FOI 342/18/19 Series 1

PDR: MS18-002002 SEC/2018/OUT/194 CDF/2018/OUT/446



# MINISTERIAL SUBMISSION

Australian Government

# **Department of Defence**

# **Minister for Defence – For action**

Copies to: Associate Secretary, VCDF, CJOPS, CA, DEPSEC SP&I, FASMECC, SOCAUST, HMSC, HDL

# DEFENCE AMENDMENT (CALL OUT OF THE AUSTRALIAN DEFENCE FORCE) BILL 2018 COMMUNICATIONS MATERIAL

Critical Date: 25 June 2018	<b>Reason:</b> Introduction of the Bill is p week of Winter Session (25-28 June)		ing		
Recommendations:					
1. Note Defence has prepared com	munications material to support the	Noted / Please disc	uss		
s47C Deliberative processes					
Minister 1	for Defence	Date / /			

# **Key Points:**

- 1. To support the introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018, Defence, in consultation with the Attorney-General's Department, has prepared the following communications material:
  - a. whole-of-government talking points to provide to other relevant Commonwealth agencies, as well as states and territories to ensure consistency of messaging at all levels of government;
  - b. question and answer brief, including extensive if asked questions (which may be subject to further revision after introduction to respond to any specific questions raised);

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2. The material explains the scope of the amendments, as well as the broader measures undertaken by Defence to enhance its support to states and territories following the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review on 17 July 2017.

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Greg Moriarty MD Binskin, AC Secretary Air Chief Marshal Chief of the Defence Force 19 - June 2018 June 2018

Contact officer: Tom Hamilton First Assistant Secretary Strategic Policy Contact officer phone: 02 6265 1883

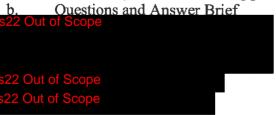
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**S33 Defence** However, the communications material makes clear that police will continue to be the primary responders to terrorist incidents and that the ADF would work in partnership with states and territories as first responders.

Financial Impacts: There are no financial impacts.

# **Summary of Attachments:**

a. Whole-of-government talking points



Defence has consulted with the Attorney-General's Department in the development of the wholeof-government talking points and the Question and Answer Brief, which may still be subject to refinements before inclusion in the Briefing Pack to support debate of the Bill. **S22 Out of S22 Out of Scope** 

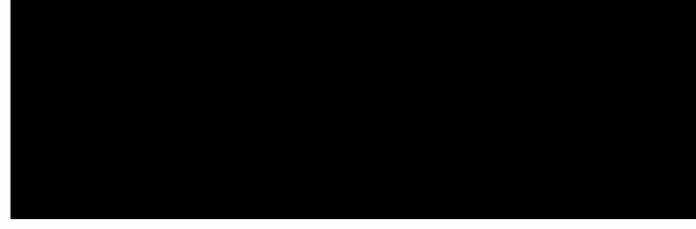
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# **Background:**

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# Related Briefs: s22 Out of Scope

# **Consultation:**

Yes. Defence Legal (Head Defence Legal, Mr Mark Cunliffe), Military Strategic Commitments (Head Military Strategic Commitments, MAJGEN Gus Gilmore), Special Operations Command s47F(1) Personal privacy, Headquarters

Joint Operations Command (Deputy Commander Joint Operations, MAJGEN Greg Bilton), Ministerial and Executive Coordination and Communication (Strategic Communications).

# WHOLE OF GOVERNMENT TALKING POINTS

# Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 has been developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is

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better able to respond effectively to the contemporary terrorist threat.

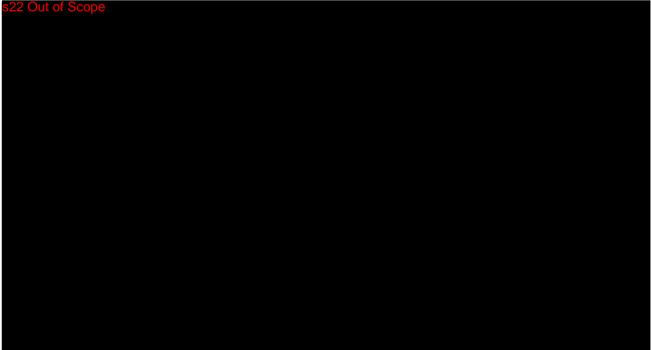
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- It is characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- Under the amendments, states and territories will continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and play a primary role as first responders within minutes of an attack.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made

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substantial progress to further enhance the practical support it provides to state and territory police, including through:

- o an enhanced counter-terrorism liaison network;
- an increased and broadened program of support for specialist training activities; and
- streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.





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# If asked: will these amendments see the use of military forces in law enforcement roles or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.



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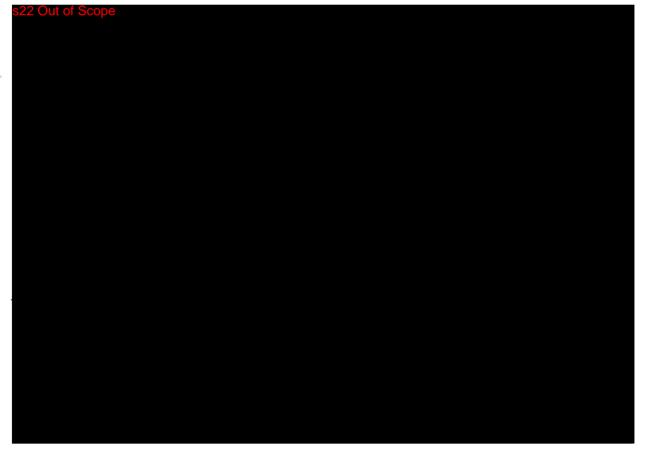
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# **Questions and Answers**

# Defence Amendment (Call Out of the Australian Defence Force) Bill 2018



6. Will amendments to Part IIIAAA result in increased military presence or the imposition of martial law?......10



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# 6. Will amendments to Part IIIAAA result in increased military presence or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain paramount during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the powers it needs to assist police in quickly responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that, when operating under a call out order, the ADF must assist and cooperate with state and territory police forces.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently relocate or pre-position forces in anticipation of providing security support to state and territory law enforcement, and will retain this ability under the amendments.

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FOI 342/18/19 Serial 2

### **Driver, Sarah MS**

From:	Moore, Dominic MR
Sent:	Thursday, 28 June 2018 6:04 PM
То:	'Galluccio, Julia'; 'Aravindan, Sanjeevan'; 'Pennicook, Hugh'; 'Morris, Stephen'; 'Balint, Ilona'; 'Chambers, Alison'; 'Jackett, Jennifer'; 'Wilson, Lachlan'
Cc:	SP&I-SP-SCSP-DS&CT Higgins, Samantha MS
Subject: Attachments:	FW: 29 June Draft QTB and Media Summary [ <del>SEC=UNCLASSIFIED</del> ] QB18-000305 - 180629.docx

### UNOLASSIFIED

Good evening,

Please find attached for your awareness Defence's draft QTB prepared for tomorrow morning (subject to change based on any reporting overnight).

Kind regards,

Dominic

### **Dominic Moore** Senior Policy Officer, Domestic Security and Counter-Terrorism Strategic Policy Branch

Strategic Policy Division Department of Defence *Ph*: 02 6265 2781 *Location*: R1-1-A025 E: <u>dominic.moore@defence.gov.au</u>

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### DEFENCE ROLE IN COUNTER-TERRORISM

### ISSUE

Enhanced defence support to domestic counter-terrorism, and Defence regional and global counter-terrorism contributions.

### HEADLINE RESPONSE

### Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

[Handling note: these are whole of Government talking points]

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 has been developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
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  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism



Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.

- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- It is characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- Under the amendments, states and territories will continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and play a primary role as first responders within minutes of an attack.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.

- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - o an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.

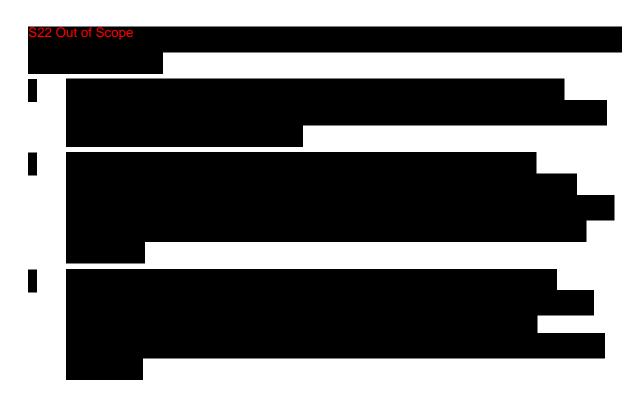
# If asked: Will the legislation allow the ADF be called out to respond to riots?

- This bill is about making it easier for the ADF to help state and territory police respond to terrorist attacks, not rioting.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threatens the safety of Australians.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The ADF has never been called out under Part IIIAAA to respond to riots and there is no expectation that they would be in future.

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## If asked: will these amendments see the use of military forces in law enforcement roles or the imposition of martial law?

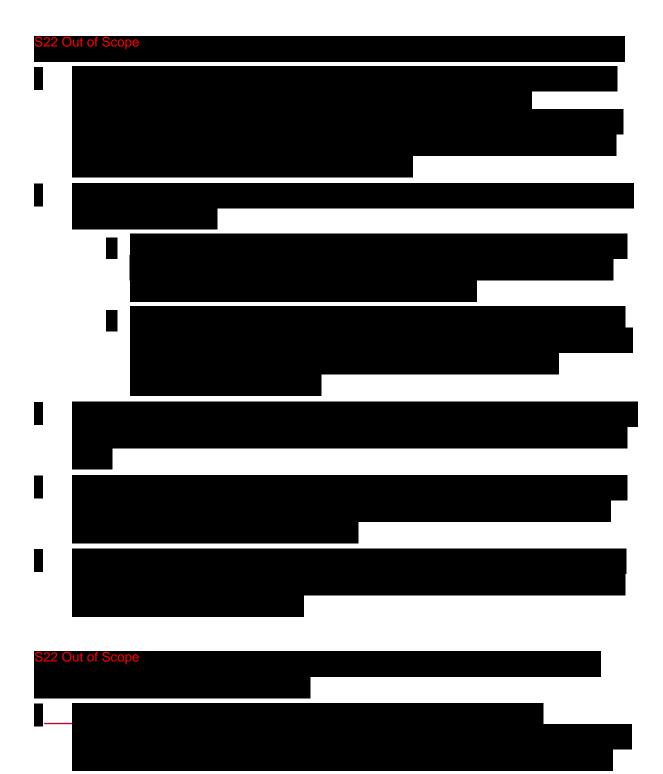
- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.



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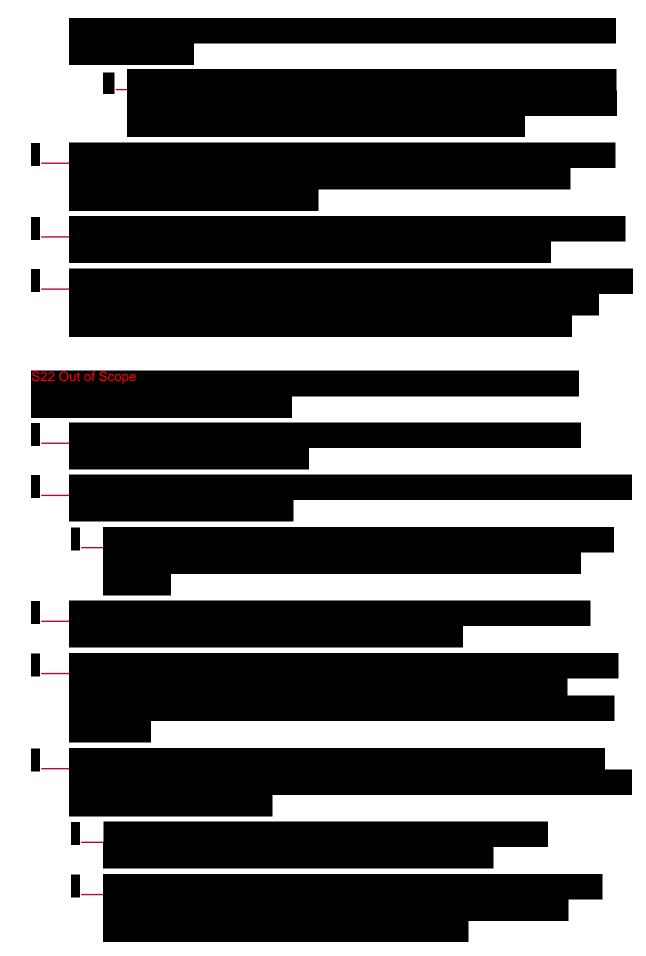
- As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.

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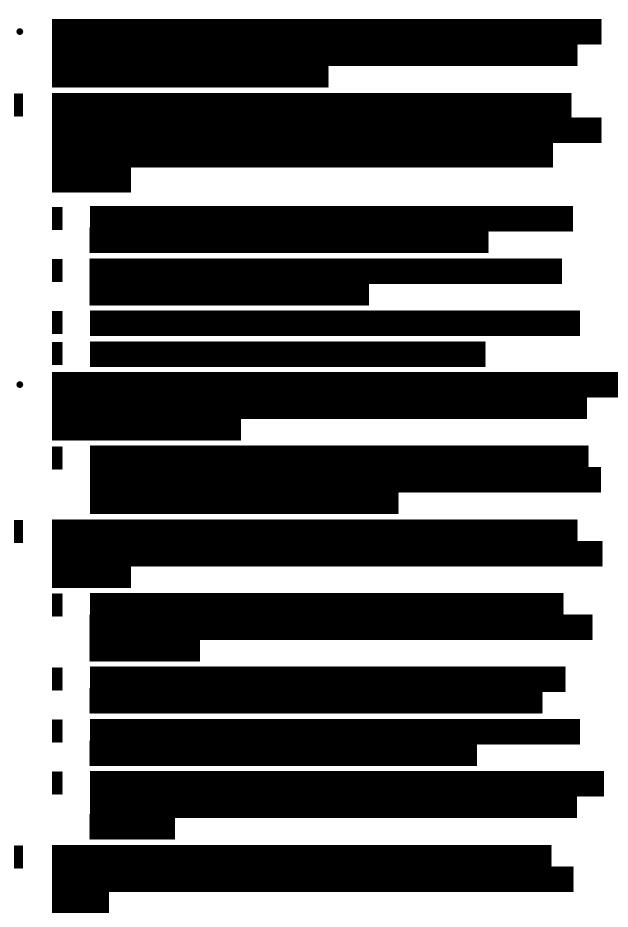


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## **Current media**

28 June 2018, Herald Sun editorial, 'SASR base needed'. The Editorial calls for the establishment of an ADF Tactical Assault Group (TAG) base in Victoria noting "if a major incident unfolds, waiting for highly-trained ADF specialists to be flown in will not be an option".

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

28 June 2018, Adelaide Advertiser, 'Troops could be guards for finals', reports that 'troops could be deployed to protect football finals and other major sporting events from terrorist threats' under the proposed amendments.

Multiple other news articles on Part IIIAAA Bill, including mentioning of use of ADF to respond to riots.

28 June 2018, The Australian, 'Green light for SAS to bolster terror response' reports that barriers to the rapid deployment of special forces troops, military hardware and defence experts to deal with domestic terror threats will be removed under changes to be introduced in parliament today.

28 June 2018, Australian Financial Review, 'New laws extend military's powers to help state police' reports that soldiers will be able to be called out to help put out riots, with new powers intended to make it easier for the military to respond to terror attacks going further than anticipated. The article states that the military will also have 'shoot to kill' powers but they could be used only when 'reasonable and necessary' to protect life – the same standard that applies to police.

28 June 2018, The Age, 'Calling in the army easier in wake of siege' reports that the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced today.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to

#### QB18-000305

the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December 2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."

13 June 2018, The Australian, "ISIS links to tourist site car-bomb plot", reports a Pakistani-based extremist tried to persuade a British 'jihadi hunter' (posing as an extremist) to launch an attack during Ramadan at Melbourne's Queen Victoria Market and other locations, including St Paul's Cathedral. The extremist provided a 5000-page manual on how to attack the market with video instructions on making a bomb.

25 May 2018, The Australian, "ASIO Director-General Duncan Lewis has warned of the unprecedented threat Australia faces with espionage and foreign interference. At senate estimates yesterday the Director-General also warned that Australia's terror threat level remained 'probable', stating that the consequence of the collapse of the Islamic State was the spread and return of foreign fighters and their families. ASIO believed about 110 Australians now in Syria or Iraq have fought or supported Islamic extremist groups.

19 May 2018, The Australian Financial Review, 'Terrorism on our doorstep', reports on whole families being used as suicide cells in the recent terrorist attacks in Indonesia. It remarks on Australia's official development assistance to the region and regional cooperation due to the concern of foreign fighters returning. This includes Australia and the Association of South-East Asian Nations signing a cooperation agreement and Australia's support to the Philippines last year.

10 May 2018, The Herald Sun, "Army will help police" PM Malcolm Turnbull insists new laws to allow soldiers to be embedded with police to respond to terrorist attacks are only weeks away from being introduced to federal parliament.

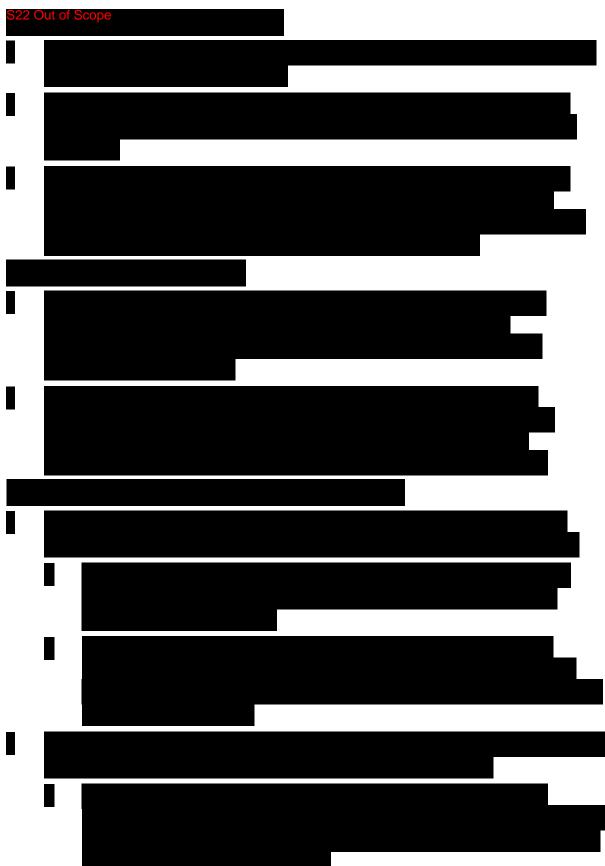
9 May 2018, Radio interview with Prime Minister and Ben Fordham, 2GB, Prime Minister responds to questions about how far off the new legislation is that was announced in July last year. Prime Minister says it is only weeks away from being introduced, but we have got existing laws already in place.



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#### **RELEVANT MEDIA**

Nil.

#### **QUESTIONS ON NOTICE**

#### SSCFADT Supplementary Budget Estimates Hearing 25 October 2017

• In QON 132, Senator the Hon Don Farrell (SA) (ALP) asked a series of questions related to the use of Special Forces personnel and equipment (especially watercraft) as part of the press conference announcing the findings of the Defence CT Review by the Prime Minister and CDF on 17 July 2017. **Response lodged: 12 December 2017** 





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# Senate Select Committee on Finance and Public Administration Legislation 21 May 2018 (pp. 123)

Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?

Page 124 Senate Monday, 21 May 2018

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

### FREEDOM OF INFORMATION (FOI)

• Nil
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### **RECENT RELEVANT MINISTERIAL COMMENTS**

Nil		
Contact:	Helen ThaiSarah Driver, A/Director Domestic Security and Counter- Terrorism, 02 6265 34997216	Min ID: QB18-0003305 Division: Strategic Policy
Cleared by:	Samantha Higgins, Assistant Secretary Strategic Capability and Security Policy 02 6265 1718	Created:12 April 2018 Updated: 2 <mark>98</mark> June 2018
Consulted:	Military Strategic Commitments, Defence Legal, SOCOMD	

### Driver, Sarah MS

From: Sent: To:	Hamilton, Tom MR Thursday, 28 June 2018 6:13 PM Gilmore, Peter MAJGEN; Cunliffe, Mark MR; Geering, John MR; Burr, Rick MAJGEN; Scott, Michael LTCOL 7; Heath, Cameron MR; Findlay, Adam MAJGEN
Cc:	Dewar, Scott MR; Higgins, Samantha MS; Media; Moore, Dominic MR; Thai, Helen MS; s47F(1) Personal
Subject: Attachments:	IIIAAA 29 June QTB, Media Summary and engagement plan [ MEDIA SUMMARY - Part IIIAAA Amendments Introduction.docx; QB18-000305 - 180629.docx; Part IIIAAA Engagement Plan Task Tracker.doc

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Please see attached our summary of today's IIIAAA media and updated talking points to address issues raised in the media.

Of note, we have received NIL media inquiries. The Minister's office has advised that it and the A-G's office have also received NIL inquiries.

We will update the documents tomorrow morning following our review of relevant media.

I've also attached an update to the engagement plan task tracker. I and AGD reps will be speaking to a small number of think tanks tomorrow.

There are a number of other significant media issues around but we will keep updating and circulating these documents for the time being.

#### Happy to discuss

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# **Tom Hamilton** - First Assistant Secretary Strategic Policy

Strategic Policy Division Department of Defence Ph: +61 2 6265 1883 | **\$47F(1) Personal** Location: R1-1-A005, Russell Offices E: tom.hamilton@defence.gov.au

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# MEDIA SUMMARY Part IIIAAA AMENDMENTS INTRODUCTION

Highlighted Sections have been reflected in the QTB Talking Points Updates Note: not all media articles are included in the media summary section of the QTB

Date	Media Article	Summary	Defence Action
27/6	The Canberra Times, 'Law change to make military call-out easier in terror incidents'	The military will more easily be able to help police handle major terrorist and other large- scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.	Included in QTB Media Summary
28/6	Australian Financial Review, 'New laws extend military's powers to help state police'	The article reports that soldiers will be able to be called out to help put out riots, with new powers intended to make it easier for the military to respond to terror attacks going further than anticipated. The article states that the military will also have 'shoot to kill' powers but they could be used only when 'reasonable and necessary' to protect life – the same standard that applies to police.	Included in QTB Media Summary TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB.

	Breakfast with Wendy Harmer and Robbie Buck, Interview with the Attorney- General	the streets (the AG answered that there are three main scenarios when the ADF would be called out – a prolonged incident, multiple geographically spread incidents, and chemical or biological incidents); would states always ask for call out; would we see tanks on the street (AG answered it would most likely be specialist capabilities such as the TAG); and would the	TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB.
28/6	ABC Radio Sydney,	Questions included; will we be seeing troops on	Not included in QTB Media Summary
28/6	Dailey Telegraph, 'Military to strike jihadists at home"	The article reports that Australia's military can now be pre-emptively on patrol at sporting grand finals, riots or a meeting of world leaders if there's a credible terror threat under new laws prompted by the review into Sydney's fatal Lindt Café Seige. The changes meanyou could see military present on the streets, in fast boats or in choppers to monitor the situation.	Not included in QTB Media Summary TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB. An if asked question on major events is included in the 29/6 QTB.
28/6	Herald Sun, Editorial 'SASR base needed'	The Editorial calls for the establishment of an ADF Tactical Assault Group (TAG) base in Victoria noting "if a major incident unfolds, waiting for highly-trained ADF specialists to be flown in will not be an option".	Included in QTB Media Summary TPs in response to the call for a TAG Base in Victoria have been included in the 29/6 QTB.
28/6	Radio National, Hamish MacDonald Interview with the Attorney-General	Questions included whether the outcome of the Lindt Café Siege would be different with the new powers (AG answered that is impossible to answer) and whether the ADF would be called out in response to riots (AG answered that it's almost inconceivable to consider what specialist assets the ADF could deploy in anything other than a type of terrorist scenario).	Not included in QTB Media Summary TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB.

		answered he could not think of any situation where this has occurred in Australian history)	
28/6	Channel 7, Sunrise, Interview with the Attorney- General	Questions included; what extra powers will the Bill give the Army; who makes the decision to call in the ADF; will the ADF be used as a standard part of major events such as the AFL Grand Final (AG answered that it would not become standard)	Not included in QTB Media Summary An if asked question on major events is included in the 29/6 QTB.
28/6	Adelaide Advertiser. 'Troops could be guards for finals'	The article reports that troops could be deployed to protect football finals and other major sporting events from terrorist threats, under an overhaul of Defence "callout" powers. Land, air and sea resources could be used to protect state events and major national events, such as summits attended by world leaders.	Included in QTB Media Summary An if asked question on major events has been included in the 29/6 QB
28/6	ABC News Online, Shakeup of Defence 'call- out' powers will make it easier for police to request military backup during terror attacks	The article reports that requests for military backup during terrorist attacks would become easier under a shakeup of Defence "call-out" powers being introduced today into Federal Parliament. Quotes Neil James from the Australia Defence Association who stated that he supports the overhaul but believes today's legislation simply formalises much of what already occurs. "The whole concept of this goes back centuries back in the days when they didn't have police forces and governments used to call on the military to do things that the police now do. All this is doing is putting in a statute what is a century-and-a-half of precedent."	Included in QTB Media Summary

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28/6	Herald Sun, 'Military terror back-up'	The article reports that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.	Included in QTB Media Summary
28/6	The Age, 'Calling in the army easier in wake of siege'	The article reports that the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced today	Included in QTB Media Summary
28/6	The Australian, 'Green light for SAS to bolster terror response'	The article reports that barriers to the rapid deployment of special forces troops, military hardware and defence experts to deal with domestic terror threats will be removed under changes to be introduced in parliament today.	Included in QTB Media Summary
28/6	ABC AM, Sabra Lane Interview with Minister Payne	Questions included; whether the ADF could be easily called out using existing legislation (Minister answered that we have processes in place today which everyone is familiar with); who would authorise the call-out and how quickly do you anticipate decisions would be made; would police and Defence won't become embroiled in a turf war during an incident (Minister answered that the legislation has been developed through extensive consultations between police and the ADF); and whether the amendments would have made a difference during Lindt (Minister answered it is not helpful to second guess).	Not included in QTB Media Summary

28/6	The Guardian, 'Military could be on call for sieges and riots, attorney general says'	The article reports that the Australian military could be called out to terrorist and riot events with greater ease and gain limited shoot-to-kill powers under legal changes being pushed by the federal government.	Not included in QTB Media Summary
28/6	The Conversation, 'Military to get wider role in combatting terrorism'	The article reports that Australia's military forces will be given power to play a bigger part in dealing with terrorist incidents, under legislation to be introduced into parliament on Thursday. The bill makes it easier for states and territories to seek help from the Australian Defence Force (ADF) to respond to terrorist and other violent occurrences, especially those that stretch the capabilities of state forces.	Not included in QTB Media Summary
28/6	Sky News, AM Agenda with Kieran Gilbert, Interview with Attorney- General	Questions were mostly about whether the SAS would have deployed to resolve the Lindt Siege under the amendments (AG answered this was impossible to answer)	Not included in QTB Media Summary
28/6	Radio 6PR, Morning with Gareth Parker, interview with Attorney-General	Questions included; the types of scenarios when the ADF would be called out; would the ADF be placed under police command; and will there be any parliamentary opposition to the Bill.	Not included in QTB Media Summary
28/6	Channel 9, Today, Interview with the Attorney- General	Questions included; what the Army's role in counter-terrorism is and what the delineation between the role of police.	Not included in QTB Media Summary

28/6	ABC News Breakfast, Michael Rowland interview with the Attorney-General	Questions included what the new threshold is; would it have changed the response to the Lindt Siege and would police have operational control of incidents.	Not included in QTB Media Summary
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# ENGAGEMENT PLAN FOR THE DEFENCE AMENDMENT (CALL OUT OF THE AUSTRALIAN DEFENCE FORCE) BILL TASK TRACKER

ACTIVITY	LEAD AGENCY	DESCRIPTION	STATUS
	nonici	Phase 1 – Formal announcements	
Announcement of the introduction of the Bill	AGO	AG announced the introduction of the Bill on the morning of 28 June 2018.	28/06
		Defence has provided OMINDEF with draft speaking points and joint media release.	
Briefing to Parliamentarians	OMINDEF/AGO	The OMINDEF and AGO will make arrangements for briefings to Parliamentarians. AGD has provided Ministers with a debate folder on the amendments.	28/06 and ongoing
	Ph	ase 2 – Targeted engagements at introduction of the Bill	
Targeted Departmental briefing	Defence (FASSP/HMSC) AGD	Defence and AGD Senior Officials (SES 2) are offering briefings by email and follow up calls to key stakeholder groups as soon as practicable after the introduction of the Bill. <b>\$47C(1) Deliberative process</b>	s47C(1) Deliberative process

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		A short information factsheet has been prepared to provide to representatives.	s47C(1) Deliberative process
Provision of whole-of- government talking points to states and territories	AGD	AGD (Anna Harmer) provided states and territories with an embargoed copy of the whole-of-government talking points on the Bill on 27 June through the ANZCTC Legal Issues Working Group. The talking points were provided to a wider ANZCTC distribution list on 28 June following introduction.	27/6 and 28/9
	Phase 3 – Dialogue	during the passage of the Bill through the Winter Recess of Parliament	
Private Ministerial briefings to key stakeholders	OMINDEF/AGO	s47C(1) Deliberative process Defence/AGD have provided both Offices with extensive communications	Offices to action (Defence to support)

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		material including Q&A Brief, whole-of-government talking points and an information factsheet. Further material can be provided if requested.	
Departmental-led stakeholder roundtable discussions	Defence/AGD	Departmental-led roundtable discussions with broader stakeholder groups will be held to ensure broad understanding of the facts during the public discourse, as the amendments proceed through Parliament. The stakeholders would be divided into a <b>Defence Policy Stream</b> and a <b>Legal Stream</b> .	Roundtables will be arranged during the winter recess by Defence and AGD
Defence Policy Stream Roundtable	Defence (with AGD support)	This roundtable would include representatives from the key national security, defence and strategic academic institutions and think tanks. This group represents the key communicators in national security that would be likely to provide media and other expert commentary on the reforms. It is therefore vital that they understand the amendments, their genesis, rationale, and purpose. It is also important to explain what the amendments are not. Organisations that will be invited to this roundtable include:	See above
Stakeholder Roundtable (Legal Stream)	AGD (with Defence support)	s47C(1) Deliberative process	See above

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		s47C(1) Deliberative process s47C(1) Deliberative process	
MINDEF Opinion Editorial (OpEd)	OMINDEF	s47C(1) Deliberative process	Possible week of 2-8 July
Long-form article	Defence	s47C(1) Deliberative process	As required, OMINDEF to advise
Continued engagement with states and territories	Defence/AGD	Defence, AGD and the Centre for Counter-Terrorism Coordination will continue to engage with states and territories on the amendments, including updating the relevant guidance material (e.g. the National Counter- Terrorism Handbook) to make the amendments operational.	Ongoing
Support to parliamentary debates,	Defence/AGD	Defence and AGD will continue to support OMINDEF and the AGO as the Bill progresses through Parliament, including the provision of relevant	Defence and AGD will prepare packs

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committee hearings, or media queries on the amendments.	material such as debate briefing packs, support to media enquiries and senior officials to appear at committee hearings.	for committee hearings when scheduled and for Spring Sittings
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FOI 342/18/19 Series 6



# DEFENCE ROLE IN COUNTER-TERRORISM

# ISSUE

Enhanced defence support to domestic counter-terrorism, and Defence regional and global counter-terrorism contributions.

# HEADLINE RESPONSE

# Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

[Handling note: these are whole of Government talking points]

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 has been developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism



Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.

- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- It is characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- Under the amendments, states and territories will continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and play a primary role as first responders within minutes of an attack.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.

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- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - o an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.

# If asked: Will the legislation allow the ADF be called out to respond to riots?

- This bill is about making it easier for the ADF to help state and territory police respond to terrorist attacks, not rioting.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threatens the safety of Australians.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The ADF has never been called out under Part IIIAAA to respond to riots and there is no expectation that they would be in future.

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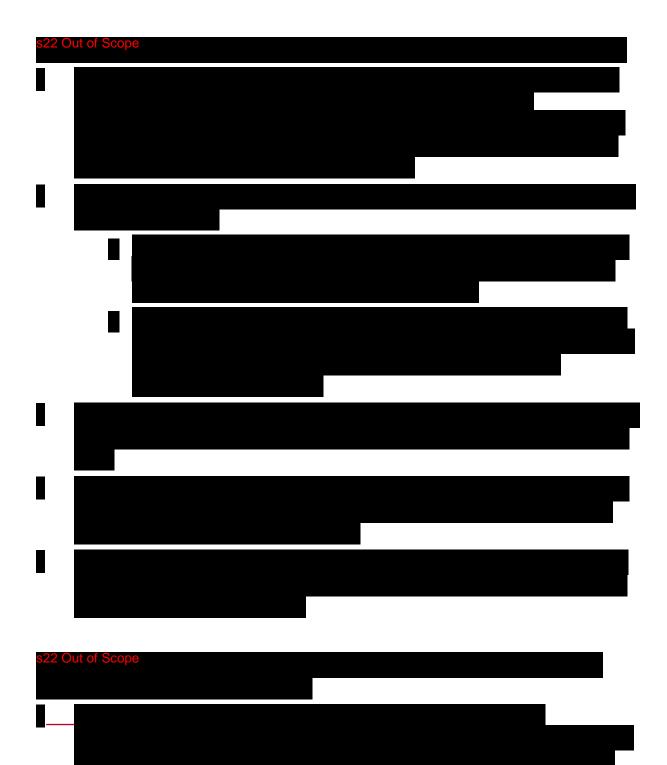


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## If asked: will these amendments see the use of military forces in law enforcement roles or the imposition of martial law?

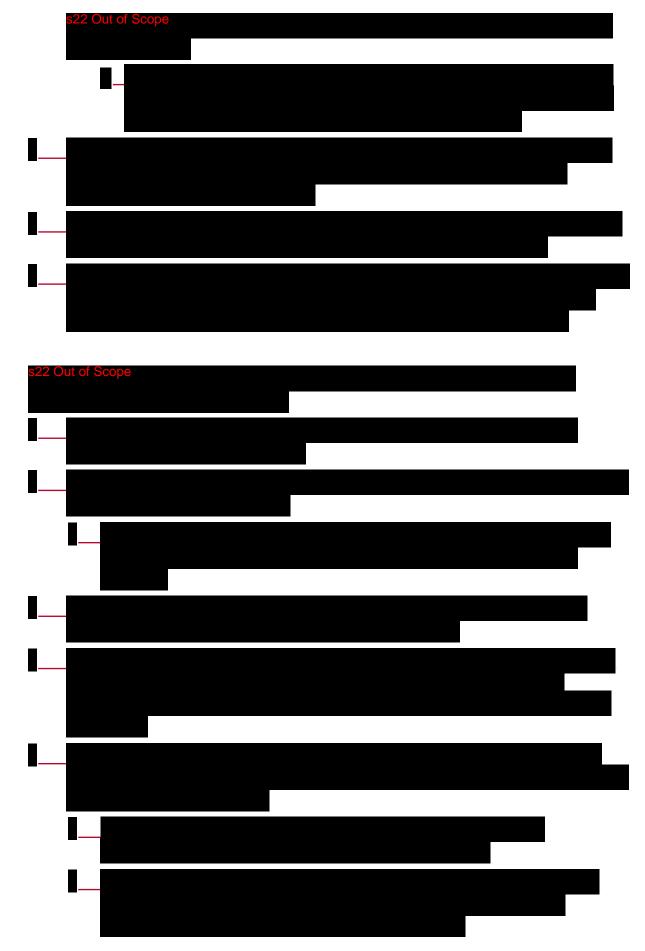
- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.

- As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.



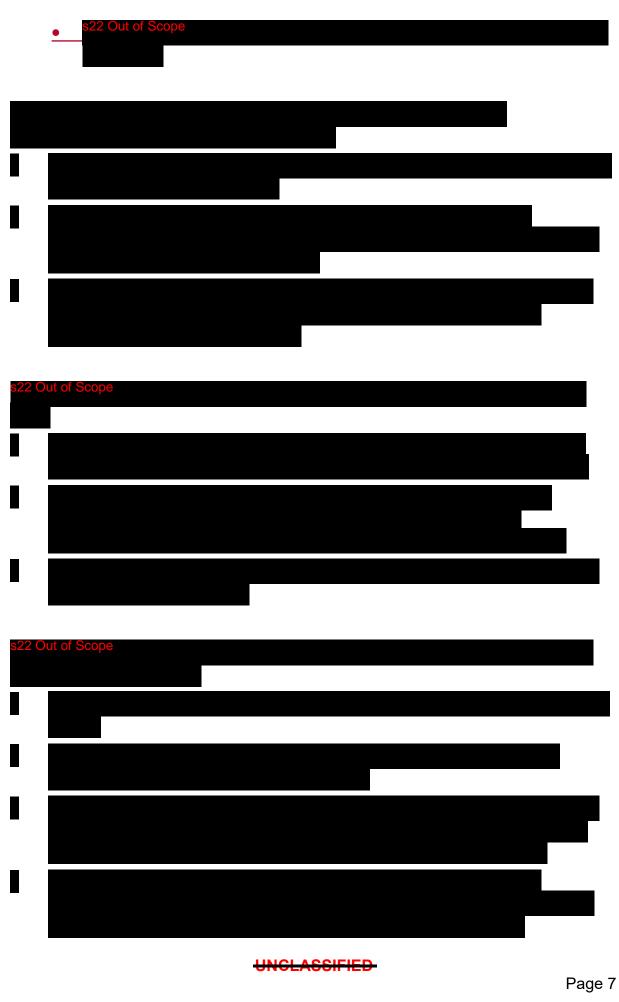
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## **Current media**

28 June 2018, Herald Sun editorial, 'SASR base needed'. The Editorial calls for the establishment of an ADF Tactical Assault Group (TAG) base in Victoria noting "if a major incident unfolds, waiting for highly-trained ADF specialists to be flown in will not be an option".

