CLA

Civil Liberties Australia Inc. A04043
Box 7438 Fisher ACT 2611
Email: secretary[at]cla.asn.au

Submission: from Civil Liberties Australia *31 July 2018*

Re: **The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018**
(Defence Call Out bill for short)

Overview

The bill over-reaches its claimed aims considerably. It is a sledge-hammer to crack a nut.

Under this bill, expedited call outs can occur at a moment's notice, on a minister's say-so, with virtually no paperwork. A federal minister can call out the troops anywhere in Australia without consulting a state or territory. The call-out can be 'on spec', that is, just in case something happens. The federal government can call out the troops anywhere "to protect Commonwealth interests": every road, every phone line, and all the air we breathe throughout Australia, is a "Commonwealth interest".[1]

Troops can barge in everywhere, including into anyone's house. They can demand ID, quiz you, detain you, arrest you and seize anything they like. They can go anywhere, storm any building, including private houses. If troops stuff up, they can say: "I was just following orders" and be absolved of responsibility for actions, including crimes, that might send them to jail in other circumstances. This is better known as the "Nuremberg defence". We note that the existing *Defence Act* includes a number of similar provisions in the existing 'call out' section. However, the use of those powers (i.e. the call out of the armed forces) required a higher threshold of urgency, a threshold this bill lowers.

A minister can order the Chief of Defence Forces to use the troops exactly as the minister wants, in a phone call (not necessarily in writing). If the government decides to target a business, the troops can be deployed to target not only that business, but all its suppliers and the people it sells to. The troops can be used against unions. They can do security patrolling.

Ministers are supposed to tell the federal parliament what is happening when the troops are called out…but, if they don't tell parliament, there's no recourse, no punishment, no penalty. The federal government can deploy troops into any state or territory without consulting with the state or territory government.

[1] A 1997-98 Parliamentary Library Paper details a number of instances where the Commonwealth deployed troops to protect its 'interests', revealing how broad this term is:
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9798/98rp08#APPENDIXA

Bill definition: "**substantive criminal law** means law (including unwritten law)":

The term 'substantive criminal law' is problematic because it is so vague. It may just be any law that is kind of criminal… but maybe it isn't? What if people assume a law isn't a criminal law but then face jail time and a conviction as a possible penalty (as opposed to a civil fine). A similar dilemma occurred in a tobacco excise case: it took the High Court to work it out.

Conversely, people might think something *is* a criminal offence, when it isn't. This means that higher criminal standards of evidence (beyond a reasonable doubt) or the rule against self-incrimination *don't* apply.

The bill allows "unwritten law" to prevail. No-one knows – can know – what "unwritten law" means, or what is included, because it is not spelled out in the bill's definitions. It could mean "judge-made" (ie, common) law, or you could insert your own family's unwritten law, because it might apply under this bill, eg:

> *Thou shall not check your mobile phone at the dinner table; or*
>
> *You must be in bed by 8pm; or*
>
> *Women and children first! (in any maritime confrontation under this bill).*

In more detail, these are some of the things that are wrong with this bill:

- It is questionable whether it will survive a Constitutional challenge.
- It permits over-ride of state and territory control of their own policing responsibilities.
- It seductively slides Australia from an exemplary democracy into a potential autocracy.
- It allows troops to question, detain, arrest – and shoot – civilians with the lowest standard of responsibility possible.
- It permits naval vessels to shell onshsore facilities, the shooting down of passenger aircraft and allows military aviation assets to bomb houses.
- It empowers ministers to order the Chief of the Defence Force where and how to deploy troops.
- It proposes a parliamentary overview, then dispenses with it in the next paragraph (for example see s51(8) and s51H(8)).
- It enables the Nuremberg defence to prevail: *"I was only following orders"*.
- It is a "big" national law where a mediated agreement would more than suffice.
- It is meant to address important principles, but the words can be found only in the Minister's speech and the Explanatory Memorandum, not in the proposed legislation.

- The Minister speaks of terrorist incidents being small groups using low tech weapons and attacks 'over in minutes'...which doesn't seem to justify the use of the military (over-reaction).
- The bill appears to allow non-ministerial authorisation for destruction of air or sea-craft in emergency situations.
- The bill is devoid of usual civil liberties, human rights and rule of law protections for the individual.
- The declared infrastructure division (Division 5, Subdivision C) seems inappropriate in a rule of law democracy such as Australia.
- Section 51P demonstrates why the police should be the only ones capable of detaining individuals. This section provides that army personnel tell people what laws they are suspected of breaking. Will army members need police training?

