



Defence Legislation Amendment (Security of Defence Premises) Bill 2010

Paula Pyburne
Law and Bills Digest Section

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Defence Legislation Amendment (Security of Defence Premises) Bill 2010

Date introduced: 29 September 2010

House: House of Representatives

Portfolio: Defence

Commencement: Sections 1–3 on the day of Royal Assent; Schedule 1 on a day to be fixed by Proclamation but not later than six months after Royal Assent

Links: The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

The purpose of the Defence Legislation Amendment (Security of Defence Premises) Bill 2010 (the Bill) is to amend the *Defence Act 1903* (Defence Act) and the *Australian Federal Police Act 1979* (AFP Act) to enhance the security of Defence bases, facilities, assets and personnel within Australia in response to the changing nature of security threats.

History of the Bill

An earlier version of the Bill was introduced into the House of Representatives on 24 June 2010 during the term of the 42nd Parliament (the original Bill). However, that version of the Bill lapsed on 19 July 2010 when the Parliament was prorogued. This version of the Bill is not the same as the original Bill in that it includes an additional item—item 5.

Background

The impetus for the Bill came from two separate incidents.

The first was the theft by army personnel of 10 rocket launchers which were subsequently sold on the black market.¹ The weapons were stolen by a weapons destruction specialist who then sold

1. P Walters and D McNicoll, 'Weapons theft launches review', *Weekend Australian*, 7 April 2007, p. 2, viewed 13 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FT4QM6%22>

them to potential terrorists.² Shane Della-Vedova was subsequently sentenced to ten years imprisonment for the theft.³

The second was the arrest of five men who were allegedly planning a suicide attack on the Holsworthy Army base near Sydney in August 2009.⁴

It was reported that

... the plan was to storm Sydney's Holsworthy base, home to thousands of troops including a major anti-extremist unit, with firearms in what would have been Australia's worst militant attack ... the men wanted to become 'martyrs' and revealed details of the plot, including text messages and CCTV footage of [one of the accused] outside Holsworthy on March 28. "I strolled around... it is easy to enter,"[he] allegedly texted later.⁵

On the following day two journalists were charged after gaining entry to the same military base. Police said that the reporter and photographer were charged with taking a photograph of a defence installation. They were charged with unlawfully sketching, drawing, photographing or painting fortifications under section 82 of the Defence Act.⁶ It was reported that the base's private security guards let the journalists drive in.⁷

Government response

In response to the incidents at the Holsworthy Barracks former Minister for Defence, Senator Faulkner, announced a review into defence base security to be conducted by the Chief Security

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2. General News, 'Former soldier to face trial over rocket-launchers', *Sydney Morning Herald*, 28 November 2007, p. 10, viewed 13 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FAZ2P6%22>
 3. R Coulthart, 'Ex-bikie blows the whistle on stolen arms', *Weekend Australian*, 30 August 2008, p. 9, viewed 13 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FGFER6%22>
 4. P Dorling, 'Defence revamps security at bases', *Canberra Times*, 12 September 2009, p. 13, viewed 13 October 2010 and A Tarasov, 'Holsworthy Barracks target of terrorist plot', *Liverpool City Champion*, 5 August 2009, viewed 13 October 2010, <http://www.liverpoolchampion.com.au/news/local/news/general/holsworthy-barracks-target-of-terrorist-plot/1588003.aspx>
 5. L Kennedy and L McKenny, 'The tracks of a wanted man', *Sun Herald*, 9 August 2009, p. 14, viewed 13 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FDFCU6%22>
 6. 'Holsworthy review will take one month', 6 August 2009, viewed 13 October 2010, <http://www.watoday.com.au/breaking-news-national/holsworthy-review-will-take-one-month-20090806-eadp.html>
 7. 'Daily Telegraph journalists arrested at Holsworthy', 6 August 2010, viewed 13 October 2010, <http://www.news.com.au/national/daily-telegraph-journalists-arrested-at-holsworthy/story-e6frfkvr-1225758453063>

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Officer of Defence with representation from the services, Defence Support Group and Attorney-General's Department.⁸ At the conclusion of the review, the Department of Defence stated:

Following the arrests on August 4 of individuals allegedly planning an attack on the Holsworthy Army base, Defence conducted a prompt and rigorous review of security at its bases and key locations.

