

ADDITIONAL COMMENTS FROM SENATOR ANDREW BARTLETT

Introduction

1.1 These proposed amendments to Part IIIAAA of the *Defence Act 2003* are a response to the statutory review (the Blunn Review) of Part IIIAAA and changes to the global security environment.

1.2 The Democrats agree with the recommendations put forward in the report to:

- 1. Include a statement of intent for Part IIIAAA.
- 2. Recommend a stronger proportionality test for Schedules 1 and 3.

1.3 The Australian Democrats recognise the need for Australia to possess a flexible and responsive defence force to meet immediate challenges in today's heightened security environment. We also recognise the need for the defence force to be used in a wide range of scenarios including Australia's offshore areas and in the air. We do, however, still hold further concerns regarding the Bill as it has been presented.

Definitions

1.4 As in our report to the Committee's inquiry into the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000, we remain concerned at the vagueness of undefined terms such as 'Domestic Violence' and 'Commonwealth Interest'.

1.5 The Democrats note that the Committee Report does raise the many concerns presented to the Inquiry on the vague definition given to 'Domestic Violence' and notes the Committee's faith in current accountability mechanisms and consultative measures that such definitions are not read in their broadest and, therefore, most meaningless contexts.

Designated Critical Infrastructure

1.6 Under Schedule 2 of this Bill, '...authorising Ministers may, in writing, declare that particular infrastructure, or part of particular infrastructure, in Australia or in the Australian offshore area is designated critical infrastructure.'

1.7 In their submission to the Inquiry, the New South Wales Government raised the issue of notification of this designation to the States. The Democrats believe that, as with the calling out procedure, the designation of critical infrastructure within a State or Territory should require the Government to consult with the relevant State or Territory Governments. This should either be done before such a designation is made or, subject to urgency, as soon as practicable after the event.

Use of Force

1.8 The submission from the Gilbert & Tobin Centre of Public Law drew attention to a concern with the possibility of a broad interpretation of clause 51T(2A). They suggested the wording of the clause 'suggests that it may be permissible to inflict torture or cruel, inhuman or degrading treatment on a person, where this is necessary to protect life, prevent serious injury or protect critical infrastructure, and where this does not amount to subjecting a person to greater indignity than is reasonable and necessary in the circumstances.'¹

1.9 The Democrats believe this clause should be redrafted to specifically rule out the use of torture and other cruel, inhuman or degrading treatment, particularly given global controversy about whether a degree of acquiescence is developing amongst western government for the use of some forms of torture.

Accountability and Transparency – Expedited Call Out

1.10 Due to the extreme and unforeseen circumstances which this legislation has been designed to address, the Australian Democrats believe that Parliament should be recalled as soon as practicable after any expedited call out in order to debate the decision.

1.11 While we recognise that in the case of an emergency situation that this would be impractical to facilitate before or during an event, we believe that this measure would act as an additional check on the processes that are currently in place in the Act under section 51X and 51XA.

International Obligations

1.12 The Australian Democrats hold the view that the under proposed section 51SC addressing Australia's international obligation, clearer language is required to ensure our international obligations are complied with in any authorisation under the proposed Division 3A.

Recommendations

1.13 Insert a clause in Schedule 2 to notify the relevant State or Territory as to the designation of critical infrastructure as soon as practicable.

1.14 Insert a clause after 51T2A to explicitly rule out the use of torture, cruel, inhuman or degrading treatment on a person. Insert a clause to recall Parliament to debate any expedited call out order as soon as practicable.

1.15 Redraft 51SC to remove the words 'have regard to' and incorporate the words 'comply with'.

¹ Submission 10, page 3

Senator Andrew Bartlett

Australian Democrats

