

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE**

**LEGISLATION COMMITTEE**

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

**SUBMISSION**

**Submission No:** 15

**Submitter:** Premier  
Minister for State Development

**Contact:** Mr Paul Lennon  
Acting Premier

**Address:** GPO BOX 123B  
HOBART TAS 7001

**Telephone No:** (03) 6233 3464

**Fax:** (03) 6234 1572

**E-Mail** Premier@dpac.tas.gov.au

**No. of Pages:** 2

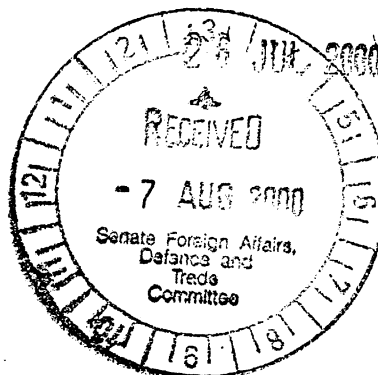
**Attachments** Nil



Tasmania

PREMIER  
MINISTER FOR STATE DEVELOPMENT

Senator J Hogg  
Acting Chairman  
Senate Foreign Affairs, Defence and Trade  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600



Dear Senator Hogg

Thank you for your letter of 29 June 2000 inviting submissions to the Legislation Committee Inquiry into the *Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000*.

The Tasmanian Government supports the intent of the legislation in updating the existing arrangements for call out of the Defence Force in law enforcement emergencies, including clarifying the authority of Defence personnel in such circumstances and establishing accountability to Parliament.

The Government does have reservations about the proposed Section 51A explicitly providing for unilateral call out of the Defence Force to protect Commonwealth interests. The provision extends the power under the existing Section 51 (itself based on Section 119 of the constitution). If such a power is to be included, it should more clearly define the circumstances under which call out would be invoked and identify the Commonwealth interests to be protected.

In the interests of ensuring cooperation and coordination of effort between the Defence Force and civilian authorities, Section 51A should also place a requirement on the Commonwealth to notify affected States and Territories of the proposed call out action.

I note too that the retention of the proviso disallowing State initiated requests for Defence Force assistance in cases of industrial dispute does not extend to cover call outs made by the Commonwealth under Section 51A. Notwithstanding the general ban on restriction of lawful protest of dissent under the proposed Section 51G, Defence Force involvement in industrial disputes should be expressly prohibited under both call out mechanisms.

Level 11, Executive Building, 15 Murray Street, Hobart, Tasmania, 7000  
Postal Address: GPO Box 123B, Hobart, Tasmania, 7001, Australia  
Telephone: (03) 6233 3464 Facsimile: (03) 6234 1572  
Email: Premier@dpac.tas.gov.au Internet: <http://www.dpac.tas.gov.au>

RECEIVED TIME 7. AUG. 15:00

PRINT TIME 7. AUG. 15:02

2.

A fundamental issue in establishing Defence call out arrangements is defining the respective powers of the Defence Force and civilian authorities under potential domestic violence scenarios. Clearly Defence Force call out must be a measure of last resort in containing law enforcement emergencies, and every attempt should be made to ensure civil liberties are not unduly infringed during such events.

Recognition of the primacy of civil power is important to the proper use of the Defence Force in resolving domestic violence situations. The purpose of call out is to assist civil authorities to deal with threatening situations that exceed their capacity to manage - whether the call out is initiated by the Commonwealth or a State or Territory. While the proposed new Section 51F acknowledges that the Defence Force role is to assist States and Territories and to act at the request of police, this provision could be more positively stated. The Tasmanian Government considers that, within the constraints of the Commonwealth Constitution, the Defence Force should only undertake tasks for which it is authorised under a Section 51A or 51B Order, at the request of civilian authorities.

Primacy of civil power helps ensure the Defence Force acts within State and Territory laws, thereby protecting both civil liberties in the broader population and the legal status of Defence personnel acting on the request of Government in 'non-defence roles'.

A number of provisions within the Bill (new Sections 51J-51W) deal with the exercise of powers, including search, seizure and detainment, within a defined general security area. I would question the need to include such sweeping powers for the Defence Force, when there is an adequate body of civil law in the area which could be applied given the appropriate use of new Section 51F. I would draw the Committee's attention in particular to new Section 51T(3) which would appear to allow a use of force beyond that accepted in similar circumstances under civil law.

Thank you for the opportunity to comment on the draft Bill and I look forward to being informed of the outcome of the Inquiry.

Yours sincerely



Paul Lennon  
Acting Premier