... The review, carried out at the Government's direction, made a series of recommendations to enhance security that responds to the changing nature of potential threats. The Government accepted the review's findings and has directed Defence to implement enhanced security measures. These enhancements are under way.

... For obvious reasons, the details of the security measures identified and the recommendations made cannot be discussed.⁹

Committee consideration

On 30 September 2010 the Senate referred the Bill to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 16 November 2010.¹⁰ However at the time of writing this Digest there were only three submissions.

Position of major interest groups

There has been some concern that this Bill will deter protest, criminalise and increase penalties for civil disobedience, and make dissent more dangerous. The Australian Anti-bases Campaign called on the then Minister for Defence, Senator Faulkner, to give a public assurance that the Bill would not in any way impede the rights of people to peacefully protest against military installations.¹¹

Accordingly **proposed section 72L** provides that, in exercising the powers contained in proposed Part VIA of the Defence Act, a defence security official must not stop or restrict any protest, dissent, assembly or industrial action, unless there is a reasonable likelihood of either death or serious injury to persons, or the commission of a criminal offence. On its face the provision would seem to satisfy the concerns that have been expressed.

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8. J Faulkner (former Minister for Defence), *Defence base security review*, media release, 5 August 2009, viewed 13 October 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FMJBU6%22>
 9. *Base security review*, Defence media release, 11 September 2009, viewed 13 October 2010, <http://www.defence.gov.au/media/departamentalpl.cfm?CurrentId=9464> and comments by the Royal Australian Navy, viewed 13 October 2010, http://www.navy.gov.au/Defence_Base_Security_Review
 10. Details of the inquiry, copies of the submissions and the final report can be viewed at: http://www.aph.gov.au/Senate/committee/fadt_ctte/dlabsdp2010_43/index.htm
 11. Unknown author, 'New bill threatens rights of peace campaigners', Independent Media Centre Australia, 27 June 2010, viewed 22 October 2010, <http://indymedia.org.au/2010/06/27/new-bill-threatens-the-rights-of-peace-campaigners>

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However the proposed provision will not protect protesters who shift the location of their protest within the boundaries of a defence premises—such as four anti-war protesters who were reported to have broken into the Swan Island defence base and tampered with a satellite dish earlier this year.¹² In the event of a similar ‘protest’ (which is effectively trespass on defence premises without authority), a protester will have committed a protective service offence which incurs a penalty of \$5500 under **proposed section 72P**.

Financial implications

The costs associated with the amendment in the Bill will be met from within the existing Government agreed cost cap of \$329m that has been allocated over the forward estimates from within the Defence budget provision for the Base Security Improvement Program.¹³

Main issue

Use of force

The primary focus of the Department of Defence is to protect and advance Australia's strategic interests by providing military forces, and the appropriate support of those forces for the direct defence of Australia and its unique strategic interests.¹⁴

The Bill provides the authority to use force which is ‘reasonable and necessary’.¹⁵ The general rule in the use of force is that a defence security official must not subject the person to greater indignity than is reasonable and necessary in the circumstances.¹⁶

The Bill provides the authority to use lethal force subject to specific limitations. In particular, neither a contracted defence security guard nor a defence security screening employee is authorised to use lethal force.¹⁷

A security authorised member of the Defence Force must not use lethal force—that is, force that is likely to cause the death of or grievous bodily harm to a person—unless the member believes on reasonable grounds that it is necessary to prevent the death of or injury to another person. In