Before addressing these issues in detail, it is necessary to point out that the bill is deficient in the mandatory discussion of what human rights implications are engaged by its provisions.

Human rights implications

The Explanatory Memorandum (EM) claims that only the

- right to life,
- right to freedom from arbitrary detention and arrest,
- right to liberty and security of the person, and
- right to freedom from arbitrary and unlawful interference with one's privacy or home

are engaged by this bill. However, it is patently clear that other rights which should be considered before this bill is properly assessed by the Parliament include the:

- right to freedom of association, and
- the right to free speech

which are both inherently bound up in any public protest, for which the "call out" section of this bill is at least partially targeted. An amended Explanatory Memorandum, under the Statement of Compatibility, must address these "elephant in the room" issues before the draft bill meets the requirements for consideration in detail by Parliament.

Recommendation 1: The Committee returns the bill for re-briefing and re-drafting in relation to the human rights implications, and to other problems identified in this submission.

Comments on individual provisions of the proposed law:

- It is questionable whether the law, if passed, would survive a Constitutional challenge.

> **Constitution s119 Protection of States from invasion and violence**
> The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

The constitutional position seems clear: states must apply for protection. The proposed law over-rides the Constitution.

- It permits over-ride of state/territory control of their own policing responsibilities.

Involvement of federal troops should be only when and where a state (or territory) is unable or unwilling to respond to a situation. It is difficult to see the Senate – the states' House – permitting such a major centralisation of power to the detriment of states' being in charge of their own policing matters.

CLA understands a driver for a change to the call out law was the Lindt siege in Sydney. What that situation required was clearer legal exposition of how the particular skills of a small number of specialist troops could be used to augment deficiencies or inexperience among state or territory police. This bill takes that contained issue, and produces a solution on steroids, where the entire armed forces of Australia can be turned out domestically throughout the nation on the say-so of the federal government.

- It seductively slides Australia from an exemplary democracy towards a potential autocracy.

Currently, the act of calling out troops and deploying military assets on the streets of Australia has more appropriate checks and balances attached. The proposed law would enable one Minister, without any customary check or balance, to turn out armed forces.

Countries which have recently passed similar laws include Turkey and Hungary, whose styles of democracy are not those Australia usually aspires to. In those countries, the laws have led to suppression of virtually all dissent and violent confrontation on the streets.

It is not possible for a parliament in 2018 to know the extent to which a future government might mis-use provisions in the proposed bill. For example, while Reserve forces are not permitted to be involved in strike actions under this bill, that could be changed with a one-line amendment in future. As well, while this Conservative-generated bill suggests strikes and protests may be targeted, a one-line change by a future non-Conservative government with majority in both houses could extend the use of permanent and reserve forces to situations of employer lockouts, and the like.[2]

[2] Again, the Parliamentary Library's own research suggests that strike action and potential strikes and protest have been the main reason for the States to request assistance under s119 of the Constitution:

Australia has experienced a very mixed outcome from calling out the troops.

At the Eureka Rebellion in 1854, when British troops were sent in to back up colonial police, at least 27 died (maybe 60, with subsequent deaths from wounds), and 6 were police officers and soldiers. One Eureka leader, Peter Lalor, later stood (unopposed) for the Victorian Parliament, where in 1856 he said during a speech in the Legislative Council:

> *"I would ask these gentlemen what they mean by the term 'democracy'."*

That is a pertinent question 160 years later about the Defence Call Out bill. Lalor is the name of a federal electorate. The current Member, Joanne Ryan, in her maiden speech in November 2013, outlines her "Eureka moment" during a public protest campaign to defeat a proposed CSR plant that ended up never being built anywhere: under this bill, she would probably have been arrested by troops, and the plant would have been built.

The Miners' Strike of 1949 was the first use of soldiers in peacetime to break a strike by unionists; it lasted seven (7) weeks after troops were sent in by Labor Prime Minister Ben Chifley. Hastily-enacted laws forbade people giving financial aid or store credit to strikers, and also confiscated the funds of unions to prevent them being used to help workers and their families, who were penniless. Some 2500 troops became coal miners.

