

Attention: Committee Secretary,
Senate Foreign Affairs, Defence and Trade Legislation Committee

Re: Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020

Dear Committee Secretary

I appreciate this opportunity to share with you certain concerns related to the Bill, in my capacity as a member of BaseWatch.

BaseWatch is a Darwin community group formed in response to the 2011 announcement that our town would play host to what president Obama described as ‘an enduring presence’ of USA Marines. Since then, our activities have included participation in formal processes including social impact assessment of the deployments and environmental assessment of so-called ‘war games’.

Noting the severity of last season’s bushfire emergencies, during which Australians appreciated a large call out of reserve forces, reexamination of this mechanism is relevant and appropriate. Nonetheless we recognise particular concerns with the Bill that give rise to the following recommendations:

- remove reference to foreign personnel
- the amendments should be more tightly scoped, to remove uncertainty regarding use of force
- legislate for prompt parliamentary review of any order, to balance the new streamlined powers

foreign personnel

The inclusion of foreign personnel is tangential to the stated rationale.

We recommend removing proposed clause **4 (b)** from new section **123AA Immunity in relation to certain assistance** which draws in:

a member of the naval, military or air force of a foreign country, or a member of a foreign police force (however described).

The Parliamentary Library’s Bills Digest notes that the process of foreign forces dealing with any liability arising from participation in emergency service provision may already be constrained by the terms of any applicable Status of Forces Agreement.

BaseWatch has made prior recommendations regarding the Aus/USA SOFA, which already provides ‘in the course of duty’ indemnity. We have identified the 50-year-old SOFA as out of date and in need of review within a modern context that includes the growing USA war bases (both USMC and USAF) in the NT. It would be particularly regrettable to see a further deterioration of community confidence in the applicability of Australian law to those visiting forces.

tighter scoping of amendments

The Parliamentary Library’s Bills Digest notes:

The removal of criminal liability for actions taken in good faith performance of duty while providing certain assistance is likely to have the practical effect of expanding the circumstances in which the ADF can use force when deployed within Australia.

...

may have the unintended effect of permitting the domestic use of force by the ADF without the safeguards currently required under Part IIIAAA of the Defence Act.

and references Draft Propositions arising from the ongoing Bushfire Royal Commission which propose:

The Australian government should consider whether Defence (including ADF) and Defence personnel and staff (including ADF personnel) engaged in activities conducted under or pursuant to emergency DACC have the same or similar privileges and immunities as states and territories, and their personnel do, when engaged in activities in

response to, and recovery from, natural disasters.

The Digest identifies concern that the repeated phrase ‘*other emergencies*’ offers itself to wide interpretation.

To meet the stated objectives, and eliminate uncertainty regarding use of force, new Section 123AA should explicitly exclude emergencies involving domestic violence (which are already regulated elsewhere in the Defence Act)

parliamentary review

Given the proposed increased scope and immunity provisions, the opportunity should be taken to grant this streamlined decision making power the benefit of prompt parliamentary review.

While the purpose of this bill is important, it is not urgent. The granting of far-reaching new power deserves greater scrutiny and deeper exploration than this Bill has enjoyed so far, including with regard to civil liberties.

BaseWatch remain keenly interested to contribute to improved decision making that relates to the growing foreign military presence in the NT.

Contact:

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