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

28 June 2018, Adelaide Advertiser, 'Troops could be guards for finals', reports that 'troops could be deployed to protect football finals and other major sporting events from terrorist threats' under the proposed amendments.

Multiple other news articles on Part IIIAAA Bill, including mentioning of use of ADF to respond to riots.

28 June 2018, The Australian, 'Green light for SAS to bolster terror response' reports that barriers to the rapid deployment of special forces troops, military hardware and defence experts to deal with domestic terror threats will be removed under changes to be introduced in parliament today.

28 June 2018, Australian Financial Review, 'New laws extend military's powers to help state police' reports that soldiers will be able to be called out to help put out riots, with new powers intended to make it easier for the military to respond to terror attacks going further than anticipated. The article states that the military will also have 'shoot to kill' powers but they could be used only when 'reasonable and necessary' to protect life – the same standard that applies to police.

28 June 2018, The Age, 'Calling in the army easier in wake of siege' reports that the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced today.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to

# QB18-000305

the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December 2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."

13 June 2018, The Australian, "ISIS links to tourist site car-bomb plot", reports a Pakistani-based extremist tried to persuade a British 'jihadi hunter' (posing as an extremist) to launch an attack during Ramadan at Melbourne's Queen Victoria Market and other locations, including St Paul's Cathedral. The extremist provided a 5000-page manual on how to attack the market with video instructions on making a bomb.

25 May 2018, The Australian, "ASIO Director-General Duncan Lewis has warned of the unprecedented threat Australia faces with espionage and foreign interference. At senate estimates yesterday the Director-General also warned that Australia's terror threat level remained 'probable', stating that the consequence of the collapse of the Islamic State was the spread and return of foreign fighters and their families. ASIO believed about 110 Australians now in Syria or Iraq have fought or supported Islamic extremist groups.

19 May 2018, The Australian Financial Review, 'Terrorism on our doorstep', reports on whole families being used as suicide cells in the recent terrorist attacks in Indonesia. It remarks on Australia's official development assistance to the region and regional cooperation due to the concern of foreign fighters returning. This includes Australia and the Association of South-East Asian Nations signing a cooperation agreement and Australia's support to the Philippines last year.

10 May 2018, The Herald Sun, "Army will help police" PM Malcolm Turnbull insists new laws to allow soldiers to be embedded with police to respond to terrorist attacks are only weeks away from being introduced to federal parliament.

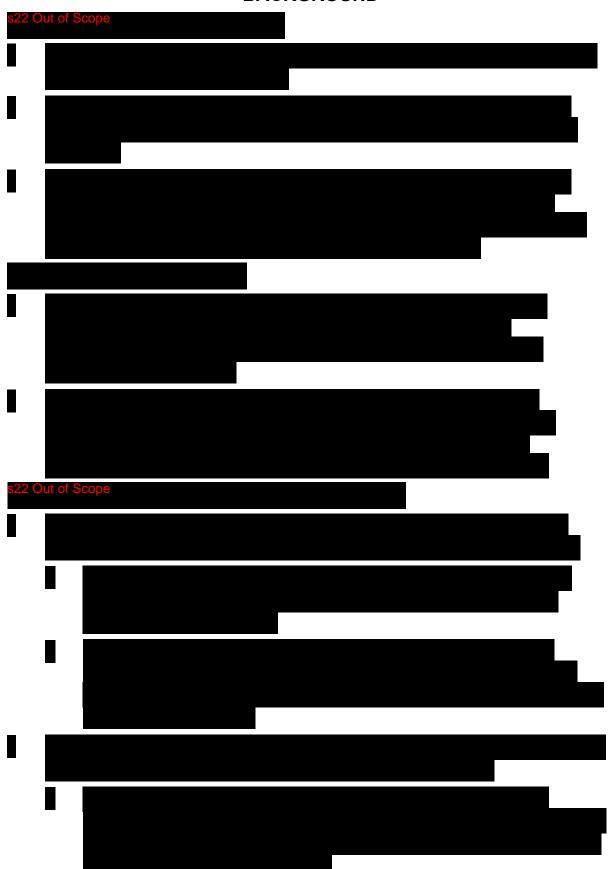
9 May 2018, Radio interview with Prime Minister and Ben Fordham, 2GB, Prime Minister responds to questions about how far off the new legislation is that was announced in July last year. Prime Minister says it is only weeks away from being introduced, but we have got existing laws already in place.

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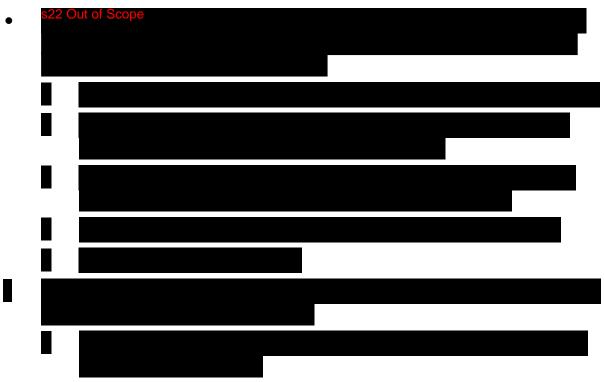
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# **RELEVANT MEDIA**

Nil.

# **QUESTIONS ON NOTICE**

# SSCFADT Supplementary Budget Estimates Hearing 25 October 2017

• In QON 132, Senator the Hon Don Farrell (SA) (ALP) asked a series of questions related to the use of Special Forces personnel and equipment (especially watercraft) as part of the press conference announcing the findings of the Defence CT Review by the Prime Minister and CDF on 17 July 2017. **Response lodged: 12 December 2017** 



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# Senate Select Committee on Finance and Public Administration Legislation 21 May 2018 (pp. 123)

Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?

Page 124 Senate Monday, 21 May 2018

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

# FREEDOM OF INFORMATION (FOI)

• Nil
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# **RECENT RELEVANT MINISTERIAL COMMENTS**

Nil		
Contact:	Helen Thai <u>Sarah Driver</u> , A/Director Domestic Security and Counter- Terrorism, 02 6265 <u>34997216</u>	Min ID: QB18-0003305 Division: Strategic Policy
Cleared by:	Samantha Higgins, Assistant Secretary Strategic Capability and Security Policy 02 6265 1718	Created:12 April 2018 Updated: 2 <mark>98</mark> June 2018
Consulted:	Military Strategic Commitments, Defence Legal, SOCOMD	

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	anced defence support to domestic counter-terrorism, and Defence onal and global counter-terrorism contributions.	
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	oduction of the Defence Amendment (Call Out of the Australian ence Force) Bill 2018	
	dling note: these are whole of Government talking points <u>for the Part IIIAAA</u> ndment Bill <mark>]</mark>	Formatted: Highlight
•	The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.	
•	The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 has been developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.	
	<ul> <li>States and territories will retain the primary responsibility to protect life and property in their jurisdictions.</li> </ul>	Formatted: Tab stops: Not at 1 cm
	<ul> <li>State and territory police are the best first response to domestic threats or acts of violence.</li> </ul>	
•	The Bill will amend Part IIIAAA of the <i>Defence Act 1903</i> which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.	
•	In particular, the Bill will:	
	<ul> <li>make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;</li> </ul>	<b>Formatted:</b> Tab stops: Not at 1 cm
	<ul> <li>allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;</li> </ul>	
	<ul> <li>simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and</li> </ul>	
	enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.	
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- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
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  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.

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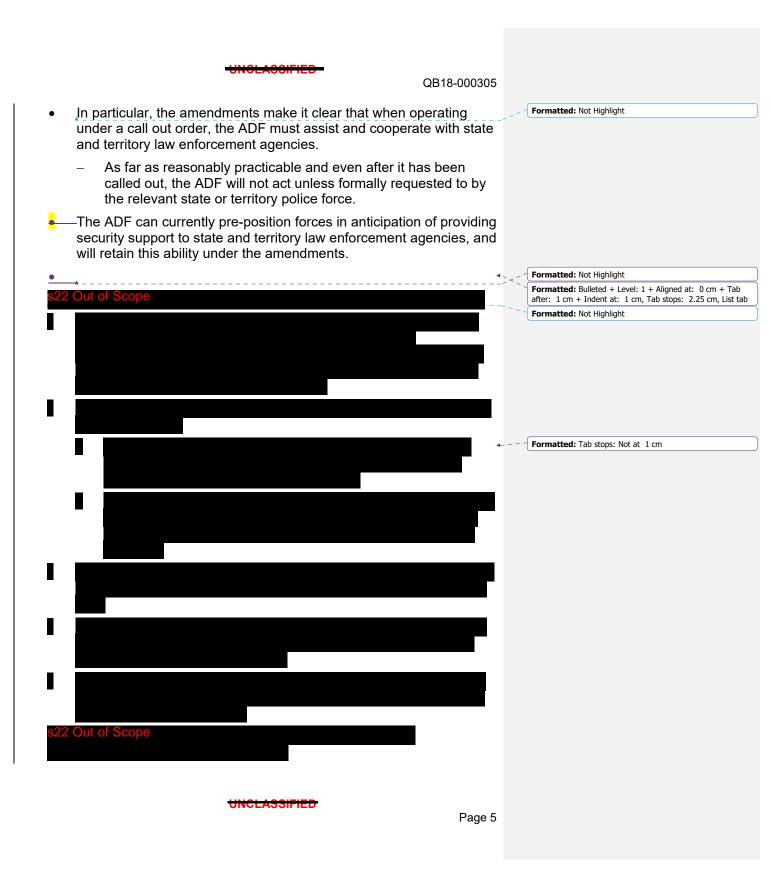
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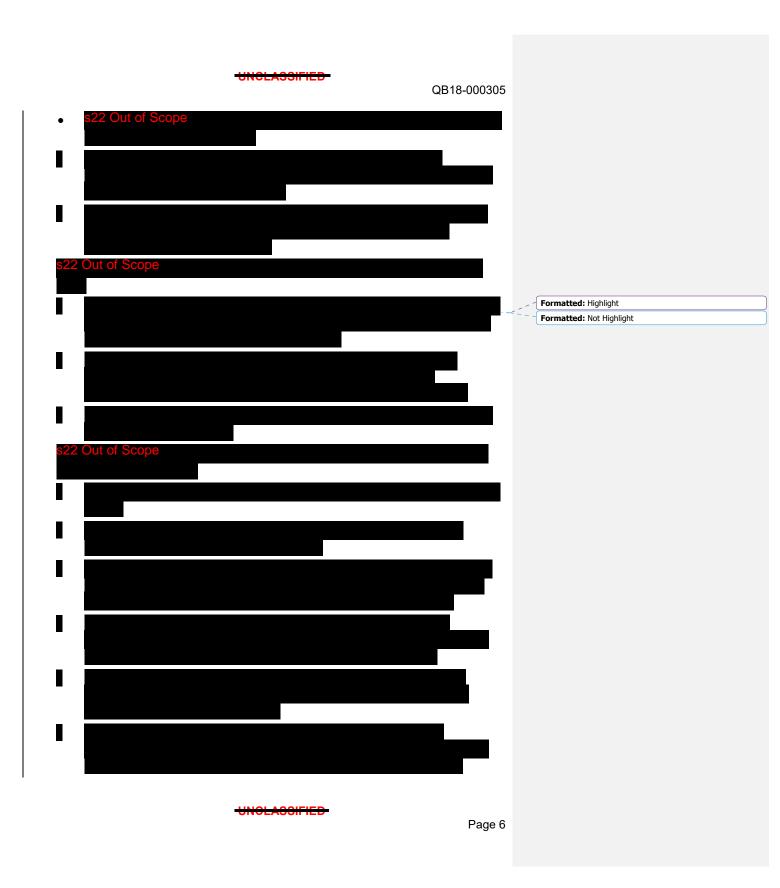
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<ul> <li>They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.</li> </ul>	
<ul> <li>The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.</li> </ul>	
<ul> <li>Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:</li> </ul>	
<ul> <li>an enhanced counter-terrorism liaison network;</li> </ul>	Formatted: Tab stops: Not at 1 cm
<ul> <li>an increased and broadened program of support for specialist training activities; and</li> </ul>	
<ul> <li>streamlined police access to Defence facilities such as rifle ranges.</li> </ul>	
<ul> <li>These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.</li> </ul>	
If asked: Will the legislation allow the ADF be called out to respond to riots?	Formatted: Not Highlight
<ul> <li>This bill is about making it easier for the ADF to help state and territory police respond to terrorist attacks, not rioting.</li> </ul>	<b>Formatted:</b> Tab stops: Not at 1 cm
<ul> <li>States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.</li> </ul>	
<ul> <li>'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threatens the safety of Australians.</li> </ul>	
<ul> <li>Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.</li> </ul>	
• This will not change under the Government's proposed amendments to Part IIIAAA.	
<ul> <li>The ADF has never been called out under Part IIIAAA to respond to riots and there is no expectation that they would be in future.</li> </ul>	
s22 Out of Scope	
-UNCLASSIFIED Page 3	



# If asked: will these amendments see the use of military forces in law enforcement roles or the imposition of martial law?

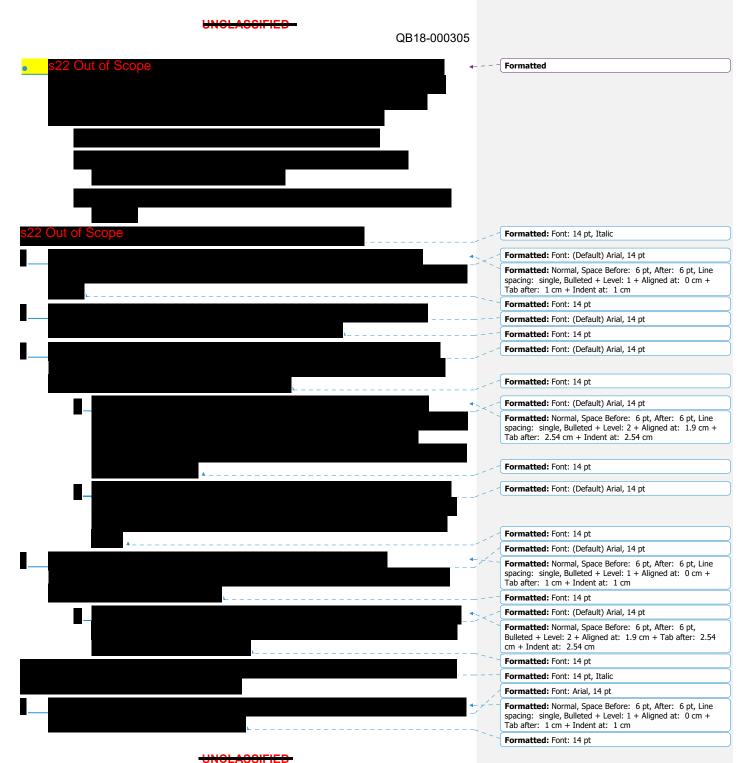
- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

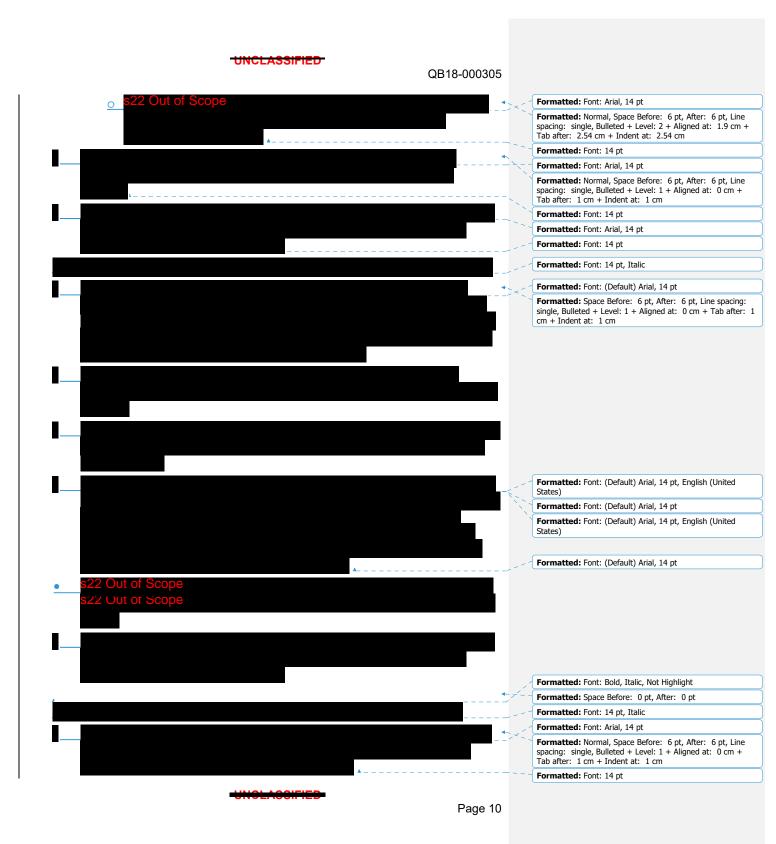


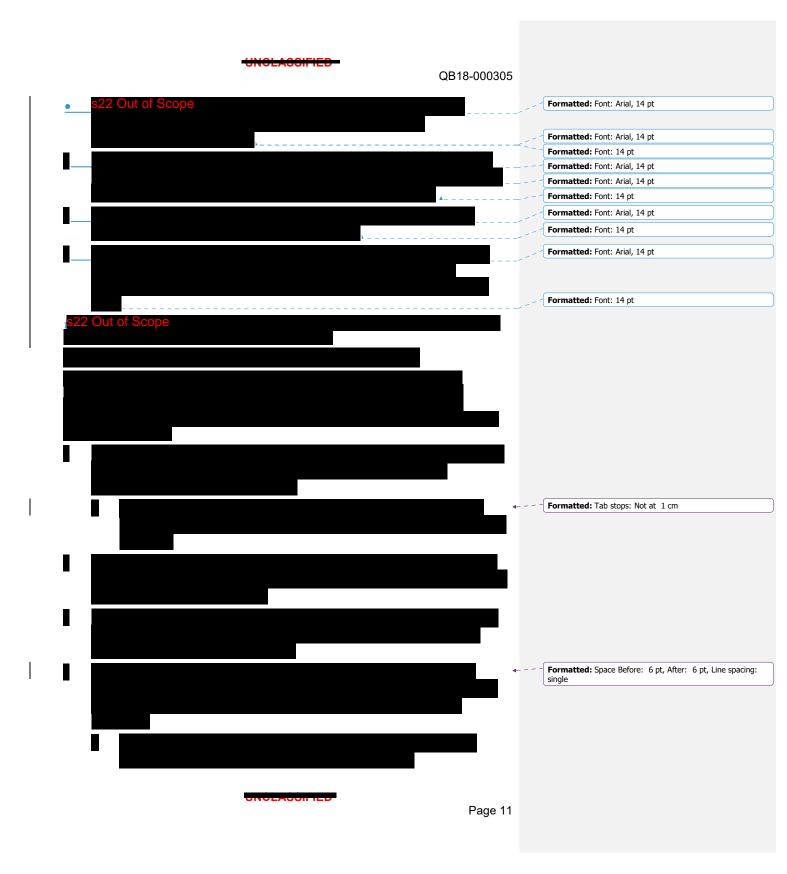


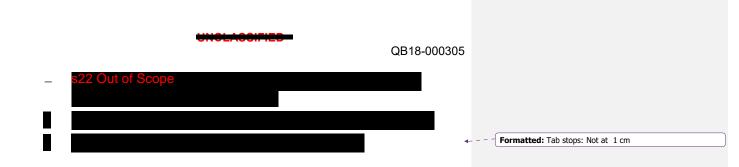
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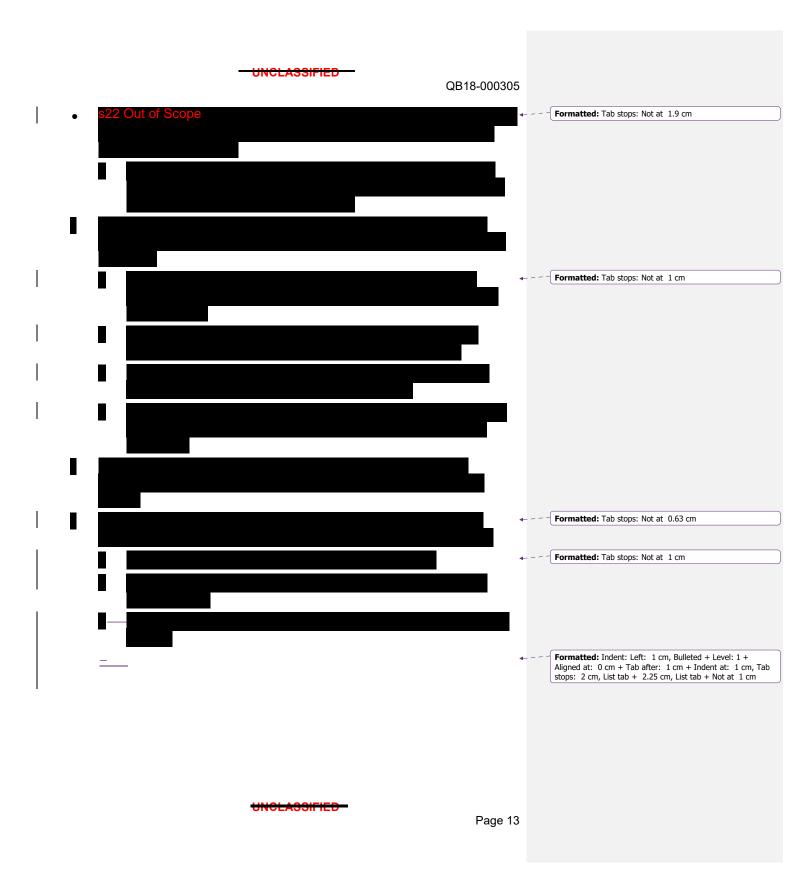




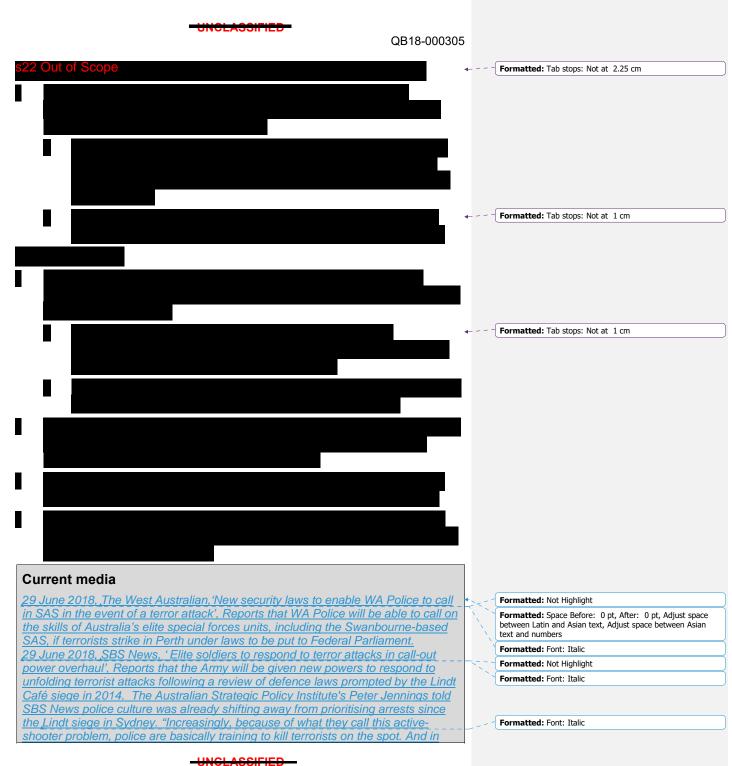








# QB18-000305



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hat sense, on that particular area, their culture is becoming more like the military culture," Mr Jennings said at the time,	Formatted: Highlight
29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".	<b>Formatted:</b> Highlight
29 June 2018, SMH, Editorial 'Lessons learnt from the Lindt Cafe siege', notes that there are also some who will worry that the federal government's proposed new aws will make deployment of the military domestically a routine act". "At the very east, niche military capabilities need to mesh more readily with police operations in severe terrorism incidents".	
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29 June 2018, The Australian, Editorial 'Putting boots on the ground', states it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need mproved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.	<b>Formatted:</b> Highlight
reports that barriers to the rapid deployment of special forces troops, military nardware and defence experts to deal with domestic terror threats will be removed under changes to be introduced in parliament today. 28 June 2018, Australian Financial Review, 'New laws extend military's powers to help state police' reports that soldiers will be able to be called out to help put out riots, with new powers intended to make it easier for the military to respond to error attacks going further than anticipated. The article states that the military will	
also have 'shoot to kill' powers but they could be used only when 'reasonable and necessary' to protect life – the same standard that applies to police.	
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necessary' to protect life – the same standard that applies to police. 28 June 2018, Herald Sun Editorial, 'SASR base needed'. The Editorial calls for the establishment of an ADF Tactical Assault Group (TAG) base in Victoria noting if a major incident unfolds, waiting for highly-trained ADF specialists to be flown in will not be an option". 28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier or police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their	
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QB18-000305

28 June 2018, The Age, 'Calling in the army easier in wake of siege' reports that the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced today.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

28 June 2018, SMH, 'New ADF engagement rules reflect lessons learnt from Lindt siege'. Article about Deborah Snow's book on the Lindt Café Siege. Article notes that "Canberra's decision to make it easier for the military to help the states in circumstances which include those that prevailed at the Lindt café rewrites the playbook. This is not to say the army should go in every time, or as a first resort. But it is vital that federal and state agencies are able to work seamlessly when presented with a crisis such as Lindt."

27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December 2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."

13 June 2018, The Australian, "ISIS links to tourist site car-bomb plot", reports a Pakistani-based extremist tried to persuade a British 'jihadi hunter' (posing as an extremist) to launch an attack during Ramadan at Melbourne's Queen Victoria Market and other locations, including St Paul's Cathedral. The extremist provided a 5000-page manual on how to attack the market with video instructions on making a bomb.

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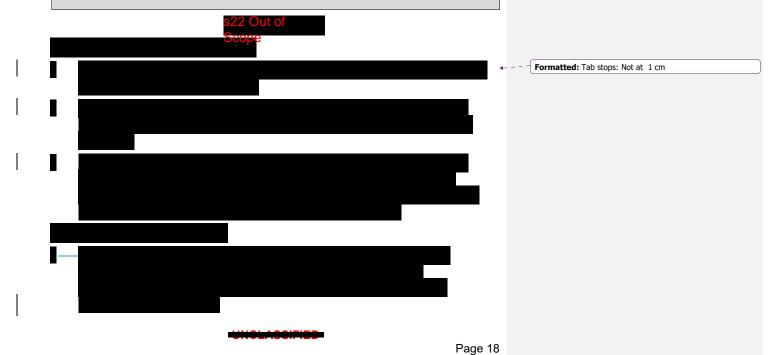
#### QB18-000305

25 May 2018, The Australian, "ASIO Director-General Duncan Lewis has warned of the unprecedented threat Australia faces with espionage and foreign interference. At senate estimates yesterday the Director-General also warned that Australia's terror threat level remained 'probable', stating that the consequence of the collapse of the Islamic State was the spread and return of foreign fighters and their families. ASIO believed about 110 Australians now in Syria or Iraq have fought or supported Islamic extremist groups.

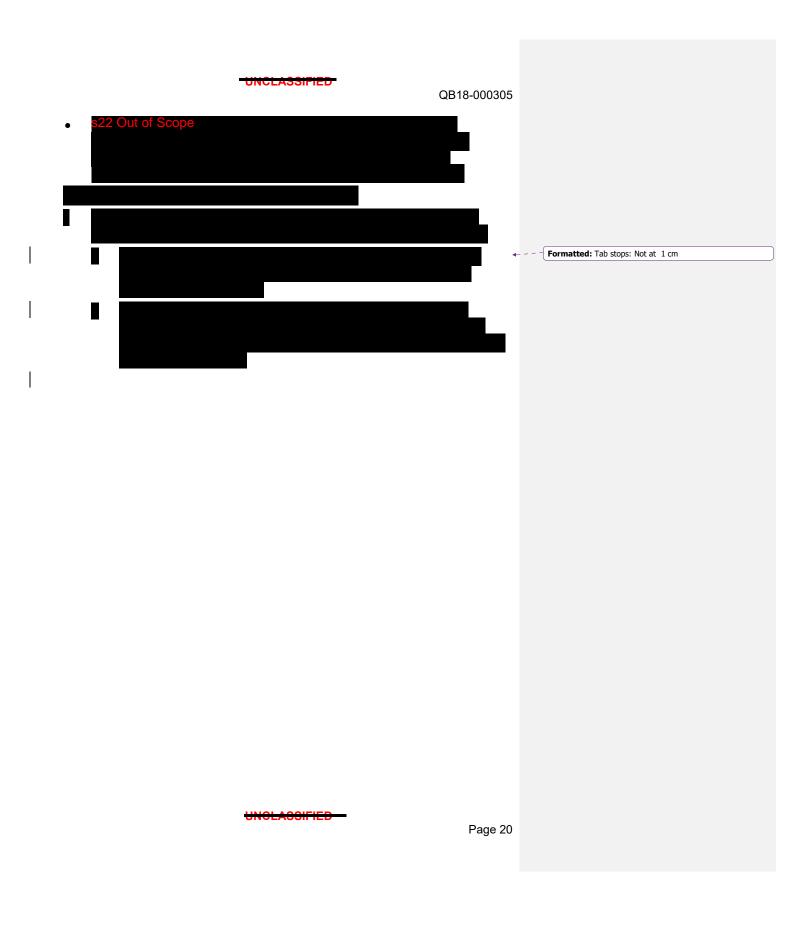
19 May 2018, The Australian Financial Review, 'Terrorism on our doorstep', reports on whole families being used as suicide cells in the recent terrorist attacks in Indonesia. It remarks on Australia's official development assistance to the region and regional cooperation due to the concern of foreign fighters returning. This includes Australia and the Association of South-East Asian Nations signing a cooperation agreement and Australia's support to the Philippines last year.

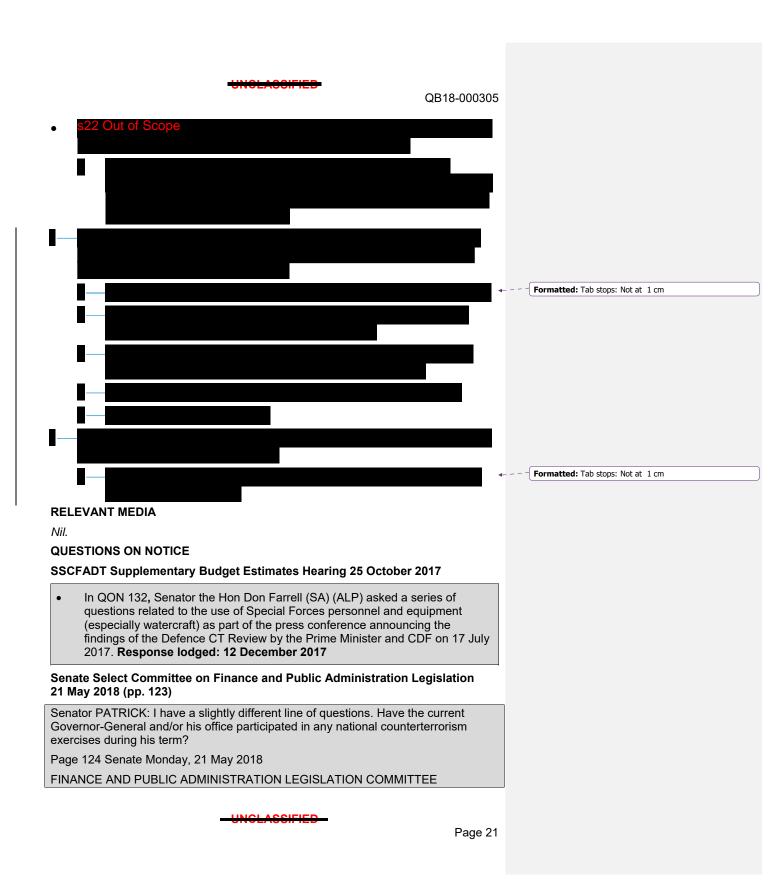
10 May 2018, The Herald Sun, "Army will help police" PM Malcolm Turnbull insists new laws to allow soldiers to be embedded with police to respond to terrorist attacks are only weeks away from being introduced to federal parliament.

9 May 2018, Radio interview with Prime Minister and Ben Fordham, 2GB, Prime Minister responds to questions about how far off the new legislation is that was announced in July last year. Prime Minister says it is only weeks away from being introduced, but we have got existing laws already in place.



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#### QB18-000305

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

### FREEDOM OF INFORMATION (FOI)

• Nil

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# QB18-000305

RECENT RELEVANT MINISTERIAL COMMENTS	
Senate Question Time 28 June 2018 (pp 51)	<b>Formatted:</b> Highlight
Senator MOLAN (New South Wales) (14:05): My question today is to the Minister for Defence, Senator Payne. Could the minister update the Senate on the steps taken by the Turnbull government to keep Australians safe?	> ( • • • • • • • • • • • • • • • • • •
Senator PAYNE (New South Wales—Minister for Defence) (14:06): I thank Senator Molan for his guestion. The No. 1 priority for the Turnbull government is the safety and security of Australians and Australia. In recent years terrorist attacks around the world and closer to home—for example, in Indonesia and the Philippines—have horrified us all. It's clear that terrorist tactics are evolving and, as we've also seen in	
the Middle East, some groups are capable of planning and conducting complex, well- coordinated attacks.	
As the threat evolves so must our approach to dealing with counterterrorism. Legislation being introduced by the government today will make it simpler for state and territory governments to call on the resources and expertise of the Australian Defence Force when they need it to deal with a terror related event or other acts of violence.	
The defence amendment bill gives effect to the recommendations of the defence counterterrorism review announced last year. These amendments are the most significant changes to ADF callout powers since part IIIAAA of the Defence Act was introduced.	
The changes have been made in close consultation with the states and territories. It is very important to note that state and territory police will remain the best first response to terrorist and other incidents and continue to have primary responsibility for protecting life and property in their state or territory.	
I also want to take this opportunity to acknowledge and thank the Australia-New Zealand CounterTerrorism Committee for its work in consulting with the states and territories so effectively and also to acknowledge and thank the state and territory governments for their active and constructive contributions to the consultation process on this extremely important matter of national security.	
The PRESIDENT: Senator Molan, a supplementary question.	
Senator MOLAN (New South Wales) (14:07): Could the minister advise the Senate on other measures the Turnbull government is taking to protect Australians from terrorism?	
Senator PAYNE (New South Wales—Minister for Defence) (14:08): As the bill has been in development, Defence has also made substantial progress to further enhance the very practical support that it provides to state and territory police through a range of engagements, including an enhanced counterterrorism liaison network, an increased and broadened program of specialist training activities and streamlined access for police to specialist defence facilities, such as rifle ranges.	
The bill itself will make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident; allow the government to preauthorise the ADF to respond to threats on land, at sea and in the air; simplify, expand and clarify the ADF's powers to search, seize and control movement during a violent or terrorist incident; and enhance the ability of the ADF to	

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# QB18-000305

respond to incidents occurring in more than one jurisdiction, which was an area of the act that needed amendment. (Time expired)
The PRESIDENT: Senator Molan, a final supplementary question.
Senator MOLAN (New South Wales) (14:09): Can the minister advise the Senate about what protections are built into the bill?
Senator PAYNE (New South Wales—Minister for Defence) (14:09): There will be times when the states and territories may seek defence assistance to deal with violent situations, as I've indicated, and the amendments in the bill will improve and enhance the existing legal framework for that.
Nevertheless, as I said, police remain the best first responders to terrorism incidents, and the bill makes no changes to the primary responsibility of the states and territories to protect lives and property in their jurisdictions. Nor are there any changes to the primacy of the civil power.
Civilian law enforcement agencies remain the paramount authority during a call-out. In particular, the amendments make it clear that when operating under a call-out order the Australian Defence Force must assist and cooperate with state and territory law enforcement agencies.
As far as reasonably practical, and even after it has been called out, the ADF will not act unless formally requested by the relevant state or territory police force. All levels of government recognise that our highest duty is to protect the Australian people.
House of Representatives Question Time 28 June 2018 (pp 64-65) Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?
Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.
To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.
The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself. That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state

authorities—usually state police—would need to consider the nature and scale of the

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<u>terrorist threat that they were facing and then consider whether there were any</u> <u>particular specialist ADF assets, skills or service personnel who could be brought to</u> bear to improve the situation and the response and help save Australian lives. For the benefit of members of the House: it's not particularly difficult, unfortunately, to

consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Nil		
Contact:	Sarah DriverHelen Thai, A/Director Domestic Security and Counter- Terrorism, 02 6265 9181	Min ID: QB18-0003305 Division: Strategic Policy
Cleared by:	Tom HamiltonSamantha Higgins, First Assistant Secretary Strategic Capability and Security Policy <u>02</u> 6265 5562 02 6265 1718	Created:12 April 2018 Updated: <u>297</u> June 2018
Consulted:	Military Strategic Commitments, Defence Legal, SOCOMD	

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# **Driver, Sarah MS**

From: Sent: To: Subject: Moore, Dominic MR Monday, 2 July 2018 12:57 PM Driver, Sarah MS; Thai, Helen MS FW: Part IIIAAA QB [<del>SEC=UNCLASSIFIED]</del>

### UNCLASSIFIED

I'm happy to respond to this....