The developments once a call out took place suggest that any government who uses the draconian provisions contained in this proposed bill probably faces a longer call out, and wider ramifications, than just the call out, as well as having to deal with issues involving families and children. There appears to be no consideration of these elements – of this well-known Australian history – in the preparation of this bill.

Troops have been used by Liberal governments against waterside workers (wharfies) on occasions, and the Air Force was called out by Labor PM Bob Hawke against a pilots' association strike in 1989. The use of Air Force aircraft to ferry passengers around Australia benefited the company of one of his closest friends, Sir Peter Abeles. The eventual outcome was the replacement of Australian pilots with those from overseas, forcing Australians to relocate internationally to get work in the industry. Nowhere in this bill is there any safeguard to prevent a government, or a minister, calling out troops or military or aviation assets to benefit an individual or a company. There should be an explicit clause to that effect.

> **Recommendation 2: the bill be re-drafted to include a clause that no call out can be undertaken where the outcome will be to the direct benefit of one or more private companies and/or to the direct detriment of Australian workers and/or their families.**

---

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP9798/98rp08, Appendix A;
https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/CIB9798/98cib03

The proposed bill is inherently dangerous to Australian democracy.

- It allows troops to question, detain, arrest – and shoot – civilians with the lowest standard of responsibility possible.

The powers handed instantly to troops under this law are themselves dangerous. For example, troops untrained to the role are given the power under this bill to:

- question citizens;
- demand identity papers;
- detain;
- search anybody and seize items; and
- arrest people for "breaking the law".

- The bill conflates police and military roles. It does so with alarming imprecision.

There is no provision in this bill that the troops be trained (as police are) in aspects of police-like duties. It is entirely unexplained and un-planned that Army, Navy and Air Force personnel will have to – must – undergo a new type of legally-oriented training before they could know what their powers, rights and responsibilities are under this bill.

As well, it appears no thought has been given to the ramifications of military personnel being sued either as a unit/force or individually for wrongful detention and wrongful arrest. Will any compensation awarded be drawn from brigade funds, or from central force funds, or from Australian Defence Force (ADF, therefore pooled) funds?

Similarly, compensation for wrongful killing is a distinct possibility when troops are untrained for civilian supervision and police-like duties.

The standards for holding troops to account for their actions is the absolute minimum possible: that of 'reasonable belief' at the time of taking the action to question, detain, arrest, use physical force, or shoot. '. Civil Liberties Australia believes the standard should be much higher, and involve a better and more measurable and comparable test of whether or not the circumstances were sufficient for the action taken. Of course, when a matter gets to court, the claims of an injured protestor (or the family of a dead one) will face the full might of the Commonwealth of Australia.

Perhaps the real question should be why would deployed troops be armed at all in civilian areas during a non-terrorist event? There should be an explicit authorization required for the carrying of arms (and in very limited areas, e.g. not on 'patrol' or 'guard' duty) and the use of arms should, otherwise, be left to the civilian police.

Recommendation 3: The bill be re-written to include the need for a specific authorisation if troops are to carry weapons while face-to-face with civilians.

- It permits naval vessels to shell onshsore facilities, and military aviation assets to bomb houses.

We note the definition of "premises" includes just about anything that keeps the rain off, and some things that won't. The bill's canvas is so broad as to impose no practical restraint on the military of Australia doing anything they like to the citizens of Australia and their houses, vehicles and possessions: indeed, an Aboriginal shelter in the outback could be attacked stealthily by an F35 joint strike fighter on the "reasonable belief" that one of the occupants might have been planning to attend a protest on the morrow outside a Defence facility in the inland desert.

This proposed law, in many if not most aspects, needs to be re-briefed by the relevant departments, and re-drafted, to remove the excesses introduced because it is designed to be all-powerful to the government.

This is a law against the people, not a law for the people.

- It empowers a Minister to order the Chief of the Defence Force where and how to deploy troops, and to direct what the troops will do, and when, and how.

> 39 Chief of Defence Force to utilise Defence Force as directed
>
> (3) In doing so, the Chief of the Defence Force:
>
> (a) must (subject to paragraph (b)) comply with any direction that the Minister gives from time to time as to the way in which the Defence Force is to be utilised; …

Civil Liberties Australia would be surprised if the ADF chiefs were not alarmed by suddenly coming under the moment-by-moment, day-by-day direction of a Minister as to how to deploy and use their troops. CLA certainly does not believe that any Minister should have such control over troops, ships or aircraft.