12. R Sexton and D Oakes, ‘War protesters switch off defence satellite dish’, *The Age*, 1 April 2010, p. 3, viewed 22 October 2010,

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressclp%2FJLBW6%22>

13. Explanatory Memorandum, Defence Legislation Amendment (Security of Defence Premises) Bill 2010, p. 1.

14. Department of Defence, ‘Agency Resources and Planned Performance’, *Defence Budget 2010–11*, Commonwealth of Australia, Canberra, undated, p. 13, viewed 25 October 2010, http://www.defence.gov.au/budget/10-11/pbs/2010-2011_Defence_PBS_03_department.pdf

15. **Proposed section 72G** of the Bill.

16. **Proposed subsection 72G(3)** of the Bill.

17. **Proposed subsection 72G(2)** of the Bill.

addition, the use of lethal force is authorised only if the threat of death or injury to another person is caused by an attack on defence premises, or on people on defence premises, that is occurring at the time the force is used or is imminent.¹⁸ The Explanatory Memorandum states that ‘attack covers an armed attack, attack by the detonation of an explosive device or any other conduct, whether or not involving firearms or explosives, which is designed to kill or could result in the death or serious injury of persons on defence premises’.¹⁹ However neither the Bill, nor the principal act, define the term.

The authority to use lethal force is further limited in circumstances where a person is attempting to escape being detained by fleeing. In that case, a security authorised member of the Defence Force must not do anything that is likely to cause the death of, or grievous bodily harm, to the person unless the person has been called on to surrender and the Defence Force member believes on reasonable grounds that the person cannot be apprehended in any other manner.²⁰ This authority to use lethal force against a person who is attempting to escape can be exercised only if it is necessary to prevent death or serious injury to persons on defence premises in the event of an attack that is imminent or occurring.

Use of force that is more than reasonable and necessary

The Bill does not provide protection to a Defence Force member who exercises greater force than is authorised. British courts have discussed the extent to which a soldier may be allowed to shoot a suspect in order to defend him or herself, and others, in the context of the role of the military in the policing of Northern Ireland. Lord Diplock made the following comments in the case of a soldier on patrol in Northern Ireland who shot and killed an unarmed man in the mistaken belief that the man was a member of the IRA:

What amount of force is ‘reasonable in the circumstances’ for the purpose of preventing crime is, in my view, always a question for the jury in a jury trial ... The jury would also have to consider how the circumstances in which the accused had to make his decision whether or not to use force and the shortness of the time available to him for reflection, might affect the judgment of a reasonable man ... [The jury] should remind themselves that the postulated balancing of risk against risk, harm against harm, by the reasonable man is not undertaken in the calm analytical atmosphere of the court-room after counsel with the benefit of hindsight have expounded at length the reasons for and against the kind of degree of force that was used by the accused; but in the brief second or two which the accused had to decide whether to shoot or not and under all the stresses to which he was exposed.²¹

In another case emanating from Northern Ireland, the Court considered a charge of murder against Private Clegg.²² He had been on patrol to catch joy-riders, and fired three shots at the windscreen of

18. **Proposed section 72H** of the Bill.

19. Explanatory Memorandum, op. cit.

20. **Proposed subsection 72H(2)** of the Bill.

21. *Attorney-General for Northern Ireland’s Reference (No. 1 of 1975)* [1977] AC 105.

22. *R v Clegg* [1995] 1 AC 482, viewed 25 October 2010, <http://www.bailii.org/uk/cases/UKHL/1995/1.html>

a speeding car as it approached a checkpoint. He fired a fourth shot, killing a passenger, after the car had passed him and was speeding away. Lord Lloyd of Berwick enunciated the question for the Court of Appeal as whether Private Clegg, in firing the fourth shot, used only such force as was reasonable in the circumstances, or whether the force which he used was excessive.

