

**SENATE STANDING COMMITTEE ON  
FOREIGN AFFAIRS, DEFENCE AND TRADE**

**LEGISLATION COMMITTEE**

**LEGISLATION AMENDMENT BILL  
(AID TO CIVILIAN AUTHORITIES) BILL 2000**

**SUBMISSIONS**

**Submission No:** 4

**Submittor:** Victoria Police

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**Attachments** Nil

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**From:** Policy & Research, Victoria Police [vppolicy@enternet.com.au]  
**Sent:** Friday, 14 July 2000 5:03 PM  
**To:** fadt.sen@aph.gov.au  
**Subject:** Submission to Senate Inquiry into the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000



Submission to Senate  
Committee...



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Senator John Hogg

Acting Chairman  
Foreign Affairs, Defence and Trade Legislation Committee

Please find attached a submission to the Senate Inquiry into the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000 on behalf of the Victoria Police.

If you require further information please contact John Frigo on (03) 9247 6717.

Yours sincerely

John Frigo  
Acting Manager  
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Victoria Police



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The Hon Senator John Hogg  
Acting Chairman  
Foreign Affairs, Defence and Trade Legislation Committee  
Parliament House  
**CANBERRA ACT 2600**

Dear Senator Hogg

**DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN AUTHORITIES) BILL 2000**

A copy of your letter dated 29 June 2000 addressed to the Premier has been given to Victoria Police for consideration of the need to provide a submission. Although that letter was dated 29 June 2000, Victoria Police did not receive it until 13 July 2000. Fortunately, this office had noted the advertisement, which appeared in *The Age* newspaper on 3 July 2000 and was already evaluating this proposal. I am however extremely concerned, given the importance of this legislation, at the very short-time frame for submissions, which has prevented a more in-depth evaluation of the legislation.

Notwithstanding this concern, Victoria Police has considered the Bill and we offer the following comments:

- There is no demonstrated need for the legislation. The last time that the Commonwealth was required to assist State authorities was in 1978 (following the Hilton Hotel bombing). Arising from that incident the Hope *Protective Security Review* recommended legislation to cover the role of Members of the Defence Forces (MDFs) during a crisis of this nature. However, the report was delivered very shortly after the establishment of the Standing Advisory Committee on Commonwealth/State Cooperation for Protection Against Violence (SAC-PAV). Since then significant advances in the management of terrorism have occurred within the SAC-PAV environment. The existing arrangements and legislation are adequate and can be readily modified to meet the specific circumstances of incidents. Many of the concerns identified by Justice Hope have been remedied in the 20 years since that Review.
- Legislation should not be enacted which gives the Commonwealth power to intervene in the affairs of the State without the consent of that State. The proposed automatic power to

provide a military intervention where “Commonwealth interests are threatened” represents an unreasonable intrusion on the rights of the States.

- If enacted, the legislation should place an obligation on the authorising Ministers or Minister to officially notify the Premier/Chief Minister or in his absence the Deputy or Acting Premier/Chief Minister of the intention to deploy the defence forces in that State/Territory a suitable length of time prior to such deployment. It is not appropriate that the first a State Government might be aware of a deployment of troops is when they actually arrive. In the event that the Premier/Chief Minister or the Deputy or Acting Premier/Chief Minister is not available, notification should be required to the Chief Commissioner of Police.
- Given the possible impact of the legislation and its potential to cut across portfolio boundaries, the draft legislation should be submitted to the Australasian Police Ministers’ Council and the Standing Committee of Attorneys-General prior to going back before the Senate.
- The legislation proposes to make MDFs more accountable to the Commonwealth Parliament for their actions during a “call-out.” The legislation does not adequately deal with the accountability of MDFs to the criminal justice system when their actions exceed acceptable limits. The legislation should make it clear that MDFs are subject to the criminal and civil law of the State or Territory in which the “call-out” occurs and have obligations to assist State/Territory police in every way possible in dealing with the aftermath of such an incident, including acting as witnesses, assisting in the preparation and presentation of briefs to the Coroner and/or Commission of Inquiry, etc. This would be consistent with recommendations 120 to 122 of the Review conducted by Mr Justice Hope.
- MDFs are untrained in management of members of the public either in small groups or large crowds. They are also untrained in the investigation of crime, the preservation of crime scenes and the laws relating to criminal evidence. The legislation proposes a course of action, which effectively relieves MDFs of responsibility for necessary responses arising out of their actions. Justice Hope identified this fundamental difference in training methods in recommendation 115 of his report, where he said in part “a ‘tactical battle involving fire and movement’ or a ‘close quarter battle’ with a group of armed terrorists is not properly a matter for police, except in emergent circumstances. Armed encounters of this involved kind are properly matters for members of the Defence Force whose training fits them for the task.” It follows that the training of MDFs does not equip them for the investigation of crime and management of large and unruly but not necessarily armed groups.
- The training generally undertaken by MDFs does not equip them to respond in a “peace-keeping” role. Cross-training during Operation Safety and Tactics Training conducted by Victoria Police revealed that MDFs are ill-equipped in this area.

- The proposal that MDFs will remain under the command of other MDFs during any deployment is unwieldy, particularly as the legislation proposes that MDFs will act in cooperation with police. Lieutenant-Colonel Kelly expressed the need for MDFs to be able to operate without police advice when necessary but did not canvas the need for Police Incident Commanders to be able to direct MDFs. While it is understood that the Australian Constitution prevents anyone or any agency other than the Commonwealth from exercising control of MDFs, this fact will seriously inhibit the usefulness of MDFs whilst deployed, as additional steps in the chain of command will be required when using such forces.
- If State/Territory police agencies (including Victoria Police) are unable to provide an adequate response to a crisis it is more preferable for them to call for assistance from interstate police who at least are trained as police officers. For example, Victoria Police provided assistance to Tasmania Police during the Port Arthur Incident. Certainly, the use of interstate police officers is preferable to calling in the MDFs.
- The proposed legislation does not include an adequate definition of “domestic violence.” It is given the same meaning as in section 119 of the Constitution, which also does not include a definition of the term.
- If the legislation were to be introduced, it must be supported by Memorandums of Understanding and set response procedures developed between police agencies and defence force command. Given the staging of the Olympic events at venues outside Sydney later this year it is important that any legislation have adequate procedures in place before commencement of the legislation. Such procedures would need to be tied to documents such as the National Anti-Terrorist Plan (NATP).

I ask that these concerns be conveyed to the Committee. If your office requires further information, the person responsible for this file is John Frigo who can be contacted on (03) 9247 6717.

Yours sincerely

Peter B Nancarrow  
**Acting Deputy Commissioner  
(Policy and Standards)**

14 / 7 / 2000