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

From: Holder, Katherine LTCOL 1 Sent: Monday, 2 July 2018 12:40 PM To: Moore, Dominic MR <dominic.moore@defence.gov.au> Subject: RE: Part IIIAAA QB [SEC\_UNGLASSIFIED]

### **UNCLASSIFIED**

Hi Dom,

s42 Legal professional privilege

Happy to discuss,

Kath

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From: Moore, Dominic MR Sent: Monday, 2 July 2018 11:45 AM To: Holder, Katherine LTCOL 1; Lippis, Zoe MAJ; Wallis, Simon MR 2; Blake, Duncan WGCDR; 47F(1) Personal 1; Waddell, Jim COL; Aulmann, Chris CAPT - RAN Cc: SP&I-SP-SCSP-DS&CT Subject: Part IIIAAA QB [SEC=UNCLASSIFIED]

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MSC, Defence Legal,

We have just been assigned the Defence CT QB for review (it was lost in a group mailbox) – OMINDEF wants more info on how the amendments will enhance support for major events. I've redrafted accordingly (see question highlighted in green).

Grateful for review ASAP (the original due time was 1000 this morning).

Also late on Friday evening we added a number of questions based on some issues raised during FASSP's meeting with the **S47C(1)** (see questions highlighted in yellow) – apologies but the questions were only included at FASSP's request after everyone had left on Friday and as such we were unable to seek your review – grateful if you could please review now, time permitting.

Happy to discuss.

Cheers, Dom

**Dominic Moore** Senior Policy Officer, Domestic Security and Counter-Terrorism Strategic Policy Branch

Strategic Policy Division Department of Defence *Ph*: 02 6265 2781 *Location*: R1-1-A025 E: <u>dominic.moore@defence.gov.au</u>

# Driver, Sarah MS

From: Sent: To: Cc: Subject: Moore, Dominic MR Monday, 2 July 2018 1:30 PM Holder, Katherine LTCOL 1 Driver, Sarah MS; Thai, Helen MS FW: Part IIIAAA QB [<del>SEC=UNCLASSIFIED]</del>

Hi Kath,

s42 Legal professional privilege; s	47C(1) Deliberative pro	Cess	
			I

Happy to discuss further.

Cheers,

Dominic

### **Dominic Moore** Senior Policy Officer, Domestic Security and Counter-Terrorism Strategic Policy Branch

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Strategic Policy Division Department of Defence *Ph*: 02 6265 2781 *Location*: R1-1-A025 E: <u>dominic.moore@defence.gov.au</u>

# **Driver, Sarah MS**

From: Sent: To: Cc: Subject: Thai, Helen MS Monday, 2 July 2018 1:21 PM Moore, Dominic MR Driver, Sarah MS RE: Part IIIAAA QB

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Dom,

See below – please finesse as you see fit based on our discussion.

Helen

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

From: Moore, Dominic MR
Sent: Monday, 2 July 2018 1:09 PM
To: Driver, Sarah MS <sarah.driver@defence.gov.au>; Thai, Helen MS <helen.thai@defence.gov.au>
Subject: RE: Part IIIAAA QB

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Hi Kath,

s42 Legal professional privile	ege; s47C(1) Deliberative process	

From: Holder, Katherine LTCOL 1 Sent: Monday, 2 July 2018 12:40 PM To: Moore, Dominic MR <<u>dominic.moore@defence.gov.au</u>> Subject: RE: Part IIIAAA QB

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s47C(1) Deliberative process		

Happy to discuss.

Cheers, Dom

**Dominic Moore** Senior Policy Officer, Domestic Security and Counter-Terrorism Strategic Policy Branch

Strategic Policy Division Department of Defence Ph: 02 6265 2781 Location: R1-1-A025 E: dominic.moore@defence.gov.au

#### **Driver, Sarah MS**

From: Sent: To: Subject: Moore, Dominic MR Monday, 2 July 2018 1:09 PM Driver, Sarah MS; Thai, Helen MS RE: Part IIIAAA QB [<del>SEC=UNCLASSIFIED]</del>

#### Hi Kath,

s42 Legal professional privilege; s47C(1) Deliberative process	
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s47C(1) Deliberative process

Happy to discuss.

Cheers, Dom

**Dominic Moore** Senior Policy Officer, Domestic Security and Counter-Terrorism Strategic Policy Branch

Strategic Policy Division Department of Defence *Ph*: 02 6265 2781 *Location*: R1-1-A025 E: dominic.moore@defence.gov.au

#### **Driver, Sarah MS**

From:	Hamilton, Tom MR
Sent:	Thursday, 5 July 2018 6:00 PM
То:	Cunliffe, Mark MR; Gilmore, Peter MAJGEN; Findlay, Adam MAJGEN; Bilton, Gregory MAJGEN
Cc:	Dewar, Scott MR; Sawczak, Peter DR; Heath, Cameron MR; Chappell, Stephen GPCAPT; Geering, John MR; <mark>\$47F(1) Personal</mark> Higgins, Samantha MS; Driver, Sarah MS; Moore, Dominic MR; Thai, Helen MS
Subject:	IIIAAA - update <del>[SEC=PROTECTED]</del>
Attachments:	ENHANCED DEFENCE SUPPORT TO NAT.PDF; QB18-000305 5 July 2018 Update.docx; Task Tracker PART IIIAAA.DOCX; Question and Answers - Defence Call Out Bill 2018_20180704.docx

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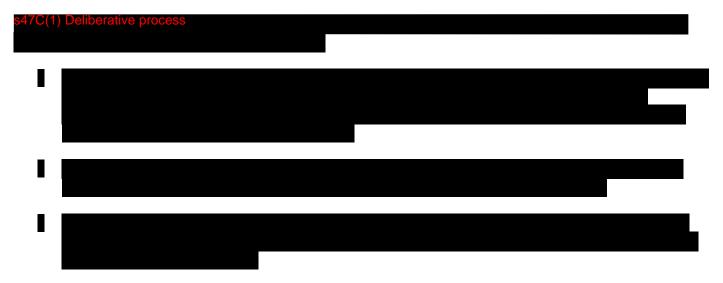
Colleagues

#### **IIIAAA update**

The CDF has received an invitation from the Senate Committee for Defence to make a submission to the committee inquiry – please note it is the Legal and Constitutional Affairs Committee. The final date for submissions is 31 July. **347C(1)** Deliberative process

On stakeholder engagement, our intention is to hold the roundtable in the week beginning 16 July. This will ensure that participants are briefed in time to inform their submissions before the Committee due date. As with the media, we will monitor the <u>Committee page</u> for published submissions.

The briefing to **S47C(1) Deliberative** yesterday went well. Her questions mostly related to the operational aspects of call out, as well as Defence measures to enhance its practical engagement with states and territories.



#### Regards

ΤH

# **Tom Hamilton** - First Assistant Secretary Strategic Policy

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#### E: tom.hamilton@defence.gov.au

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Exported by Rebecca K Perkins - 09:28 AM Thursday, 5 July 2018

Title:	ENHANCED DEFENCE SUPPORT TO NATIONAL COUNT- TERRORISM
MRN:	s22 Out of 04/07/2018 11:10:00 PM
To:	s33 International Relations
200	
Cc:	RR : Canberra
From:	Canberra
From File:	
EDRMS	
Files:	
<b>References:</b>	
<b>Response</b> :	Routine, Information Only
	UNCLASSIFIED

Defence Message Identifier: RAYLB 8330 1852325 DTG: 042310Z JUL 18 SIC: EAA

ARRANGEMENTS - PART IIIAAA BILL

FROM STRATEGIC POLICY DIVISION

#### SUMMARY

On 28 June 2018, the Australian Government introduced a Bill into Parliament to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism. **533 International Relations** 

END OF SUMMARY

On 28 June 2018, the Australian Government introduced the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism. The bill and

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#### s22 Out of

explanatory memorandum can be found at: https://www.legislation.gov.au/Details/C2018B00130



5. Should Posts require further information, please contact Ms Sarah Driver, Director - Domestic Security and Counter-Terrorism, Strategic Policy Division, Defence, on (+612) 6265 7216 or by email at sarah.driver@defence.gov.au .

6. The Attorney-General's Department was consulted in preparing this cable.

**\*\*TALKING POINTS BEGINS\*\*** 

The Australian Government has introduced the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.

The Bill has been developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.

States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

The Bill will amend Part IIIAAA of the Defence Act 1903 (Cth) which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.

In particular, the Bill will:

make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;

allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;

#### s22 Out of

simplify, expand and clarify the ADF's power to search, seize, and control movement during a violent or terrorist incident; and

enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.

These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister on 17 July 2017.

The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000 in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.

This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.

It is characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.

Under the amendments, states and territories will continue to have primary responsibility for protecting life and property in their jurisdictions.

State and territory police forces are well-equipped to respond to domestic terrorism incidents, and play a primary role as first responders within minutes of an attack.

However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.

The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.

Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.

The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.

They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.

The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.

Since the Prime Minister's announcement of the outcomes of the

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Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:

an enhanced counter-terrorism liaison network;

an increased and broadened program of support for specialist training activities; and

streamlined police access to Defence facilities such as rifle ranges.

These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories. If asked: will the legislation allow the ADF be called out to respond to riots?

This Bill is about making it easier for the ADF to help state and territory police respond to terrorist attacks, not rioting.

States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.

'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threatens the safety of Australians.

Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.

This will not change under the Government's proposed amendments to Part IIIAAA.

The ADF has never been called out under Part IIIAAA to respond to riots and there is no expectation that they would be in future. If asked: will these amendments see the use of military forces in law enforcement roles or the imposition of martial law?

The amendments will not result in the imposition of martial law.

Civilian law enforcement agencies remain the paramount authority during a call out.

The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.

They will also ensure that the ADF has the tools it needs to assist police in responding to such incidents.

States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.

As far as reasonably practicable and even after it has been called

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out, the ADF will not act unless formally requested to by the relevant state or territory police force.

The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments. If asked: in what kind of circumstances will the ADF be called out?

In deciding whether the ADF should be called out in response to a terrorist incident or other incident of significant violence, Commonwealth authorising Ministers will need to take into account the nature of the violence, and whether the ADF would be likely to enhance the state and territory response.

There are a range of circumstances in which the ADF may be called out. For example:

in response to unique types of violence, such as a chemical, biological, radiological or nuclear attack, to which the ADF maintains specialist response capabilities.

in response to terrorist incidents that are so widespread that law enforcement resources are in danger of being exhausted and ADF assistance is necessary to support the law enforcement response.

Contingent call out orders may also be made as part of the ADF security assistance for major events such as the Commonwealth Games, or G20.

Contingent call out orders pre-authorise the ADF to respond should specified circumstances arise. They are routinely made to protect major events from aviation threats.

When operating under a contingent call out order, the amendments will also now allow the ADF to be pre-authorised to respond to land and maritime based threats.

If asked: who retains command and control of an incident if the ADF is called out to assist?

States and territories have responsibility for domestic security in their respective jurisdictions.

As far as reasonably practicable, the ADF will not act unless formally requested by the relevant state or territory police force.

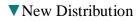
ADF members remain under ADF command and control for the duration of the call out. \*\*TALKING POINTS ENDS\*\*

text ends

Sent by: Prepared SP DIV by: Approved by: Topics: INTERNATIONAL SECURITY/Defence Policy

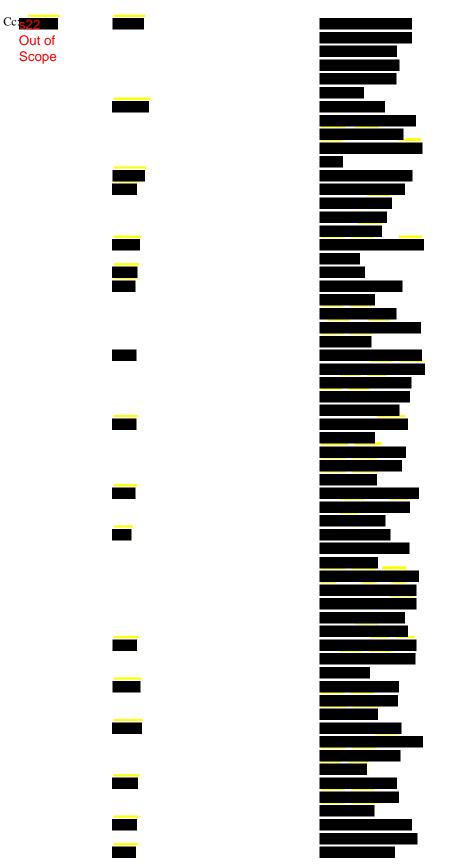
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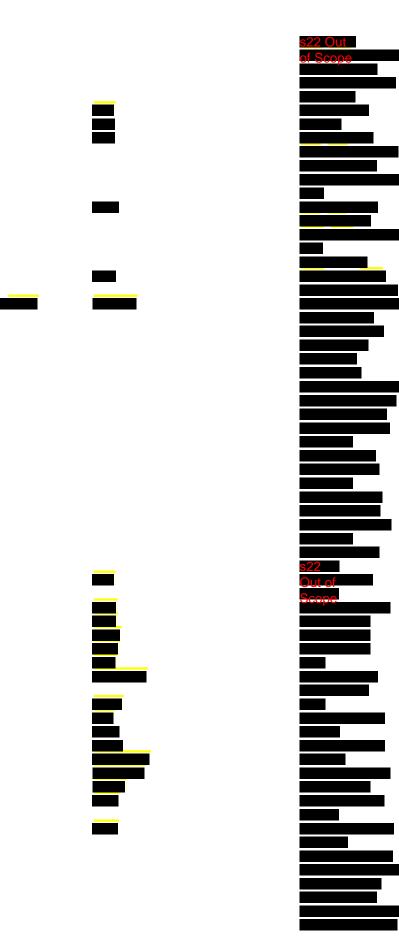
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### PART IIIAAA AMENDMENT BILL TASK TRACKER Last Updated: 1300 05/07/18

This document is set out in three sections:

- 1. Media Summary consolidates all key media reporting and Defence's action in response
- 2. Stakeholder Engagement Plan Task Tracker outlines steps to implement the Engagement Plan
- 3. Stakeholder Issues Tracker consolidates key questions raised during stakeholder briefings

### 1. MEDIA SUMMARY Part IIIAAA AMENDMENTS INTRODUCTION

Highlighted Sections have been reflected in the QTB Talking Points Updates Note: not all media articles are included in the media summary section of the QTB

Date	Media Article	Summary	Defence Action
29/6	Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'	Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor	Included in QTB Media Summary

		Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."	
29/6	The West Australian, 'New security laws to enable WA Police to call in SAS in the event of a terror attack'	Reports that WA Police will be able to call on the skills of Australia's elite special forces units, including the Swanbourne-based SAS, if terrorists strike in Perth under laws to be put to Federal Parliament.	Included in QTB Media Summary
29/6	SBS News, ' Elite soldiers to respond to terror attacks in call-out power overhaul'	Reports that the Army will be given new powers to respond to unfolding terrorist attacks following a review of defence laws prompted by the Lindt Café siege in 2014. The Australian Strategic Policy Institute's Peter Jennings told SBS News police culture was already shifting away from prioritising arrests since the Lindt siege in Sydney. "Increasingly, because of what they call this active-shooter problem, police are basically training to kill terrorists on the spot. And in that sense, on that particular area, their culture is becoming more like the military culture," Mr Jennings said at the time.	Included in QTB Media Summary
29/6	SMH, OpEd by Michael Pembroke 'Increasing militarisation of the police risks tragedy'	States that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".	Included in QTB Media Summary

29/6	SMH, Editorial 'Lessons learnt from the Lindt Cafe siege'	Notes that "there are also some who will worry that the federal government's proposed new laws will make deployment of the military domestically a routine act". "At the very least, niche military capabilities need to mesh more readily with police operations in severe terrorism incidents".	Included in QTB Media Summary
29/6	The Australian, Editorial 'Putting boots on the ground'	States that it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need improved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.	Included in QTB Media Summary
28/6	Australian Financial Review, 'New laws extend military's powers to help state police'	The article reports that soldiers will be able to be called out to help put out riots, with new powers intended to make it easier for the military to respond to terror attacks going further than anticipated. The article states that the military will also have 'shoot to kill' powers but they could be used only when 'reasonable and necessary' to protect life – the same standard that applies to police.	Included in QTB Media Summary TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB.
28/6	Radio National, Hamish MacDonald Interview with the Attorney-General	Questions included whether the outcome of the Lindt Café Siege would be different with the new powers (AG answered that is impossible to answer) and whether the ADF would be called out in response to riots (AG answered that it's almost inconceivable to consider what specialist assets the ADF could deploy in anything other than a type of terrorist scenario).	Not included in QTB Media Summary TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB.

28/6	Herald Sun, Editorial	The Editorial calls for the establishment of an	Included in QTB Media Summary
	'SASR base needed'	ADF Tactical Assault Group (TAG) base in	
		Victoria noting "if a major incident unfolds,	TPs in response to the call for a TAG Base
		waiting for highly-trained ADF specialists to be	in Victoria were been included in the 29/6
		flown in will not be an option".	QTB.
28/6	Dailey Telegraph, 'Military	The article reports that Australia's military can	Not included in QTB Media Summary
	to strike jihadists at home"	now be pre-emptively on patrol at sporting grand	
		finals, riots or a meeting of world leaders if	TPs on Defence's role in response to
		there's a credible terror threat under new laws	'riots' were included in the in the 28/6
		prompted by the review into Sydney's fatal Lindt	QTB.
		Café Siege. The changes meanyou could see	
		military present on the streets, in fast boats or in	An if asked question on major events was
		choppers to monitor the situation.	included in the 29/6 QTB.
28/6	ABC Radio Sydney,	Questions included; will we be seeing troops on	Not included in QTB Media Summary
	Breakfast with Wendy	the streets (the AG answered that there are three	
	Harmer and Robbie Buck,	main scenarios when the ADF would be called	TPs on Defence's role in response to
	Interview with the Attorney-	out – a prolonged incident, multiple	<mark>'riots' were included in the in the 28/6</mark>
	General	geographically spread incidents, and chemical or	QTB.
		biological incidents); would states always ask for	
		call out; would we see tanks on the street (AG	
		answered it would most likely be specialist	
		capabilities such as the TAG); and would the	
		ADF be called out in response to a riot (AG	
		answered he could not think of any situation	
		where this has occurred in Australian history)	
28/6	Channel 7, Sunrise,	Questions included; what extra powers will the	Not included in QTB Media Summary
	Interview with the Attorney-	Bill give the Army; who makes the decision to call	
	General	in the ADF; will the ADF be used as a standard	An if asked question on major events was
		part of major events such as the AFL Grand Final	included in the 29/6 QTB.
		(AG answered that it would not become	
		standard)	

28/6	Adelaide Advertiser.	The article reports that troops could be deployed	Included in QTB Media Summary
	'Troops could be guards for finals'	to protect football finals and other major sporting	An if asked substion on major events was
		events from terrorist threats, under an overhaul of Defence "callout" powers. Land, air and sea	An if asked question on major events was included in the 29/6 QB
		resources could be used to protect state events	
		and major national events, such as summits	
		attended by world leaders.	
28/6	ABC News Online,	The article reports that requests for military	Included in QTB Media Summary
	Shakeup of Defence 'call-	backup during terrorist attacks would become	
	out' powers will make it	easier under a shakeup of Defence "call-out"	
	easier for police to request	powers being introduced today into Federal	
	military backup during	Parliament. Quotes Neil James from the Australia	
	terror attacks	Defence Association who stated that he supports	
		the overhaul but believes today's legislation	
		simply formalises much of what already occurs.	
		"The whole concept of this goes back centuries	
		back in the days when they didn't have police	
		forces and governments used to call on the	
		military to do things that the police now do. All	
		this is doing is putting in a statute what is a	
28/6	Horold Sup (Militory terror	century-and-a-half of precedent."	Included in QTB Media Summary
20/0	Herald Sun, 'Military terror back-up'	The article reports that police will soon be able to	Included in QTB Media Summary
	back-up	call on crack SAS troops to help them deal with	
		terrorist attacks and civil unrest on home soil	
		under the biggest shakeup of Australia's defence	
		'call-out powers' in 20 years.	
28/6	The Age, 'Calling in the	The article reports that the military will more	Included in QTB Media Summary
20/0	army easier in wake of	easily be able to help police handle major	
	siege'	terrorist and other large-scale violent attacks in	
		Australia under laws being introduced today	
		Australia under laws being introduced today	

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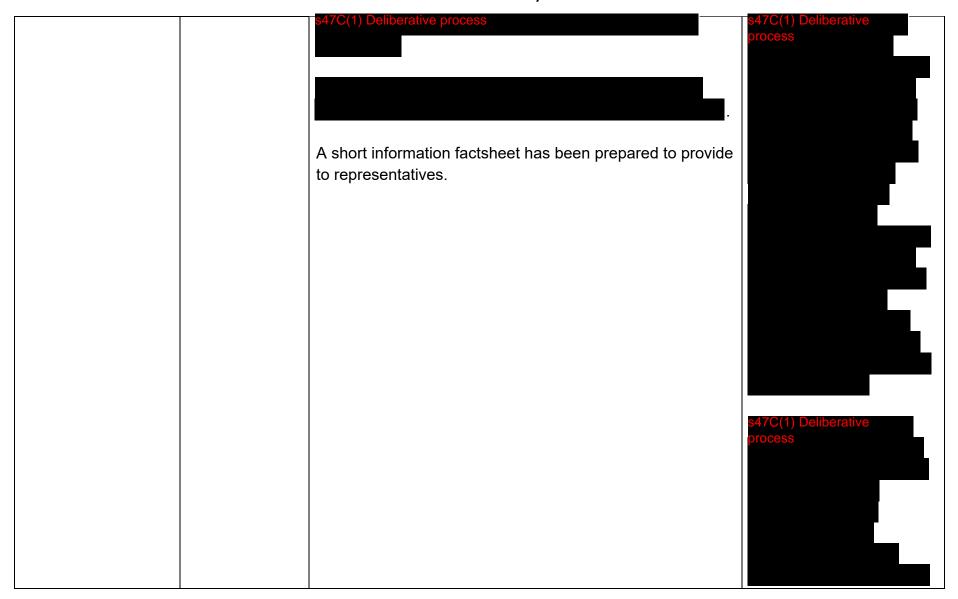
28/6	The Australian, 'Green	The article reports that barriers to the rapid	Included in QTB Media Summary
	light for SAS to bolster	deployment of special forces troops, military	
	terror response'	hardware and defence experts to deal with	
		domestic terror threats will be removed under	
		changes to be introduced in parliament today.	
28/6	ABC AM, Sabra Lane	Questions included; whether the ADF could be	Not included in QTB Media Summary
	Interview with Minister	easily called out using existing legislation	
	Payne	(Minister answered that we have processes in	
		place today which everyone is familiar with);	
		who would authorise the call-out and how quickly	
		do you anticipate decisions would be made;	
		would police and Defence become embroiled in	
		a turf war during an incident (Minister answered	
		that the legislation has been developed through	
		extensive consultations between police and the	
		ADF); and whether the amendments would have	
		made a difference during Lindt (Minister	
		answered it is not helpful to second guess).	
28/6	The Guardian, 'Military	The article reports that the Australian military	Not included in QTB Media Summary
	could be on call for sieges	could be called out to terrorist and riot events	
	and riots, attorney general	with greater ease and gain limited shoot-to-kill	
	says'	powers under legal changes being pushed by the	
		federal government.	
28/6	The Conversation, 'Military	The article reports that Australia's military forces	Not included in QTB Media Summary
	to get wider role in	will be given power to play a bigger part in	
	combatting terrorism'	dealing with terrorist incidents, under legislation	
		to be introduced into parliament on Thursday.	
		The bill makes it easier for states and territories	
		to seek help from the Australian Defence Force	
		(ADF) to respond to terrorist and other violent	
		occurrences, especially those that stretch the	
		capabilities of state forces.	

28/6	Sky News, AM Agenda with Kieran Gilbert, Interview with Attorney- General	Questions were mostly about whether the SAS would have deployed to resolve the Lindt Siege under the amendments (AG answered this was impossible to answer)	Not included in QTB Media Summary
28/6	Radio 6PR, Morning with Gareth Parker, interview with Attorney-General	Questions included; the types of scenarios when the ADF would be called out; would the ADF be placed under police command; and will there be any parliamentary opposition to the Bill.	Not included in QTB Media Summary
28/6	Channel 9, Today, Interview with the Attorney- General	Questions included; what the Army's role in counter-terrorism is and what the delineation between the role of police.	Not included in QTB Media Summary
28/6	ABC News Breakfast, Michael Rowland interview with the Attorney-General	Questions included what the new threshold is; would it have changed the response to the Lindt Siege and would police have operational control of incidents.	Not included in Media Summary QB (28/6)
27/6	The Canberra Times, 'Law change to make military call-out easier in terror incidents'	The military will more easily be able to help police handle major terrorist and other large- scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.	Included in QTB Media Summary

#### 2. ENGAGEMENT PLAN FOR THE DEFENCE AMENDMENT (CALL OUT OF THE AUSTRALIAN DEFENCE FORCE) BILL TASK TRACKER

ΑCTIVITY	LEAD	DESCRIPTION	STATUS
	AGENCY		
		Phase 1 – Formal announcements	
Announcement of the introduction of the Bill	AGO	AG announced the introduction of the Bill on the morning of 28 June 2018. Defence has provided OMINDEF with draft speaking	28/06
Briefing to	OMINDEF/AGO	points and joint media release. The OMINDEF and AGO will make arrangements for	28/06 and ongoing
Parliamentarians		briefings to Parliamentarians. AGD has provided Ministers with a debate folder on the amendments.	
	Phase	2 – Targeted engagements at introduction of the Bill	
Targeted Departmental briefing	Defence (FASSP/HMSC) AGD	Defence and AGD Senior Officials (SES 2) are offering briefings by email and follow up calls to key stakeholder groups as soon as practicable after the introduction of the Bill.	s47C(1) Deliberative process
		Defence (with AGD support) is offering to brief the s47C(1) Deliberative process	

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			s47C consultations
Provision of whole- of-government talking points to states and territories	AGD	AGD (Anna Harmer) provided states and territories with an embargoed copy of the whole-of-government talking points on the Bill on 27 June through the ANZCTC Legal Issues Working Group. The talking points were provided to a wider ANZCTC distribution list on 28 June following introduction.	27/6 and 28/9
Phase	e 3 – Dialogue du	ring the passage of the Bill through the Winter Recess of	Parliament
Private Ministerial briefings to key stakeholders	OMINDEF/AGO	S47C(1) Deliberative process Defence/AGD have provided both Offices with extensive communications material including Q&A Brief, whole-of- government talking points and an information factsheet. Further material can be provided if requested.	Offices to action (Defence to support)
Departmental-led stakeholder roundtable discussions	Defence/AGD	Departmental-led roundtable discussions with broader stakeholder groups will be held to ensure broad understanding of the facts during the public discourse, as the amendments proceed through Parliament.	Defence and AGD met on 4 July to plan out the way forward for the roundtables.

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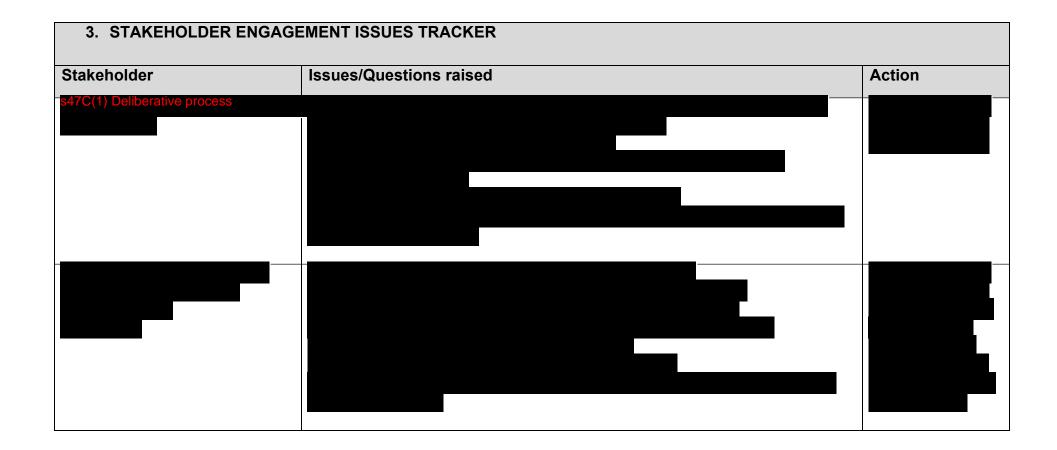
		The stakeholders would be divided into a <b>Defence Policy</b>	
		Stream and a Legal Stream.	
Defence Policy	Defence (with	This roundtable would include representatives from the key	Defence is making
Stream Roundtable	AGD support)	national security, defence and strategic academic	arrangements for the
		institutions and think tanks. This group represents the key	<b>Defence Policy Stream</b>
		communicators in national security that would be likely to	roundtable, tentatively
		provide media and other expert commentary on the	scheduled for the week of
		reforms. It is therefore vital that they understand the	16-20 July. Intent is to
		amendments, their genesis, rationale, and purpose. It is	send out invitations on 6
		also important to explain what the amendments are not.	July. AGD will support this
			roundtable.
		Organisations that will be invited to this roundtable include:	
		a. s47C(1) Deliberative process	
Stakeholder	AGD (with	s47C(1) Deliberative process	AGD is making
Roundtable (Legal	Defence		arrangements for the
Stream)	support)		Legal Stream Roundtable.
			Defence will provide
			support.

		s47C(1) Deliberative process a. s47C(1) Deliberative process	
		s47C(1) Deliberative process	s47C(1) Deliberative process
MINDEF Opinion Editorial (OpEd)	OMINDEF		
Long-form article	Defence	s47C(1) Deliberative process	As required, OMINDEF to advise
Continued engagement with states and territories	Defence/AGD	Defence, AGD and the Centre for Counter-Terrorism Coordination will continue to engage with states and territories on the amendments, including updating the	Ongoing

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		relevant guidance material (e.g. the National Counter-	
		Terrorism Handbook) to make the amendments	
		operational.	
Support to	Defence/AGD	Defence and AGD will continue to support OMINDEF and	Defence and AGD will
parliamentary		the AGO as the Bill progresses through Parliament,	prepare packs for
debates, committee		including the provision of relevant material such as debate	committee hearings when
hearings, or media		briefing packs, support to media enquiries and senior	scheduled and for Spring
queries on the		officials to appear at committee hearings.	Sittings.
amendments.			The Bill has been referred
			to the Senate Legal and
			<b>Constitutional Affairs</b>
			Committee. The
			Committee is now
			accepting submissions,
			with a closing date of 31 July 2018. <mark>s47C(1)</mark> Deliberative
			process The due
			date for the Committees
			report is 3 September
			2018.
			AGD will liaise with the
			Committee Secretariat to
			ascertain timings for
			hearings.



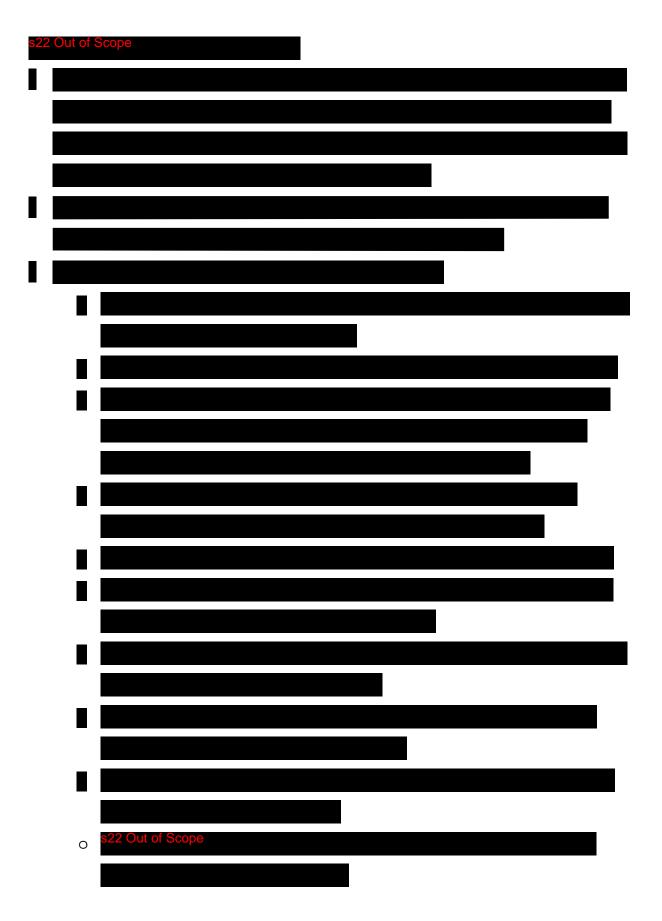
# **Questions and Answers**

# Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

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6. Will amendments to Part IIIAAA result in increased military presence or the imposition martial law?
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## **General questions & rationale**

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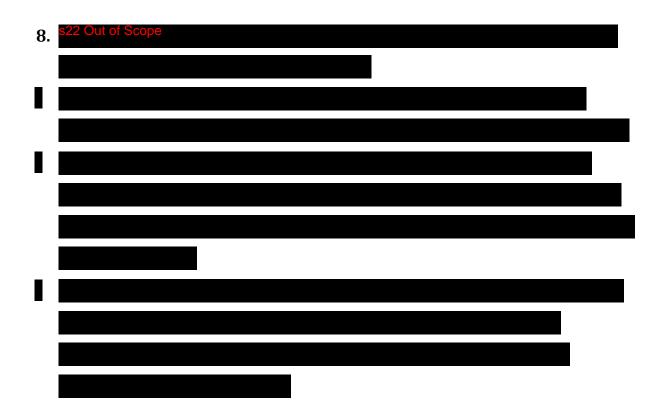


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## 6. Will amendments to Part IIIAAA result in increased military presence or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain paramount during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the powers it needs to assist police in quickly responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory police forces.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently relocate or pre-position forces in anticipation of providing security support to state and territory law enforcement, and will retain this ability under the amendments.

