



Australian Civilian Corps Bill 2010

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Law and Bills Digest Section

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Australian Civilian Corps Bill 2010

Date introduced: 29 September 2010

House: House of Representatives

Portfolio: Foreign Affairs

Commencement: Sections 1 and 2 on the day of Royal Assent; Sections 3–31 on the 28th day 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 Australian Civilian Corps Bill 2010 (the Bill) establishes the Australian Civilian Corps, and creates a legal framework for the employment and management of Australian Civilian Corps employees.

History of the Bill

An earlier version of the Australian Civilian Corps Bill 2010 was first introduced into the House of Representatives on 23 June 2010 during the term of the 42nd Parliament. However, that Bill lapsed on 19 July 2010 when Parliament was prorogued for the 2010 federal election. The Bill was re-introduced in the first week of the 43rd Parliament with no substantive amendments.

Background

On 3 February 2008 the then Prime Minister, Kevin Rudd MP, announced that the Government would convene an Australia 2020 Summit at Parliament House on 19–20 April 2008.¹ It was envisaged that the Summit would ‘bring together some of the best and brightest brains from across the country to tackle the long term challenges confronting Australia’s future’.² The 1000 summit participants subsequently debated and developed long-term options for the nation.³ The 2020 Youth Summit was held in the lead up to the Australia 2020 Summit. It was attended by 100 delegates aged between 15 to 24 years. One of the proposals put forth was:

4. A deployable public service

1. K Rudd (former Prime Minister), *Australia 2020 Summit*, media release, 3 February 2008, National Library of Australia (NLA) website, viewed 24 September 2010, http://pandora.nla.gov.au/pan/79983/20080212-1502/www.pm.gov.au/media/Release/2008/media_release_0054.html

2. Ibid.

3. Ibid.

To train a reserve of strategic level government professionals in technical assistance in less developed countries and failed states. That this reserve be readily deployable, in whole or in part, at the request of regional governments or where Australia is required to intervene in the event of a collapsed state.⁴

The concept of developing a 'bureaucratic reserve of government officials available to assist in the development of governance in less developed countries and failed states' appears to have only been briefly discussed at the 2020 Summit.⁵ However, in a response to the *Australia 2020 Summit Final Report* issued on 22 April 2009, the Government agreed to develop a policy framework to:

... enable rapid deployment of civilian experts to assist in international disaster relief, stabilisation and post conflict reconstruction efforts. An inter-agency task force is being led by AusAID to undertake this work. Once established, a national deployable civilian capacity will allow more rapid and early delivery of stabilisation and recovery assistance to countries that experience conflict or natural disaster. The program will be sufficiently adaptable to allow Australia to tailor its response to a particular event or emergency and will improve Australia's integration into multilateral reconstruction and stabilisation operations.⁶

Establishment of the Australian Civilian Corps

Whilst attending the East Asia Summit (EAS) in Thailand, Mr Rudd announced that the Government would 'provide \$52 million to enable the rapid deployment of Australian civilians into overseas disaster or conflict zones' and that the new initiative 'is expected to have an interim capability by mid-2010, and is expected to be fully operational by early 2011'.⁷

When asked at a press conference whether the creation of a civilian corps was an indication that Australia's military commitments in the region were stretched to capacity, Mr Rudd responded by saying that 'our military capacity is first class' and that a civilian corps would simply complement Australia's military capabilities.⁸

The Australian Civilian Corps will comprise a register of up to 500 civilian specialists in areas such as public administration and finance, law and justice, engineering, health administration and community development. Specialists will be chosen for inclusion on the deployment register based

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4. Australia 2020 Youth Summit, '2020 Youth Summit communiqué', Australia 2020 website, viewed 24 September 2010, http://www.australia2020.gov.au/docs/youth_summit_communique.pdf
 5. Australia 2020 Summit, *Australia 2020 summit final report*, Commonwealth of Australia, Canberra 2008, viewed 24 September 2010, http://www.australia2020.gov.au/docs/final_report/2020_summit_report_full.pdf
 6. Australian Government, 'Australia 2020 Summit - Government Response', Australia 2020 website, viewed 24 September 2010, http://www.australia2020.gov.au/docs/government_response/2020_summit_response_full.pdf
 7. K Rudd (former Prime Minister), *New civilian corps to assist in disaster and conflict zones*, media release, 25 October 2009, NLA website, viewed 24 September 2010, <http://pandora.nla.gov.au/pan/79983/20091030-1529/www.pm.gov.au/node/6272.html>
 8. K Rudd (former Prime Minister), 'Transcript of press conference', 25 October 2009, NLA website, viewed 24 September 2010, <http://pandora.nla.gov.au/pan/79983/20091030-1529/www.pm.gov.au/node/6276.html>

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on their expertise and demonstrated experience in relevant areas.⁹ It is intended that personnel will be sought from both government and the broader Australian community and will remain in their regular employment until accepting a deployment. Deployments will be managed by the Office of the Australian Civilian Corps, located in the Australian Agency for International Development (AusAID) in Canberra.¹⁰

Why do we need it?

