

Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020

Summary:

Whilst this bill is ostensibly about regulating the call out of defence forces and reserves to assist in natural disasters, there are a number of elements that are concerning and will impact on civil liberties. This bill fails to properly define 'other emergencies', delegates too much responsibility for the call out to a single minister, permits foreign armies and police forces to be called in, does not restrict the use of force for defence forces and extends an unreasonable level of immunity for the defence force from criminal and civil penalties.

Defence forces used in a civilian context should not be normalised. [Freedom of Information requests](#) show that Defence is planning towards extreme climate change impacts, raising concerns that the Government is preparing for a militarised response to climate breakdown. The Government should be investing in civilian capacities to manage future disaster and climate impacts.

Substance:

- The term 'other emergencies' is undefined. Defence's operations when operating domestically appear to be governed by the [Defence Assistance to the Civil Community](#) policy, which is extremely wide ranging and appears to be at the discretion of the Department. It is not inconceivable to see the normalisation of military forces on the streets responding to public order issues that should be dealt with by police, for example protests. Although the explanatory note states assistance is limited to that "not using force", that does not appear in the legislation.
- The bill extends a very large immunity for ADF personnel from civil and criminal liability as long as their acts are done in 'good faith'. This is a very low and imprecise bar, especially when combined with the looseness of the term 'other emergencies'.
- Responsibility for calling out of the reserves sits with the Defence Minister (who must "consult" the Prime Minister, whatever that may mean. The amendment takes away the supervisory role of the Executive Council). This is an extremely narrow course for permitting such an important decision.
- The Human Rights Statement is grossly inadequate. It does not address public rights that may well be infringed under these provisions.
- **The bill authorises the use of foreign military and police forces and gives them the same immunity from legal liabilities as Australian forces. The use of a foreign army or militarised police force should not be allowed at all, and certainly not without the safeguard of citizens' rights of access to courts.**
- The new provisions for directions for assistance and delegation of powers remove any parliamentary scrutiny.
- There are no real time limits on when the forces can be called out: a disaster being imminent, occurring, or recent does not impose any real constraint. For example, climate change is undeniably "imminent" even if it has not "occurred".

Recommendations

- That the bill be sent to a committee where constitutional law experts can provide advice on the constitutional validity of the legislation and human rights experts properly assess the human rights impacts.
- That the civil and criminal immunity granted to defence forces operating domestically be revisited and rebalanced with the right of victims of civil or criminal misconduct to seek justice.
- That the call out powers be subject to review by parliament or a test to introduce checks and balances.
- That the defence forces be explicitly prohibited from using force domestically. The proscription should be in the legislation.
- Foreign armies or police forces should not be encompassed by this legislation, and certainly should not be given immunity for crimes or other wrongs against citizens.