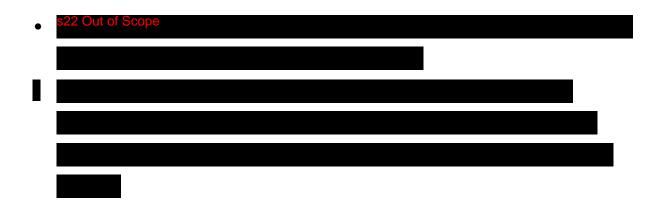
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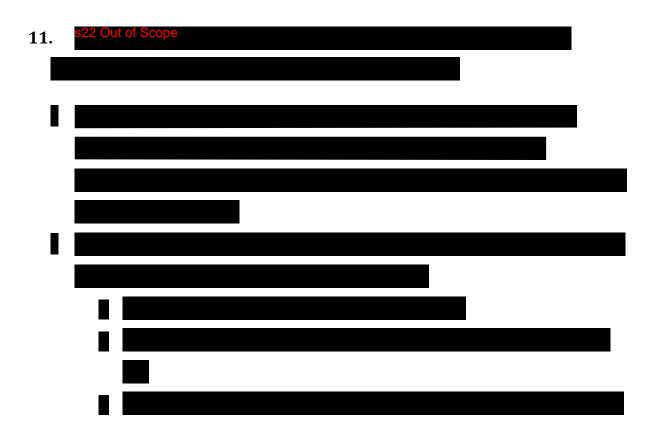


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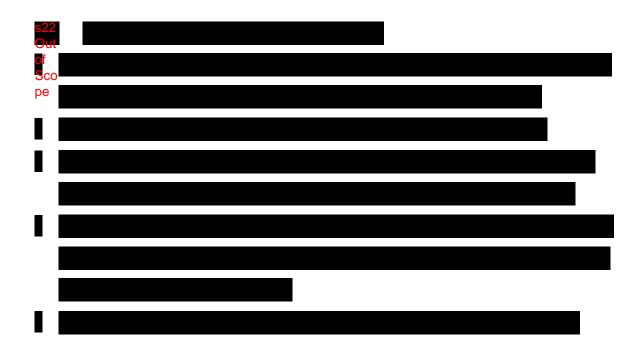
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## Key terms & concepts

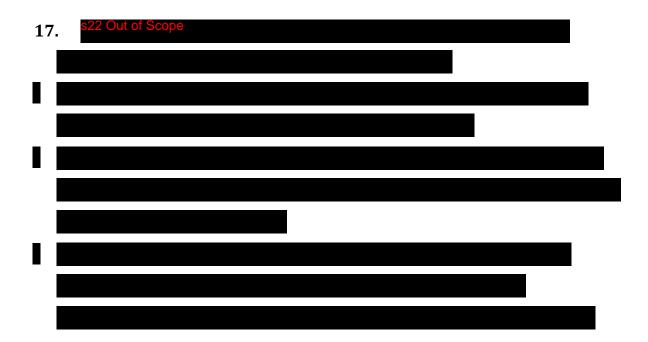




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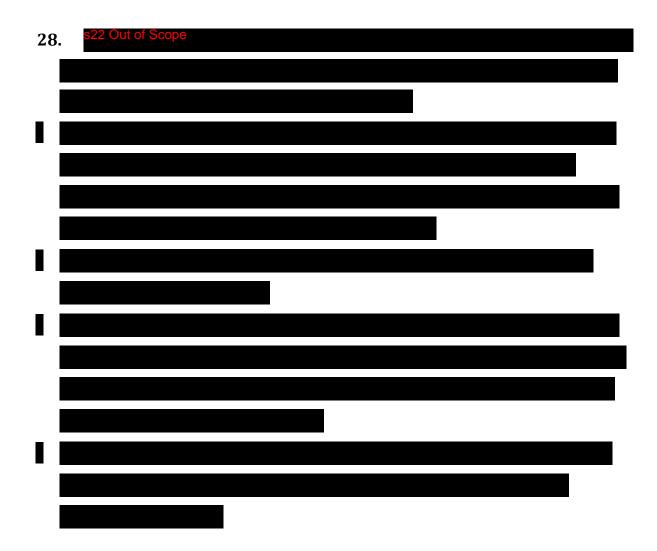
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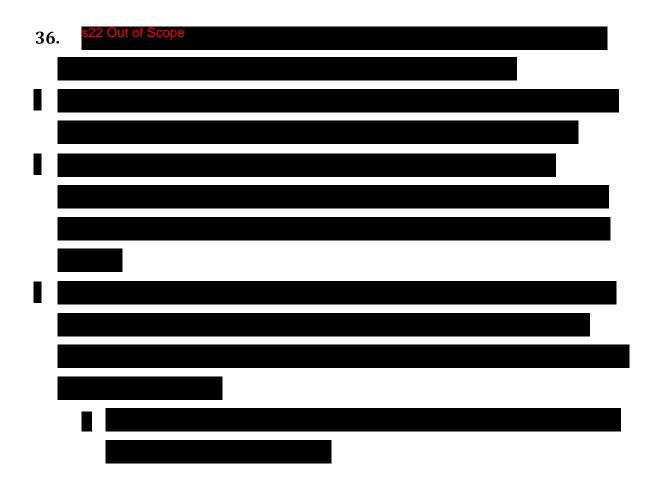
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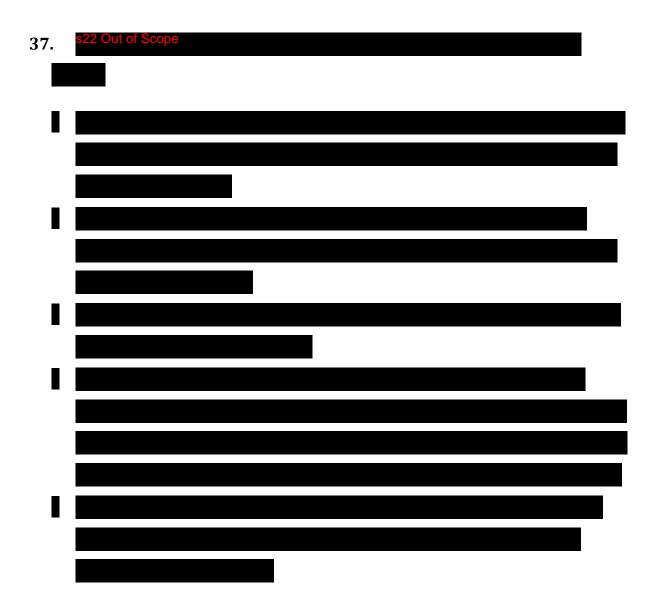
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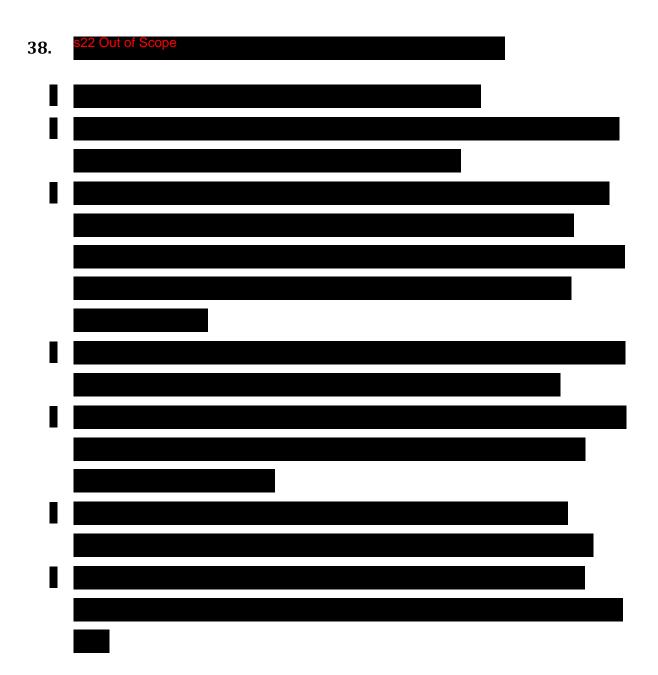
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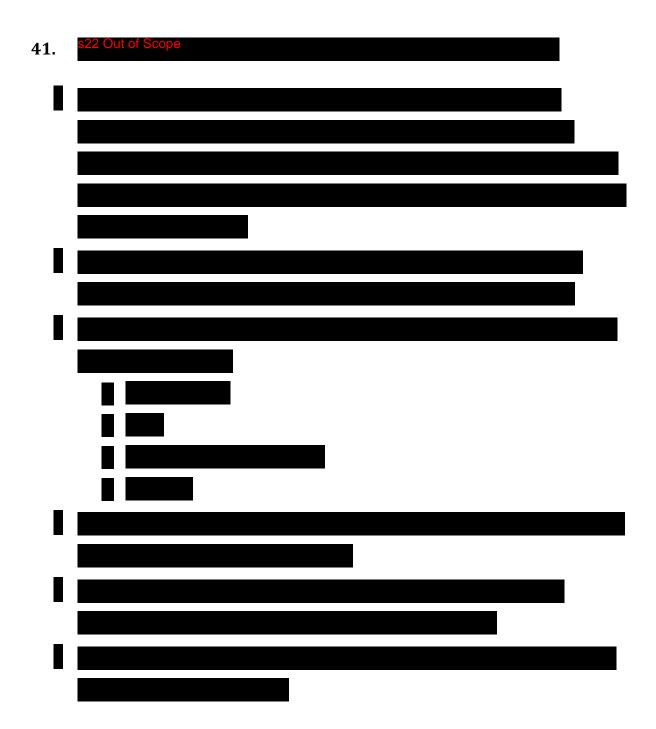






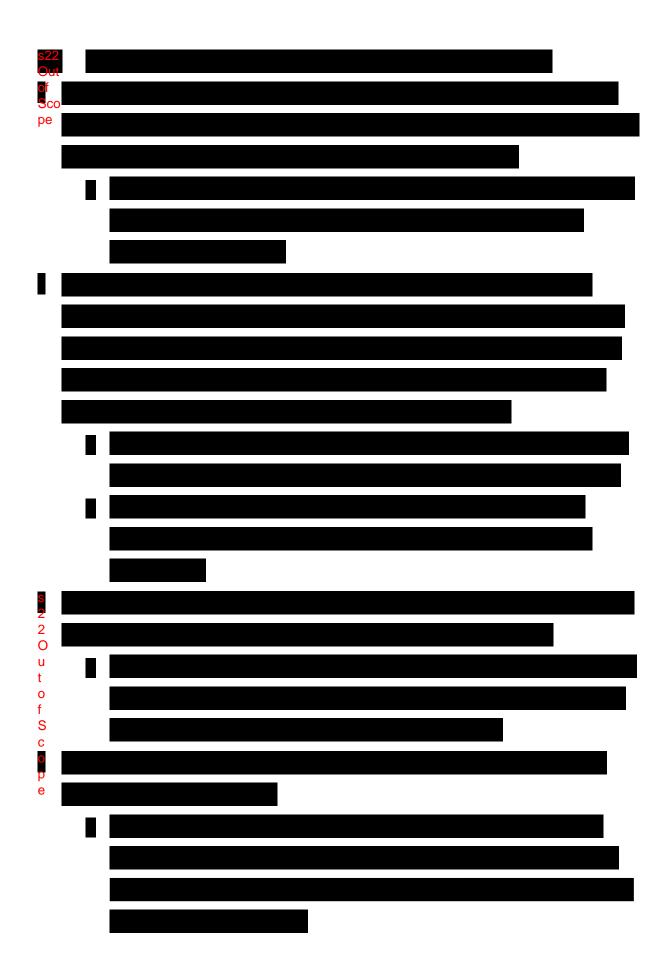


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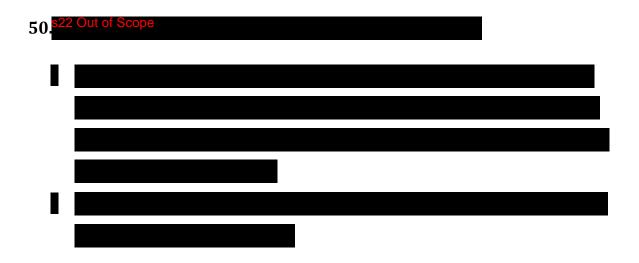
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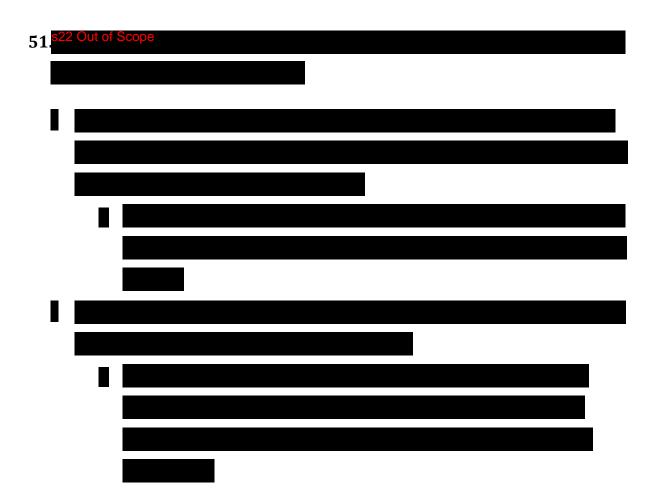
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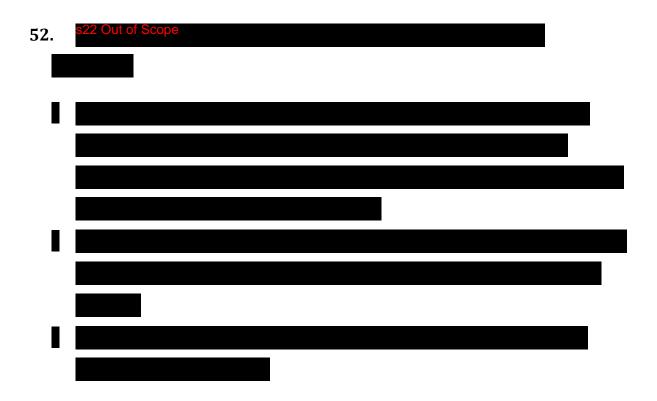
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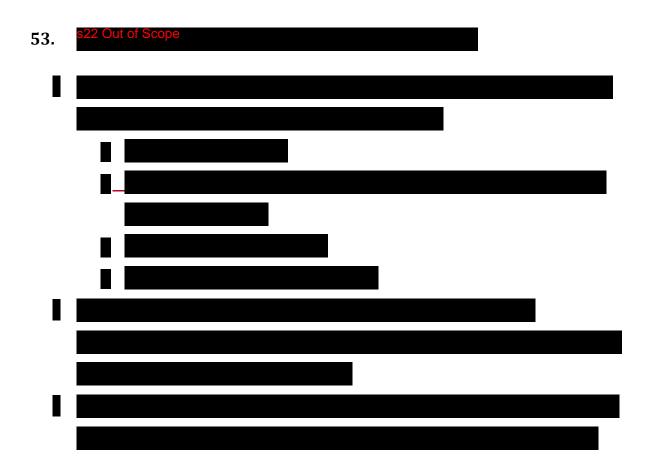
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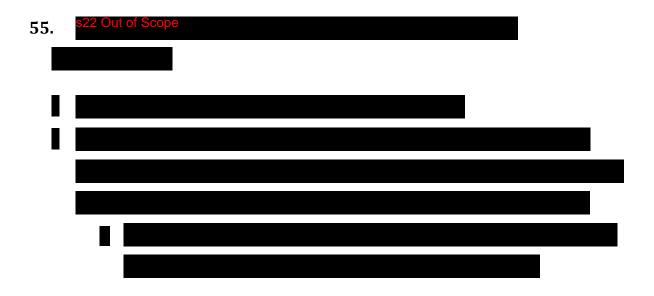




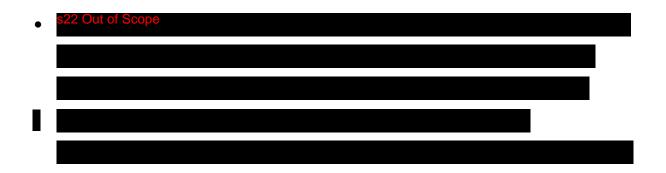


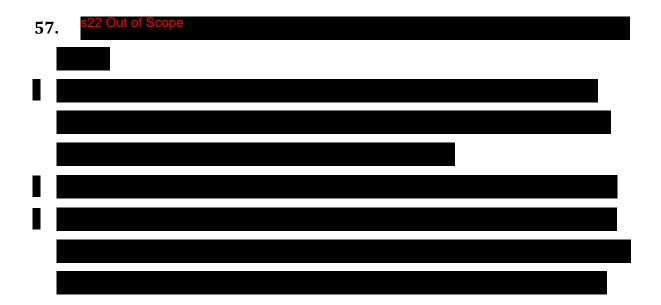






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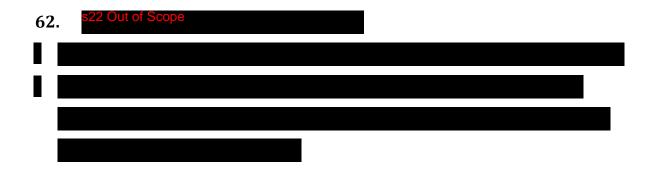




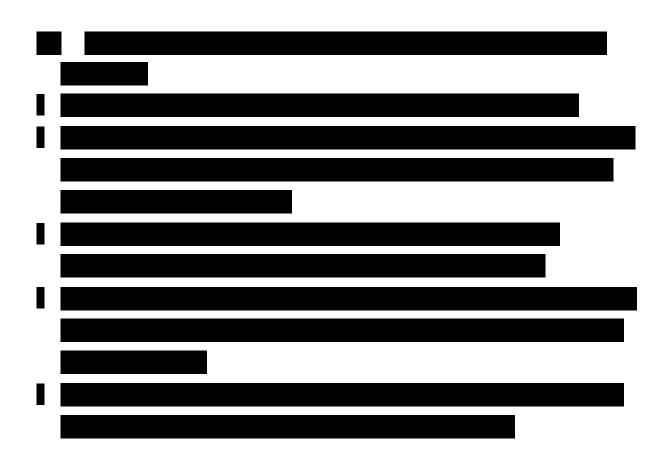
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	DEFENCE ROLE IN COUNTER-TERRORISM	
ISSUE		
Enhanced defence support to domestic counter-terrorism, and Defence regional and global counter-terrorism contributions.		
HEADLINE RESPONSE		
Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018		
[Handling note: these are whole of Government talking points for the Part IIIAAA Amendment Bill]		
•	The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.	
•	The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 has been developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.	
	<ul> <li>States and territories will retain the primary responsibility to protect life and property in their jurisdictions.</li> </ul>	
	<ul> <li>State and territory police are the best first response to domestic threats or acts of violence.</li> </ul>	
•	The Bill will amend Part IIIAAA of the <i>Defence Act 1903</i> which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.	
٠	In particular, the Bill will:	
	<ul> <li>make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;</li> </ul>	
	<ul> <li>allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;</li> </ul>	
	<ul> <li>simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and</li> </ul>	
	<ul> <li>enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.</li> </ul>	
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- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- Modern terrorist attacks are characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- State and territory governments continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.

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- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.

## If asked: Will the legislation allow the ADF be called out to respond to riots?

- This Bill is about making it easier for the ADF to help state and territory police respond to <u>acts of significant violence</u>, <u>such as</u> <u>terrorism</u>terrorist attacks.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threatens the safety of Australians.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The ADF has never been called out under Part IIIAAA to respond to riots and there is no expectation that they would be in future.

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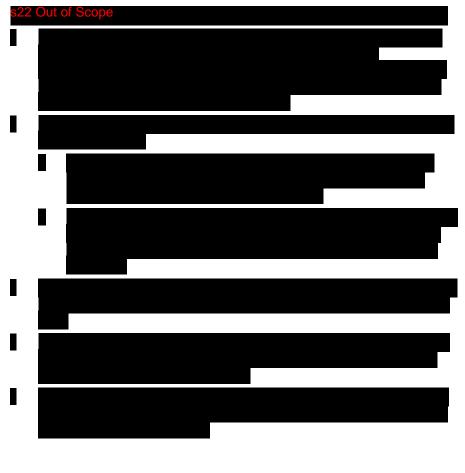
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∎ If a	sked: will these amendments see the use of the military in law	Formatted: Not Highlight
	orcement roles, or the imposition of martial law?	
•	The amendments will not result in the imposition of martial law. Civilian law enforcement agencies remain the paramount authority	
-	during a call out.	
•	The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to <u>incidents of</u> <u>significant violence, including</u> terrorist incidents.	
•	They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.	
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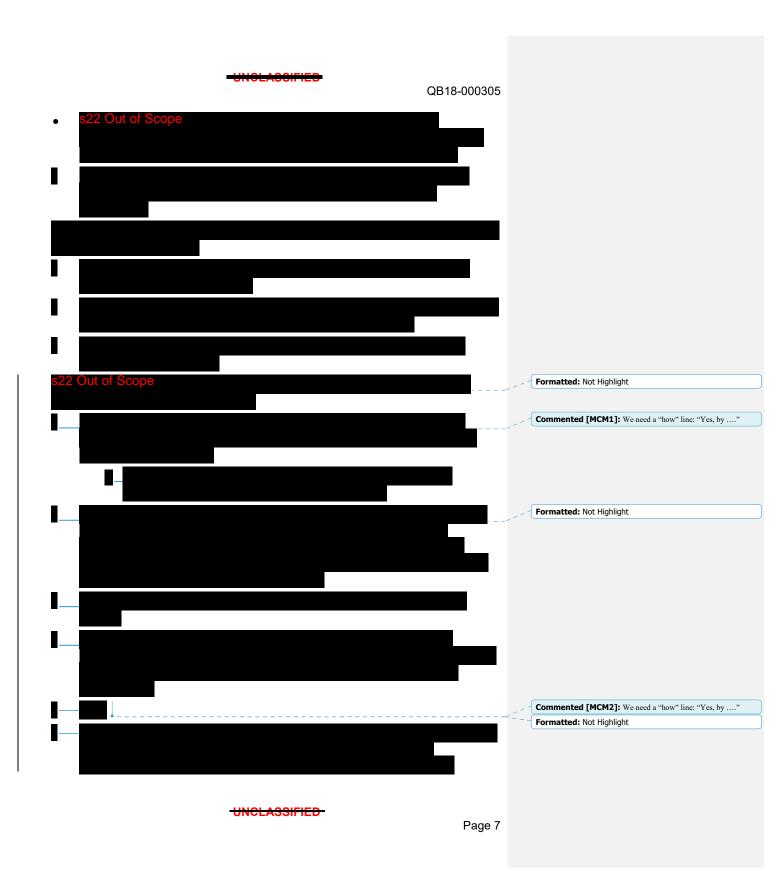
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- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.

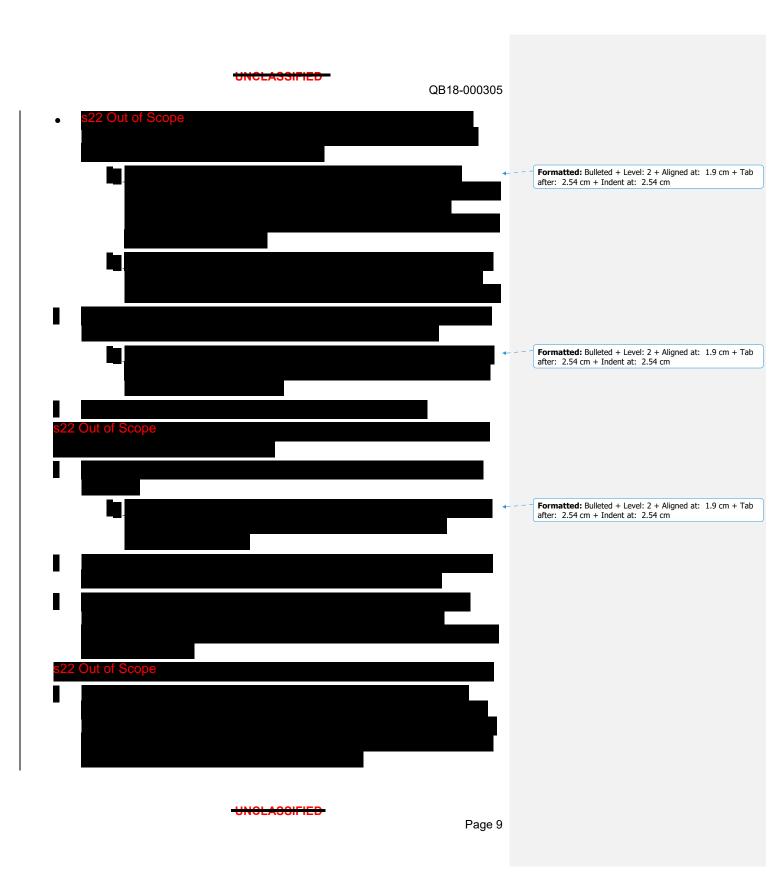


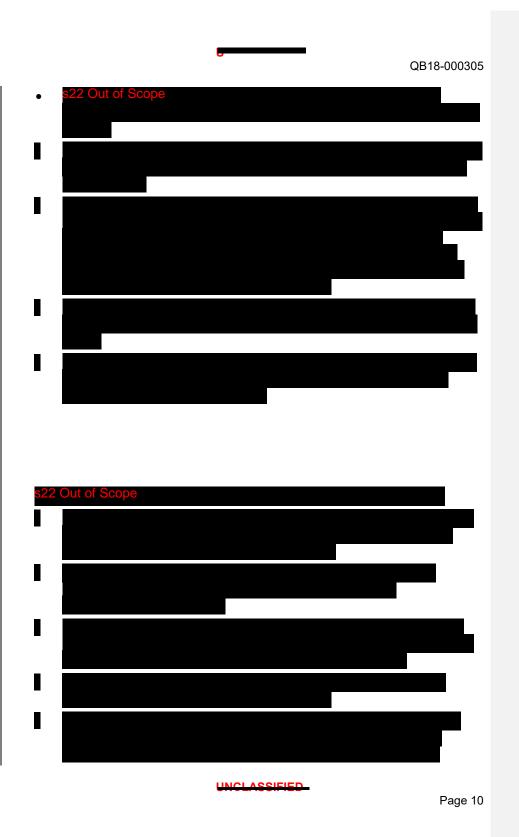
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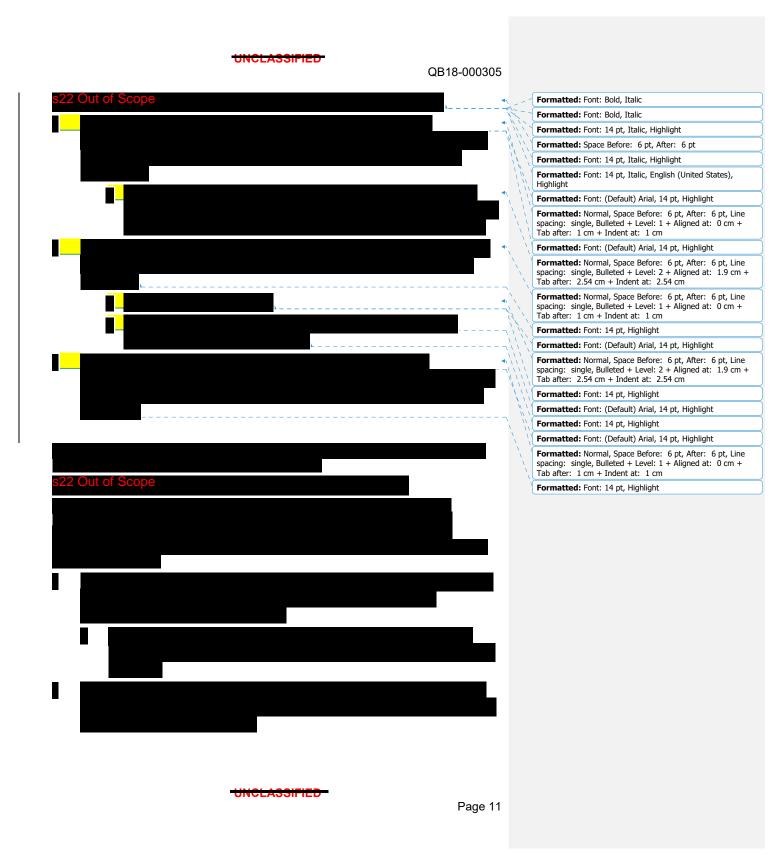


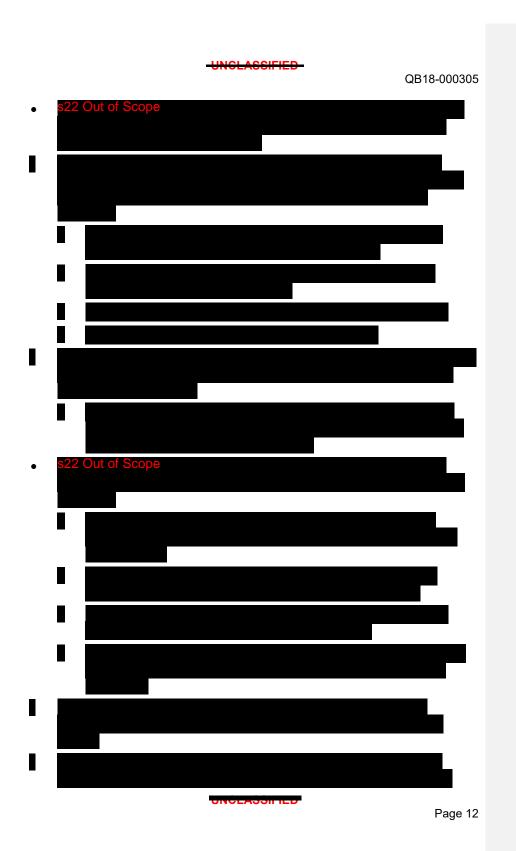


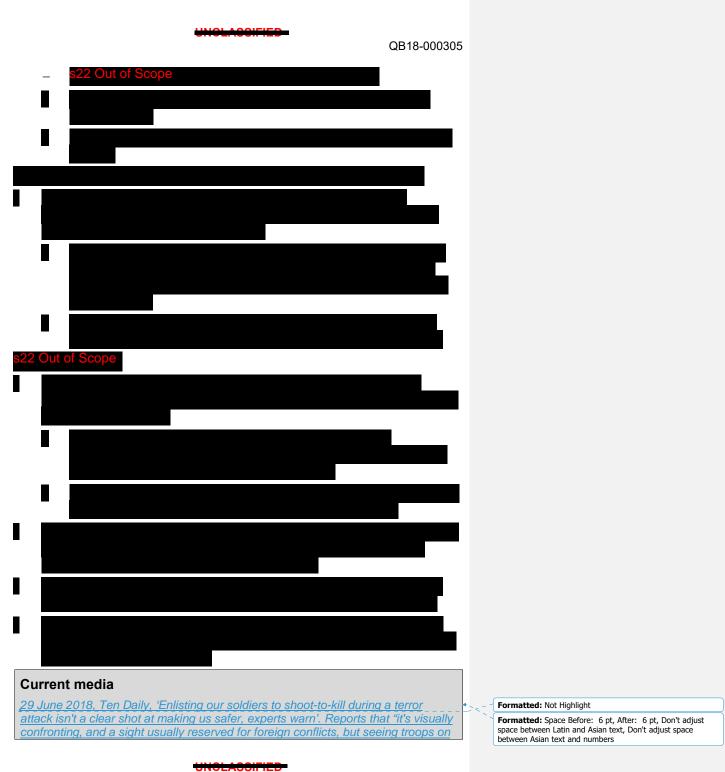
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the streets of Australia may become more common""The military should be able to be called out to protect the Commonwealth it was clear after the Sydney	Formatted: Font: (Default) Arial, 12 pt, Italic, Not Highlight
siege that we needed legislation that clearly sets out how the defence force would	Formatted: Not Highlight
be used in these sorts of situations," said counter terrorism law expert Dr Kieran	
Hardy from Griffith University". "Professor Michael Head from Western Sydney	
University's Faculty of Law argues Australia does not need more national security	
powers, given they were already significantly increased in 2000 and 2006."	
29 June 2018, The West Australian, 'New security laws to enable WA Police to call in SAS in the event of a terror attack', Reports that WA Police will be able to call on the skills of Australia's elite special forces units, including the Swanbourne-based SAS, if terrorists strike in Perth under laws to be put to Federal Parliament.	
29 June 2018, SBS News, 'Elite soldiers to respond to terror attacks in call-out	Formatted: Font: 12 pt, Not Highlight
power overhaul', Reports that the Army will be given new powers to respond to	Formatted: Not Highlight
unfolding terrorist attacks following a review of defence laws prompted by the Lindt Café siege in 2014. The Australian Strategic Policy Institute's Peter Jennings told	
SBS News police culture was already shifting away from prioritising arrests since	
the Lindt siege in Sydney. "Increasingly, because of what they call this active-	Formatted: Font: Italic, Not Highlight
shooter problem, police are basically training to kill terrorists on the spot. And in	Formatted: Not Highlight
that sense, on that particular area, their culture is becoming more like the military	
culture," Mr Jennings said at the time.	
29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent	
attacks, are welcome [and] this is better than greater militarisation of the police".	
29 June 2018, SMH, Editorial 'Lessons learnt from the Lindt Cafe siege', notes that "there are also some who will worry that the federal government's proposed new laws will make deployment of the military domestically a routine act". "At the very least, niche military capabilities need to mesh more readily with police operations in severe terrorism incidents".	
29 June 2018, The Australian, Editorial 'Putting boots on the ground', states it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need improved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.	
28 June 2018, The Australian, 'Green light for SAS to bolster terror response' reports that barriers to the rapid deployment of special forces troops, military hardware and defence experts to deal with domestic terror threats will be removed under changes to be introduced in parliament today.	
28 June 2018, Australian Financial Review, 'New laws extend military's powers to help state police' reports that soldiers will be able to be called out to help put out riots, with new powers intended to make it easier for the military to respond to terror attacks going further than anticipated. The article states that the military will also have 'shoot to kill' powers but they could be used only when 'reasonable and necessary' to protect life – the same standard that applies to police.	
28 June 2018, Herald Sun Editorial, 'SASR base needed'. The Editorial calls for the establishment of an ADF Tactical Assault Group (TAG) base in Victoria noting	<b>Formatted:</b> Not Highlight
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*"if a major incident unfolds, waiting for highly-trained ADF specialists to be flown in will not be an option".* 

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

28 June 2018, Adelaide Advertiser, 'Troops could be guards for finals', reports that 'troops could be deployed to protect football finals and other major sporting events from terrorist threats' under the proposed amendments.

28 June 2018, multiple other news articles on Part IIIAAA Bill, including mentioning of use of ADF to respond to riots.

28 June 2018, The Age, 'Calling in the army easier in wake of siege' reports that the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced today.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

28 June 2018, SMH, 'New ADF engagement rules reflect lessons learnt from Lindt siege'. Article about Deborah Snow's book on the Lindt Café Siege. Article notes that "Canberra's decision to make it easier for the military to help the states in circumstances which include those that prevailed at the Lindt café rewrites the playbook. This is not to say the army should go in every time, or as a first resort. But it is vital that federal and state agencies are able to work seamlessly when presented with a crisis such as Lindt."

27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December

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2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."

25 May 2018, The Australian, "ASIO Director-General Duncan Lewis has warned of the unprecedented threat Australia faces with espionage and foreign interference. At senate estimates yesterday the Director-General also warned that Australia's terror threat level remained 'probable', stating that the consequence of the collapse of the Islamic State was the spread and return of foreign fighters and their families. ASIO believed about 110 Australians now in Syria or Iraq have fought or supported Islamic extremist groups.

19 May 2018, The Australian Financial Review, 'Terrorism on our doorstep', reports on whole families being used as suicide cells in the recent terrorist attacks in Indonesia. It remarks on Australia's official development assistance to the region and regional cooperation due to the concern of foreign fighters returning. This includes Australia and the Association of South-East Asian Nations signing a cooperation agreement and Australia's support to the Philippines last year.

10 May 2018, The Herald Sun, "Army will help police" PM Malcolm Turnbull insists new laws to allow soldiers to be embedded with police to respond to terrorist attacks are only weeks away from being introduced to federal parliament.

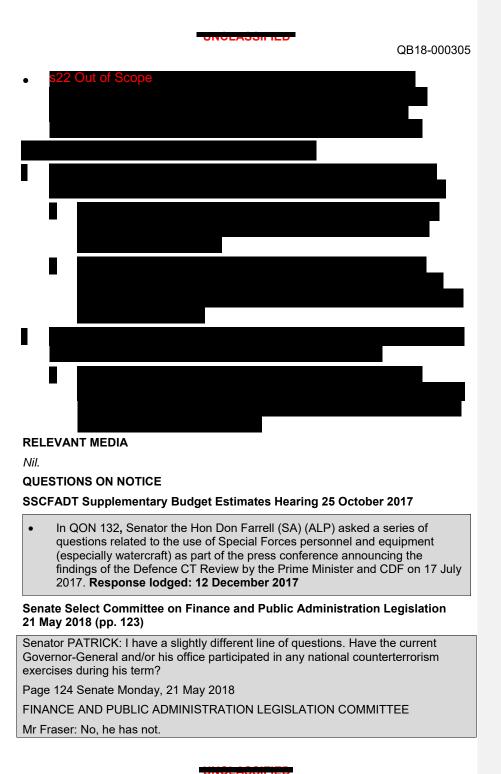
9 May 2018, Radio interview with Prime Minister and Ben Fordham, 2GB, Prime Minister responds to questions about how far off the new legislation is that was announced in July last year. Prime Minister says it is only weeks away from being introduced, but we have got existing laws already in place.



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# BACKGROUND

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Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

### FREEDOM OF INFORMATION (FOI)

Nil

### **RECENT RELEVANT MINISTERIAL COMMENTS**

### Senate Question Time 28 June 2018 (pp 51)

Senator MOLAN (New South Wales) (14:05): My question today is to the Minister for Defence, Senator Payne. Could the minister update the Senate on the steps taken by the Turnbull government to keep Australians safe?

Senator PAYNE (New South Wales—Minister for Defence) (14:06): I thank Senator Molan for his question. The No. 1 priority for the Turnbull government is the safety and security of Australians and Australia. In recent years terrorist attacks around the world and closer to home—for example, in Indonesia and the Philippines—have horrified us all. It's clear that terrorist tactics are evolving and, as we've also seen in the Middle East, some groups are capable of planning and conducting complex, well-coordinated attacks.

As the threat evolves so must our approach to dealing with counterterrorism. Legislation being introduced by the government today will make it simpler for state and territory governments to call on the resources and expertise of the Australian Defence Force when they need it to deal with a terror related event or other acts of violence.

The defence amendment bill gives effect to the recommendations of the defence counterterrorism review announced last year. These amendments are the most

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significant changes to ADF callout powers since part IIIAAA of the Defence Act was introduced.

The changes have been made in close consultation with the states and territories. It is very important to note that state and territory police will remain the best first response to terrorist and other incidents and continue to have primary responsibility for protecting life and property in their state or territory.

I also want to take this opportunity to acknowledge and thank the Australia-New Zealand CounterTerrorism Committee for its work in consulting with the states and territories so effectively and also to acknowledge and thank the state and territory governments for their active and constructive contributions to the consultation process on this extremely important matter of national security.

The PRESIDENT: Senator Molan, a supplementary question.

Senator MOLAN (New South Wales) (14:07): Could the minister advise the Senate on other measures the Turnbull government is taking to protect Australians from terrorism?

Senator PAYNE (New South Wales—Minister for Defence) (14:08): As the bill has been in development, Defence has also made substantial progress to further enhance the very practical support that it provides to state and territory police through a range of engagements, including an enhanced counterterrorism liaison network, an increased and broadened program of specialist training activities and streamlined access for police to specialist defence facilities, such as rifle ranges.

The bill itself will make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident; allow the government to preauthorise the ADF to respond to threats on land, at sea and in the air; simplify, expand and clarify the ADF's powers to search, seize and control movement during a violent or terrorist incident; and enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction, which was an area of the act that needed amendment. (Time expired)

The PRESIDENT: Senator Molan, a final supplementary question.

Senator MOLAN (New South Wales) (14:09): Can the minister advise the Senate about what protections are built into the bill?

Senator PAYNE (New South Wales—Minister for Defence) (14:09): There will be times when the states and territories may seek defence assistance to deal with violent situations, as I've indicated, and the amendments in the bill will improve and enhance the existing legal framework for that.

Nevertheless, as I said, police remain the best first responders to terrorism incidents, and the bill makes no changes to the primary responsibility of the states and territories to protect lives and property in their jurisdictions. Nor are there any changes to the primacy of the civil power.

Civilian law enforcement agencies remain the paramount authority during a call-out. In particular, the amendments make it clear that when operating under a call-out order the Australian Defence Force must assist and cooperate with state and territory law enforcement agencies.

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As far as reasonably practical, and even after it has been called out, the ADF will not act unless formally requested by the relevant state or territory police force. All levels of government recognise that our highest duty is to protect the Australian people.