The Australian Government already responds to humanitarian emergencies through a range of mechanisms including providing supplies to affected countries; deploying medical teams and urban search and rescue teams under the Government's AusASSIST Plan; RedR Australia and the Australian Red Cross;¹¹ and rapidly disbursing funding to partner governments, the United Nations, Australian non-government organisations (NGOs) and the Red Cross Movement.

According to the AusAID website:

By delivering civilian technical assistance quickly—alongside security operations where necessary—the prospects for stabilising and rebuilding the essential functions of government in affected counties are greatly improved.

Following a natural disaster or conflict, AusAID will undertake a rapid assessment of recovery needs. AusAID will develop strategies and programs to address these recovery needs and deploy civilian specialists from a register as required.

Deployed civilians may work alongside the Australian military and police where present or in a stand-alone capability. They may work alongside foreign military, United Nations peacekeepers, police and civilian experts from other countries.

Assignments will support immediate stabilisation and recovery needs and will flow into longer-term capacity building roles—recognising that the consequences of disaster can be felt for many years after the impact.¹²

The Australian National Audit Office (ANAO) report entitled *AusAID's Management of an Expanding Aid Program* found that the quality of operational frameworks for whole-of-government

9. AusAID, *The Australian Civilian Corps*, Commonwealth of Australia, Canberra, 26 August 2010, viewed 4 November 2010, <http://www.aisaid.gov.au/acc/>

10. AusAID, *The Australian Civilian Corps: supporting stabilisation and recovery from disaster and conflict*, Commonwealth of Australia, Canberra, January 2010, p. 3, viewed 29 October 2010, <http://www.aisaid.gov.au/acc/pdf/accbrochure.pdf>

11. RedR Australia provides emergency assistance to communities devastated by conflict or major natural disasters by selecting, training and providing personnel to humanitarian relief programs. Further information can be viewed on the RedR Australia webpage: <http://www.redr.org.au/about-us/about-us.html>

12. AusAID, *The Australian Civilian Corps*, Commonwealth of Australia, Canberra, 26 August 2010, viewed 4 November 2010, <http://www.aisaid.gov.au/acc/>

coordination has been variable, with government agencies guided by their different mandates rather than a coherent whole-of-government approach to Australia's aid initiatives.¹³

The ANAO report highlights the future pressures on AusAID stating that

... the aid program is likely to double in size between 2008–09 and 2015–16. Delivering a much larger aid program will require a concerted and collaborative effort across the entire Australian aid community. AusAID will need to strike a sound balance between its country, regional and global programs, and in using AusAID staff, other Australian Government agencies, managing contractors, multilateral agencies, other donors and civil society organisations to deliver aid.¹⁴

According to Bergin and Breen, the 2009 Defence White Paper identified the need for a joined-up, whole-of-government approach to responding to overseas emergencies.¹⁵ The Defence White Paper states that:

Australia will continue to have particular responsibilities to assist our neighbours in dealing with humanitarian and disaster relief needs, and to support their stability and security. Given our size and resources, Australia will be expected to take a leadership role within the South Pacific if these states are overwhelmed by a natural or man-made disaster.¹⁶

Whilst the creation of the Australian Civilian Corps will, presumably, assist AusAID to deliver aid, this is not necessarily going to deal with the somewhat separate issue and ongoing challenge of delivering aid in a more effective manner.

Committee consideration

On 24 June 2010 the first Bill was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 24 August 2010.¹⁷ When Parliament was prorogued on 19 July 2010 the Committee resolved not to continue its inquiry.¹⁸

13. Australian National Audit Office, AusAID's Management of an Expanding Aid Program, *Audit Report No. 15, 2009–10*, Commonwealth of Australia, 2009, pp. 110–111, viewed 2 November 2010, http://www.anao.gov.au/uploads/documents/2009-10_Audit_Report_15.pdf

14. *Ibid.*, p. 17.