The provisions in the bill are meant to be used in emergency or highly dangerous situations – traditionally, where states needed extra manpower and, possibly, skills.[3] It may be appropriate for a Minister to describe the general task(s) to be undertaken by ADF chiefs and the general situation, but it is both the duty and the responsibility of the Chief of the Defence Force, and his chiefs, to take action which they decided is appropriate as they see fit to meet the requirements of the 'mission' the Minister has given them.

Ministers should not be able to give such controlling instructions moment-by-moment to the ADF Chief. A Minister should clearly and precisely describe and enunciate the problem(s) and task(s) for the ADF, and then leave it to the military to achieve their objective(s).

[3] However, the Parliamentary Library's research shows that the call out powers have more frequently been used for natural disasters and industrial disputes.

The provision in the bill for a supremo minister/general directing "his troops" in uniform in actual "fighting" is at once silly and dangerous. Some ministers beloved of uniforms and aircraft, with and without military experience, may not be able to resist the opportunity to demonstrate their innate battlefield generalship abilities with a view to winning medals.

> (In passing, we trust the government will give a solid guarantee that there will not be any new medal, or series of medals, struck for glad-handing by governments in relation to any duties performed under this bill).

- It proposes a parliamentary overview, then dispenses with it in the next paragraph.

The orders are to be tabled in parliament but no timeframe is given. They could be tabled years after the event, if the "Presiding Officers" (President of the Senate and Speaker of the House, both political appointments by the government) so decide.

- It enables the Nuremberg defence to prevail: *"I was only following orders"*.

Under this bill, no-one can be held strictly responsible under the normal rules of criminal law. Clause 51Z makes it clear that it is a defence to any criminal act by a Defence Force member that he/she acted under the order of a superior. This gives carte blanche to the military, all the way up from the lowliest grunt soldier to the Chief of the ADF (who can be "ordered" to do things by a Minister), to excuse themselves from the rule of law. (There are overtones of Breaker Morant).

Of course, the Minister is only subject to the Parliament of Australia. So, if the proverbial hits the fan, it will be almost impossible to be held accountable in any court of the land. Troops, and officers, get the benefit of the Nuremberg defence*; the Minister could only be censured by the Parliament…and he/she represents the government-of the-day, which has the numbers in the lower house at the very least.

Given that the entire bill is negligent about insisting on clear lines of responsibility and the giving of written orders, there is a strong likelihood that Australia will re-visit a "Breaker Morant" style of trial, under which a trooper will claim a verbal order was given, and officers will be in a position to deny the order was given.

> * The 'Nuremberg defence' was used by Nazi Germany's military officers in Nuremberg when they were on trial for their treatment of the Jews. The officers w claimed they only doing what they were ordered to do.

- It is a "big" national law where a mediated agreement would more than suffice.

Surely the correct methodology to put in place a fundamentally important agreement between the federal, state and territory governments is by way of discussion, debate and

agreement through the Council of Australian Governments (COAG) forum. This take-it-or-leave-it bill is a slap in the face to the states and territories. The bill should be withdrawn, and an agreement worked up over the coming 2-3 years during COAG discussions.

> **Recommendation 4: The bill should be withdrawn, and the subject matter taken up with a view to creating an agreement via COAG. Such a plan should be consistent with existing disaster response and other national plans in emphasizing that state and territory governments have primary responsibility for protecting life, property and environment within their borders and that the role of the federal government is to provide assistance to the states and territories when requested to do so.**

- It is meant to address important principles, but the words can be found only in the Minister's speech and the Explanatory Memorandum, not in the proposed legislation.

Both the Explanatory Memorandum and Minister's second reading speech refer to four important principles that "inform the operation of the amended call-out powers":

- The ADF should only be called out to assist civilian authorities.
- If the ADF is called out, civilian authorities remain paramount, but ADF members remain under military command.
- When called out, ADF members can only use force that is reasonable and necessary in all the circumstances.
- ADF personnel remain subject to the law and are accountable for their actions.[4]

These are excellent principles (we would have suggested them ourselves), but <u>they are not included in the proposed bill</u>.