### House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself. That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer,

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the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Contact:	Sarah Driver, Director Domestic Security and Counter-Terrorism, 02 6265 9181	Min ID: QB18-0003305 Division: Strategic Policy	
Cleared by:	Tom Hamilton, First Assistant Secretary Strategic Policy 02 6265 5562	Created:12 April 2018 Updated: <u>52129 JuneJuly</u> 2018	<b>Formatted:</b> Not Highlight
Consulted:	Military Strategic Commitments, Defence Legal <del>, SOCOMD</del>		

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# **Driver, Sarah MS**

From:	Shrimpton, Rebecca MS
Sent:	Thursday, 19 July 2018 2:19 PM
To:	Hamilton, Tom MR
Cc:	Driver, Sarah MS; Moore, Dominic MR; Thai, Helen MS
Subject:	FW: Draft email to Chris McNicol <del>[DLM=For Official-Use-Only]</del>
Attachments:	Task Tracker PART IIIAAA - updated 19 July 2018.docx

### For Official Uce Only

•	s47C(1) Deliberative process
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Tom,

Dom drafted the below email for you to send to Chris McNicol updating on this morning's briefing to \$47C(1) on the Part IIIAAA amendment Bill. The Task Tracker has been updated.

Cheers,

Bec

Hi Chris,

As discussed yesterday, this morning Gus Gilmore and I, alongside AGD (Julia Galluccio) and Defence Legal (CDRE Pete Bowers) briefed **\$47C(1) Deliberative process** on the Part IIIAAA amendment Bill. The meeting went well, with both **\$47C(1)** expressing support for the amendments.

We had a good discussion about the rationale for the amendments and how the new provisions would operate in practice.

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Gus and I were well prepared to respond to these questions, which have been captured in the Task Tracker (attached). Questions included:

Defence is working with AGD to refine the Q&A document to ensure all questions raised by stakeholders are addressed, including those raised by the Opposition yesterday.

Regards,

Tom

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# PART IIIAAA AMENDMENT BILL TASK TRACKER Last Updated: 1400 19/07/18

This document is set out in three sections:

- 1. Media Summary consolidates all key media reporting and Defence's action in response
- 2. Stakeholder Engagement Plan Task Tracker outlines steps to implement the Engagement Plan
- 3. Stakeholder Issues Tracker consolidates key questions raised during stakeholder briefings

# 1. MEDIA SUMMARY Part IIIAAA AMENDMENTS INTRODUCTION

Highlighted Sections have been reflected in the QTB Talking Points Updates Note: not all media articles are included in the media summary section of the QTB

Date	Media Article	Summary	Defence Action
29/6	Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'	Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor	Included in QTB Media Summary

		Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."	
29/6	The West Australian, 'New security laws to enable WA Police to call in SAS in the event of a terror attack'	Reports that WA Police will be able to call on the skills of Australia's elite special forces units, including the Swanbourne-based SAS, if terrorists strike in Perth under laws to be put to Federal Parliament.	Included in QTB Media Summary
29/6	SBS News, ' Elite soldiers to respond to terror attacks in call-out power overhaul'	Reports that the Army will be given new powers to respond to unfolding terrorist attacks following a review of defence laws prompted by the Lindt Café siege in 2014. The Australian Strategic Policy Institute's Peter Jennings told SBS News police culture was already shifting away from prioritising arrests since the Lindt siege in Sydney. "Increasingly, because of what they call this active-shooter problem, police are basically training to kill terrorists on the spot. And in that sense, on that particular area, their culture is becoming more like the military culture," Mr Jennings said at the time.	Included in QTB Media Summary
29/6	SMH, OpEd by Michael Pembroke 'Increasing militarisation of the police risks tragedy'	States that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".	Included in QTB Media Summary

29/6	SMH, Editorial 'Lessons learnt from the Lindt Cafe siege'	Notes that "there are also some who will worry that the federal government's proposed new laws will make deployment of the military domestically a routine act". "At the very least, niche military capabilities need to mesh more readily with police operations in severe terrorism incidents".	Included in QTB Media Summary
29/6	The Australian, Editorial 'Putting boots on the ground'	States that it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need improved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.	Included in QTB Media Summary
28/6	Australian Financial Review, 'New laws extend military's powers to help state police'	The article reports that soldiers will be able to be called out to help put out riots, with new powers intended to make it easier for the military to respond to terror attacks going further than anticipated. The article states that the military will also have 'shoot to kill' powers but they could be used only when 'reasonable and necessary' to protect life – the same standard that applies to police.	Included in QTB Media Summary TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB.
28/6	Radio National, Hamish MacDonald Interview with the Attorney-General	Questions included whether the outcome of the Lindt Café Siege would be different with the new powers (AG answered that is impossible to answer) and whether the ADF would be called out in response to riots (AG answered that it's almost inconceivable to consider what specialist assets the ADF could deploy in anything other than a type of terrorist scenario).	Not included in QTB Media Summary TPs on Defence's role in response to 'riots' were included in the in the 28/6 QTB.

28/6	Herald Sun, Editorial	The Editorial calls for the establishment of an	Included in QTB Media Summary
	'SASR base needed'	ADF Tactical Assault Group (TAG) base in	
		Victoria noting "if a major incident unfolds,	TPs in response to the call for a TAG Base
		waiting for highly-trained ADF specialists to be	in Victoria were been included in the 29/6
		flown in will not be an option".	QTB.
28/6	Dailey Telegraph, 'Military	The article reports that Australia's military can	Not included in QTB Media Summary
	to strike jihadists at home"	now be pre-emptively on patrol at sporting grand	
		finals, riots or a meeting of world leaders if	TPs on Defence's role in response to
		there's a credible terror threat under new laws	'riots' were included in the in the 28/6
		prompted by the review into Sydney's fatal Lindt	QTB.
		Café Siege. The changes meanyou could see	
		military present on the streets, in fast boats or in	An 'if asked' question on major events was
		choppers to monitor the situation.	included in the 29/6 QTB.
28/6	ABC Radio Sydney,	Questions included; will we be seeing troops on	Not included in QTB Media Summary
	Breakfast with Wendy	the streets (the AG answered that there are three	
	Harmer and Robbie Buck,	main scenarios when the ADF would be called	TPs on Defence's role in response to
	Interview with the Attorney-	out – a prolonged incident, multiple	'riots' were included in the in the 28/6
	General	geographically spread incidents, and chemical or	QTB.
		biological incidents); would states always ask for	
		call out; would we see tanks on the street (AG	
		answered it would most likely be specialist	
		capabilities such as the TAG); and would the	
		ADF be called out in response to a riot (AG	
		answered he could not think of any situation	
		where this has occurred in Australian history)	
28/6	Channel 7, Sunrise,	Questions included; what extra powers will the	Not included in QTB Media Summary
	Interview with the Attorney-	Bill give the Army; who makes the decision to call	
	General	in the ADF; will the ADF be used as a standard	An 'if asked' question on major events was
		part of major events such as the AFL Grand Final	included in the 29/6 QTB.
		(AG answered that it would not become	
		standard)	

28/6	Adelaide Advertiser. 'Troops could be guards	The article reports that troops could be deployed to protect football finals and other major sporting	Included in QTB Media Summary
	for finals'	events from terrorist threats, under an overhaul of Defence "callout" powers. Land, air and sea resources could be used to protect state events and major national events, such as summits attended by world leaders.	An 'if asked' question on major events was included in the 29/6 QB
28/6	ABC News Online, Shakeup of Defence 'call- out' powers will make it easier for police to request military backup during terror attacks	The article reports that requests for military backup during terrorist attacks would become easier under a shakeup of Defence "call-out" powers being introduced today into Federal Parliament. Quotes Neil James from the Australia Defence Association who stated that he supports the overhaul but believes today's legislation simply formalises much of what already occurs. "The whole concept of this goes back centuries back in the days when they didn't have police forces and governments used to call on the military to do things that the police now do. All this is doing is putting in a statute what is a century-and-a-half of precedent."	Included in QTB Media Summary
28/6	Herald Sun, 'Military terror back-up'	The article reports that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.	Included in QTB Media Summary
28/6	The Age, 'Calling in the army easier in wake of siege'	The article reports that the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced today	Included in QTB Media Summary

28/6	The Australian, 'Green	The article reports that barriers to the rapid	Included in QTB Media Summary
	light for SAS to bolster	deployment of special forces troops, military	
	terror response'	hardware and defence experts to deal with	
		domestic terror threats will be removed under	
		changes to be introduced in parliament today.	
28/6	ABC AM, Sabra Lane	Questions included; whether the ADF could be	Not included in QTB Media Summary
	Interview with Minister	easily called out using existing legislation	
	Payne	(Minister answered that we have processes in	
		place today which everyone is familiar with);	
		who would authorise the call-out and how quickly	
		do you anticipate decisions would be made;	
		would police and Defence become embroiled in	
		a turf war during an incident (Minister answered	
		that the legislation has been developed through	
		extensive consultations between police and the	
		ADF); and whether the amendments would have	
		made a difference during Lindt (Minister	
		answered it is not helpful to second guess).	
28/6	The Guardian, 'Military	The article reports that the Australian military	Not included in QTB Media Summary
	could be on call for sieges	could be called out to terrorist and riot events	
	and riots, attorney general	with greater ease and gain limited shoot-to-kill	
	says'	powers under legal changes being pushed by the	
		federal government.	
28/6	The Conversation, 'Military	The article reports that Australia's military forces	Not included in QTB Media Summary
	to get wider role in	will be given power to play a bigger part in	
	combatting terrorism'	dealing with terrorist incidents, under legislation	
		to be introduced into parliament on Thursday.	
		The bill makes it easier for states and territories	
		to seek help from the Australian Defence Force	
		(ADF) to respond to terrorist and other violent	
		occurrences, especially those that stretch the	
		capabilities of state forces.	

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28/6	Sky News, AM Agenda with Kieran Gilbert, Interview with Attorney- General	Questions were mostly about whether the SAS would have deployed to resolve the Lindt Siege under the amendments (AG answered this was impossible to answer)	Not included in QTB Media Summary
28/6	Radio 6PR, Morning with Gareth Parker, interview with Attorney-General	Questions included; the types of scenarios when the ADF would be called out; would the ADF be placed under police command; and will there be any parliamentary opposition to the Bill.	Not included in QTB Media Summary
28/6	Channel 9, Today, Interview with the Attorney- General	Questions included; what the Army's role in counter-terrorism is and what the delineation between the role of police.	Not included in QTB Media Summary
28/6	ABC News Breakfast, Michael Rowland interview with the Attorney-General	Questions included what the new threshold is; would it have changed the response to the Lindt Siege and would police have operational control of incidents.	Not included in Media Summary QB (28/6)
27/6	The Canberra Times, 'Law change to make military call-out easier in terror incidents'	The military will more easily be able to help police handle major terrorist and other large- scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.	Included in QTB Media Summary

# 2. ENGAGEMENT PLAN FOR THE DEFENCE AMENDMENT (CALL OUT OF THE AUSTRALIAN DEFENCE FORCE) BILL TASK TRACKER 📿

ACTIVITY	LEAD AGENCY	DESCRIPTION	STATUS
		Phase 1 – Formal announcements	
Announcement of the introduction of the Bill	AGO	AG announced the introduction of the Bill on the morning of 28 June 2018. Defence has provided OMINDEF with draft speaking points and joint media release.	28/06
Briefing to Parliamentarians	OMINDEF/AGO	The OMINDEF and AGO will make arrangements for briefings to Parliamentarians. AGD has provided Ministers with a debate folder on the amendments.	28/06 and ongoing s47C(1) Deliberative process

Phase 2 – Targeted engagements at introduction of the Bill			
Targeted Departmental briefing	Defence (FASSP/HMSC) AGD	Defence and AGD Senior Officials (SES 2) are offering	ative ) Personal

Provision of whole- of-government talking points to states and territories	AGD	AGD (Anna Harmer) provided states and territories with an embargoed copy of the whole-of-government talking points on the Bill on 27 June through the ANZCTC Legal Issues Working Group. The talking points were provided to a wider ANZCTC distribution list on 28 June following introduction.	27/6 and 28/9
Phase	e 3 – Dialogue du	ring the passage of the Bill through the Winter Recess of	Parliament
Private Ministerial briefings to key stakeholders	OMINDEF/AGO	S47C(1) Deliberative process Defence/AGD have provided both Offices with extensive communications material including Q&A Brief, whole-of- government talking points and an information factsheet. Further material can be provided if requested.	Offices to action (Defence to support)

Departmental-led stakeholder roundtable discussions	Defence/AGD	Departmental-led roundtable discussions with broader stakeholder groups will be held to ensure broad understanding of the facts during the public discourse, as the amendments proceed through Parliament. The stakeholders would be divided into a <b>Defence Policy</b>	Defence and AGD met on 4 July to plan out the way forward for the roundtables.
Defence Policy Stream Roundtable	Defence (with AGD support)	Stream and a Legal Stream. This roundtable would include representatives from the key national security, defence and strategic academic institutions and think tanks. This group represents the key communicators in national security that would be likely to provide media and other expert commentary on the reforms. It is therefore vital that they understand the amendments, their genesis, rationale, and purpose. It is also important to explain what the amendments are not. Organisations that will be invited to this roundtable include:	s47C(1) Deliberative process

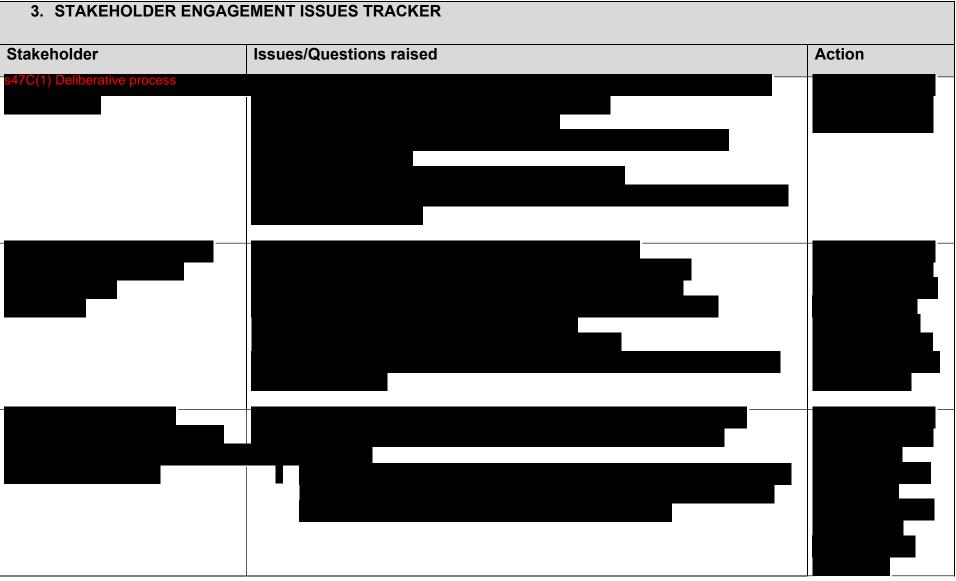


Stakeholder Roundtable (Legal Stream)	AGD (with Defence support)	s47C(1) Deliberative process process	Deliberative
		s47C(1) Deliberative process ill bettion invited to assist the legal fraternity in their legal consideration of the issues, from an independent perspective. Organisations that will be invited to this roundtable include: a. s47C(1) Deliberative process	
MINDEF Opinion Editorial (OpEd)	OMINDEF	s47C(1) Deliberative process	Deliberative process

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Long-form article	Defence	s47C(1) Deliberative process	As required, OMINDEF to advise
Continued engagement with states and territories	Defence/AGD	Defence, AGD and the Centre for Counter-Terrorism Coordination will continue to engage with states and territories on the amendments, including updating the relevant guidance material (e.g. the National Counter- Terrorism Handbook) to make the amendments operational.	Ongoing
Support to parliamentary debates, committee hearings, or media queries on the amendments.	Defence/AGD	Defence and AGD will continue to support OMINDEF and the AGO as the Bill progresses through Parliament, including the provision of relevant material such as debate briefing packs, support to media enquiries and senior officials to appear at committee hearings.	Defence and AGD will prepare packs for committee hearings when scheduled and for Spring Sittings. The Bill has been referred to the Senate Legal and Constitutional Affairs Committee. The Committee is now accepting submissions, with a closing date of 31 July 2018. s47C(1) Deliberative process

	The due date
	for the Committees report
	is 3 September 2018.
	AGD will liaise with the
	Committee Secretariat to
	ascertain timings for
	<mark>hearings.</mark>







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# DEFENCE ROLE IN COUNTER-TERRORISM

# ISSUE

Enhanced defence support to domestic counter-terrorism, and Defence regional and global counter-terrorism contributions.

# **HEADLINE RESPONSE**

# Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

[Handling note: these are whole of Government talking points for the Part IIIAAA Amendment Bill]

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain the primary responsibility to protect life and property in their jurisdictions.
  - State and territory police are the best first response to domestic threats or acts of violence.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.

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- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- Modern terrorist attacks are characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- State and territory governments continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.

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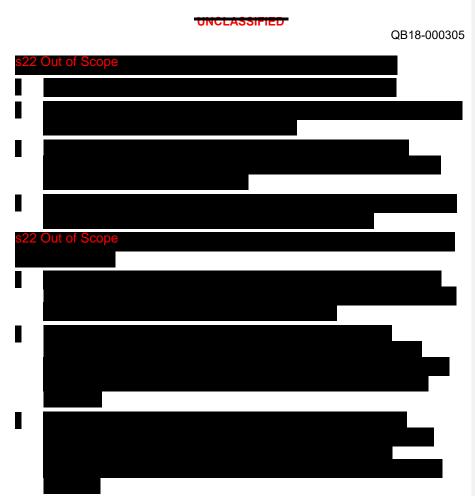
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- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.

# If asked: Will the legislation allow the ADF be called out to respond to riots?

- This Bill is about making it easier for the ADF to help state and territory police respond to acts of significant violence, such as terrorism.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threaten the safety of Australians inside Australia's jurisdiction.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The ADF has never been called out under Part IIIAAA to respond to civil disorder and there is no expectation that they would be in future.

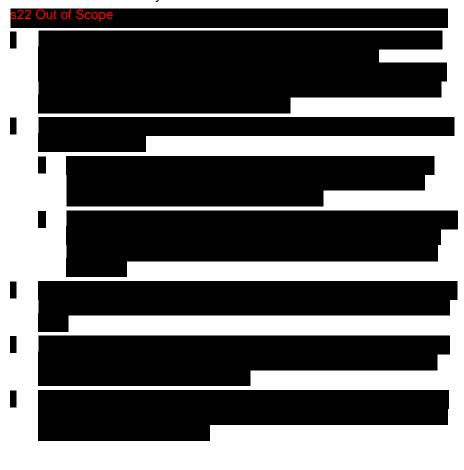


If asked: will these amendments see the use of the military in law enforcement roles, or the imposition of martial law?

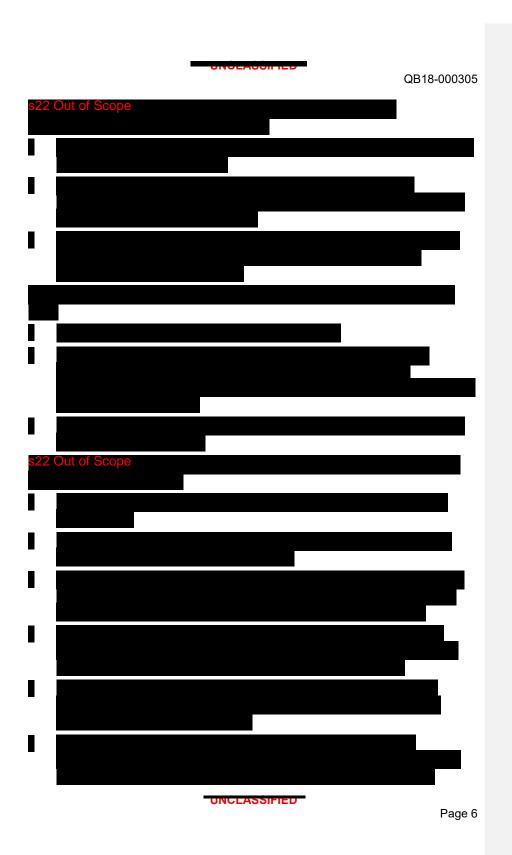
- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to incidents of significant violence, including terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

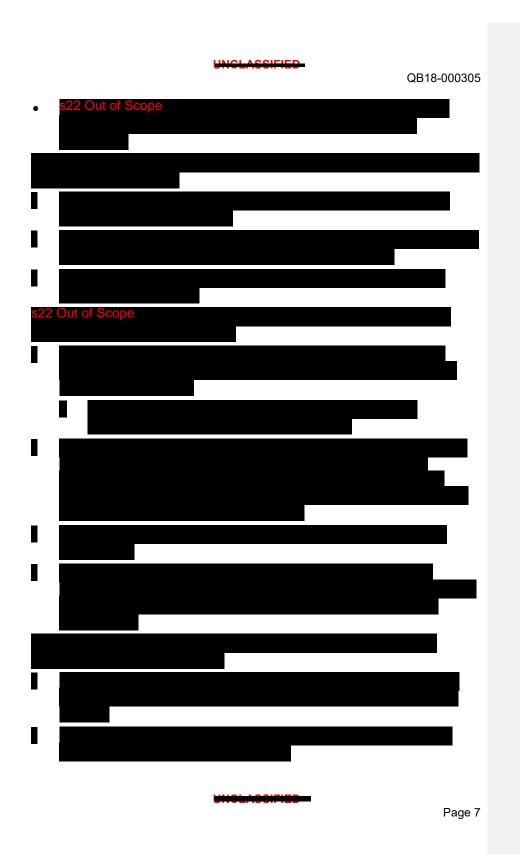
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- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.

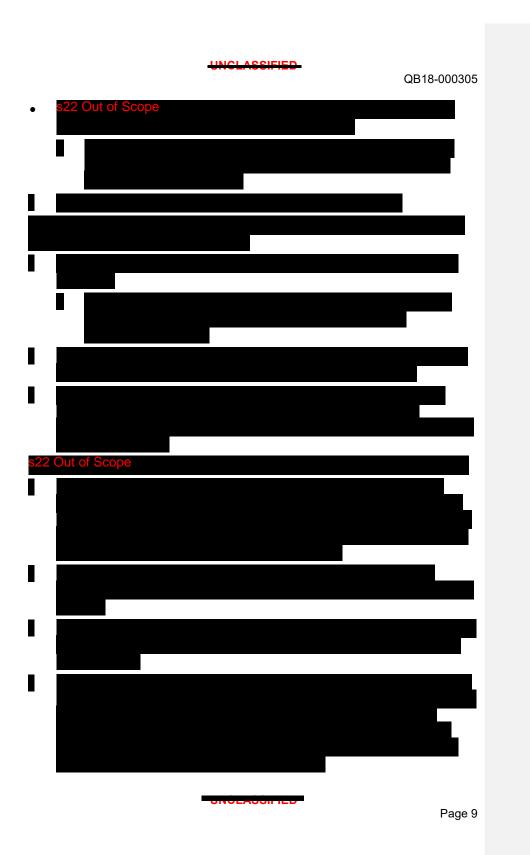


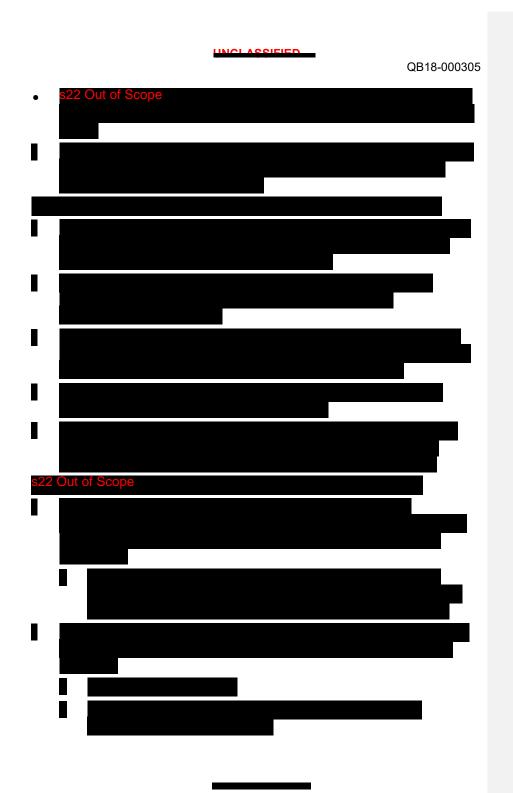
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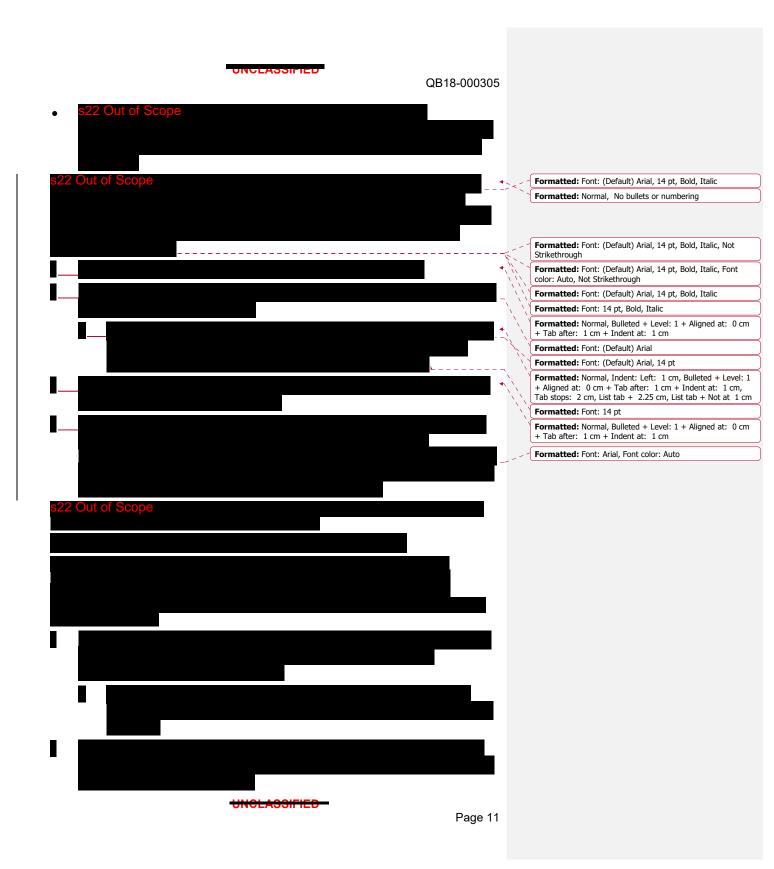


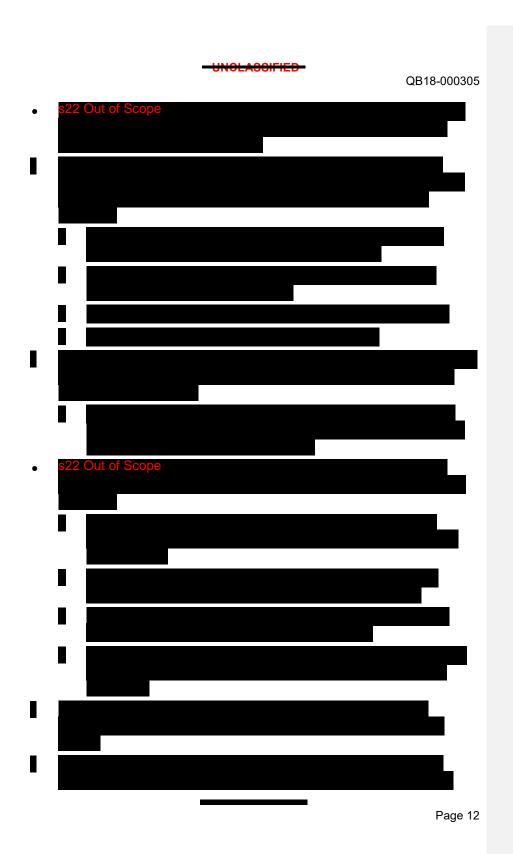


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measures allow the defence forces to be called out anywhere in Australia, or overseas, for any purpose, at a moment's notice, and there's no need for consultations with state or territory officials. If military personnel act with a "reasonable belief" before they start shooting people or blowing things up, then that's okay".

18 July 2018, Daily Telegraph, 'Terrorists could soon be set free', reports that the first of 20 convicted Australian terrorists, including Abdul Nacer Benbrika and Faheem Lodhi, are eligible for parole next year. The article reports that NSW cannot extend their sentence as it cannot prove to a 'high degree of probability' they would reoffend, and this also results in NSW not being able to impose bail conditions such as curfews. The article notes this power rests with the Federal Court and involves filing a new case – it's understood the Attorney-General is 'in a race against time to streamline the laws' [Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016] before the first eligible parole case comes up.

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29 June 2018, Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'. Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth ... it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."

29 June 2018, SBS News, 'Elite soldiers to respond to terror attacks in call-out power overhaul', Reports that the Army will be given new powers to respond to unfolding terrorist attacks following a review of defence laws prompted by the Lindt Café siege in 2014. The Australian Strategic Policy Institute's Peter Jennings told SBS News police culture was already shifting away from prioritising arrests since the Lindt siege in Sydney. "Increasingly, because of what they call this activeshooter problem, police are basically training to kill terrorists on the spot. And in that sense, on that particular area, their culture is becoming more like the military culture," Mr Jennings said at the time.

29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".

29 June 2018, The Australian, Editorial 'Putting boots on the ground', states it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need improved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

28 June 2018, Adelaide Advertiser, 'Troops could be guards for finals', reports that 'troops could be deployed to protect football finals and other major sporting events from terrorist threats' under the proposed amendments.

28 June 2018, multiple other news articles on Part IIIAAA Bill, including mentioning of use of ADF to respond to riots.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

28 June 2018, SMH, 'New ADF engagement rules reflect lessons learnt from Lindt siege'. Article about Deborah Snow's book on the Lindt Café Siege. Article notes

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that "Canberra's decision to make it easier for the military to help the states in circumstances which include those that prevailed at the Lindt café rewrites the playbook. This is not to say the army should go in every time, or as a first resort. But it is vital that federal and state agencies are able to work seamlessly when presented with a crisis such as Lindt."

27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

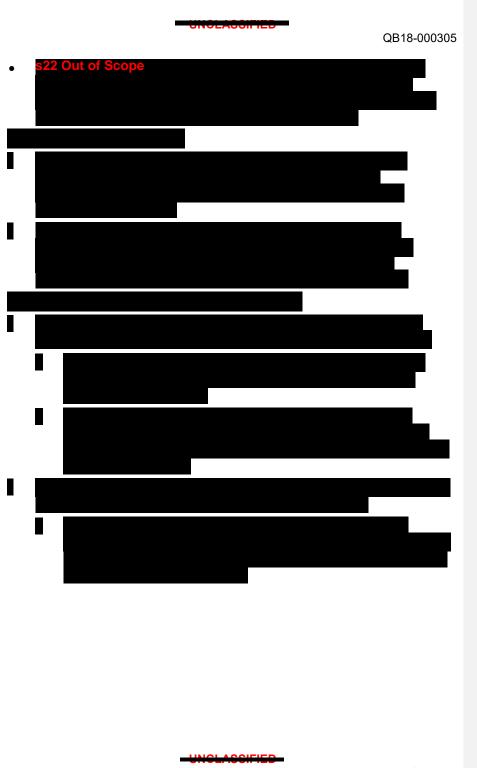
27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December 2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."

10 May 2018, The Herald Sun, "Army will help police" PM Malcolm Turnbull insists new laws to allow soldiers to be embedded with police to respond to terrorist attacks are only weeks away from being introduced to federal parliament.

9 May 2018, Radio interview with Prime Minister and Ben Fordham, 2GB, Prime Minister responds to questions about how far off the new legislation is that was announced in July last year. Prime Minister says it is only weeks away from being introduced, but we have got existing laws already in place.

BACKGROUND			
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## RELEVANT MEDIA

Nil.

## QUESTIONS ON NOTICE

## SSCFADT Supplementary Budget Estimates Hearing 25 October 2017

 In QON 132, Senator the Hon Don Farrell (SA) (ALP) asked a series of questions related to the use of Special Forces personnel and equipment (especially watercraft) as part of the press conference announcing the findings of the Defence CT Review by the Prime Minister and CDF on 17 July 2017. Response lodged: 12 December 2017

## Senate Select Committee on Finance and Public Administration Legislation 21 May 2018 (pp. 123)

Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?

Page 124 Senate Monday, 21 May 2018

## FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

## FREEDOM OF INFORMATION (FOI)

Nil

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## RECENT RELEVANT MINISTERIAL COMMENTS

## Senate Question Time 28 June 2018 (pp 51)

Senator MOLAN (New South Wales) (14:05): My question today is to the Minister for Defence, Senator Payne. Could the minister update the Senate on the steps taken by the Turnbull government to keep Australians safe?

Senator PAYNE (New South Wales—Minister for Defence) (14:06): I thank Senator Molan for his question. The No. 1 priority for the Turnbull government is the safety and security of Australians and Australia. In recent years terrorist attacks around the world and closer to home—for example, in Indonesia and the Philippines—have horrified us all. It's clear that terrorist tactics are evolving and, as we've also seen in the Middle East, some groups are capable of planning and conducting complex, well-coordinated attacks.

As the threat evolves so must our approach to dealing with counterterrorism. Legislation being introduced by the government today will make it simpler for state and territory governments to call on the resources and expertise of the Australian Defence Force when they need it to deal with a terror related event or other acts of violence.

The defence amendment bill gives effect to the recommendations of the defence counterterrorism review announced last year. These amendments are the most significant changes to ADF callout powers since part IIIAAA of the Defence Act was introduced.

The changes have been made in close consultation with the states and territories. It is very important to note that state and territory police will remain the best first response to terrorist and other incidents and continue to have primary responsibility for protecting life and property in their state or territory.

I also want to take this opportunity to acknowledge and thank the Australia-New Zealand CounterTerrorism Committee for its work in consulting with the states and territories so effectively and also to acknowledge and thank the state and territory governments for their active and constructive contributions to the consultation process on this extremely important matter of national security.

The PRESIDENT: Senator Molan, a supplementary question.

Senator MOLAN (New South Wales) (14:07): Could the minister advise the Senate on other measures the Turnbull government is taking to protect Australians from terrorism?

Senator PAYNE (New South Wales—Minister for Defence) (14:08): As the bill has been in development, Defence has also made substantial progress to further enhance the very practical support that it provides to state and territory police through a range of engagements, including an enhanced counterterrorism liaison network, an increased and broadened program of specialist training activities and streamlined access for police to specialist defence facilities, such as rifle ranges.

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The bill itself will make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident; allow the government to preauthorise the ADF to respond to threats on land, at sea and in the air; simplify, expand and clarify the ADF's powers to search, seize and control movement during a violent or terrorist incident; and enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction, which was an area of the act that needed amendment. (Time expired)

The PRESIDENT: Senator Molan, a final supplementary question.

Senator MOLAN (New South Wales) (14:09): Can the minister advise the Senate about what protections are built into the bill?

Senator PAYNE (New South Wales—Minister for Defence) (14:09): There will be times when the states and territories may seek defence assistance to deal with violent situations, as I've indicated, and the amendments in the bill will improve and enhance the existing legal framework for that.

Nevertheless, as I said, police remain the best first responders to terrorism incidents, and the bill makes no changes to the primary responsibility of the states and territories to protect lives and property in their jurisdictions. Nor are there any changes to the primacy of the civil power.

Civilian law enforcement agencies remain the paramount authority during a call-out. In particular, the amendments make it clear that when operating under a call-out order the Australian Defence Force must assist and cooperate with state and territory law enforcement agencies.

As far as reasonably practical, and even after it has been called out, the ADF will not act unless formally requested by the relevant state or territory police force. All levels of government recognise that our highest duty is to protect the Australian people.