15. A Bergin and B Breen, 'Rudd's Army: a deployable civilian capacity for Australia', *Australian Strategic Policy Institute*, 25 May 2009, viewed 29 October 2010, http://www.aspi.org.au/publications/publication_details.aspx?ContentID=214

16. Department of Defence, 'Defending Australia in the Asia Pacific Century: Force 2030', *Defence White Paper*, Commonwealth of Australia, Canberra, May 2009, p. 54, viewed 29 October 2010, http://www.defence.gov.au/whitepaper/docs/defence_white_paper_2009.pdf

17. Senate Foreign Affairs, Defence and Trade Committee, *Inquiry into the provisions of the Australian Civilian Corps Bill 2010*, viewed 24 September 2010, http://www.aph.gov.au/Senate/committee/FADT_CTTE/accb2010/index.htm

18. Senate Foreign Affairs, Defence and Trade Committee, *Inquiry into the provisions of the Australian Civilian Corps Bill 2010*, August 2010, viewed 24 September 2010, http://www.aph.gov.au/Senate/committee/FADT_CTTE/accb2010/report/report.pdf

This Bill was referred to the Senate Foreign Affairs, Defence and Trade Legislation Committee (the Senate Committee) for inquiry and report by 17 November 2010 on the grounds that:

Concerns relate to costs and logistics, and adequate protection for Australians working overseas under his program. There is also the potential for conflicts arising from AusAID selection of civilian specialists who may be AusAID employees as they are not excluded from applying.¹⁹

At the time of writing this Digest, only three submissions had been received.²⁰ The matters arising from the submissions are canvassed under the heading Main Issues, below.

Policy position of non-government parties/independents

Leader of the Australian Greens, Senator Bob Brown does not appear to be opposed to the creation of a civilian corps. When Mr Rudd announced the initiative on 25 October 2009, he reportedly said the government should go one step further and establish a regional disaster centre:

Mr Rudd's register of doctors, engineers and other professionals on standby is another step, but an international disaster agency, which would also aid in domestic emergencies, would better coordinate relief in conjunction with the affected nation.²¹

Financial implications

According to the Explanatory Memorandum, there are no direct financial impacts from this Bill.²² However, the Ministerial Statement on Australia's International Development Assistance indicates that an amount of \$301.5m has been budgeted for humanitarian, emergency and refugee programs in 2010–11, which includes the Australian Civilian Corps.²³

19. Selection of Bills Committee, *Report No. 11 of 2010*, 30 September 2010.

20. Information about the inquiry, the submissions received and the final report can be viewed at the inquiry webpage: http://www.aph.gov.au/Senate/committee/fadt_ctte/accb2010_43/index.htm

21. Australian Associated Press, 'Civilian corps to complement assistance: Kevin Rudd', *The Australian*, 25 October 2009, viewed 24 September 2010, <http://www.theaustralian.com.au/news/nation/civilian-corps-to-complement-assistance-kevin-rudd/story-e6frg6nf-1225791031127>

22. Explanatory Memorandum, Australian Civilian Corps Bill 2010, p. 1.

23. S Smith (Minister for Foreign Affairs and Trade) and B McMullan (Parliamentary Secretary for International Development Assistance), 'Ministerial Statement: Australia's International Development Assistance', *Budget 2010–11*, 11 May 2010, p. 57, viewed 2 November 2010, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22library%2Fbudget%2F2010_37%22

Main issues

Terms and conditions of employment

The submission by the Community and Public Sector Union (CPSU) to the Senate Committee sets out a number of concerns in relation to the Bill—particularly in relation to the terms and conditions of employment of members of the Australian Civilian Corps.²⁴

According to the second reading speech ‘the Australian Civilian Corps is a select group of civilian specialists who deploy to countries experiencing or emerging from natural disaster or conflict.’²⁵ The difficulty is that some of those ‘civilians’ will be Commonwealth employees whilst others will not. For those persons who are employed under the *Public Service Act 1999* (Public Service Act), movement from one Commonwealth agency to another is not unusual and the Public Service Act has a number of provisions²⁶ which ensure that the employee’s entitlements are protected.²⁷ Certainly, the submission by the Australian Public Service Commission to the Senate Committee indicates that it has had discussions with the Office of the Australian Civilian Corps to ensure that the transfer of members of the Commonwealth Public Service to the Australian Civilian Corps will not result in any loss of terms and conditions such as leave entitlements.²⁸

On the other hand, the Bill provides that some ‘civilians’ may not be Commonwealth employees, in which case the Director-General of AusAID has a wide discretion in relation to that person’s terms and conditions of engagement. The CPSU is concerned about the possible discrepancies between terms and conditions which might arise as a result.