For example, the term 'accountable' is absent, as is a firm statement that civilian authorities remain 'paramount'. Other principles have been twisted or qualified by the actual terms of the proposed legislation such that the phrase 'reasonable and necessary' seems to be more about the legal protection of the Chief of the Defence Force rather than the physical protection of the populace. Likewise, the 'paramountcy' of the civilian forces is actually subject to a higher order for the Chief of the Defence Forces to comply with a direction from the Defence Minister (s40(4)). We believe that if these principles are so important, they should be captured in the Bill via an objects clause at the start of Part IIIAAA.

> **Recommendation 5: An "objects" clause be inserted in a re-drafted bill to capture the issues described in this submission.**

---

[4] http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F429b4c41-4a6c-465d-a259-05e8252b994d%2F0025%22

- The Minister speaks of terrorist incidents being small groups using low-tech weapons and attacks 'over in minutes'.

The Minister's characterisation of the bill in his speech doesn't seem to justify the use of the military at all, which means that this bill is a sizeable over-reaction. "Small groups using low-tech weapons in attacks over in minutes" seems to be the basis for justifying "contingent" orders as "when planning for anticipated terrorist threats". There is an enormous disconnect between the ministerial rhetoric and the 'turn out the troops' bill.

There is no mention of oversight of such anticipatory orders, or with a requirement for transparency with, say, the fact of the order(s) being immediately broadcast on radio and published online to inform Australian citizens.

These issues raise the fundamental question: why not try to train police and support the development of policing abilities rather than have the military on hair-trigger release into the community, sometimes on 'spec' in advance.

- The bill appears to allow non-ministerial authorisation for destruction of air or sea-craft in emergency situations.

There is a jumbled mis-match of who can order what in this bill. For example, it appears that shooting down planes or blowing ships out of the water only needs a "superior" military officer in "emergency" circumstances. That power seems, to Civil Liberties Australia, to impose too much risk of a political nature for Defence chiefs. Surely such decisions – which may well involve destroying assets of other nations – should not be taken by the military alone, when they potentially have serious diplomatic repercussions.

CLA also asks who is a "superior" ADF officer. To a pilot officer in the Air Force (the equivalent of a second lieutenant in the Army) a flight lieutenant is a superior officer. A flight lieutenant is a very low rank to be given the power to order the shooting of an aircraft out of the sky without further consultation. The situation evokes overtones of the MH17 disaster in the Ukraine.

- The bill is devoid of usual civil liberties, human rights and rule of law protections for the individual.

For example, there is no right to refuse to answer questions when the troops are let loose; there is no mention of legal professional privilege over documents or medical confidentiality over health records seized, and so on.

Civil Liberties Australia would also like to know what is the secondary/derivative use protection for documents seized or answers compelled? Can these documents be given to the police for subsequent use in an ordinary police investigation? What happens then?

- The declared infrastructure division (Division 5, Subdivision C) seems inappropriate in a rule of law democracy such as Australia.

This part of the bill has the potential to result in the military being used to break up environmental protests around ports, power plants (completed, or under construction) or mining sites, or peace protests at facilities such as Pine Gap. Police are the appropriate authority for handling protests of such a nature.

CLA comments that, when a government has to turn out the troops, it has usually lost the public argument…or is in the process of losing it.

- Section 51P demonstrates why police should be the only ones capable of detaining people.

This section provides that army (or other ADF) personnel tell people what laws they are suspected of breaking. How are the ADF people – troopers, naval ratings, even officers – expected to know the laws, which is a police responsibility? Will all Army members need police training? And the entire Navy? And all the Air Force?

Ambit law

This bill appears to continue a disturbing trend of "ambit drafting".

Civil Liberties Australia defines the term as crafting the departmental (or ministerial adviser) briefing document to the parliament draftspeople in a such a way that they are obliged to make the exposure draft of a new law as broad, far-reaching and draconian as possible. When wound back by public outcry, the end-point bill will still be harsher and tougher and more infringing on rights and liberties than it would have been if it had been reasonably drafted in the first place.

Like unions who claim 18% wage rises when they know the likely outcome is 2-3%, ambit legislation drafting seeks to up the ante after revision and final agreement by committees and the parliament. Like police forces who constantly claim they are understaffed, ambit drafting is a method of ensuring what should be minimums approach maximums, in that any new law restricts the rights and liberties of Australians as little as reasonably possible.

