

Monday, 16 January 2006



New South Wales
Council for
Civil Liberties

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600

by email: legcon.sen@aph.gov.au

**New South Wales Council
for Civil Liberties Inc**

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Dear Sir/Madam,

**Re: Inquiry into the Defence Legislation Amendment (Aid to
Civilian Authorities) Bill 2005**

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The New South Wales Council for Civil Liberties ('CCL') thanks the Committee for the opportunity to make a written submission to the above inquiry.

CCL opposes the amendments proposed by the bill, and is particularly concerned that:

- Provisions allowing for the domestic call out of ADF personnel without the consent of relevant State governments extend the powers of the Commonwealth government beyond those conferred by s 119 of the *Constitution*. It is highly questionable if such provisions are supported by a constitutional head of power, as such the proposed amendments may be constitutionally flawed.
- The amendments, if passed, signal a permanent militarisation of what are and should remain domestic policing matters.
- The use of ADF personnel alongside State police introduces an unacceptable inconsistency in the level of force that may be used in joint domestic operations. For example, ADF personnel may be given shoot to kill orders, while police will be restricted to using reasonable force.
- The use of ADF personnel in domestic situations places individual soldiers in an untenable position when faced with potentially unlawful orders. If they disobey the orders they risk military disciplinary action (including imprisonment), whereas if they follow such orders they may expose themselves to penalties under civilian law. A military system demanding strict obedience to orders is not appropriate

for domestic situations where law enforcement agents can and should exercise greater individual discretion.

Unfortunately due to time constraints and a high demand for submissions CCL is unable to make a more comprehensive submission at this time. However, we have had the benefit of reading Dr Michael Head's written submission published on the committee's website and we support that submission.

CCL would also be happy to elaborate on any of the above points and give evidence at any public hearings.

Yours faithfully,

Cameron Murphy
President

Anish Bhasin
Committee Member