The concerns raised by the CPSU do not appear to acknowledge that there are real disincentives for non-Commonwealth employees to seek a deployment with the Australian Civilian Corps. Primarily, there is no compulsion for a non-Commonwealth employer to agree that an employee be allowed to take unpaid leave for the purpose of a deployment with the Australian Civilian Corps. Depending on the term of the deployment it may be difficult for a non-Commonwealth employer to preserve the person’s position. This is less of an issue for Commonwealth employees.

Given the diversity of the work which the Australian Civilian Corps may be called upon to undertake, the differing terms of engagement and the nature of the conflict or emergency in which a person

24. Community and Public Sector Union, Submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee, *Inquiry into the Australian Civilian Corps Bill 2010 [Provisions]*, October 2010.

25. K Rudd MP (Minister for Foreign Affairs), ‘Second reading speech: Australian Civilian Corps Bill 2010’, House of Representatives, *Debates*, 30 September 2010, p. 260, viewed 2 November 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2010-09-30%2F0009%22>

26. For example, section 26 of the Public Service Act which deals with voluntary moves between agencies.

27. An example of movement from one agency to another is when a Commonwealth public servant takes up a provision under the *Members of Parliament (Staff) Act 1984*.

28. Australian Public Service Commission, Submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee, *Inquiry into the Australian Civilian Corps Bill 2010 [Provisions]*, 22 October 2010.

may be involved will be different, it may not be practicable, or appropriate, to attempt to standardise the terms and conditions of employment as the CPSU would wish.²⁹ To do so may create a greater barrier to non-Commonwealth employees applying to become members of the Australian Civilian Corps.

Protection of Australian Civilian Corps members

One of the grounds for the reference of the Bill to the Senate Committee was a concern about the protection for Australian Civilian Corps personnel when overseas in crisis situations. None of the submissions provides a response to this concern.

Following the civil wars in Somalia, the former Yugoslavia and Rwanda, and the resultant peacekeeping and humanitarian response in those countries, a growing understanding of the nature of civil-military co-operation has emerged.³⁰ In 2003, formal guidelines on the *Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies* have been prepared.³¹ Complementing those guidelines is the Inter-Agency Standing Committee Working Group reference paper about the civil-military relationship in complex emergencies.³² Together they set out a non-binding reference for humanitarian practitioners, assisting them to formulate country-specific operational guidelines on civil-military relations for particular complex emergencies. According to the Inter-agency Standing Committee Working Group:

... it is important to maintain a clear separation between the roles of the military and humanitarian actors, by distinguishing their respective spheres of competence and responsibility. This approach is implicit in and builds on the principles of international humanitarian law, and is crucial to maintaining the independence of humanitarian action. The need for the humanitarians to maintain an actual and perceived distance from the military is especially important with regard to belligerent forces or representatives of an occupying power. Any coordination with a party to an armed conflict must proceed with extreme caution, care and sensitivity, given that the actual or perceived affiliation with a belligerent might lead to the loss of neutrality and impartiality of the humanitarian organization, which might in turn affect the security of beneficiaries as well as humanitarian staff, and jeopardize the whole humanitarian operation in a conflict zone.³³

29. Community and Public Sector Union, op. cit., recommendation to ensure equity in employment conditions between AusAID/DFAT and other similar employees, and Corps employees.

30. A Beaugregard, 'Civil (NGO)-military cooperation: lessons from Somalia, the former Yugoslavia and Rwanda', *The Ploughshares Monitor*, vol. 19, no. 4, December 1998, viewed 2 November 2010, <http://www.ploughshares.ca/libraries/monitor/mond98g.html>

31. *Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies*, March 2003, viewed 2 November 2010, <http://coe-dmha.org/Media/Guidance/3MCDAGuidelines.pdf>

32. Inter-Agency Standing Committee Working Group, 'Civil-military relationship in complex emergencies', IASC Reference Paper, 28 June 2004, viewed 2 November 2010, http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_humanitarian-and-emergencies/cimiiascpaper28jun04.pdf

33. Ibid., p. 6.

It appears that there is a protocol for civilian-military co-operation, including the protection of civilian aid workers which is well understood within the humanitarian community which promotes an environment in which humanitarian activities can take place in relative safety.

