

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

**INQUIRY INTO THE DEFENCE LEGISLATION  
(ENHANCEMENT OF DEFENCE FORCE RESPONSE TO EMERGENCIES)  
BILL 2020**

**Introduction**

1. This submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade by the Australia Defence Association relates to the committee's inquiry into the Defence Legislation (Enhancement of Defence Force Response to Emergencies) Bill 2020.
2. For nearly five decades the ADA has long been a strong proponent of the machinery-of-government oversight and accountability mechanisms provided by parliamentary committees. We appreciate the opportunity to offer a submission to the inquiry.

**Relevance of this issue to the ADA**

3. The issues addressed in this inquiry naturally fall within the ADA's area of interest as the relevant independent, community-based, non-partisan, national public-interest watchdog organisation for strategic security, defence and wider national security issues.
4. Since our foundation in Perth in 1975 the ADA has long advocated that Australia needs an integrated and whole-of-government approach to our strategic and domestic security. This Bill helps achieve this aim, albeit somewhat indirectly, because it is both a human security and an employment equity measure.

**Background to the Bill**

5. The primary role of our defence force remains the protection of Australia and its national interests. This is as it should be, and few Australians disagree.
6. As a function of the organisational capacity to undertake this primary (and largely externally-focused) role, Australian governments of both political persuasions have often called on our defence force to assist the civil community in certain domestic situations.
7. Since Federation, the six principal situations where this has occurred in descending order of frequency, and usually scale, have been:
  - a. natural disasters (eg. floods, bushfires, cyclones, earthquakes and pandemics);

- b. support to barrier law enforcement by civil agencies administering our customs, fisheries, marine conservation, quarantine and immigration laws;
- c. provision of terrestrial, oceanographic and hydrographic survey data for national geo-spatial requirements;
- d. health and construction programs in remote indigenous communities;
- e. industrial disputes (undertaking the continuation of skeleton essential services during major strikes); and
- f. support to the maintenance of law and order in extreme circumstances (bomb disposal, reinforcement of the civil police for riot control, and provision of specific counter-terrorism capabilities beyond police resources).

8. Several points are worth noting about this wide range of ADF assistance to the wider Australian community within Australia. Especially as many of them do not appear to be widely understood, either generally or in relation to public debate about the Bill under examination.

9. **Natural disasters.** The nature of ADF assistance in natural disasters largely depends on the scale and location of the disaster. Such assistance is frequently necessary across the country, and this is often dictated by seasonal climatic and weather conditions. This category of assistance does not involve the carriage of weapons or use of force by ADF personnel, nor any law enforcement role.

10. **Barrier law enforcement.** Assistance to barrier law enforcement agencies is chiefly at sea, not ashore, and rarely involves the wider community. It chiefly involves the use of RAN (and ABF) vessels for electronic surveillance and transport. Where it may occasionally involve ADF personnel being armed, this is for their self-protection in potentially violent situations on vessels being boarded. It does not involve an enforcement role by ADF personnel unless they are authorised under the relevant Act (eg. as fisheries inspectors during counter-poaching operations).

11. **Geo-spatial survey.** The Army no longer assists national mapping. The RAN no longer has the national responsibility for oceanographic survey but retains responsibility for hydrographic survey. None of these activities involve the carriage of weapons, the use of force or assistance to law enforcement.

12. **Remote indigenous communities.** Army assistance programs in remote indigenous communities mainly involve the construction of housing and community facilities. They have involved medical and dental clinics since the 1950s and, more recently, logistic support to various civil agencies during the 2007-12 federal intervention in some remote NT communities. None of these activities involve armed personnel, nor law enforcement by the ADF. Contrary to widespread, incorrect and hyper-politicised claims about the intervention, then and since, that the "Army was coming to take your kids away".

13. **Industrial disputes.** The last use of the ADF to maintain essential services during an industrial dispute was by the Hawke Government during the commercial airline pilots' strike in 1989. There was some minor use of the Army by the Menzies Government during small wharf strikes in regional Queensland ports during the mid-1950s. The last major use of the ADF in industrial disputes was by the Chifley Government during the latter-1940s coalmining strikes. None of these ADF operations have involved the carriage of weapons, the use of force, or law enforcement.