### House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

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The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself. That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Contact:	Sarah Driver, Director, Domestic Security and Counter-Terrorism, 02 6265 9181	Min ID: QB18-0003305 Division: Strategic Policy
Cleared by:	Peter Sawczak <u>Tom Hamilton, Acting</u> First Assistant Secretary Strategic Policy 02 6265 5562- <u>1883</u>	Created:12 April 2018 Updated: 6- <u>2418</u> July 2018
Consulted:	Military Strategic Commitments, Defence Legal	

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DEFENCE ROLE IN COUNTER-TERRORISM	
ISSUE <u>'Military call-out power is too important to get the wording of an</u> amendment wrong' ABC News Online, 14 August 2018	
The purpose of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 is to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.	
The Bill was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.     States and territories will retain the primary responsibility to protect life and property in their jurisdictions.	
<ul> <li>State and territory police are the best first response to domestic threats or acts of violence.</li> <li>In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.</li> </ul>	Formatted: Indent: Left: 1 cm, Bulleted + Level: 1 + Aligned at: 0 cm + Tab after: 1 cm + Indent at: 1 cm, Tab stops: 2 cm, List tab + Not at 1 cm
<ul> <li>As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.</li> </ul>	←
The amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance by removing the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.	after: 1 cm + Indent at: 1 cm, Tab stops: Not at 2 cm
<ul> <li>Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider not just whether the ADF would enhance the state or territory's response, but also the nature of the incident.</li> <li>This amendment will allow greater flexibility for the ADF to</li> </ul>	Formatted: Indent: Left: 1 cm, Bulleted + Level: 1 + Aligned at: 0 cm + Tab after: 1 cm + Indent at: 1 cm, Tab stops: 2 cm, List tab + 2.25 cm, List tab + Not at 1 cm
provide the most rapid, effective and appropriate specialist support to the states and territories, upon request.	
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<ul> <li>It also respects the states' and territories' position as first responders by ensuring that there is an assessment of the potential benefit of ADF assistance.</li> </ul>	Formatted: Indent: Left: 1 cm, Tab stops: 2 Not at 1 cm	cm, List tab +
• The Defence Act currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.	<b>Formatted:</b> Bulleted + Level: 1 + Aligned at: after: 1 cm + Indent at: 1 cm, Tab stops: Not	
<ul> <li><u>         'Domestic violence' is a constitutional term which includes not</u> <u>         only terrorist attacks but other incidents of significant violence</u> <u>         that threaten the safety of Australians inside Australia's         jurisdiction.         </u></li> </ul>	Formatted: Indent: Left: 1 cm, Bulleted + Le Aligned at: 0 cm + Tab after: 1 cm + Indent a stops: 2 cm, List tab + Not at 1 cm + 1.27 cr	at: 1 cm, Tab
<ul> <li>This will not change under the Government's proposed amendments to Part IIIAAA.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt	
<ul> <li>The ADF has never been called out under Part IIIAAA to respond to civil disorder and there is no expectation that they would be in future.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt	
In recognition of the key role that the Minister for Home Affairs plays in national security the Bill adds the Minister for Home Affairs as a named 'alternative Minister' for the purposes of expedited call out.	Formatted: Font: (Default) Arial, 14 pt Formatted: Font: (Default) Arial, 14 pt	
<ul> <li>However, expedited call out orders may only be made in the event of a sudden and extraordinary emergency, where it is not practicable for a normal call out order to be made.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt Formatted: Font: 14 pt Formatted: Normal, Space Before: 6 pt, After spacing: single	: 6 pt, Line
<ul> <li>In the first instance, expedited orders may be made by the Prime Minister (instead of the Governor-General).</li> </ul>	Formatted: Font: (Default) Arial, 14 pt Formatted: Font: (Default) Arial, 14 pt Formatted: Font: 14 pt	
<ul> <li>In the event that the Prime Minister is not available, expedited call out can be authorised by the two other authorising Ministers (Minister for Defence and Attorney- General) jointly.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt Formatted: Font: 14 pt Formatted: Font: (Default) Arial, 14 pt Formatted: Font: 14 pt	
<ul> <li>It is only in the event that the Prime Minister and one of the other authorising Ministers are not available that an 'alternative Minister' has a role. In this situation, expedited call out can be authorised by the remaining authorising Minister (Minister for Defence or Attorney-General), and an 'alternative Minister'. Currently, the 'alternative Ministers' are:</li> </ul>	Formatted: Font: (Default) Arial, 14 pt	
<u>1. the Deputγ Prime Minister</u> <u>2. the Minister for Foreign Affairs, and</u>	(Formatted	
3. the Treasurer. <u>○ The amendments will add the Minister for Home Affairs as a</u> fourth 'alternative Minister'.	Formatted: List Paragraph,CV text,Dot pt,F5 L Paragraph,FooterText,L,List Paragraph1,List Pa Paragraph111,List Paragraph2,Medium Grid 1 - GP Bulleted List,Numbered Paragraph,Paragrap liste1,Recommendation,Table text,numbered,列 Before: 0 pt, After: 0 pt	ragraph11,List Accent 21,NFP whe de
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## ISSUE

Enhanced defence support to domestic counter-terrorism, and Defence regional and global counter-terrorism contributions.

## **HEADLINE RESPONSE**

## Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

[Handling note: these are whole of Government talking points for the Part IIIAAA Amendment Bill]

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain the primary responsibility to protect life and property in their jurisdictions.
  - State and territory police are the best first response to domestic threats or acts of violence.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism

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Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.

- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- Modern terrorist attacks are characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- State and territory governments continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.

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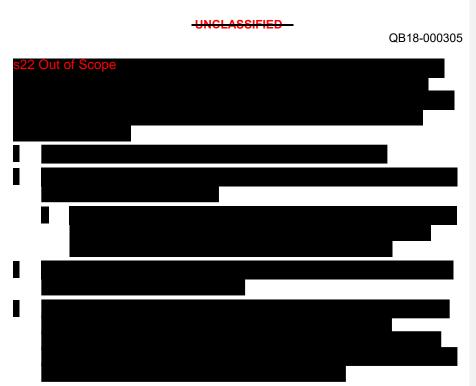
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- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.



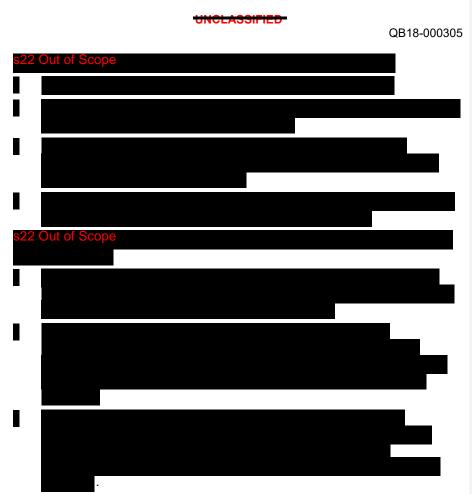
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If asked: Will the legislation allow the ADF be called out to respond to riots?

- This Bill is about making it easier for the ADF to help state and territory police respond to acts of significant violence, such as terrorism.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threaten the safety of Australians inside Australia's jurisdiction.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The ADF has never been called out under Part IIIAAA to respond to civil disorder and there is no expectation that they would be in future.



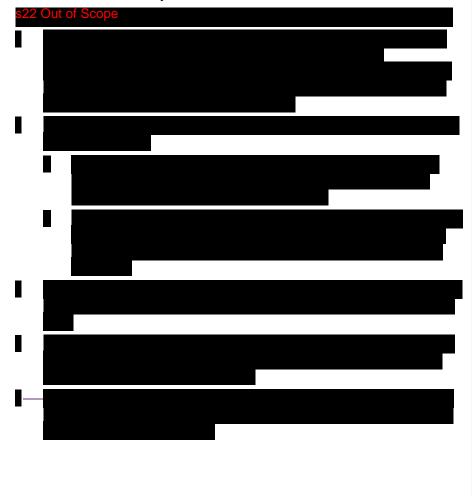
If asked: will these amendments see the use of the military in law enforcement roles, or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to incidents of significant violence, including terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

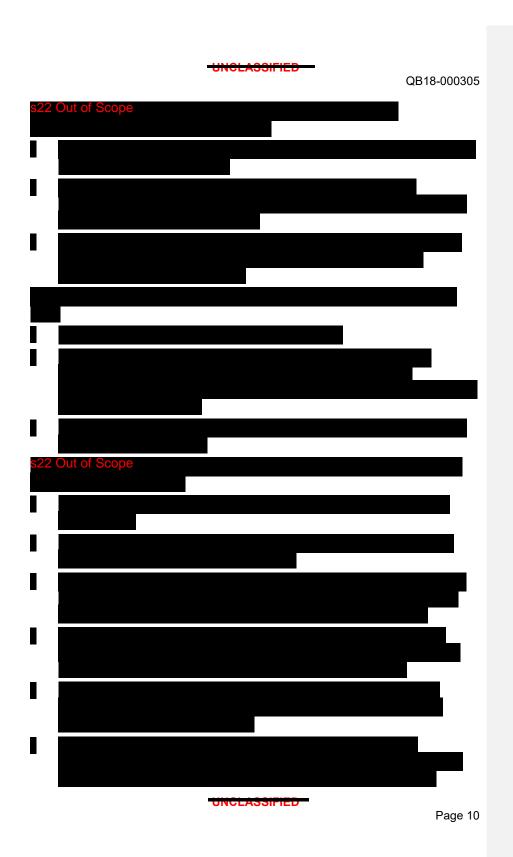
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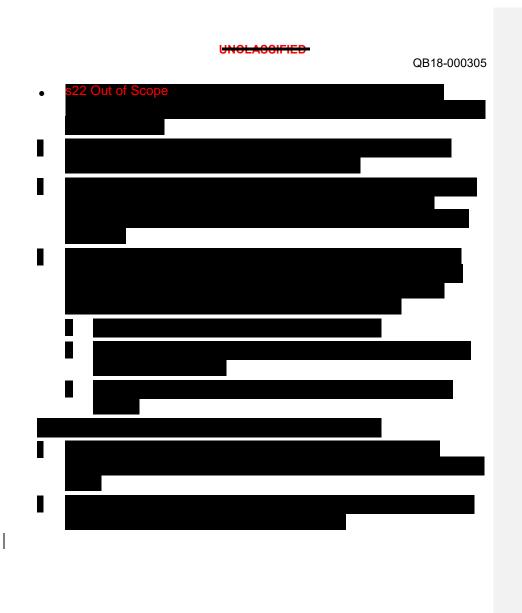
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.

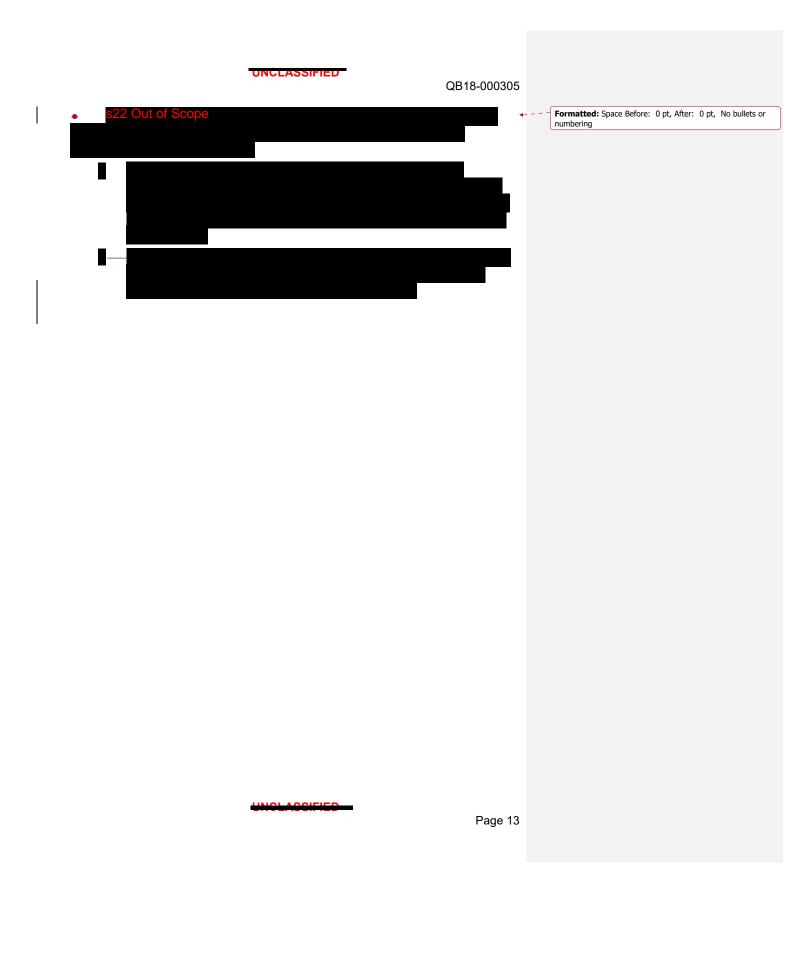


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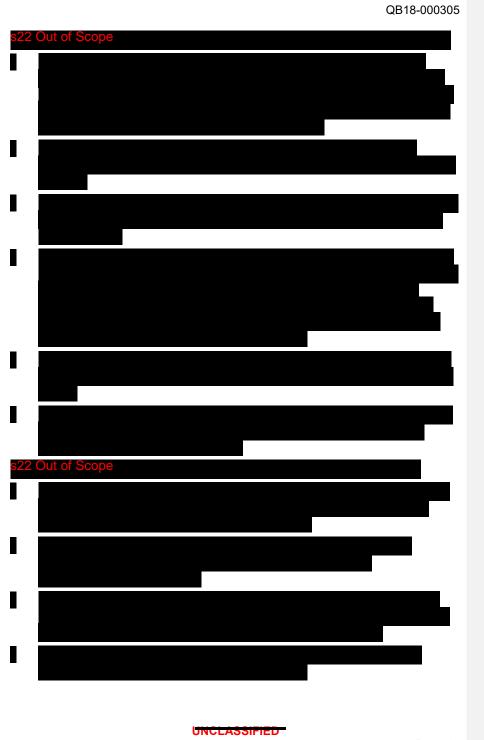
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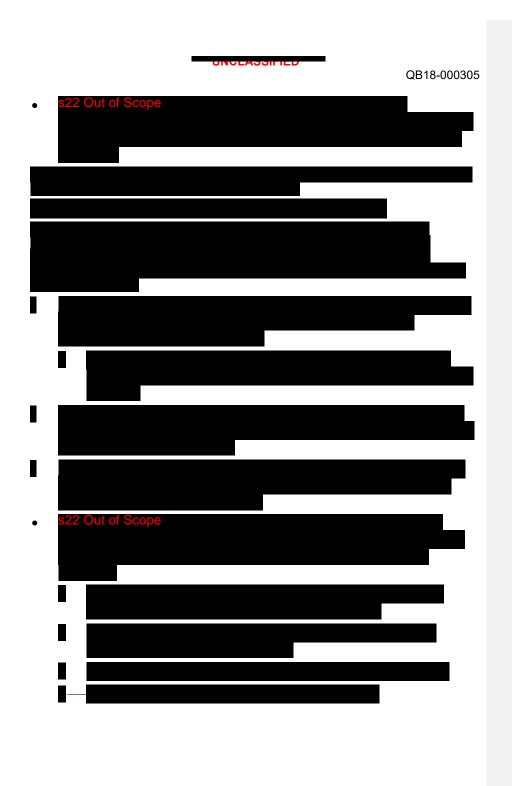


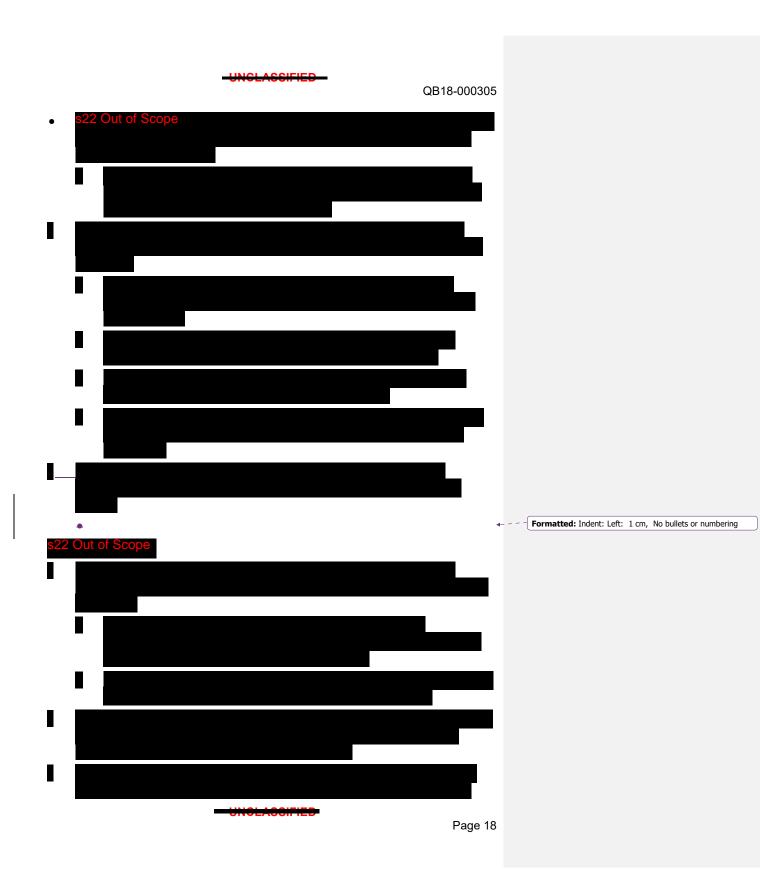
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## Current media

<u>14 August 2018, 'Military call-out power is too important to get the wording of an</u> <u>amendment wrong' ABC News Online, criticises the Bill, noting that "the amended</u> <u>law will, beyond argument, allow the Federal Government to call out the Army,</u> <u>whether or not a State Government wants it, to respond to an incident of mass civil</u> <u>disturbance — such as the 2005 or 2012 Sydney riots."</u>

<u>10 August 2018, various media reporting about five Australian citizens losing their</u> citizenship because of their involvement with Islamic State.

8 August 2018, Sydney Morning Herald, 'Nerve attack men sought', reports that Britain is ready to extradite two men it suspects of carrying out a nerve attack agent attack on former Russian spy Sergei Skripal and his daughter Yulia in England.

7 August 2018, Adelaide Advertiser (Tory Shepherd), Drone terrorism here to stay, experts warn in wake of attack. Australia is at risk of attack in new era of 'drone terrorism' experts warn in the wake of an assassination attempt in Venezuela. Two drones loaded with explosives were used in an apparent attack on President Nicols Maduro this week.

5 August 2018, Sunday Mail Brisbane, 'Elite forces proposal to combat terrorists', interviews Mark Bruce, an ex-British SAS soldier, who warns that a major terrorist attack in Australia is "only a matter of time." He suggests a new unit of ex-service personnel, as a layer between the Australian Federal Police and the private security industry, is needed in support of Australia's counter-terrorism capability.

21 July 2018, The Saturday Paper, 'Siege mentality', is an opinion editorial by Richard Ackland on the Part IIIAAA amendments. It suggests that the legislation was framed as a necessity post-Lindt Café siege but goes beyond that – allowing the Australian Defence Force "to be called out anywhere in Australia, or overseas, for any purpose, at a moment's notice, and there's no need for consultations with state or territority officials."

21 July 2018, Weekend Australian, 'Terror attacks on Australia 'inevitable'' interviews Aimen Dean – an undercover agent for British intelligence, and reportedly ASIO leading up to the 2000 Olympics – who warns that 'it's inevitable' Australia will face a terror attack. This threat would come from Australia's returning foreign fighters, including the use of drones to disperse poisons, and in part is because Australia is seen as a representative of the United States.

18 July 2018, Daily Telegraph, 'Terrorists could soon be set free', reports that the first of 20 convicted Australian terrorists, including Abdul Nacer Benbrika and Faheem Lodhi, are eligible for parole next year. The article reports that NSW cannot extend their sentence as it cannot prove to a 'high degree of probability' they would reoffend, and this also results in NSW not being able to impose bail conditions such as curfews. The article notes this power rests with the Federal Court and involves filing a new case – it's understood the Attorney-General is 'in a

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race against time to streamline the laws' [Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016] before the first eligible parole case comes up.

29 June 2018, Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'. Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth ... it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."

29 June 2018, SBS News, 'Elite soldiers to respond to terror attacks in call-out power overhaul', Reports that the Army will be given new powers to respond to unfolding terrorist attacks following a review of defence laws prompted by the Lindt Café siege in 2014. The Australian Strategic Policy Institute's Peter Jennings told SBS News police culture was already shifting away from prioritising arrests since the Lindt siege in Sydney. "Increasingly, because of what they call this activeshooter problem, police are basically training to kill terrorists on the spot. And in that sense, on that particular area, their culture is becoming more like the military culture," Mr Jennings said at the time.

29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".

29 June 2018, The Australian, Editorial 'Putting boots on the ground', states it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need improved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

28 June 2018, Adelaide Advertiser, 'Troops could be guards for finals', reports that 'troops could be deployed to protect football finals and other major sporting events from terrorist threats' under the proposed amendments.

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28 June 2018, multiple other news articles on Part IIIAAA Bill, including mentioning of use of ADF to respond to riots.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

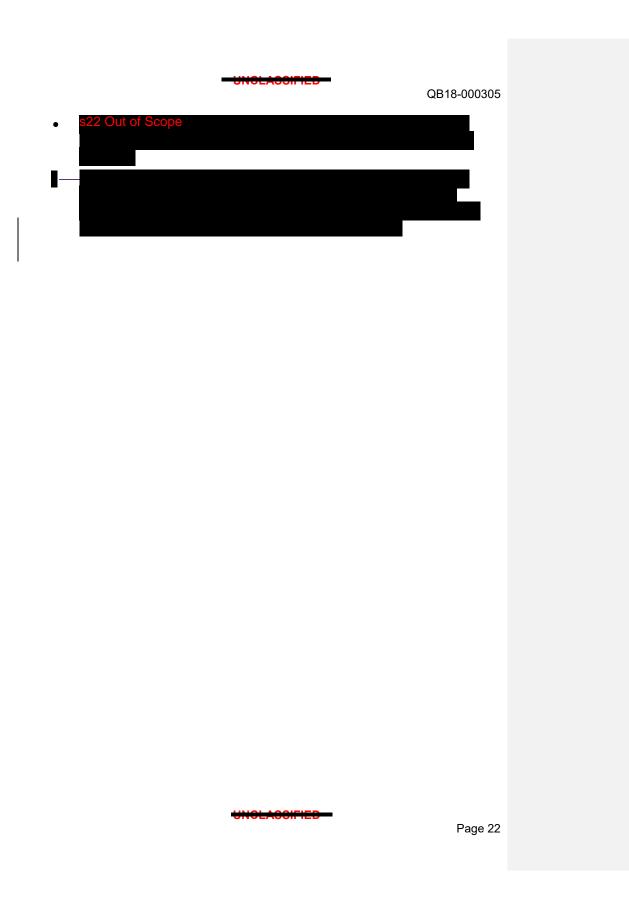
28 June 2018, SMH, 'New ADF engagement rules reflect lessons learnt from Lindt siege'. Article about Deborah Snow's book on the Lindt Café Siege. Article notes that "Canberra's decision to make it easier for the military to help the states in circumstances which include those that prevailed at the Lindt café rewrites the playbook. This is not to say the army should go in every time, or as a first resort. But it is vital that federal and state agencies are able to work seamlessly when presented with a crisis such as Lindt."

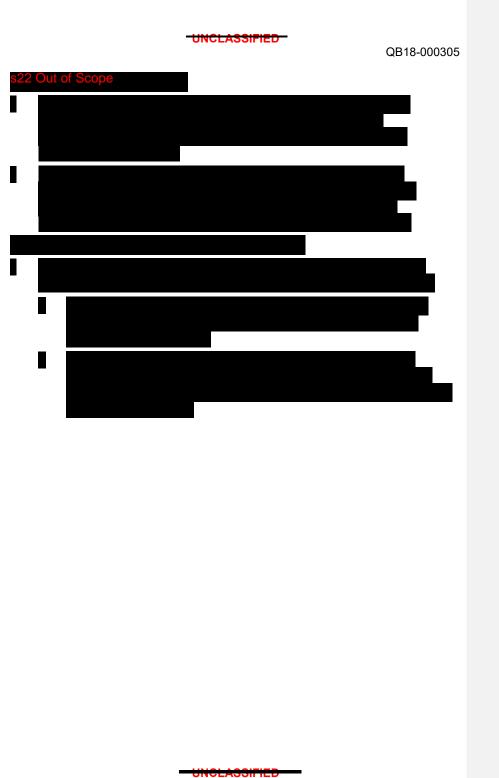
27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

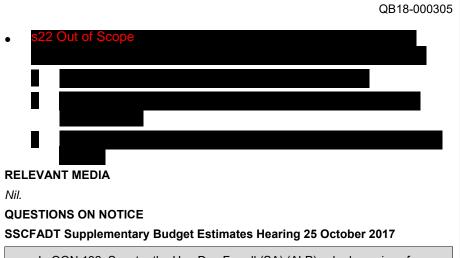
23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December 2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."







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 In QON 132, Senator the Hon Don Farrell (SA) (ALP) asked a series of questions related to the use of Special Forces personnel and equipment (especially watercraft) as part of the press conference announcing the findings of the Defence CT Review by the Prime Minister and CDF on 17 July 2017. Response lodged: 12 December 2017

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# Senate Select Committee on Finance and Public Administration Legislation 21 May 2018 (pp. 123)

Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?

Page 124 Senate Monday, 21 May 2018

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

## FREEDOM OF INFORMATION (FOI)

Nil

## **RECENT RELEVANT MINISTERIAL COMMENTS**

Senate Question Time 28 June 2018 (pp 51)

Senator MOLAN (New South Wales) (14:05): My question today is to the Minister for Defence, Senator Payne. Could the minister update the Senate on the steps taken by the Turnbull government to keep Australians safe?

Senator PAYNE (New South Wales—Minister for Defence) (14:06): I thank Senator Molan for his question. The No. 1 priority for the Turnbull government is the safety and security of Australians and Australia. In recent years terrorist attacks around the world and closer to home—for example, in Indonesia and the Philippines—have horrified us all. It's clear that terrorist tactics are evolving and, as we've also seen in the Middle East, some groups are capable of planning and conducting complex, well-coordinated attacks.

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As the threat evolves so must our approach to dealing with counterterrorism. Legislation being introduced by the government today will make it simpler for state and territory governments to call on the resources and expertise of the Australian Defence Force when they need it to deal with a terror related event or other acts of violence.

The defence amendment bill gives effect to the recommendations of the defence counterterrorism review announced last year. These amendments are the most significant changes to ADF callout powers since part IIIAAA of the Defence Act was introduced.

The changes have been made in close consultation with the states and territories. It is very important to note that state and territory police will remain the best first response to terrorist and other incidents and continue to have primary responsibility for protecting life and property in their state or territory.

I also want to take this opportunity to acknowledge and thank the Australia-New Zealand CounterTerrorism Committee for its work in consulting with the states and territories so effectively and also to acknowledge and thank the state and territory governments for their active and constructive contributions to the consultation process on this extremely important matter of national security.

The PRESIDENT: Senator Molan, a supplementary question.

Senator MOLAN (New South Wales) (14:07): Could the minister advise the Senate on other measures the Turnbull government is taking to protect Australians from terrorism?

Senator PAYNE (New South Wales—Minister for Defence) (14:08): As the bill has been in development, Defence has also made substantial progress to further enhance the very practical support that it provides to state and territory police through a range of engagements, including an enhanced counterterrorism liaison network, an increased and broadened program of specialist training activities and streamlined access for police to specialist defence facilities, such as rifle ranges. The bill itself will make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident; allow the government to preauthorise the ADF to respond to threats on land, at sea and in the air; simplify, expand and clarify the ADF's powers to search, seize and control movement during a violent or terrorist incident; and enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction, which was an area of the act that needed amendment. (Time expired)

The PRESIDENT: Senator Molan, a final supplementary question.

Senator MOLAN (New South Wales) (14:09): Can the minister advise the Senate about what protections are built into the bill?

Senator PAYNE (New South Wales—Minister for Defence) (14:09): There will be times when the states and territories may seek defence assistance to deal with violent situations, as I've indicated, and the amendments in the bill will improve and enhance the existing legal framework for that.

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Nevertheless, as I said, police remain the best first responders to terrorism incidents, and the bill makes no changes to the primary responsibility of the states and territories to protect lives and property in their jurisdictions. Nor are there any changes to the primacy of the civil power.

Civilian law enforcement agencies remain the paramount authority during a call-out. In particular, the amendments make it clear that when operating under a call-out order the Australian Defence Force must assist and cooperate with state and territory law enforcement agencies.

As far as reasonably practical, and even after it has been called out, the ADF will not act unless formally requested by the relevant state or territory police force. All levels of government recognise that our highest duty is to protect the Australian people.

## House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself. That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three

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separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

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Contact:	Aleysha Ingram, a <u>Sarah Driver, /</u> Director, Domestic Security and Counter- Terrorism, 02 6265 1725	Min ID: QB18-0003305 Division: Strategic Policy	<ul> <li> Formatted Table</li> </ul>
Cleared by:	Elizabeth McGregorSamantha Higgins, Acting First Assistant Secretary Strategic Critical Infrastructure and Foreign Investment Policy 002 6265 1883	Created:12 April 2018 Updated: & <u>140</u> August 2018	
Consulted:	SOCOMD		

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# **Driver, Sarah MS**

From:
Sent:
To:

To: Cc:

Subject: Attachments: Tuesday, 14 August 2018 4:27 PM Copeland, Damian LTCOL; **547F(1) Personal privacy** ; MR 5; Lippis, Zoe MAJ; Halward, Richard MAJ (GBR) SP&I-SP-SCSP-DS&CT FW: Part IIIAAA [D<del>LM-For Official Use Only]</del> QB18-000305.docx

## For Official Uco Only

Good afternoon,

Please find attached a copy of the Defence's Role in CT, which was updated at short notice this morning to address the following article published on ABC News Online:

# http://amp.abc.net.au/article/10064716?\_\_twitter\_impression=true

Moore, Dominic MR

Given the very short turnaround time, we did not have enough time to consult with Defence Stakeholders on the talking points this morning – however, all of the points were drawn from existing material in the whole-of-government talking points and Part IIIAAA Q&A brief.

AGD has also drafted the below points for inclusion in the AG's QTB.

Grateful for your review of both our QTB and AGD's points (which we may look to incorporate in our QTB if required) – if you have any suggested edits we can look to include in the next update.

Kind regards,

Dominic

**Dominic Moore** Senior Policy Officer, Domestic Security and Counter-Terrorism Strategic Policy Branch

Strategic Policy Division Department of Defence *Ph*: 02 6265 2781 *Location*: R1-1-A025 E: <u>dominic.moore@defence.gov.au</u>

From: Crofts, Robert [mailto:Robert.Crofts@ag.gov.au]
Sent: Tuesday, 14 August 2018 3:23 PM
To: Driver, Sarah MS <<u>sarah.driver@defence.gov.au</u>>
Cc: Ingram, Aleysha MS <<u>aleysha.ingram@defence.gov.au</u>>; Moore, Dominic MR
<<u>dominic.moore@defence.gov.au</u>>; Morris, Stephen <<u>Stephen.Morris@ag.gov.au</u>>; Pennicook, Hugh
<<u>Hugh.Pennicook@ag.gov.au</u>>;
Subject: RE: Part IIIAAA [<u>DLM=For=Official-Use=Only]</u>

Sorry for the delay with this. The lines we included are highlighted in the below.

Cheers,

Robbie

# If asked: will these amendments see the use of military forces in law enforcement roles<mark>, in dealing with peaceful</mark> protests</mark>, or the imposition of martial law?

- The amendments will not result in the imposition of martial law. They do not impact upon citizens' ability to protest. They will make it easier for the ADF to assist states and territories in responding to terrorist incidents.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments specifically prevent the use of the ADF in response to any kind of peaceful protest or industrial action.

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

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ISSUE         'Military call-out power is too important to get the wording of an amendment wrong' ABC News Online, 14 August 2018         • The purpose of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 is to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.	
<ul> <li>The Bill was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.</li> <li>States and territories will retain the primary responsibility to protect life and property in their jurisdictions.</li> <li>State and territory police are the best first response to domestic + threats or acts of violence.</li> <li>In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with</li> </ul>	<ul> <li>Formatted: Indent: Left: 1 cm, Bulleted + Level: 1 +</li> <li>Aligned at: 0 cm + Tab after: 1 cm + Indent at: 1 cm, Tab stops: 2 cm, List tab + Not at 1 cm</li> </ul>
<ul> <li>As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.</li> <li>The amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance by removing the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant</li> </ul>	Formatted: Bulleted + Level: 1 + Aligned at: 0 cm + Tab after: 1 cm + Indent at: 1 cm, Tab stops: Not at 2 cm
<ul> <li><u>Instead, in deciding whether to call out the ADF, the</u></li> <li><u>Commonwealth will need to consider not just whether the ADF</u> would enhance the state or territory's response, but also the nature of the incident.</li> <li><u>This amendment will allow greater flexibility for the ADF to</u> provide the most rapid, effective and appropriate specialist support to the states and territories, upon request.</li> </ul>	Formatted: Indent: Left: 1 cm, Bulleted + Level: 1 + Aligned at: 0 cm + Tab after: 1 cm + Indent at: 1 cm, Tab stops: 2 cm, List tab + 2.25 cm, List tab + Not at 1 cm
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<ul> <li>It also respects the states' and territories' position as first responders by ensuring that there is an assessment of the potential benefit of ADF assistance.</li> </ul>	Formatted: Indent: Left: 1 cm, Tab stops: 2 cm, List tab + Not at 1 cm
The Defence Act currently enables the states and territories to     request ADF assistance to respond to 'domestic violence'.	Formatted: Bulleted + Level: 1 + Aligned at: 0 cm + Tab after: 1 cm + Indent at: 1 cm, Tab stops: Not at 1.27 cm
<ul> <li><u>         'Domestic violence' is a constitutional term which includes not</u> <u>         only terrorist attacks but other incidents of significant violence</u> <u>         that threaten the safety of Australians inside Australia's         jurisdiction.         </u></li> </ul>	Formatted: Indent: Left: 1 cm, Bulleted + Level: 1 + Aligned at: 0 cm + Tab after: 1 cm + Indent at: 1 cm, Tab stops: 2 cm, List tab + Not at 1 cm + 1.27 cm
<ul> <li>This will not change under the Government's proposed amendments to Part IIIAAA.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt
<ul> <li><u>The ADF has never been called out under Part IIIAAA to</u> respond to civil disorder and there is no expectation that they would be in future.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt
In recognition of the key role that the Minister for Home Affairs plays in national security the Bill adds the Minister for Home Affairs as a named 'alternative Minister' for the purposes of expedited call out.	Formatted: Font: (Default) Arial, 14 pt Formatted: Font: (Default) Arial, 14 pt
<ul> <li>However, expedited call out orders may only be made in the event of a sudden and extraordinary emergency, where it is not practicable for a normal call out order to be made.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt Formatted: Font: 14 pt Formatted: Normal, Space Before: 6 pt, After: 6 pt, Line spacing: single
<ul> <li>In the first instance, expedited orders may be made by the Prime Minister (instead of the Governor-General).</li> </ul>	Formatted: Font: (Default) Arial, 14 pt         Formatted: Font: (Default) Arial, 14 pt         Formatted: Font: 14 pt
<ul> <li>In the event that the Prime Minister is not available, expedited call out can be authorised by the two other authorising Ministers (Minister for Defence and Attorney- General) jointly.</li> </ul>	Formatted: Font: (Default) Arial, 14 pt Formatted: Font: 14 pt Formatted: Font: (Default) Arial, 14 pt Formatted: Font: 14 pt Formatted: Font: 14 pt
<ul> <li>It is only in the event that the Prime Minister and one of the other authorising Ministers are not available that an 'alternative Minister' has a role. In this situation, expedited call out can be authorised by the remaining authorising Minister (Minister for Defence or Attorney-General), and an 'alternative Minister'. Currently, the 'alternative Ministers' are:</li> </ul>	Formatted: Font: (Default) Arial, 14 pt
<u>1. the Deputy Prime Minister</u> ← <u>2. the Minister for Foreign Affairs, and</u>	(Formatted
<ul> <li><u>3. the Treasurer.</u></li> <li><u>o The amendments will add the Minister for Home Affairs as a fourth 'alternative Minister'.</u></li> </ul>	Formatted: List Paragraph,CV text,Dot pt,F5 List Paragraph,FooterText,L,List Paragraph1,List Paragraph11,List Paragraph111,List Paragraph2,Medium Grid 1 - Accent 21,NFP GP Bulleted List,Numbered Paragraph,Paragraphe de liste1,Recommendation,Table text,numbered,列出, Space Before: 0 pt, After: 0 pt
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# ISSUE

Enhanced defence support to domestic counter-terrorism, and Defence regional and global counter-terrorism contributions.

## **HEADLINE RESPONSE**

# Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

[Handling note: these are whole of Government talking points for the Part IIIAAA Amendment Bill]

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain the primary responsibility to protect life and property in their jurisdictions.
  - State and territory police are the best first response to domestic threats or acts of violence.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism

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Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.

- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- Modern terrorist attacks are characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- State and territory governments continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.

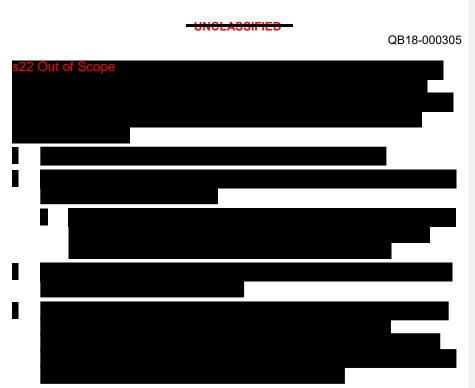
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- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.



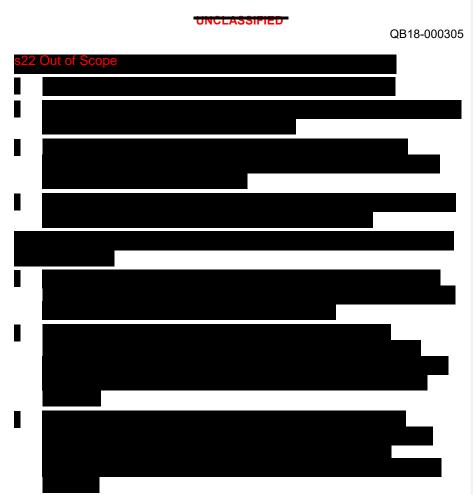
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If asked: Will the legislation allow the ADF be called out to respond to riots?

- This Bill is about making it easier for the ADF to help state and territory police respond to acts of significant violence, such as terrorism.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threaten the safety of Australians inside Australia's jurisdiction.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The ADF has never been called out under Part IIIAAA to respond to civil disorder and there is no expectation that they would be in future.