The Court determined that there was no suggestion in Private Clegg's evidence that he thought that the driver was a terrorist, or that if the driver escaped he would carry out terrorist offences in the future. In those circumstances the use of lethal force to arrest the driver of the car was, in the court's view, so 'grossly disproportionate to the mischief to be averted' that any tribunal of fact would have been bound to find that the force used was unreasonable.

The Bill authorises members of the Defence Force to use force, including lethal force, to prevent the death of, or serious injury to a person in connection with an attack on Defence premises. This authority is subject to strict limitations and would seem to be in accordance with the Department's stated focus.

Orders and directions which conflict with the use of force provisions

Existing Part IIIAAA of the Defence Act contains provisions about the use of force, including lethal force, in certain circumstances in the protection of Commonwealth interests, the States and Territories. Section 51WB in Part IIIAAA provides that where a member of the Defence Force has done a criminal act under an order of a superior, the member is not relieved of criminal responsibility. However it is a defence to a charge that a criminal act has been done if:

- the member was under a legal obligation to obey the order
- the order was not manifestly unlawful
- the member had no reason to believe that circumstances had changed in a material respect since the order was given
- the member had no reason to believe that the order was based on a mistake as to a material fact; and
- the action taken was reasonable and necessary to give effect to the order.

No similar provision is contained in Part VIA which is proposed by this Bill.

Key provisions

Three new ‘protective service offences’

Section 14A of the AFP Act provides that a protective service officer²³ may, without warrant, arrest a person for a **‘protective service offence’** if the protective service officer believes on reasonable grounds that:

- the person has just committed, or is committing, the offence, and
- the arrest of the person is necessary for the purpose of ensuring the appearance of the person before a court of competent jurisdiction for the offence, preventing the continuation of, or a repetition of, the offence or the commission of a further offence, preventing the concealment, loss or destruction of evidence of, or relating to, the offence, or preserving the safety or welfare of the person, and
- proceedings by way of summons against the person for the offence would not achieve such a purpose.

The Bill creates three new **‘protective service offences’**:

- **proposed section 71V**—refusing to provide evidence which is required under Division 4²⁴
- **proposed section 71W**—hindering or obstructing a search under Division 4,²⁵ and
- **proposed section 72P**—unauthorised entry on defence premises or defence accommodation.²⁶

These new offences underpin the Bill as a whole.

Where do the proposed provisions apply?

The Bill inserts **proposed Part VIA** into the Defence Act relating to the security of defence premises. There are three relevant definitions which set out the geographical locations in which the new powers contained in the Bill can be exercised:

- **‘defence premises’** relates to an area of land or any other place, a building or other structure, a vehicle, vessel or aircraft and a prohibited area within the meaning of the *Defence (Special Undertakings) Act 1952*. To satisfy the definition, the relevant premises **must** be in Australia and be owned or occupied by the Commonwealth for use by the Australian Defence Force or the Department of Defence

23. Under section 40EA of the AFP Act, the Commissioner of the AFP may declare AFP employees with certain competencies and qualifications to be **‘protective service officers’**.

24. Under section 4AA of the *Crimes Act 1914* a ‘penalty unit’ is equivalent to \$110. The penalty for the offence created by **proposed section 71V** is 20 penalty units, being \$2200.

25. The penalty for the offence created by **proposed section 71W** is 50 penalty units, being \$5500.

26. The penalty for the offence created by **proposed section 72P** is 50 penalty units, being \$5500.

- **‘defence access control point’** relates to a point of limited or controlled entry to, or exit from, defence premises by means of physical barriers such as security screens, locked doors or gates or by guarding by defence security officials
- **‘defence accommodation’** which is a building, structure or place **in Australia** used for the accommodation of a group of members of the Defence Force.²⁷

Who exercises the powers in the Bill?

