & Abuse of Power (General Assembly resolution 40/34); Basic Principles & Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations (General Assembly resolution 60/147); Set of Principles for the Protection & Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1); Convention against Transnational Organised Crime (eg Articles 24 & 25); Convention against Corruption (eg Article 32).

There is a growing acknowledgement that victims' rights and victim assistance need to be given greater consideration in preparations for and responses to terrorism and other mass violence. The Bill focuses on the needs to maintain security, contain an incident, and locate perpetrators; yet, in addition there are obligations such as victims' rights that should be respected and victims' needs that should be met.

Every state and mainland territory in Australia have a charter or declaration on crime victims' rights. Public agencies and officials are required to have regard, and to give effect, to these rights so far as it is practicable to do so having regard to the other obligations binding on them. Although there is a national charter on victims' rights, there is no federal charter or declaration.

Given the absence of a federal charter or declaration, the Bill should be amended to include an obligation that ADF personnel should, like the police in each state and territory, be obliged to respect the rights of victims of terrorism and other mass violence. ADF personnel should be tasked, for example, to treat victims with respect and dignity; should (unless likely to jeopardise the counter-terrorism activity) be honour victims' rights to information¹; and, should respect victims right to access to justice². The Bill should provide for the effective cooperation and collaboration between ADF and police providing responses to victims of terrorism.

Yours faithfully,

Michael O'Connell AM APM

¹ See the Madrid Memorandum on Good Practices for Assistance to Victims of Terrorism Immediately after the Attack and in Criminal Proceedings, adopted 27 September 2013: information about the progress and response to the incident for victims and their families, information about available local services, information about how to deal with the media and information about criminal justice processes.

² Declaration of Basic Principles of Justice for Victims of Crime & Abuse of Power (General Assembly resolution 40/34)