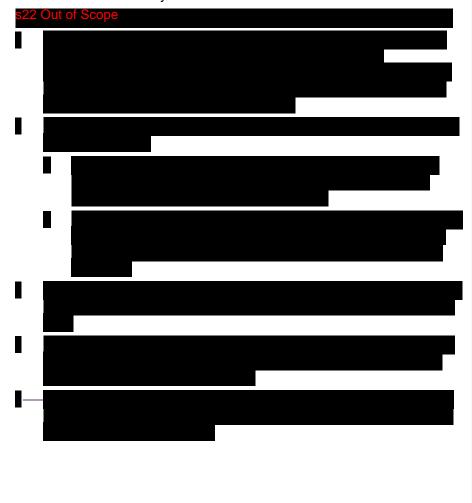
If asked: will these amendments see the use of the military in law enforcement roles, or the imposition of martial law?

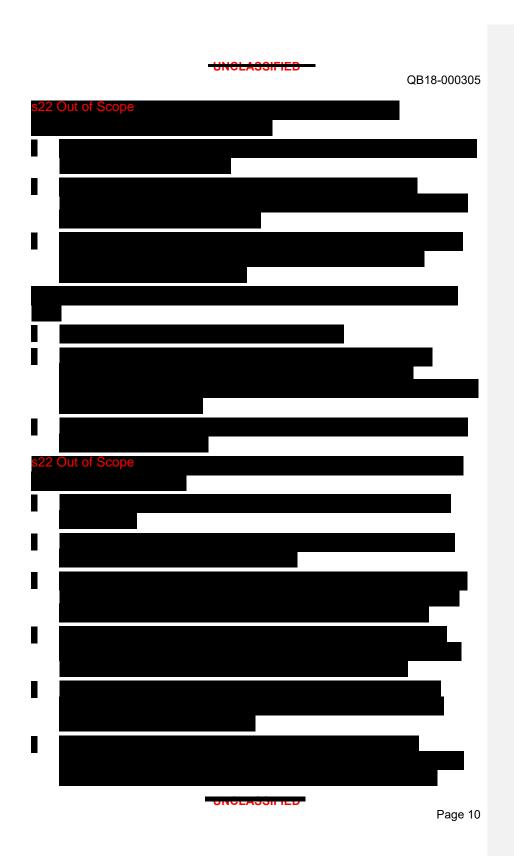
- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to incidents of significant violence, including terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

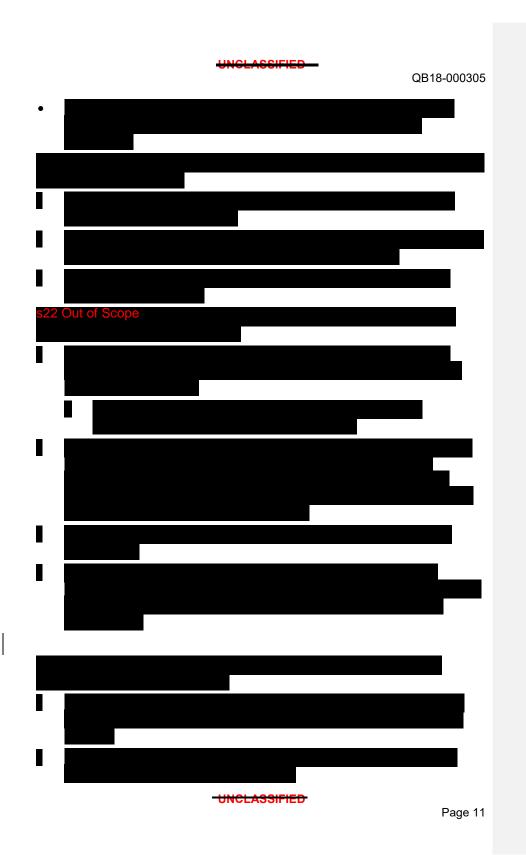
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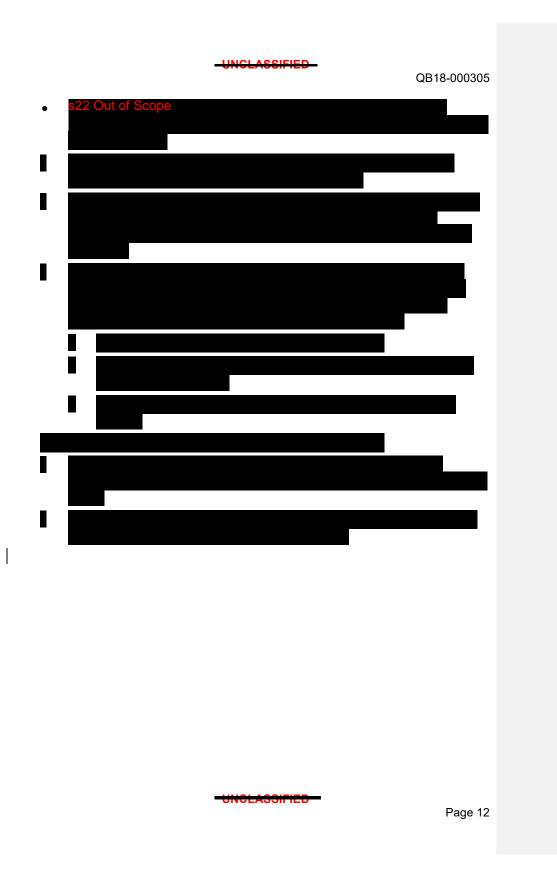
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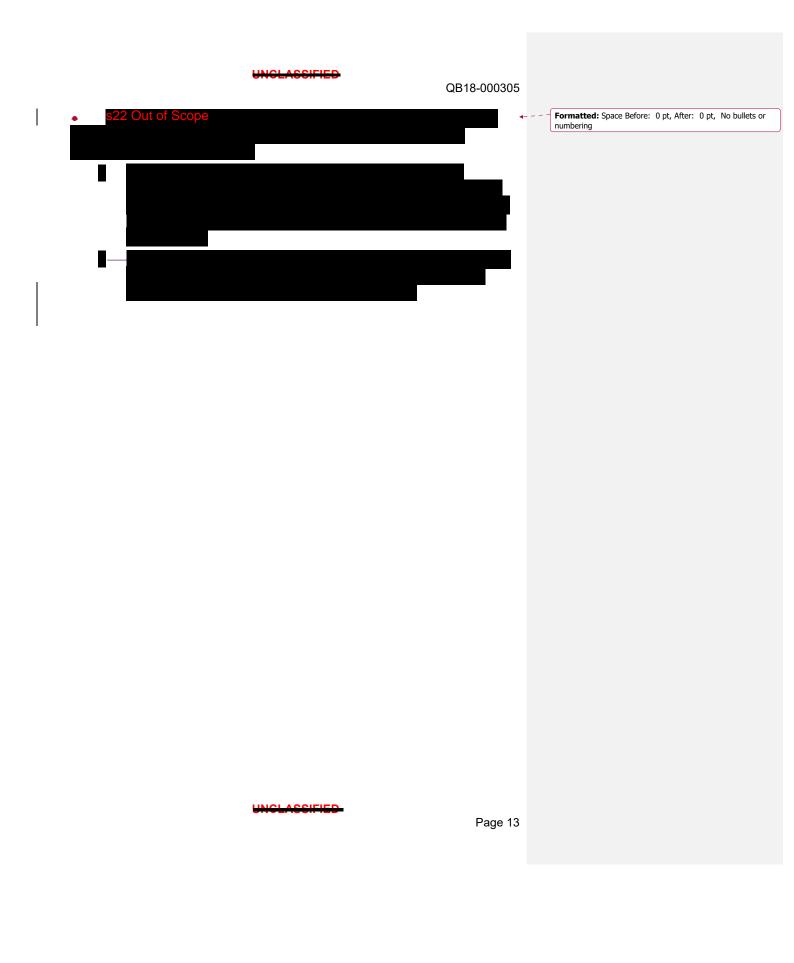
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.





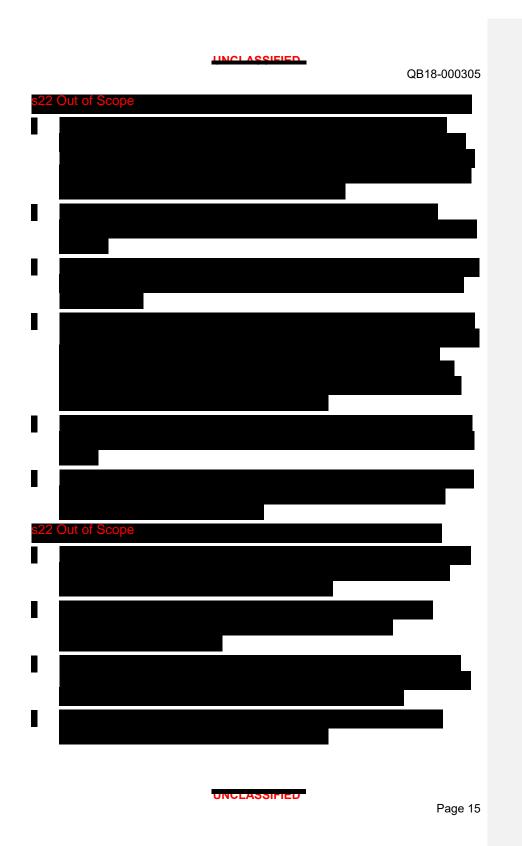


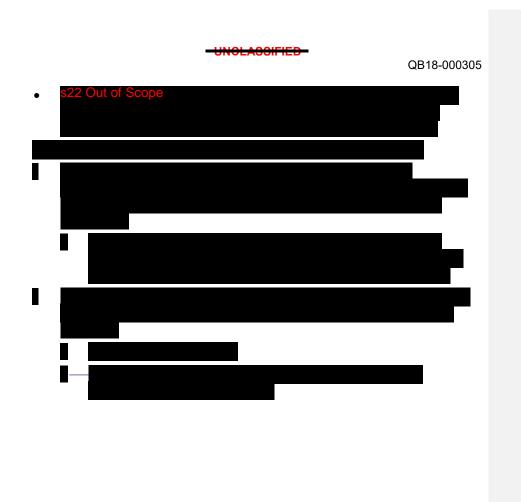




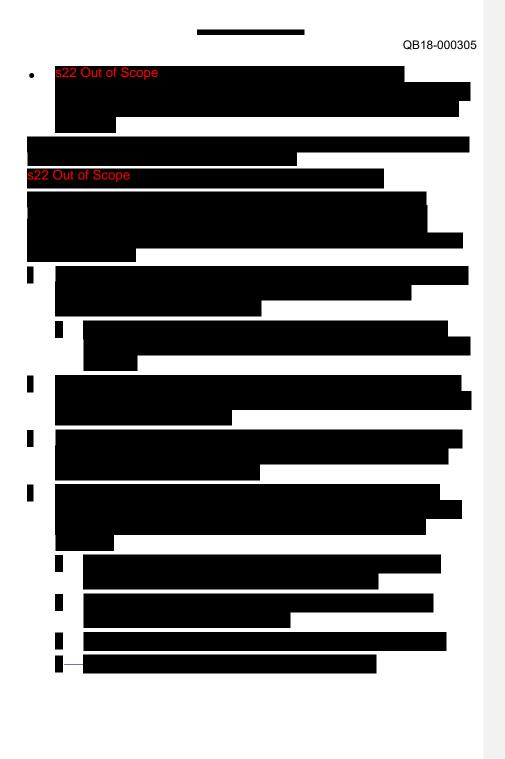


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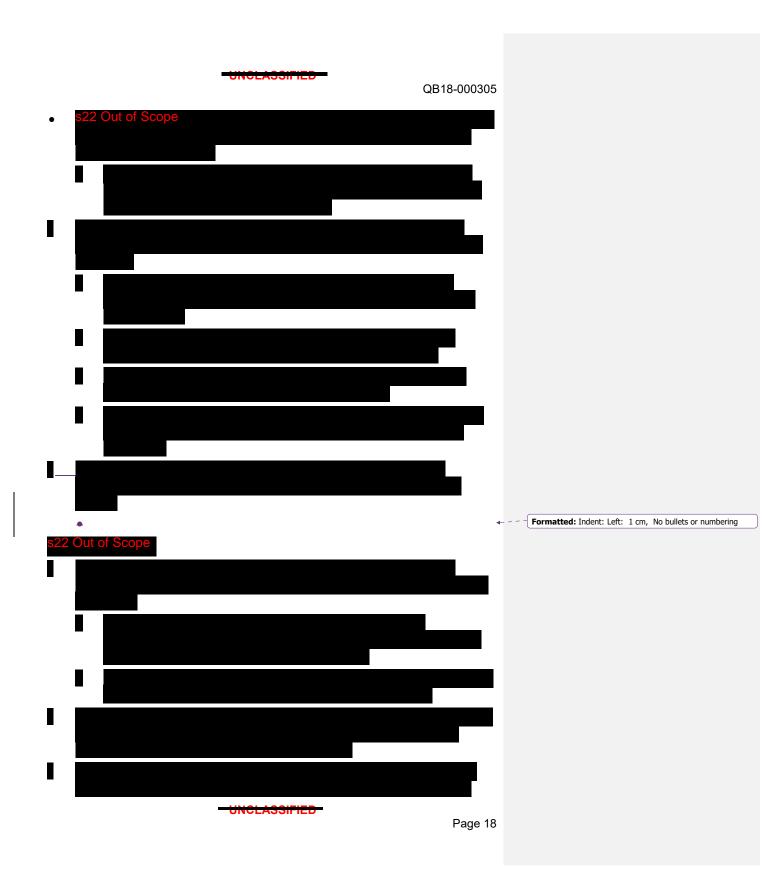




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## Current media

<u>14 August 2018, 'Military call-out power is too important to get the wording of an</u> <u>amendment wrong' ABC News Online, criticises the Bill, noting that "the amended</u> <u>law will, beyond argument, allow the Federal Government to call out the Army,</u> <u>whether or not a State Government wants it, to respond to an incident of mass civil</u> <u>disturbance — such as the 2005 or 2012 Sydney riots."</u>

<u>10 August 2018, various media reporting about five Australian citizens losing their</u> citizenship because of their involvement with Islamic State.

8 August 2018, Sydney Morning Herald, 'Nerve attack men sought', reports that Britain is ready to extradite two men it suspects of carrying out a nerve attack agent attack on former Russian spy Sergei Skripal and his daughter Yulia in England.

7 August 2018, Adelaide Advertiser (Tory Shepherd), Drone terrorism here to stay, experts warn in wake of attack. Australia is at risk of attack in new era of 'drone terrorism' experts warn in the wake of an assassination attempt in Venezuela. Two drones loaded with explosives were used in an apparent attack on President Nicols Maduro this week.

5 August 2018, Sunday Mail Brisbane, 'Elite forces proposal to combat terrorists', interviews Mark Bruce, an ex-British SAS soldier, who warns that a major terrorist attack in Australia is "only a matter of time." He suggests a new unit of ex-service personnel, as a layer between the Australian Federal Police and the private security industry, is needed in support of Australia's counter-terrorism capability.

21 July 2018, The Saturday Paper, 'Siege mentality', is an opinion editorial by Richard Ackland on the Part IIIAAA amendments. It suggests that the legislation was framed as a necessity post-Lindt Café siege but goes beyond that – allowing the Australian Defence Force "to be called out anywhere in Australia, or overseas, for any purpose, at a moment's notice, and there's no need for consultations with state or territority officials."

21 July 2018, Weekend Australian, 'Terror attacks on Australia 'inevitable'' interviews Aimen Dean – an undercover agent for British intelligence, and reportedly ASIO leading up to the 2000 Olympics – who warns that 'it's inevitable' Australia will face a terror attack. This threat would come from Australia's returning foreign fighters, including the use of drones to disperse poisons, and in part is because Australia is seen as a representative of the United States.

18 July 2018, Daily Telegraph, 'Terrorists could soon be set free', reports that the first of 20 convicted Australian terrorists, including Abdul Nacer Benbrika and Faheem Lodhi, are eligible for parole next year. The article reports that NSW cannot extend their sentence as it cannot prove to a 'high degree of probability' they would reoffend, and this also results in NSW not being able to impose bail conditions such as curfews. The article notes this power rests with the Federal Court and involves filing a new case – it's understood the Attorney-General is 'in a

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race against time to streamline the laws' [Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016] before the first eligible parole case comes up.

29 June 2018, Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'. Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth ... it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."

29 June 2018, SBS News, 'Elite soldiers to respond to terror attacks in call-out power overhaul', Reports that the Army will be given new powers to respond to unfolding terrorist attacks following a review of defence laws prompted by the Lindt Café siege in 2014. The Australian Strategic Policy Institute's Peter Jennings told SBS News police culture was already shifting away from prioritising arrests since the Lindt siege in Sydney. "Increasingly, because of what they call this activeshooter problem, police are basically training to kill terrorists on the spot. And in that sense, on that particular area, their culture is becoming more like the military culture," Mr Jennings said at the time.

29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".

29 June 2018, The Australian, Editorial 'Putting boots on the ground', states it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need improved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

28 June 2018, Adelaide Advertiser, 'Troops could be guards for finals', reports that 'troops could be deployed to protect football finals and other major sporting events from terrorist threats' under the proposed amendments.

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28 June 2018, multiple other news articles on Part IIIAAA Bill, including mentioning of use of ADF to respond to riots.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

28 June 2018, SMH, 'New ADF engagement rules reflect lessons learnt from Lindt siege'. Article about Deborah Snow's book on the Lindt Café Siege. Article notes that "Canberra's decision to make it easier for the military to help the states in circumstances which include those that prevailed at the Lindt café rewrites the playbook. This is not to say the army should go in every time, or as a first resort. But it is vital that federal and state agencies are able to work seamlessly when presented with a crisis such as Lindt."

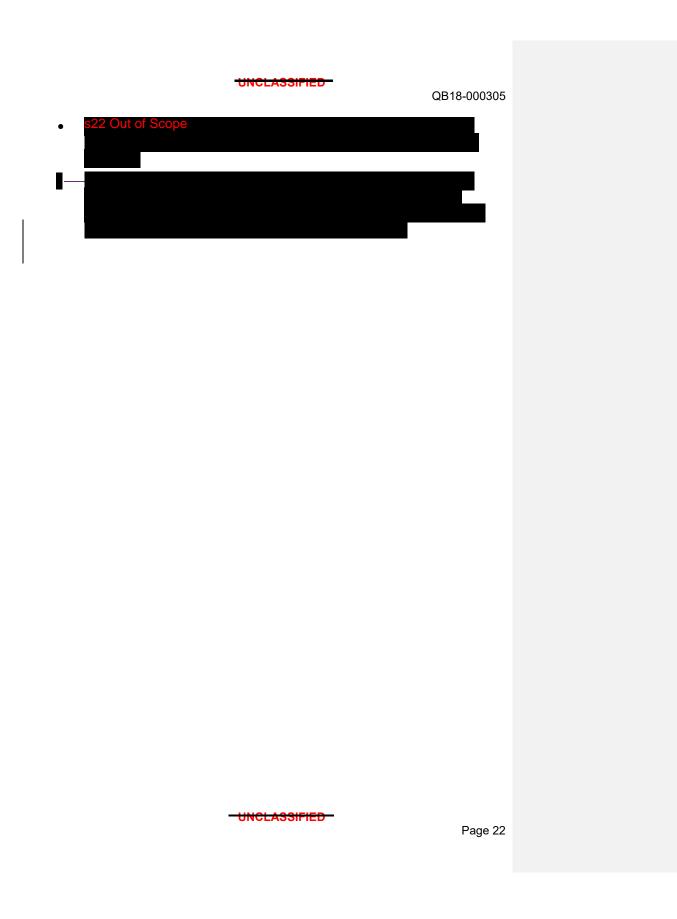
27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

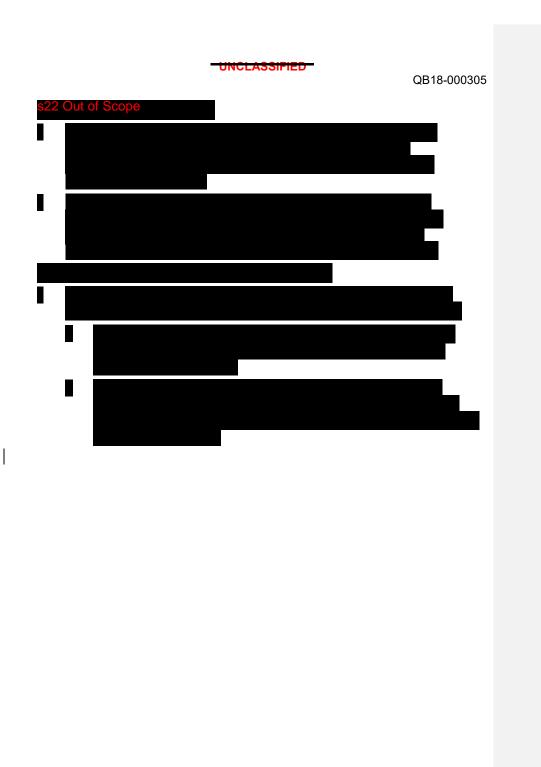
27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December 2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."

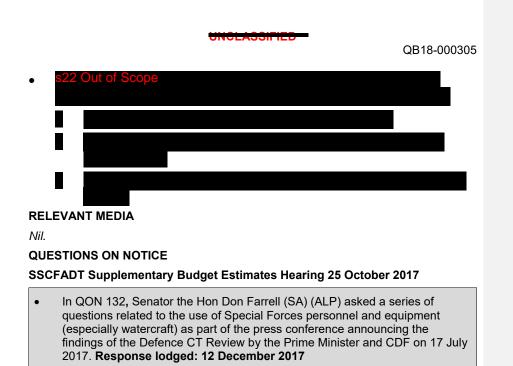


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## Senate Select Committee on Finance and Public Administration Legislation 21 May 2018 (pp. 123)

Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?

Page 124 Senate Monday, 21 May 2018

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

#### FREEDOM OF INFORMATION (FOI)

• Nil

#### **RECENT RELEVANT MINISTERIAL COMMENTS**

Senate Question Time 28 June 2018 (pp 51)

Senator MOLAN (New South Wales) (14:05): My question today is to the Minister for Defence, Senator Payne. Could the minister update the Senate on the steps taken by the Turnbull government to keep Australians safe?

Senator PAYNE (New South Wales—Minister for Defence) (14:06): I thank Senator Molan for his question. The No. 1 priority for the Turnbull government is the safety and security of Australians and Australia. In recent years terrorist attacks around the world and closer to home—for example, in Indonesia and the Philippines—have horrified us all. It's clear that terrorist tactics are evolving and, as we've also seen in the Middle East, some groups are capable of planning and conducting complex, well-coordinated attacks.

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As the threat evolves so must our approach to dealing with counterterrorism. Legislation being introduced by the government today will make it simpler for state and territory governments to call on the resources and expertise of the Australian Defence Force when they need it to deal with a terror related event or other acts of violence.

The defence amendment bill gives effect to the recommendations of the defence counterterrorism review announced last year. These amendments are the most significant changes to ADF callout powers since part IIIAAA of the Defence Act was introduced.

The changes have been made in close consultation with the states and territories. It is very important to note that state and territory police will remain the best first response to terrorist and other incidents and continue to have primary responsibility for protecting life and property in their state or territory.

I also want to take this opportunity to acknowledge and thank the Australia-New Zealand CounterTerrorism Committee for its work in consulting with the states and territories so effectively and also to acknowledge and thank the state and territory governments for their active and constructive contributions to the consultation process on this extremely important matter of national security.

The PRESIDENT: Senator Molan, a supplementary question.

Senator MOLAN (New South Wales) (14:07): Could the minister advise the Senate on other measures the Turnbull government is taking to protect Australians from terrorism?

Senator PAYNE (New South Wales—Minister for Defence) (14:08): As the bill has been in development, Defence has also made substantial progress to further enhance the very practical support that it provides to state and territory police through a range of engagements, including an enhanced counterterrorism liaison network, an increased and broadened program of specialist training activities and streamlined access for police to specialist defence facilities, such as rifle ranges. The bill itself will make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident; allow the government to preauthorise the ADF to respond to threats on land, at sea and in the air; simplify, expand and clarify the ADF's powers to search, seize and control movement during a violent or terrorist incident; and enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction, which was an area of the act that needed amendment. (Time expired)

The PRESIDENT: Senator Molan, a final supplementary question.

Senator MOLAN (New South Wales) (14:09): Can the minister advise the Senate about what protections are built into the bill?

Senator PAYNE (New South Wales—Minister for Defence) (14:09): There will be times when the states and territories may seek defence assistance to deal with violent situations, as I've indicated, and the amendments in the bill will improve and enhance the existing legal framework for that.

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Nevertheless, as I said, police remain the best first responders to terrorism incidents, and the bill makes no changes to the primary responsibility of the states and territories to protect lives and property in their jurisdictions. Nor are there any changes to the primacy of the civil power.

Civilian law enforcement agencies remain the paramount authority during a call-out. In particular, the amendments make it clear that when operating under a call-out order the Australian Defence Force must assist and cooperate with state and territory law enforcement agencies.

As far as reasonably practical, and even after it has been called out, the ADF will not act unless formally requested by the relevant state or territory police force. All levels of government recognise that our highest duty is to protect the Australian people.

#### House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself. That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three

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Bataclan lost their	shootings at different locations in cafes and b Theatre was subject to a multiple-shooter inc lives. Those people died. Others were subse where the attackers were wearing suicide ves	ident where 89 French citizens quently used in a hostage	
inconceiv that or an call-out w legislative	nfortunate reality of the world in which we live vable in any Western democracy, and it's also an analogous situation unfolded in Australia, the vould not have been met. It is very sobering to be change that we have brought into this Hous of the states and territories, coalition and Labo	o not inconceivable that, had e present standard for the ADF o think that there is a need for e today with great cooperation	
is an exa the way in	ng forward to working with members opposite mple of a way in which on a bipartisan basis n which the Turnbull government has that as nich the fine service men and women of our A n lives.	we can make Australians safer, an absolute priority and the	
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## DEFENCE ROLE IN COUNTER-TERRORISM

### ISSUE

# 'Military call-out power is too important to get the wording of an amendment wrong' ABC News Online, 14 August 2018

- The purpose of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 is to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Bill was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain the primary responsibility to protect life and property in their jurisdictions.
  - State and territory police are the best first response to domestic threats or acts of violence.
  - In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance by removing the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider not just whether the ADF would enhance the state or territory's response, but also the nature of the incident.
  - This amendment will allow greater flexibility for the ADF to provide the most rapid, effective and appropriate specialist support to the states and territories, upon request.

- It also respects the states' and territories' position as first responders by ensuring that there is an assessment of the potential benefit of ADF assistance.
- The Defence Act currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threaten the safety of Australians inside Australia's jurisdiction.
  - This will not change under the Government's proposed amendments to Part IIIAAA.
  - The ADF has never been called out under Part IIIAAA to respond to civil disorder and there is no expectation that they would be in future.
- In recognition of the key role that the Minister for Home Affairs plays in national security the Bill adds the Minister for Home Affairs as a named 'alternative Minister' for the purposes of expedited call out.
  - However, expedited call out orders may only be made in the event of a sudden and extraordinary emergency, where it is not practicable for a normal call out order to be made.
  - In the first instance, expedited orders may be made by the Prime Minister (instead of the Governor-General).
  - In the event that the Prime Minister is not available, expedited call out can be authorised by the two other authorising Ministers (Minister for Defence and Attorney-General) jointly.
  - It is only in the event that the Prime Minister and one of the other authorising Ministers are not available that an 'alternative Minister' has a role. In this situation, expedited call out can be authorised by the remaining authorising Minister (Minister for Defence or Attorney-General), and an 'alternative Minister'. Currently, the 'alternative Ministers' are:
    - the Deputy Prime Minister
    - o the Minister for Foreign Affairs, and
    - the Treasurer.
  - The amendments will add the Minister for Home Affairs as a fourth 'alternative Minister'.

## **HEADLINE RESPONSE**

# Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

[Handling note: these are whole of Government talking points for the Part IIIAAA Amendment Bill]

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain the primary responsibility to protect life and property in their jurisdictions.
  - State and territory police are the best first response to domestic threats or acts of violence.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Prime Minister in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the

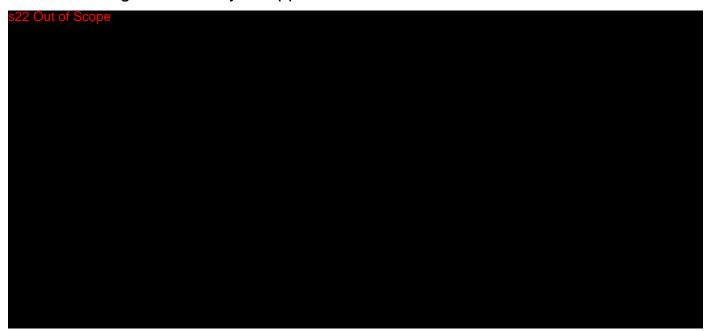


lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.

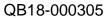
- This contemporary terrorist threat environment is more complex than the threat Australia faced when Part IIIAAA was introduced almost 20 years ago.
- Modern terrorist attacks are characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- State and territory governments continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.
- Since the Prime Minister's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made

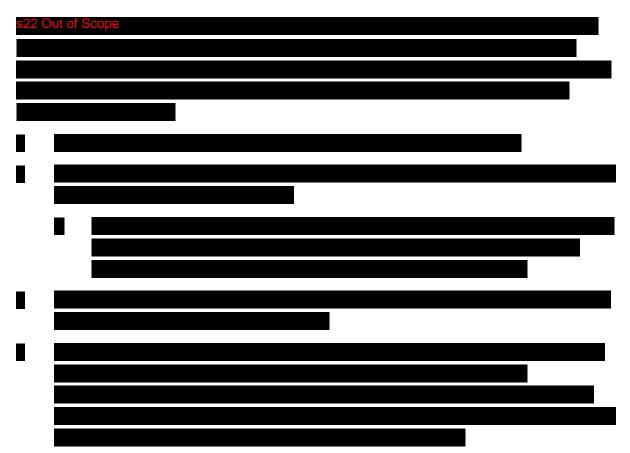
substantial progress to further enhance the practical support it provides to state and territory police, including through:

- an enhanced counter-terrorism liaison network;
- an increased and broadened program of support for specialist training activities; and
- streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.



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# *If asked: Will the legislation allow the ADF be called out to respond to riots?*

- This Bill is about making it easier for the ADF to help state and territory police respond to acts of significant violence, such as terrorism.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threaten the safety of Australians inside Australia's jurisdiction.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The ADF has never been called out under Part IIIAAA to respond to civil disorder and there is no expectation that they would be in future.

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If asked: will these amendments see the use of the military in law enforcement roles, or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority • during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to incidents of significant violence, including terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.

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## **Current media**

20 August 2018, "UK underestimating risk of far-right extremism, warns former terror chief Sir Mark Rowley' ABC News Online, reports that "the former head of counter-terrorism for the UK's Metropolitan Police has warned of a growing threat from right-wing extremists in the country. Sir Mark Rowley says extreme right-wing groups are operating in similar ways to extremists in the UK, citing figures that of 14 terror plots foiled in the counrey last year, 10 were from Islamic extremists, and four were from right-wing extremists."

14 August 2018, 'Military call-out power is too important to get the wording of an amendment wrong' ABC News Online, criticises the Bill, noting that "the amended law will, beyond argument, allow the Federal Government to call out the Army, whether or not a State Government wants it, to respond to an incident of mass civil disturbance — such as the 2005 or 2012 Sydney riots."

10 August 2018, various media reporting about five Australian citizens losing their citizenship because of their involvement with Islamic State.

8 August 2018, Sydney Morning Herald, 'Nerve attack men sought', reports that Britain is ready to extradite two men it suspects of carrying out a nerve attack agent attack on former Russian spy Sergei Skripal and his daughter Yulia in England.

7 August 2018, Adelaide Advertiser (Tory Shepherd), Drone terrorism here to stay, experts warn in wake of attack. Australia is at risk of attack in new era of 'drone terrorism' experts warn in the wake of an assassination attempt in Venezuela. Two drones loaded with explosives were used in an apparent attack on President Nicols Maduro this week.

5 August 2018, Sunday Mail Brisbane, 'Elite forces proposal to combat terrorists', interviews Mark Bruce, an ex-British SAS soldier, who warns that a major terrorist attack in Australia is "only a matter of time." He suggests a new unit of ex-service personnel, as a layer between the Australian Federal Police and the private security industry, is needed in support of Australia's counter-terrorism capability.

21 July 2018, The Saturday Paper, 'Siege mentality', is an opinion editorial by Richard Ackland on the Part IIIAAA amendments. It suggests that the legislation was framed as a necessity post-Lindt Café siege but goes beyond that – allowing the Australian Defence Force "to be called out anywhere in Australia, or overseas, for any purpose, at a moment's notice, and there's no need for consultations with state or territority officials."

21 July 2018, Weekend Australian, 'Terror attacks on Australia 'inevitable'' interviews Aimen Dean – an undercover agent for British intelligence, and reportedly ASIO leading up to the 2000 Olympics – who warns that 'it's inevitable' Australia will face a terror attack. This threat would come from Australia's returning foreign fighters, including the use of drones to disperse poisons, and in part is because Australia is seen as a representative of the United States.

18 July 2018, Daily Telegraph, 'Terrorists could soon be set free', reports that the first of 20 convicted Australian terrorists, including Abdul Nacer Benbrika and Faheem Lodhi, are eligible for parole next year. The article reports that NSW cannot extend their sentence as it cannot prove to a 'high degree of probability' they would reoffend, and this also results in NSW not being able to impose bail conditions such as curfews. The article notes this power rests with the Federal



Court and involves filing a new case – it's understood the Attorney-General is 'in a race against time to streamline the laws' [Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016] before the first eligible parole case comes up.

29 June 2018, Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'. Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth ... it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."

29 June 2018, SBS News, ' Elite soldiers to respond to terror attacks in call-out power overhaul', Reports that the Army will be given new powers to respond to unfolding terrorist attacks following a review of defence laws prompted by the Lindt Café siege in 2014. The Australian Strategic Policy Institute's Peter Jennings told SBS News police culture was already shifting away from prioritising arrests since the Lindt siege in Sydney. "Increasingly, because of what they call this activeshooter problem, police are basically training to kill terrorists on the spot. And in that sense, on that particular area, their culture is becoming more like the military culture," Mr Jennings said at the time.

29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".

29 June 2018, The Australian, Editorial 'Putting boots on the ground', states it makes sense to streamline the rules allowing state police to call on military to help when faced with terror attacks. The lesson of the Lindt siege is that police need improved capabilities, according to former chief of army Peter Leahy, who has argued that civil power must be paramount.

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

28 June 2018, Adelaide Advertiser, 'Troops could be guards for finals', reports that 'troops could be deployed to protect football finals and other major sporting events from terrorist threats' under the proposed amendments.

28 June 2018, multiple other news articles on Part IIIAAA Bill, including mentioning of use of ADF to respond to riots.

28 June 2018, Herald Sun, 'Military terror back-up'. The article notes that police will soon be able to call on crack SAS troops to help them deal with terrorist attacks and civil unrest on home soil under the biggest shakeup of Australia's defence 'call-out powers' in 20 years.

28 June 2018, SMH, 'New ADF engagement rules reflect lessons learnt from Lindt siege'. Article about Deborah Snow's book on the Lindt Café Siege. Article notes that "Canberra's decision to make it easier for the military to help the states in circumstances which include those that prevailed at the Lindt café rewrites the playbook. This is not to say the army should go in every time, or as a first resort. But it is vital that federal and state agencies are able to work seamlessly when presented with a crisis such as Lindt."

27 June 2018, The Canberra Times, 'Law change to make military call-out easier in terror incidents' reports the military will more easily be able to help police handle major terrorist and other large-scale violent attacks in Australia under laws being introduced on Thursday, The article states that the laws are not restricted to terrorism incidents and could, for instance, be used in the case of widespread rioting. Mr Porter said he found it "inconceivable" that any future federal government could abuse the call-out powers, because the threshold to deploy the ADF remains high.

27 June 2018, ABC Radio National, Interview with Deborah Snow in relation to the imminent publication of her book about the Lindt Café Siege, due to be released on Sunday 1 July 2018. Deborah Snow noted that questions remain unanswered about the ADF's role, and stated "precisely what capabilities did the Australian Defence Force, have even of a niche kind, that might have been of assistance to the New South Wales Police? What were the mechanisms by which the police and the ADF might have been communicating on the day? What was the nature of the, I suppose the question of training and equipment, preparations for something like the siege?"

23 June 2018, Sydney Morning Herald, 'Abbott offered army commandos' Deborah Snow, The article notes that former prime minister Tony Abbott "says he offered to make army commandos available during the fatal Lindt cafe siege of December 2014, but neither the then premier, Mike Baird, nor then state police minister Stuart Ayres recall a specific offer of military assistance". The article quotes Mr Abbott: "Were we to have another incident of this type, I suspect the Commonwealth's offers of assistance would be more readily accepted."

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### BACKGROUND

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**RELEVANT MEDIA** 

Nil.

**QUESTIONS ON NOTICE** 

#### SSCFADT Supplementary Budget Estimates Hearing 25 October 2017

• In QON 132, Senator the Hon Don Farrell (SA) (ALP) asked a series of questions related to the use of Special Forces personnel and equipment (especially watercraft) as part of the press conference announcing the findings of the Defence CT Review by the Prime Minister and CDF on 17 July 2017. **Response lodged: 12 December 2017** 

Senate Select Committee on Finance and Public Administration Legislation 21 May 2018 (pp. 123)



Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?

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Page 124 Senate Monday, 21 May 2018

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

#### FREEDOM OF INFORMATION (FOI)

• Nil

#### **RECENT RELEVANT MINISTERIAL COMMENTS**

#### Senate Question Time 28 June 2018 (pp 51)

Senator MOLAN (New South Wales) (14:05): My question today is to the Minister for Defence, Senator Payne. Could the minister update the Senate on the steps taken by the Turnbull government to keep Australians safe?