Proposed sections 71B–71D set out three categories of persons who are termed **‘defence security officials’**:

- **contracted defence security guards**—a contractor, sub-contractor or employee of a contractor who has been engaged to provide security services at defence premises
- **security authorised members** of the Defence Force—a member of the Defence Force who has been authorised by the Minister or is one of a class of persons authorised by the Minister for the purposes of **proposed section 71C**, and
- **defence security screening employees**—a member of the Australian Public Service (APS) employed by the Department of Defence who has been authorised by the Minister or is a member of a class of persons authorised by the Minister for the purposes of **proposed section 71D**.

Importantly, the Bill sets limits on the powers of contracted defence security guards so that they are not authorised to exercise all of the powers outlined in the Bill—particularly those which operate without consent.

Training and qualifications

Proposed subsections 71B(4), 71C(4) and 71D(4) require that the Minister must, by legislative instrument, determine the relevant training and qualifications to be satisfied by each of the three categories of persons detailed above. Any such legislative instrument would need to be tabled in both Houses of the Parliament and be subject to disallowance in accordance with the *Legislative Instruments Act 2003*.²⁸

Powers exercisable with consent

Division 3 of proposed Part VIA contains a range of powers to **request** information or **request** permission to search. Importantly, defence security officials must not exercise those powers unless

27. Because the definition relates to a ‘group of members’ of the Defence Force, single, stand-alone residences which are located off base and are either privately owned or rented by Defence Force members are excluded.

28. The Minister may delegate this power under **proposed section 71F**. However, the training and requirements will still be disallowable legislative instruments.

they have produced their identity card for inspection by the person of whom the request is made and unless they have informed the person of the consequences of any refusal to comply with a request.²⁹

Where a person is about to pass a defence access control point, **proposed section 71H** empowers a defence security official to request the person to provide evidence of their identity, address and their authority to pass the defence access control point. In addition the defence security official may request the person to undergo a *'limited search'*.³⁰ Similarly where a vehicle, vessel or aircraft is about to pass a defence access control point, **proposed section 71J** empowers a defence security official to request the person in control of the vehicle, vessel or aircraft to permit it to be searched.

If a person refuses to comply with any of these requests, the defence security official may refuse to allow the person, vehicle, vessel or aircraft to pass the defence access control point. Even where the requests are complied with, a person, vehicle, vessel or aircraft may be refused permission to pass, if the defence security official 'reasonably believes' that the person, vehicle, vessel or aircraft is not authorised to pass the defence access control point, constitutes a threat to the safety of persons on the defence premises, or has committed, or may be used in the commission of a criminal offence on, or in relation to, the defence premises: **proposed subsections 71H(3) and 71J(2)**.

If that is the case, and if the person is already on defence premises, the defence security official may restrain and detain the person.³¹ According to **proposed section 72J** this is a limited power (contained in the same terms in various parts of the Bill) for the purpose of placing the person, at the earliest practicable time, in the custody of a member or special member of the Australian Federal Police, a member of the police force of a State or Territory or a protective service officer. This creates the necessary link to the *'protective service offence'* under the AFP Act.

Similarly, **proposed section 71K** empowers a defence security official to **request** a person who is on defence premises to provide evidence of their name, residential address and authority to be on the defence premises in circumstances where he or she reasonably believes that the person is not authorised to be on them. As with proposed sections 71H and 71J, **proposed section 71K** authorises the defence security official to restrain and detain the person where the person refuses the request or where the defence security official forms a 'reasonable belief' as set out above.

29. The requirement to produce an identity card and to inform of the consequences of a failure to comply are contained in **proposed subsections 72B(1) and (2)**.

30. A *'limited search'* is defined in proposed section 71A as having two parts—a search of the person's possessions such as overcoat, coat, jacket, shoes, gloves and hat and any other items that they consent to remove—and a search of the person conducted by quickly running the hands over the person's outer garments and anything worn or carried by the person that is conveniently or voluntarily removed. It does not include requesting the person to remove all of his or her clothes.

31. **Proposed subsections 71H(4) and 71J(3)**.