Key provisions

Part 2 of the Bill

Proposed clauses 10–17 establish the Australian Civilian Corps under the management of the Director-General of AusAID (the Director-General). The conduct of the members of the Australian Civilian Corps is to be consistent with the Australian Civilian Corps Values (the ACC Values) and the Australian Civilian Corps Code of Conduct (the Code of Conduct). The ACC Values may be prescribed by regulation³⁴ and are subject to any directions issued by the Director-General in relation to its scope or application.³⁵ Those directions may include restrictions on the effect of the ACC Values.³⁶ **Proposed clause 14** requires that the Director-General uphold and promote the ACC Values.

There is a potential conflict between these obligations and the Director-General's power to issue directions about the scope or application of the ACC Values, including any restrictions on the effect of the ACC Values. Whilst **proposed clauses 13 and 14** are in similar terms to existing sections 11 and 12 of the Public Service Act, there is a very real difference. Section 11 of the Public Service Act empowers the Public Service Commissioner (who is independent of any individual Commonwealth public servant) to issue directions about the scope and application of the Public Service Values, including any restriction in their effect. Section 12 of the Public Service Act then requires Agency Heads to uphold and promote those values—separating the maker of the direction from the persons who must uphold it. By comparison, **proposed clause 13** empowers the Director-General (who is the employer of an Australian Civilian Corps employee) to issue directions about the ACC Values including any restrictions on the effects of those values, and **proposed clause 14** requires the Director-General to uphold those values.

The Code of Conduct is also to be prescribed by regulation.³⁷ The Code of Conduct must, amongst other things, require an Australian Civilian Corps employee to behave in a way that upholds the ACC Values. As with the ACC Values, the Code of Conduct will be subject to any directions issued by the Director-General in relation to its scope or application.³⁸

The ACC Values, Code of Conduct and relevant directions are legislative instruments which are not part of this Bill. It is not, therefore, possible to speculate on the substance or form of those documents. They will, however, be tabled in both Houses of the Parliament and are subject to disallowance.

34. **Proposed clause 12** of the Bill.

35. **Proposed clause 13** of the Bill.

36. **Proposed subclause 13(2)** of the Bill.

37. **Proposed clause 15** of the Bill.

38. **Proposed clause 16** of the Bill.

The submission by World Vision Australia to the Senate Committee strongly recommends that the *Australian Civilian Corps Act 2010* (when enacted) should specify the purpose of the Australian Civilian Corps with regard to achievement of Australia's humanitarian and development objectives.³⁹ It may be, however, that when the ACC Values and Code of Conduct have been developed that they will reflect those objectives. In that case, it may be that the Act is amended to include these matters, rather than that they be creatures of regulation. This would be consistent with the Public Service Act which enunciates the Public Service Values and Code of Conduct.

The Director-General must establish procedures for determining whether an Australian Civilian Corps employee has breached the Code of Conduct. Where it is determined (in accordance with those procedures) that an Australian Civilian Corps employee has breached the Code of Conduct, the Director-General may impose the following sanctions:

- termination of employment
- re-assignment of duties
- deductions from salary, by way of fine, or
- a reprimand.⁴⁰

Those procedures must be made with due regard to procedural fairness.⁴¹ In addition, the procedures must include an entitlement to review conducted within AusAID of a decision that the Code of Conduct has been breached and a decision to impose a sanction.⁴² However, the procedures may provide for an exception to the entitlement to review.⁴³ The note to **proposed subclause 17(7)** nominates an application for review which is frivolous or vexatious as an example of an exception. Importantly the procedures, and the exceptions to the proposed entitlements which may be specified in the procedures, are not a legislative instrument, will not be tabled in the Parliament for consideration and are not disallowable.⁴⁴

These provisions are expressed in similar terms to existing sections 11–13 and 15 of the Public Service Act.

Part 3—Australian Civilian Corps employees

Proposed clauses 18–25 provide for the employment of members of the Australian Civilian Corps. The Bill provides that a person who is already employed by the Commonwealth or a person employed by another employer may be engaged by the Director-General for a specified term (which may be extended) subject to conditions including probation, citizenship, formal qualifications,

39. World Vision Australia, Submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee, *Inquiry into the Australian Civilian Corps Bill 2010 [Provisions]*, July 2010.

40. **Proposed subsection 17(2)** of the Bill provides that regulations may prescribe limits on the power of the Director-General to impose sanctions.

41. **Proposed paragraph 17(6)(a)** of the Bill.

42. **Proposed subclause 17(6)** of the Bill.