14. **Law and order.** The last category of ADF assistance has been used very rarely. This testifies to the strength and stability of Australian democracy and should be remembered accurately, not subjectively.

- a. **Bomb disposal.** The federal and state police forces progressively took over primary responsibility for bomb disposal (and the disposal of expired commercial explosives generally) from the late 1980s. A process completed in the early 2000s. This role did not involve the use of armed ADF personnel, nor law enforcement by them.
- b. **Riot control.** The only two call-outs of the ADF for riot control were over 50 and 100 years ago respectively. These were the Victoria Police strike in 1923, and on New Britain, in the then Territory of Papua and New Guinea, in 1970. In both cases, the call-out was a contingency measure and no armed troops were actually used.
- c. **Counter-terrorism.** The only call-out of the ADF for counter-terrorism purposes has been the steps taken to secure the Commonwealth Heads of Government Regional Meeting, following the bomb blast outside its Sydney hotel venue in early 1978. Special legislation covered ADF contingency counter-terrorism assistance to the Sydney Olympic Games in 2000.

15. National counter-terrorism measures continue to cover the contingency whereby the ADF may be used to assist the civil police in certain counter-terrorism actions beyond police capacity. The development of special operations groups in police forces since the 1980s has lessened the need for this contingency but not replaced it.

16. Its worth noting that in all the categories of ADF domestic assistance, armed or unarmed, the principle of civil primacy applies. As does the principle of minimum force where force might be authorised. Martial law is not constitutionally possible in Australia outside designated war zones, on Australian territory, in wartime.

17. Finally, its also worth noting that the occasional use of ADF personnel to help secure defence installations during violent political protests is not classed as assistance to civil law enforcement. Chiefly because it does not occur in the wider community, nor involve the potential or actual use of force by armed troops. It is also authorised and undertaken under standard legislation which enables any "Commonwealth Officer" to apprehend or arrest trespassers on Commonwealth property.

## **Defence terminology**

18. In Department of Defence terminology, ADF operational doctrine, and in regulations under the Defence Act, a clear distinction is observed between ADF assistance involving the use of force (actual or potential), in some form of enforcement role, and assistance that does not involve the use of force.

19. Current policy and terminology define these as Defence Aid to Civil Authority (DACA), and Defence Assistance to the Civil Community (DACC), respectively. Both have been described by other terms in the past (Aid to the Civil Power and Defence Force Assistance to the Civil Community).

20. Neither DACA nor DACC is, however, defined in legislation. Probably in case the terminology changes again.

## **The controversy**

21. Public confusion, and mistaken, mischievous, extremist and even paranoiac claims, concerning the Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020 largely stem from the Bill being about DACC, not DACA, but some not understanding or believing this.

22. Most of this confusion, or concern, could have been avoided by greater or objective community understanding of the actual history of ADF assistance to the wider community.

23. It would also have been precluded if the Bill, as the explanatory memorandum does, defined the emergencies concerned as not applying to situations involving the use of force (or law enforcement) by ADF personnel.

24. As a result, a Bill rightly judged by its accompanying statement of compatibility with human rights as being:

“ compatible with human rights because it promotes and advances the right to just and favourable conditions of work, and does not otherwise engage human rights”.

is seen instead by some as the harbinger of the suspension of democracy and liberty. Including supposedly enabling dictatorial government, military coups, and widespread repression.

25. Those considering and drafting legislation in an era of hyper-politicised public debate, exacerbated by social media's capacity to combine great ignorance with great irrational fear, should perhaps have anticipated this reaction in parts of the community.

26. Maybe next time they will.

## **Conclusion**

27. The Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020 is not any threat to civil liberties.

28. The Bill can be safely passed in its present form.

29. If this is not possible, and the nature of the emergency concerned needs to be defined for the Bill to be passed, this can be achieved quickly and simply by amending it using the definition in the explanatory memorandum or:

“ a natural disaster or emergency not requiring the use of force by ADF personnel”.

30. Previous uncontroversial reforms to extend conditions-of-service protections for ADF reservists inexplicably took nearly eight years from a review report’s recommendations to actual legislation. This Bill refines some of these employment protections, and extends to ADF reservists the civil immunities already enjoyed by personnel from the various state and territory emergency and rural fire services.

31. We hope our submission helps the committee avoid further delay in this Bill becoming law.