Declared explosive ordnance depots

Proposed subsection 71L(1) provides that a specified area of land or any other place or a building or other structure is a **'declared explosive ordnance depot'** if:

- the area of land of the place, building or other structure is specified in a legislative instrument
- signs are prominently displayed at the entrance to the area of land, or the place, building or structure as well as at regular intervals around the perimeter of the area of land or the place, building or structure, stating that it is a condition of entry that a person undergo 'searches as provided by this Subdivision'.³²

Under **proposed subsection 71L(2)**, the Minister may specify by legislative instrument that an area of land or any other place or a building or other structure is a declared explosive ordnance depot if:

- it is defence premises, used wholly or partly for the storage of explosive ordnance, and
- members of the Defence Force are not normally present.

Proposed sections 71M and **71N** provide that a contracted defence security guard may **request** a person who is on a declared explosive ordnance depot to undergo a 'limited search' or to permit the search of a vehicle, vessel or aircraft in the person's control. A contracted security guard may restrain and detain a person under the same circumstances as those set out in proposed subsections 71H(3) and 71J(2).

Offences

It is an offence for a security official to conduct a limited search of a person or a search of a vehicle, vessel or aircraft under proposed Division 3 if the person did not consent to the search: **proposed section 71Q**.

Powers exercisable without consent

Proposed sections 71R–71U in Division 4 of proposed Part VIA contain powers which can be exercised without consent. There are two important limitations on these powers:

- they cannot be exercised by a contracted defence security guard,³³ and
- a defence security screening employee may only exercise them if it is not reasonably practicable in all the circumstances for the power to be exercised by a security authorised member of the Defence Force.³⁴

32. It is not stated whether any regulations will be made requiring the signs to explicitly state what those searches are.

33. The powers are exercisable by a **'special defence security official'**. The definition of that term in **proposed section 71A** does not include a contracted defence security guard.

34. **Proposed section 72A** of the Bill.

As with the powers contained in proposed Division 3, the powers in proposed Division 4 operate when a person, vehicle, vessel or aircraft is on defence premises or is about to pass a defence access control point (whether or not the access control point is on defence premises). The difference between the powers contained in Divisions 3 and 4 is that the powers exercised under Division 4 are framed as **requirements**, rather than requests. Furthermore, the consequences of a failure to comply are that the person commits one of the three new **'protective service offences'**.

Under **proposed section 71R**, a person may be required by a special defence security official to provide evidence of the person's identity, address and authority to pass the defence access control point.

A special defence security official may search a person or a vehicle, vessel or aircraft which is about to pass a defence access control point: **proposed subsections 71R(2) and 71S(1)**. The term **'search'** in relation to a person has the same meaning as in section 51 of the *Defence Act 1903*.³⁵ It includes:

- requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat and an examination of those items or
- a search of a person conducted by quickly running the hands over the person's outer garments and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

It does not include requiring the person to remove all of his or her garments, or an examination of the person's body cavities. **Proposed section 72E** of the Bill provides that a defence security official who is conducting a search of a person or thing in accordance with Bill, is authorised to use any equipment, including electronic equipment to gain access to stored data, or which is reasonably necessary for an examination of a thing.³⁶

If a person refuses to comply with any of these requirements, or hinders or obstructs a search, the special defence security official may refuse to allow the person, vehicle, vessel or aircraft to pass the defence access control point. Even where the requirements are met, a person, vehicle, vessel or aircraft may be refused permission to pass, if the defence security official 'reasonably believes' that the person, vehicle, vessel or aircraft is not authorised to pass the defence access control point, constitutes a threat to the safety of persons on the defence premises, or has committed, or may be used in the commission of a criminal offence on, or in relation to, the defence premises: **proposed subsections 71R(3) and 71S(2)**.

Additionally, **proposed subsection 71R(4)** provides that a person who is on defence premises, and is not permitted to pass a defence access control point, may be restrained and detained, or requested to leave the defence premises. If the person refuses to leave when requested, the special defence

35. The reference to section 51 of the Defence Act is contained in the definitions section of this Bill—**proposed section 71A**.