43. **Proposed subclause 17(7)** of the Bill.

44. **Proposed subclause 17(10)** of the Bill.

security and character clearances, and health clearances.⁴⁵ However, it is not a precondition of engagement in the Australian Civilian Corps that the person is in employment at the time.

The remuneration and terms and conditions of employment of a member of the Australian Civilian Corps are to be determined by the Director-General in writing. A determination must be consistent with the terms and conditions contained in the National Employment Standards and will have no effect to the extent that it would reduce the benefit to an employee of an individual term or condition applicable to an employee under an enterprise agreement.⁴⁶

An Australian Civilian Corps employee may be terminated from employment by the Director-General. A termination must comply with the relevant rules and entitlements set out in the *Fair Work Act 2009*.⁴⁷

Proposed clause 24 allows for an Australian Civilian Corps employee to be seconded to another body or organisation—for example, the United Nations.

According to the Explanatory Memorandum the Bill provides for two different types of secondment:

- first where the person is assigned duties in the body or organisation by the Director-General but will not become an employee of that organisation,⁴⁸ and
- secondly where an Australian Civilian Corps employee is granted leave without pay from the Australian Civilian Corps to take up employment in another body or organisation for the period of the secondment.⁴⁹

However, the drafting of the Bill does not make this distinction clear.

The secondment which is anticipated under proposed subclause 24(1) would enable the employee to retain his or her status as an Australian Civilian Corps employee and all the terms and conditions of employment under the *Australian Civilian Corps Act 2010* (when enacted) would continue to operate.⁵⁰ The Director-General may give notice of the termination of the secondment to the body or organisation at any time.⁵¹

The submission by World Vision Australia expresses some concern about **proposed subclause 24(1)** in that

45. **Proposed clause 19** of the Bill.

46. National Employment Standards apply to all employees covered by the national workplace relations system regardless of the award, agreement or contract of employment that applies to an employee. Further information about NES can be viewed on the Fair Work Ombudsman website:
<http://www.fairwork.gov.au/employment/national-employment-standards/pages/how-the-nes-work.aspx>

47. **Proposed subclause 9(1)** of the Bill.

48. **Proposed subclause 24(1)** of the Bill.

49. Explanatory Memorandum, op. cit., pp. 9–10.

50. **Proposed subclause 24(5)** of the Bill.

51. **Proposed subclause 24(4)** of the Bill.

the terms of secondment [as set out in proposed clause 24] leave the door open for inappropriate deployments, particularly in humanitarian or emergency situations in which the roles of civilian or military actors must be clearly defined.⁵²

Potentially the secondment provisions could give rise to a conflict for the Australian Civilian Corps employee who is obliged to adhere to the ACC Values and Code of Conduct. It is unclear, what the consequence for the Australian Civilian Corps employee would be if those values and the Code of Conduct were at odds with those of the gaining organisation.

Part 4—Leave provisions

Proposed clause 26 provides that an employer in Australia **may** grant unpaid leave to a person for the purposes of service in the Australian Civilian Corps. This is an additional power to grant unpaid leave.

The Prime Minister may, by legislative instrument issue directions to a **‘Commonwealth employer’** in relation to granting leave to employees who seek engagement in the Australian Civilian Corps, or any other matter relating to participation of employees in the Australian Civilian Corps. A

‘Commonwealth employer’ is defined in **proposed subclause 27(1)** as:

- a person who has the powers of an employer in respect of an employee of the Commonwealth
- a body corporate which has been established under a law of the Commonwealth for a public purpose and which has employees, and
- a company which is a wholly-owned Commonwealth company and which has employees.

Part 5—miscellaneous measures

Proposed clause 28 provides for payments to a person in special circumstances arising out of the person’s employment (or another person’s employment) as an Australian Civilian Corps employee. According to the Explanatory Memorandum

This provision removes the need to use general ‘act of grace’ payment arrangements in cases relating to [Australian Civilian Corps] employment matters. For example, to reimburse legal costs incurred by an [Australian Civilian Corps] employee or to provide payments where an ACC employee has suffered a detriment because of incorrect advice.⁵³

The payments in special circumstances cannot be made if the total amount is more, or likely to be more than \$100 000. In addition, conditions may be attached to payments which, if breached, may make the amount paid recoverable as a debt due to the Commonwealth.

The payments outlined in **proposed clause 28** of the Bill are consistent with existing section 73 of the Public Service Act.

52. World Vision Australia, op. cit.

53. Explanatory Memorandum, op. cit., p. 11.

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