CLA believes ambit drafting has become common practice for the federal parliament with terrorism and related bills.

Conclusion

Australia is not a country where we are accustomed to seeing our troops on the streets of our communities. This is not a country where soldiers search us, question us, demand to see our papers, detain us, set up check-points or tell us where we may or may not go. The distinction between policing and national defense is clear and the distinction is a central feature of our way of life and is a check on the exercise of power. This bill, if made law, will undermine all of that.

Certainly, sometimes the ADF may assist state and territory authorities in a disaster situation by performing complicated rescues, by assisting with sandbagging in a flood or by using their trucks or planes to transport emergency personnel or equipment. But the lines of command and control are always clear, the primacy of the states and territories is unquestioned, and the responsibility of the states and territories to properly prepare for and respond to disasters is undiminished. Further, all such assistance is provided by the Commonwealth on the basis that there is no prejudice to the primary responsibility of the ADF, namely the national defense of Australia. This bill, if made law, will upset a balance that Australian governments, at federal and state levels, have worked hard to create over many years.

As imperfect as they sometimes are, police forces train full-time in the exercise of their duties. This includes training in the relevant state and federal laws, training in their powers to question and detain, training in the management of individuals with special needs such as those suffering from a mental or physical impairment, and training in cooperation with other first responders like ambulance and fire services. Police also invest considerable time and effort in developing the trust of the community and building good relations with community leaders. Police are also subject to strict accountability and processes for the review of their actions, both internal and external, for example through coronial inquiries. As professional as the members of the ADF are, deployment into Australian communities cannot be undertaken casually as an add-on to existing duties. This bill, if made law, will lead to the deployment of lethal force in Australian communities with little if any of the skills, training and experience necessary for the role.

Australians justifiably take great pride in our national defense forces. We have a history of supporting our defense force personnel even when we sometimes question the wisdom of the politicians who make decisions about how to deploy them. This is a confidence and respect that has built up over generations and is part of our national folklore. This bill, by putting the ADF in situations of confrontation with ordinary Australian citizens in their homes, in their workplaces and in the streets of their towns, will undermine the respect for and confidence in our national defense forces that the citizens of many countries sadly do not enjoy.

This bill is perhaps the most consequential issue this Parliament will face. Despite the excitement sometimes generated in the media and the incessant appeals to “national security” by some politicians, Australia is a peaceful country that does not face major

internal security threats to the integrity of our nation. Decisions taken today on the basis of a few isolated incidents – as tragic as one or two of them have been – will have long-lasting consequences for our country. The changes contemplated in this bill should not be considered in a rush.

CLA urges the Committee to recommend that the government reconsider this bill, including the specific concerns raised in this submission. It should be asked to prepare a revised bill following more detailed consultations with states and territories through COAG.

This bill aims to cement total command and control over citizens in emergencies, or "in case" something happens. It is clearly at one, extreme end of the political spectrum. In the interests of balancing the freedoms and liberties of citizens, this bill calls for an equivalent but opposite national bill of rights as a matter of urgency.

Summary of recommendations:

Recommendation 1: The Committee returns the Bill for re-briefing and re-drafting in relation to the human rights implications, and to other problems identified in this submission.

Recommendation 2: the bill be re-drafted to include a clause that no call out can be undertaken where the outcome will be to the direct benefit of one or more private companies and/or to the direct detriment of Australian workers and/or their families.

Recommendation 3: The bill be re-written to include the need for a specific authorisation if troops are to carry weapons while face-to-face with civilians.

Recommendation 4: The bill should be withdrawn, and the subject matter taken up with a view to creating an agreement via COAG. Such a plan should be consistent with existing disaster response and other national plans in emphasizing that state and territory governments have primary responsibility for protecting life, property and environment within their borders and that the role of the federal government is to provide assistance to the states and territories when requested to do so.

Recommendation 5: An "objects" clause be inserted in a re-drafted bill to capture the issues described in this submission.

Summing up, this bill is plain awful. It calls for Australian citizens who are aware of its excesses to speak out, and save the government from itself.

> *"It is not the function of the government to stop the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."*
>
> *– Justice Robert Jackson, judge at the Nuremberg trials*

ENDS

Lead author: CLA CEO Bill Rowlings, with CLA Director Rajan Venkataraman and others