

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE  
LEGISLATION COMMITTEE**

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

**OPENING STATEMENT**

1. My name is Neil James and I am the Executive Director of the Australia Defence Association. Thank you for your invitation to discuss this Bill.
2. In my previous four decades of military service, I was involved in various disaster-relief contingency planning and operational tasks, in both Australia and New Zealand. Including various bushfires, floods, the 1989 Newcastle earthquake and cyclones in northern Australia. I am also a bush-firefighter with the NSW Rural Fire Service. These experiences have enabled opportunities to study the need for, and value of, ADF and other federal assistance to State and Territory emergency resources from both sides of the fence.
3. (As the relevant independent, community-based, non-partisan, national public-interest watchdog organisation, the Australia Defence Association offers the following quick points).
4. First as a function of the organisational capacity to undertake its national defence role, Australian governments have often called on our defence force to assist the wider community deal with natural disasters.
5. Second, this situation is unlikely to change. The ADF continues to provide any government, of any political persuasion, with the nation's primary national capacity to surge support for federal, state and territory counter-disaster, disaster-relief and disaster-recovery efforts. And in two cases, 1920 and 2020, to assist with community health during pandemics.
6. Third, continuous community assistance tasks, for example with national mapping, national hydrography, and health and construction support in remote indigenous communities, have long continued in the background but gone largely un-noticed by most Australians.
7. Fourth, none of these types of community assistance involve the application of force, nor law enforcement, by our defence force. Unfortunately, this distinction has not always been well understood
8. Fifth, contrary to some fears, such assistance does not constitute a risk of somehow "normalising" the ADF's participation in the wider Australian community. Both the frequency and range of community assistance tasks, and the resulting community appreciation of them, demonstrate their very normality.

9. Sixth, submissions by the Department of Defence, Professor Anne Twomey and Assistant Professor David Letts rightly discuss the presence, or absence, of constitutional heads of power. Especially for enabling governments to task the ADF to provide disaster relief and other non-law-and-order assistance to the States and Territories.

10. There is valid constitutional argument over this issue. However, for 120 years Australian governments, of both political persuasions, have required such assistance. This is unlikely to change in the future. It needs to be sorted out constitutionally, but only to strengthen the capacity to provide and regulate such assistance to the wider community, not to prevent it.

11. Seventh, the remaining submissions chiefly seem to misunderstand the purpose, nature or safe-guards concerning ADF disaster-relief and other emergency assistance. In most cases this appears due to simply not recognising the long history, frequency or diversity of tasks involved. In some cases, misunderstandings or misinterpretations seem to stem from inchoate, pacifist or ideological beliefs being refocused from other purported causes.

12. Finally, this Bill mainly relates to protecting the civil employment of reservists, and their conditions of service, when called-out for disaster-relief and other emergency assistance. It also streamlines the procedures for calling them out quickly.

13. It also extends, to ADF reservists and to personnel from any assisting foreign forces, the civil immunities already enjoyed by personnel from our State and Territory emergency and rural fire services.

14. (This Bill does not relate to industrial disputes where the use of ADF reservists is already forbidden by the Defence Act. And where the ADF is so rarely used, is unarmed and not tasked with law enforcement anyway.)

15. (Nor does this Bill relate to the extremely rare situations (discussed in our submission) where the ADF may be tasked with the application of minimum-force aid to civil law and order authorities for riot control, or resolution of certain terrorist incidents beyond police assault resources.)

16. Most confusion about this Bill would 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.