36. **Proposed subsection 71A(2)** provides that a **'thing'** includes a substance, a vehicle, vessel or aircraft and a thing in electronic or magnetic form.

security official may remove the person: **proposed subsection 71R(4)**. The same powers to restrain, detain, request the person to leave defence premises and, in the event of refusal, the removal of that person are contained in **proposed section 71T** if a special defence security official reasonably believes that a person who is on defence premises is not authorised to be on the premises or constitutes a threat to the safety of persons on the defence premises or has committed, or may commit, a criminal offence on or in relation to the premises.

Proposed section 72G provides that a defence security official may use ‘such force against a person or thing as is reasonable and necessary’ in exercising the powers (that is to restrain, detain and remove a person) under proposed Part VIA. **Proposed section 72M** allows for the use of dogs in exercising these (and other) powers. The limitations on the use of ‘reasonable and necessary’ force are that:

- a defence security official must not subject the person to greater indignity that is ‘reasonable and necessary’, and
- a defence security screening employee or a contract defence security guard must not do anything that is likely to cause the death of, or grievous bodily harm to, a person.

However, **proposed sections 71X, 72G** and **72H** create a package of provisions which allow for the use of force, including lethal force where a security authorised member of the Defence Force believes on reasonable grounds that the use of such force is necessary to prevent the death of, or serious injury to, another person and the threat of death or injury is caused by an attack on defence premises that is occurring or is imminent.³⁷

Seizure

Proposed Division 5 of Part VIA sets out the conditions under which a thing which is on defence premises can be seized. A special defence security official may, under **proposed section 72**, seize a thing on defence premises or a thing found as a result of a search if he or she believes on reasonable grounds that the thing may:

- constitute a threat to the safety of a person on the defence premises, or
- relate to a criminal offence committed, or that may be committed, on or in relation to the defence premises.³⁸

The power to seize a thing under proposed Division 5 can be exercised by a defence security screening employee **only if** it is not reasonably practicable in all the circumstances for the power to be exercised by a security authorised member of the Defence Force: **proposed section 72A**.

37. See the discussion under the heading ‘use of force’ above.

38. A ‘*special defence security official*’ is a security authorised member of the Defence Force under **proposed section 71C** or a defence security screening employee under **proposed section 71D**.

Where a thing is seized, a **'security authorised member'** may take action which is 'reasonable and necessary' to make the thing safe or prevent the thing being used, provide the person with a receipt for the thing.³⁹ If the special defence security official does not believe that the thing was used or involved in the commission of a criminal offence, it must be returned to the person from whom it was seized within seven days: **proposed paragraph 72(2)(d)**.

In the event that the official believes on reasonable grounds that the thing has been used or otherwise involved in the commission of a criminal offence he or she must give it to a member or special member of the Australian Federal Police or a member of the police force of a State or Territory at the earliest practicable time: **proposed paragraph 72(2)(c)**. If the operation of proposed Part VIA results in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay reasonable compensation to the person: **proposed section 72R**.

Trespass

Item 2 of the Bill repeals existing subsection 82(3) which broadly provides that it is an offence if a person trespasses on a defence installation, or on any land reserved for, or forming part of a defence installation or a building, or land, reserved or set apart for or used in connection with the administration, accommodation, or training of any part of the Defence Force. This subsection is to be replaced by **proposed section 72P** which is consistent with the other provisions in the Bill relating to defence premises. Of note is the dramatic increase in the penalty which applies. The existing provision attracts a pecuniary penalty of \$40. The proposed provision attracts a pecuniary penalty of \$5500.⁴⁰

39. The term **'security authorised member'** as defined in **proposed section 71C** is a member of the Defence Force.

40. **Proposed subsection 72P(1)** allows for a pecuniary penalty of 50 penalty units.

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