

SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE

LEGISLATION COMMITTEE

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

SUBMISSION

Submission No: 16

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

Dear Senator

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

Thank you for your letter dated 29 June 2000 inviting comments on the *Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000* ('the Bill'). I regret the delay in finalising this submission.

A significant reason for the delay is that the Commonwealth has not consulted with Victoria on this Bill, which I find concerning given that the Bill directly affects the States' roles and responsibilities when responding to terrorist and emergency scenarios. It is disappointing that my Government first became aware of such a critical Bill from a Senate Inquiry. Since becoming aware of the Bill, my Department has consulted on this matter with the agencies which have primary responsibility for dealing with incidents of domestic violence in Victoria, the Office of the Emergency Services Commissioner and Victoria Police.

Victoria is not going to be in a position to consider whether to endorse the policy encapsulated in proposed section 51A, until the Commonwealth engages in a dialogue. The Commonwealth must explain why it is necessary to have legislated powers to intervene in State matters without a request for assistance from the State, and why the Defence Force warrants receiving the significant powers provided in the Bill. The Commonwealth also needs to clearly explain why its objective of streamlining call out procedures cannot be achieved by the Commonwealth amending its own relevant legislation and regulations and/or engaging the States and Territories in a rewrite of the SAC-PAV NATP protocols. None of these issues are dealt with in the Second Reading Speech or the Explanatory Memorandum to the Bill.

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I note that Victoria Police has already forwarded a separate submission to the Committee, to comply with your request to receive written submissions by 14 July. The Emergency Services Commissioner agrees with the concerns raised in the Victoria Police submission. That submission raises concerns, *inter alia*, regarding:

- the intrusion on the rights of the States represented by the Bill's provisions for Commonwealth intervention in the affairs of a State without the consent of that State;
- the lack of any provision in such circumstances requiring the Commonwealth to notify the State of the proposed intention to deploy the Defence Force, and
- the lack of a definition of "domestic violence" beyond reference to s.119 of the *Constitution*.

I can only agree with these concerns, as the Commonwealth has not provided any information about the Bill, let alone engaged Victoria in discussion about these issues.

The proposed section 51A enables the Commonwealth to send the Defence Force into a State without a request for assistance from that State, and without the State's consent. It is critical that the Bill not be passed until the States and Territories are formally consulted by the Commonwealth on such a major policy initiative, as it is a major shift from current legislation, which requires a State to request assistance prior to the Defence Force being mobilised.

Beyond the major policy issue of whether section 51A is necessary, there are a number of significant concerns which need to be resolved by the Commonwealth.

It is unacceptable that the critical notions of "Commonwealth interests" and "domestic violence" remain so indeterminate. This concern is particularly serious because of the enormous powers given to the Defence Force under the Bill, and their potential impact on State authorities and residents. Confusion and conflict could arise between State agencies and the Defence Force, as the boundaries between the jurisdictional powers of Commonwealth and State lack clarity.

Whilst the Explanatory Memorandum states that the concept of "Commonwealth interests" *includes such matters as the enforcement of Commonwealth laws, protection of Commonwealth property or facilities and persons connected with the Commonwealth*, it is critical that a legislated definition be included in the Bill. The concept of a threat to "Commonwealth interests" is the trigger for the Defence Force to enter a State without a request from that State for assistance.

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The Bill should express a requirement that a State Government be formally notified by the Commonwealth in the event of a call out of the Defence Force to protect "Commonwealth interests" in that State. We have seen from the manner in which this Bill has been prepared that we are unable to rely on informal arrangements for critical information to be conveyed to the State.

The Bill provides enormous powers to the Defence Force, again without any attempt by the Commonwealth to justify to the States and Territories the need for such powers. The proposed section 51R gives the Defence Force significant powers to:

- erect barriers to prevent the movement of vehicles and people;
- issue directions to prevent vehicles and people accessing a designated area;
- search people (who have consented to be searched), and
- enter premises to give directions under section 51R.

The Bill provides no clarification of the precedence of agencies in the event of an emergency. It is unclear how powers such as the ability to erect barriers and issue directions affecting the flow of traffic will affect the ability of a State's police and emergency vehicles such as ambulances or fire trucks to attend an emergency.

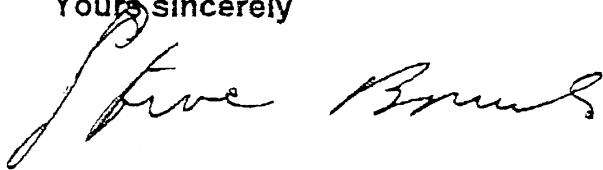
It may be useful for the relationship between the Bill and sections 61 and 119 of *The Constitution* to be referred to the Special Committee of Solicitors-General so that consolidated legal advice can be provided on the matter.

If the Bill passes through Parliament, the existing SAC PAV NATP protocols already in place to support the *Defence Act* must be updated to take into account the new call-out framework proposed by the Bill. Such protocols should be developed prior to the Bill taking effect, so that all relevant parties are clear about their roles in the event of an emergency. If the Bill takes effect prior to the protocols being revised, there is a risk of conflict between the legislation and the existing protocols. Potentially conflicting and confusing guidelines are not going to be an asset in an emergency situation. There is no point having this Bill implemented prior to the Olympics if the supporting protocols aren't in place.

Given the lack of consultation on a Bill which grants significant powers to the Defence Force to intervene in State matters without an invitation from the State, I strongly urge the Commonwealth to undertake urgent formal consultation with the States and Territories.

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Yours sincerely

A handwritten signature in cursive script that reads "Steve Bracks". The signature is written in black ink and is positioned below the typed name.

STEVE BRACKS MP
Premier