Senator PAYNE (New South Wales—Minister for Defence) (14:06): I thank Senator Molan for his question. The No. 1 priority for the Turnbull government is the safety and security of Australians and Australia. In recent years terrorist attacks around the world and closer to home—for example, in Indonesia and the Philippines—have horrified us all. It's clear that terrorist tactics are evolving and, as we've also seen in the Middle East, some groups are capable of planning and conducting complex, wellcoordinated attacks.

As the threat evolves so must our approach to dealing with counterterrorism. Legislation being introduced by the government today will make it simpler for state and territory governments to call on the resources and expertise of the Australian

Defence Force when they need it to deal with a terror related event or other acts of violence.

The defence amendment bill gives effect to the recommendations of the defence counterterrorism review announced last year. These amendments are the most significant changes to ADF callout powers since part IIIAAA of the Defence Act was introduced.

The changes have been made in close consultation with the states and territories. It is very important to note that state and territory police will remain the best first response to terrorist and other incidents and continue to have primary responsibility for protecting life and property in their state or territory.

I also want to take this opportunity to acknowledge and thank the Australia-New Zealand CounterTerrorism Committee for its work in consulting with the states and territories so effectively and also to acknowledge and thank the state and territory governments for their active and constructive contributions to the consultation process on this extremely important matter of national security.

The PRESIDENT: Senator Molan, a supplementary question.

Senator MOLAN (New South Wales) (14:07): Could the minister advise the Senate on other measures the Turnbull government is taking to protect Australians from terrorism?

Senator PAYNE (New South Wales—Minister for Defence) (14:08): As the bill has been in development, Defence has also made substantial progress to further enhance the very practical support that it provides to state and territory police through a range of engagements, including an enhanced counterterrorism liaison network, an increased and broadened program of specialist training activities and streamlined access for police to specialist defence facilities, such as rifle ranges. The bill itself will make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident; allow the government to preauthorise the ADF to respond to threats on land, at sea and in the air; simplify, expand and clarify the ADF's powers to search, seize and control movement during a violent or terrorist incident; and enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction, which was an area of the act that needed amendment. (Time expired)

The PRESIDENT: Senator Molan, a final supplementary question.

Senator MOLAN (New South Wales) (14:09): Can the minister advise the Senate about what protections are built into the bill?

Senator PAYNE (New South Wales—Minister for Defence) (14:09): There will be times when the states and territories may seek defence assistance to deal with violent situations, as I've indicated, and the amendments in the bill will improve and enhance the existing legal framework for that.

Nevertheless, as I said, police remain the best first responders to terrorism incidents, and the bill makes no changes to the primary responsibility of the states and territories to protect lives and property in their jurisdictions. Nor are there any changes to the primacy of the civil power.



Civilian law enforcement agencies remain the paramount authority during a call-out. In particular, the amendments make it clear that when operating under a call-out order the Australian Defence Force must assist and cooperate with state and territory law enforcement agencies.

As far as reasonably practical, and even after it has been called out, the ADF will not act unless formally requested by the relevant state or territory police force. All levels of government recognise that our highest duty is to protect the Australian people.

#### House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself. That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for



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legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Contact:	Sarah Driver, Director, Domestic Security and Counter-Terrorism, 02 6265 1725	Min ID: QB18-0003305 Division: Strategic Policy
Cleared by:	Samantha Higgins, Acting First Assistant Secretary Strategic Policy, 02 6265 1883	Created:12 April 2018 Updated: 20 August 2018

Consulted:

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#### **DEFENCE ROLE IN COUNTER-TERRORISM**

#### **HEADLINE RESPONSE**

# Introduction of the Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of significant violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain the primary responsibility to protect life and property in their jurisdictions.
  - State and territory police are the best first response to domestic threats or acts of violence.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to use force to resolve incidents of significant violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Government in July 2017.

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- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- Modern terrorist attacks are characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- Under the reforms, state and territory governments will continue to have primary responsibility for protecting life and property in their jurisdictions.
  - State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures being rolled out to enhance Defence's support to national counter-terrorism arrangements.

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- Since the Government's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlined police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.

# If asked: Will the legislation allow the ADF be called out to respond to riots?

- This Bill is about making it easier for the ADF to help state and territory police respond to acts of significant violence, such as terrorism.
- States and territories retain responsibility as first responders for 'domestic violence' incidents in their respective jurisdictions.
  - 'Domestic violence' is a constitutional term which includes not only terrorist attacks but other incidents of significant violence that threaten the safety of Australians inside Australia's jurisdiction.
- Part IIIAAA currently enables the states and territories to request ADF assistance to respond to 'domestic violence'.
- This will not change under the Government's proposed amendments to Part IIIAAA.
- The amendments do not impact upon citizens' ability to protest and specifically prevent the use of the ADF in response to any kind of peaceful protest or industrial action.
- The ADF has never been called out under Part IIIAAA to respond to civil disorder and there is no expectation that they would be in future.

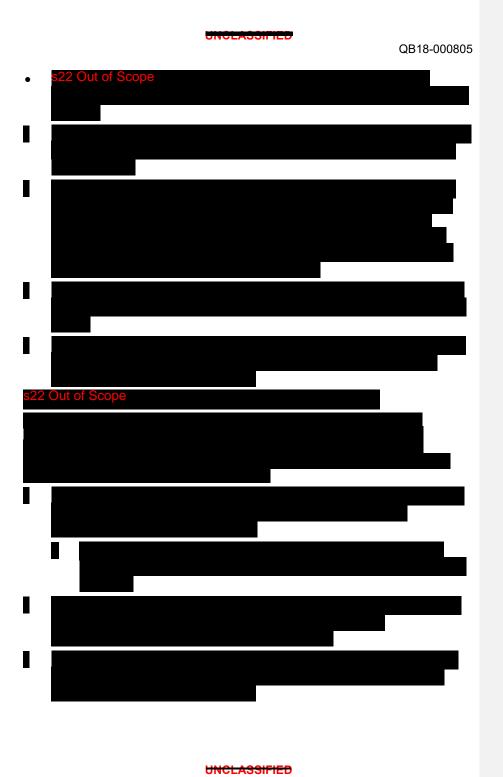
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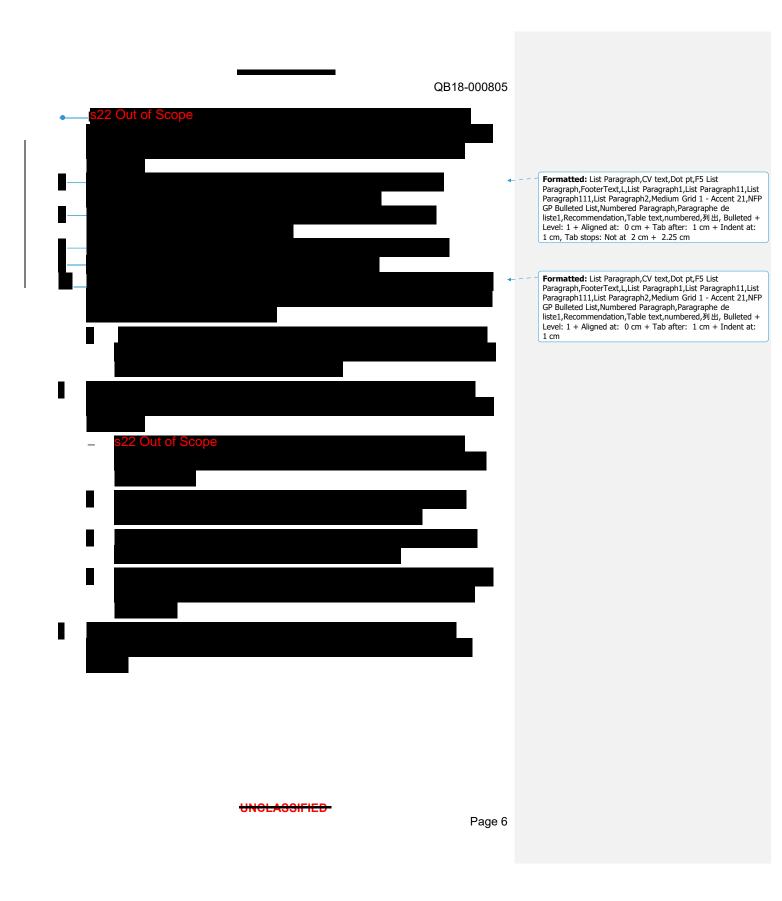


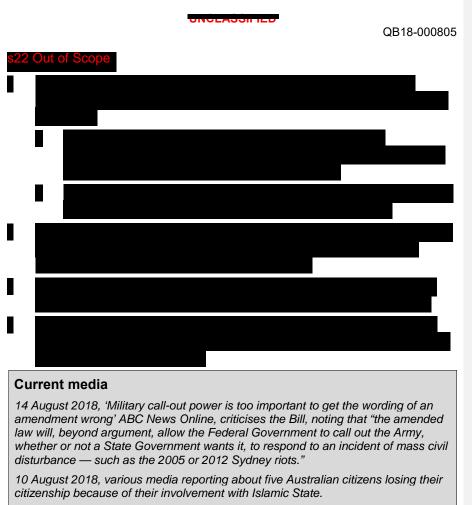
# If asked: will these amendments see the use of the military in law enforcement roles, or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the paramount authority during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to incidents of significant violence, including terrorist incidents.
- They will also ensure the ADF has the tools it needs to assist police in responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory law enforcement agencies.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.

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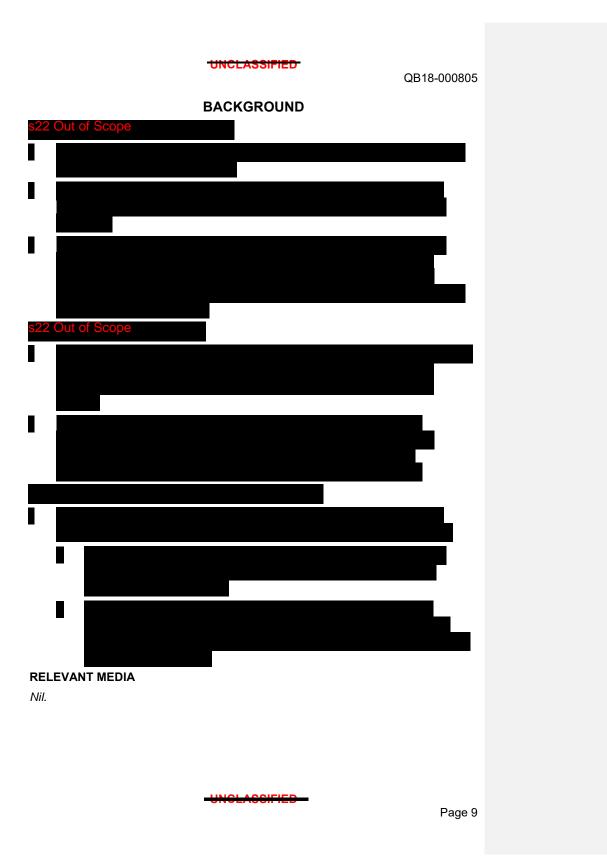
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## **QUESTIONS ON NOTICE**

## Senate Select Committee on Finance and Public Administration Legislation 21 May 2018 (pp. 123)

Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?

Page 124 Senate Monday, 21 May 2018

#### FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Mr Fraser: No, he has not.

Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement to call out Australia's armed forces in respect of domestic security arrangements. Particularly noting the Governor-General's previous career, I just wondered if that command chain had ever been exercised, particularly noting the current terrorism environment that we are operating in.

Mr Fraser: Thank you for the question. The Governor-General is briefed on those arrangements, as is the office. I have a copy of certain classified briefings that relate to arrangements that my office is apprised of—the Governor-General—in terms of contingency planning on behalf of the government. About call-out powers and things, sometimes these are matters the Governor-General is briefed on or are matters that come to Executive Council for consideration, but he hasn't participated in any exercising of those powers.

Senator PATRICK: I'd point out that back in 2005-06 the Governor-General and/or someone from his office were involved in actual exercises, where they went to command areas and so forth. That was the nature of the questions. I guess I'll follow some of these questions up with PM&C and Defence. Thank you.

#### FREEDOM OF INFORMATION (FOI)

Nil

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#### RECENT RELEVANT MINISTERIAL COMMENTS

#### House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself. That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

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I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Contact:	Aleysha Ingram <u>Helen Thai</u> , a/Director, Domestic Security and Counter- Terrorism, 02 6265 <u>3499</u> 1725	Min ID: QB18-0003305 Division: Strategic Policy
Cleared by:	Samantha Higgins, Acting First Assistant Secretary Strategic Policy 02 6265 1883	Created: 12 April 2018 Updated: 03- <u>11</u> September 2018
Consulted:	SOCOMD, International Policy Division, Military Strategic Committements, Defence Legal	2010

UNOLAGOITIED

## **Driver, Sarah MS**

From: Sent:	Thai, Helen MS Wednesday, 12 September 2018 4:07 PM
То:	Higgins, Samantha MS; Driver, Sarah MS
Cc:	Moore, Dominic MR
Subject:	RE: Part IIIAAA   Amendments Update [SEG=PROTECTED, DLM=Censitive:Legal]

## PROTECTED Sensitive:Legal

Hello Sam, Sarah,

We've spoken to AGD.

s47C(1) Deliberative process

s47C(1) Deliberative process

Helen

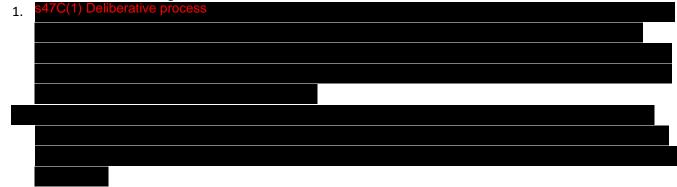
IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

From: Thai, Helen MS
Sent: Wednesday, 12 September 2018 2:52 PM
To: Higgins, Samantha MS <samantha.higgins@defence.gov.au>
Cc: Moore, Dominic MR <dominic.moore@defence.gov.au>; Driver, Sarah MS <sarah.driver@defence.gov.au>
Subject: RE: Part IIIAAA | Amendments Update [CEC\_PROTECTED, DLM\_ConstituenLegal]

## PROTECTED Sonsitivo:Logal

Sam,

Update email below. Two things to note:



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Hello Reuben,

## An update on the state of play on Part IIIAAA:



Process for second reading debate and passage of the Bill:

- The Bill will be debated in the House of Representatives (HoR).
  - From here, the amendments may be introduced in the HoR and the Bill passed in the HoR, then passed to the Senate for consideration and passage.
  - Alternatively, the Bill may be passed by the HoR without amendments. The amendments could then be introduced in the Senate and passed, then moved back to the HoR for passage.

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From: Higgins, Samantha MS
Sent: Wednesday, 12 September 2018 2:14 PM
To: Driver, Sarah MS <sarah.driver@defence.gov.au>
Cc: Thai, Helen MS <helen.thai@defence.gov.au>; Moore, Dominic MR <dominic.moore@defence.gov.au>

Subject: RE: Part IIIAAA | Amendments Update [SEC=FROTECTED, DLM=Sensitive:Legal] Importance: High

Hello

Thanks for the update.

Can you please get back to me by 1500 on where we are at (to let Reuben know)? Also, can you let me know about where the bill is going next for debate?

Thanks Sam

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From: Driver, Sarah MS
Sent: Wednesday, 12 September 2018 12:21 PM
To: Higgins, Samantha MS <<u>samantha.higgins@defence.gov.au</u>>
Cc: Thai, Helen MS <<u>helen.thai@defence.gov.au</u>>; Moore, Dominic MR <<u>dominic.moore@defence.gov.au</u>>
Subject: Part IIIAAA | Amendments Update [<u>SEC=PROTECTED, DLM=Sensitive:Legal]</u>

## PROTECTED Sonoitive:Logal

Hi Sam,

s47C(1) Deliberative process

Thanks, Sarah

Sarah Driver A/AS Strategic Capability and Security Policy

Strategic Policy Division Department of Defence *Ph*: 02 6265 7216 *Location*: R1-1-A037 E: <u>sarah.driver@defence.gov.au</u>

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SB18-000965

## PART IIIAAA OF THE DEFENCE ACT 1903

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## ISSUE

• The Government has introduced a Bill to enhance the ability of the ADF to support state and territory police in responding to incidents of domestic violence occurring in Australia, including terrorism.

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## **HEADLINE RESPONSE**

• The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of domestic violence occurring in Australia, including terrorism.



- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to resolve incidents of domestic violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Government in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- The contemporary terrorist threat environment is more complex than the threat Australia faced almost 20 years ago when Part IIIAAA was introduced.
- The threat is characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.



- Under the amendments, state and territory governments will continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures to enhance Defence's support to national counter-terrorism arrangements.
- Since the Government's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlining police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.



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# Will the ADF be deployed in preference to state and territory law enforcement?

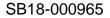
- The ADF will not be deployed in preference to state and territory law enforcement.
- It is a fundamental principle of call out that civilian authorities remain paramount, and that the ADF is used only to support state and territory law enforcement agencies as the primary responders to incidents of domestic violence, including terrorism.
- Under the amendments, states and territories will retain responsibility as first responders for domestic security incidents. State and territory police forces are well-equipped to respond to domestic terrorism incidents, and will continue to play this primary role.

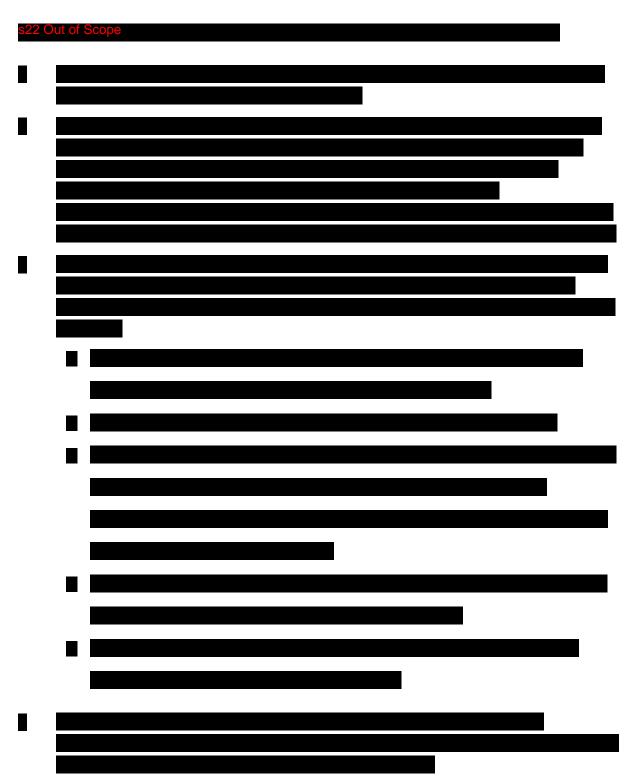
- The amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
- The proposed amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with affected state and territory police forces.
- As far as reasonably practicable, and even after it has been called out, the ADF will not act unless the relevant state or territory police force formally requests assistance.
- Will the proposed amendments enable the ADF to be deployed to respond to protests?
- The Bill does not impact on the rights of people to engage in peaceful protest, industrial action or civil disobedience.
- It is a fundamental precondition of a call out order that there is domestic violence occurring or likely to occur.
- The ADF could not, and would not, be called out in response to non-violent protests, industrial action or non-violent civil disobedience; and authorising Ministers may only call out the ADF after taking into account the nature of the violence and whether the ADF would be likely to enhance the state and territory response to that violence.
- The Bill contains a range of limitations and safeguards where the ADF is called out to respond to domestic violence.
- These ensure that the exercise of any power under a call out order is necessary, reasonable and proportionate in the circumstances.
- These limitations and safeguards operate at various levels, including at the Ministerial level, at the ADF command level, and also at the level of individual ADF members. In particular, the Bill imposes limitations on the way in which the Chief of the Defence Force (CDF) may utilise the ADF.
- The CDF must only utilise the ADF under a call out order for the purposes specified in the order.
- The Bill is explicit that the CDF must not utilise the ADF to stop or restrict any protest, dissent, assembly or industrial action, except if there is a reasonable likelihood of either the death of, or serious injury to, persons, or serious damage to property. Therefore, a call out order would not be made in relation to a peaceful protest, industrial action or civil disobedience.

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- Where other actors are engaging in domestic violence that may cause injury to people or serious damage to property, the ADF could be called out to assist civilian law enforcement agencies to respond to that violence.
- The Bill provides the ADF with powers to evacuate innocent people to safe places, and crowd control powers to control the movement of people and means of transport. The ADF could use such powers in relation to peaceful protesters to protect them from others who are carrying out acts of violence.
- State or territory law enforcement agencies would be the first responders in such circumstances. They are well-trained and equipped to respond to such situations.

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## Will amendments to Part IIIAAA result in increased military

## presence or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the primary responders for domestic security incidents in their respective jurisdictions.

- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the powers it needs to assist police in quickly responding to such incidents.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory police forces.
- As far as reasonably practicable and even after the ADF has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently relocate or pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.

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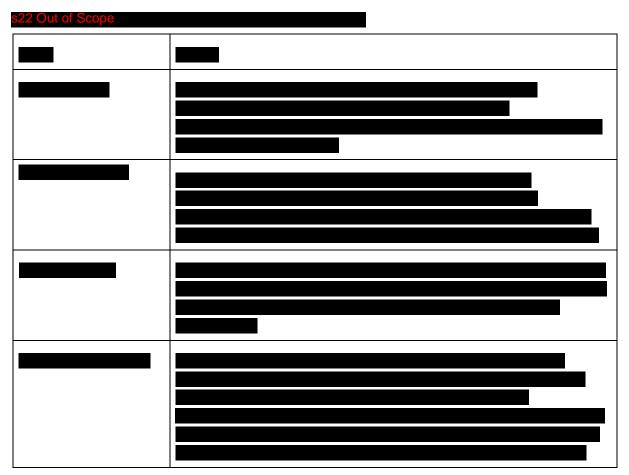
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## **RELEVANT MEDIA**

14 August 2018, 'Military call-out power is too important to get the wording of an amendment wrong' ABC News Online, criticises the Bill, noting that "the amended law will, beyond argument, allow the Federal Government to call out the Army, whether or not a State Government wants it, to respond to an incident of mass civil disturbance — such as the 2005 or 2012 Sydney riots."

21 July 2018, The Saturday Paper, 'Siege mentality', is an opinion editorial by Richard Ackland on the Part IIIAAA amendments. It suggests that the legislation was framed as a necessity post-Lindt Café siege but goes beyond that – allowing the Australian Defence Force "to be called out anywhere in Australia, or overseas, for any purpose, at a moment's notice, and there's no need for consultations with state or territority officials."

29 June 2018, Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'. Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth ... it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."



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29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

## **Current media**

Nil

**QUESTIONS ON NOTICE** 

Nil

**Other Questions on Notice** 

Nil

## **SSCFADT** Questions on Notice

Nil

## FREEDOM OF INFORMATION (FOI)

Nil

## **RECENT RELEVANT MINISTERIAL COMMENTS**

## House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself.

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That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Contact:	Helen Thai, a/Director, Domestic Security and Counter-Terrorism, 02 6265 3499	Min ID: QB18-000973 Division: Strategic Policy
Cleared by:	Samantha Higgins, Acting First Assistant Secretary Strategic Policy 02 6265 1883	Created: 26 Sept 2018 Updated: 04 Oct 2018
Consulted:	Military Strategic Commitments, Defence Legal, SOCOMD	11:27AM



## **Driver, Sarah MS**

From: Sent:	Driver, Sarah MS Friday, 12 October 2018 5:56 PM
То:	SP&I-SP-SCSP-DS&CT <mark>\$47F(1) Personal server</mark> ; Copeland, Damian LTCOL; Wallis, Simon MR 2; Bowers, Peter CDRE; Waddell, Jim COL; Halward, Richard MAJ (GBR); White, Sarah-Jane CMDR; <b>\$47F(1) Personal</b>
Subject: Attachments:	FW: Part IIIAAA   Debate Materials [DLM=Sensitive:Legal] Questions and Answers - Defence Amendment (Call Out of the Australiandocx; Minister for Defence Madia Balagea Deseage of Dett IIIAAA Amendment Bill door
	Minister for Defence Media Release Passage of Part IIIAAA Amendment Billdocx

## -Sonoitivo:Logal-

FYI

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From: Higgins, Samantha MS
Sent: Friday, 12 October 2018 5:55 PM
To: Bolaffi, Reuben MR <reuben.bolaffi@defence.gov.au>
Cc: Hamilton, Tom MR <tom.hamilton@defence.gov.au>; Gilmore, Peter MAJGEN <peter.gilmore@defence.gov.au>;
Cunliffe, Mark MR <mark.cunliffe@defence.gov.au>; Bilton, Gregory MAJGEN <gregory.bilton@defence.gov.au>;
s47F(1) Personal privacy
>; Driver, Sarah MS <sarah.driver@defence.gov.au>
Subject: Part IIIAAA | Debate Materials [D+M=Sencitive:Loga]

## **Gensitive:Legal**

Dear Reuben

Further to our discussion yesterday, please find attached the finalised **Question and Answer brief**, prepared by Defence and the Attorney-General's Department, to support debate on the Defence Amendment (Call out of the Australian Defence Force) Bill 2018 next week.

We have also attached a **joint media release** for your consideration, which will be sent to your office through the normal Defence public affairs channel as well. We have also prepared a draft speech for the Minister if required for the debate. Please let us know if you would like me to provide this to you as well.

Sarah Driver (A/Assistant Secretary Strategic Capability and Security Policy) and an ADF representative from Defence Legal will be on stand-by to go up to Parliament to support the debate next week. We have heard informally that it is scheduled for Tuesday.

If you have any queries up until my departure for the United States on Sunday morning, please do not hesitate to give me a call. From Sunday morning onwards, please contact either Tom Hamilton (\$47F(1), and or 6266 7211) or Sarah Driver (6265 1718).

Thank you,

Regards, Sam

Samantha Higgins A/FASSP Acting First Assistant Secretary Strategic Policy Division Department of Defence

R1-1-Aoo5, Russell Office <u>Samantha.higgins@defence.gov.au</u> P: 02 626 51883 M: <u>547F(1)</u>

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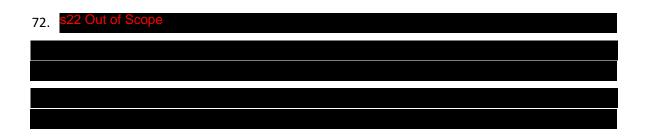
# **Questions and Answers**

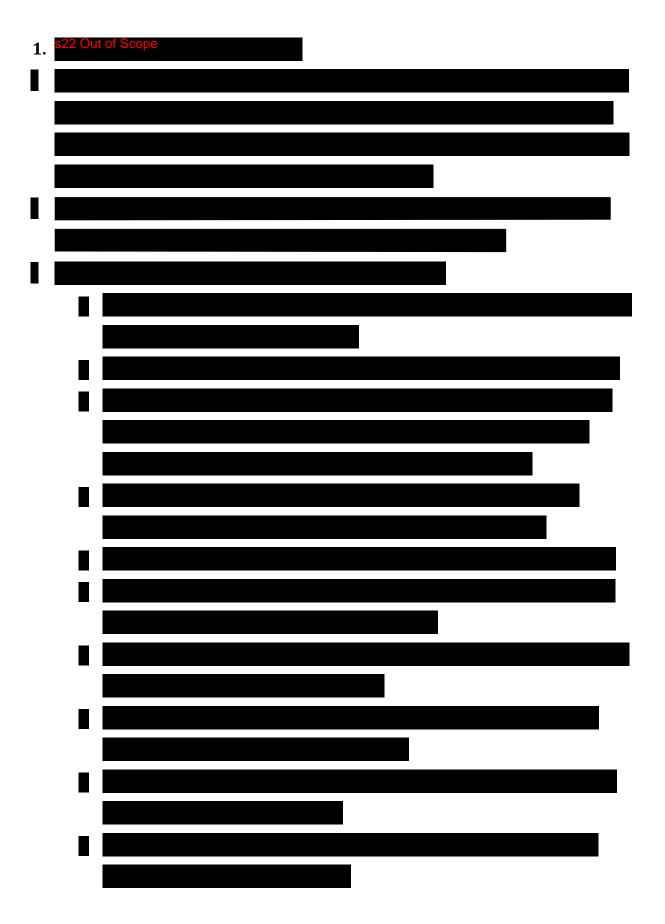
# Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

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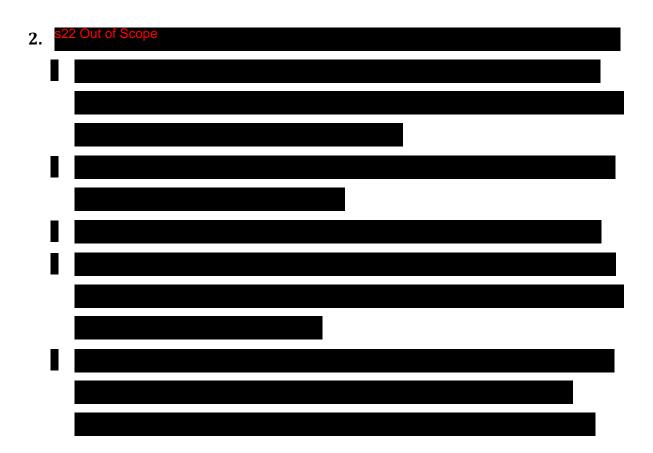
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# **General questions & rationale**

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## 7. Will amendments to Part IIIAAA result in increased military presence or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain paramount during a call out.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the powers it needs to assist police in quickly responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory police forces.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently relocate or pre-position forces in anticipation of providing security support to state and territory law enforcement, and will retain this ability under the amendments.

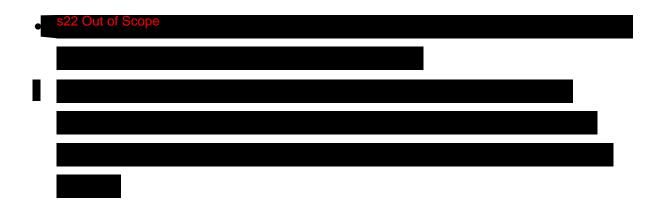
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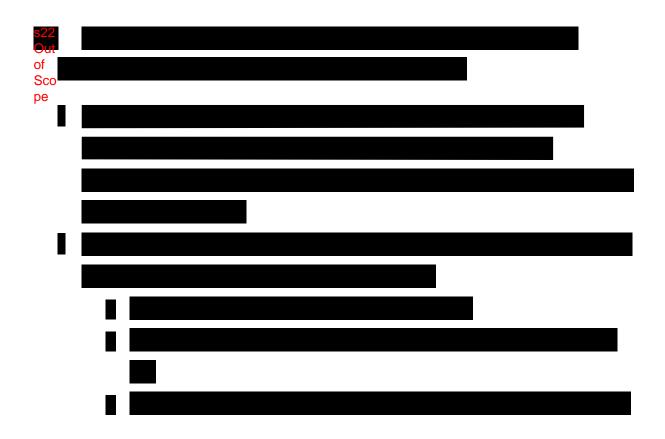
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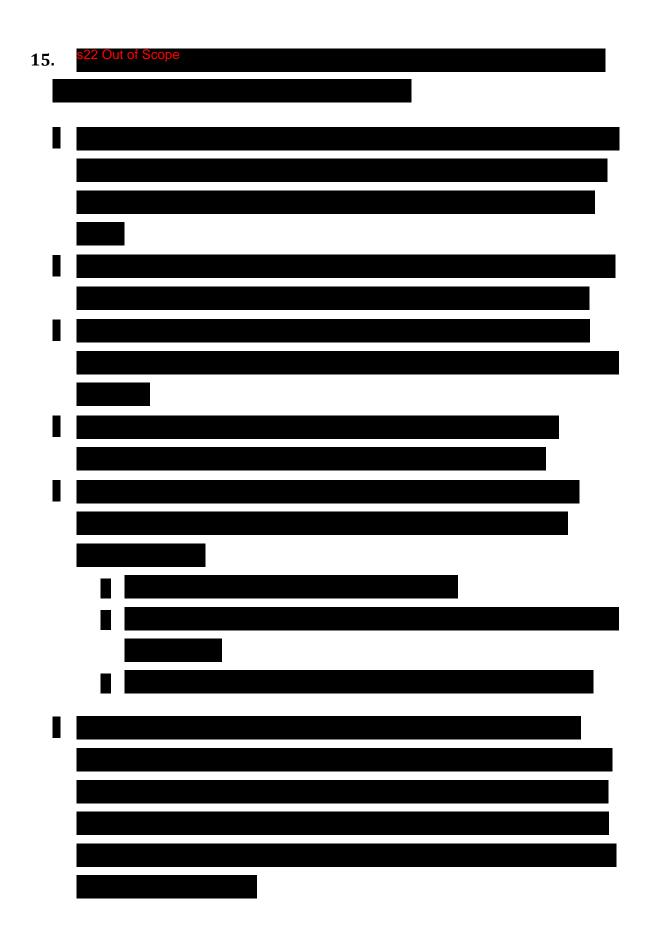


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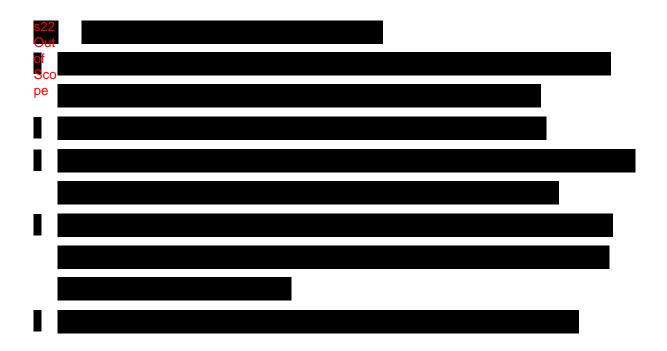
## 14. Will the proposed amendments enable the ADF to be deployed to respond to protests?

- The Bill does not impact on the rights of people to engage in *peaceful* protest, industrial action or civil disobedience.
- It is a fundamental precondition of a call out order that there is domestic violence occurring or likely to occur.
- The Bill contains a range of limitations and safeguards where the ADF is called out to respond to domestic violence.
- These ensure that the exercise of any power under a call out order is necessary, reasonable and proportionate in the circumstances.
- These limitations and safeguards operate at various levels, including at the Ministerial level, at the ADF command level, and also at the level of individual ADF members.
- At the Ministerial level, authorising Ministers may only call out the ADF after taking into account the nature of the violence and whether the ADF would be likely to enhance the state and territory response to that violence.
- The Bill also imposes limitations on the way in which the Chief of the Defence Force (CDF) may utilise the ADF.
- The CDF must only utilise the ADF under a call out order for the purposes specified in the order.
- The Bill is explicit that the CDF must not utilise the ADF to stop or restrict any
  protest, dissent, assembly or industrial action, except if there is a reasonable
  likelihood of either the death of, or serious injury to, persons, or serious
  damage to property.
- Therefore, the ADF could not, and would not, be called out in response to non-violent protests, industrial action or civil disobedience.
- There may be circumstances where a terrorist attacks a peaceful protest, or conducts an attack in the vicinity of a peaceful protest.

- ADF members may be exercising powers in the Bill, such as establishing a cordon or directing people away from a location of violence, which could incidentally impact on people engaged in peaceful protest.
- However, this would only be in a manner which is reasonable and necessary to protect the lives and safety of people from actors, such as terrorists, who are carrying out or are likely to carry out acts of violence.
- It is important to note that state or territory police would be the first responders to such incidents.





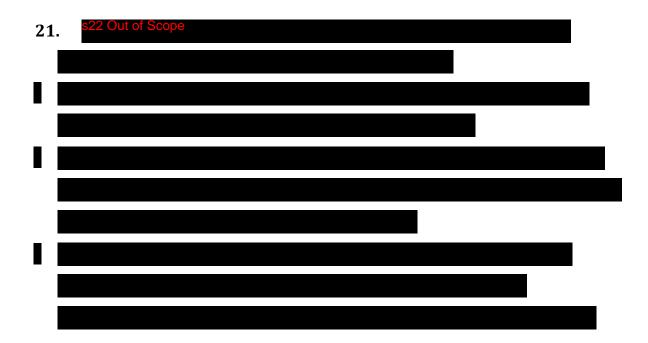




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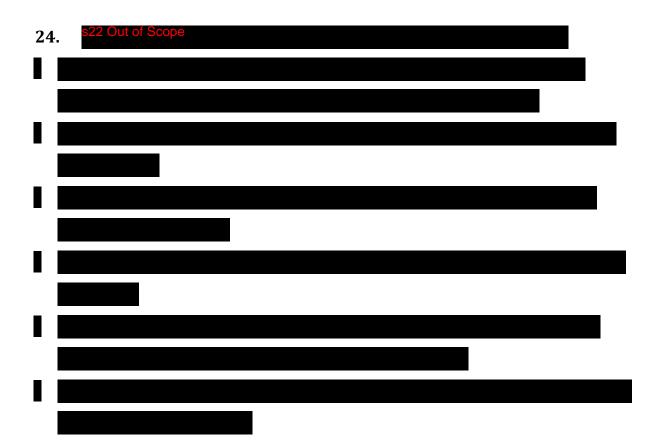
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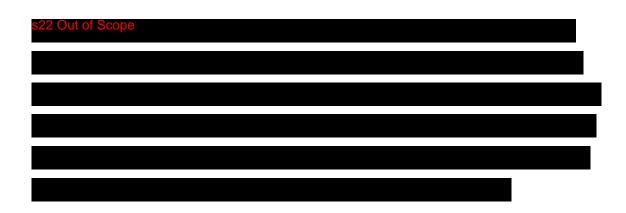


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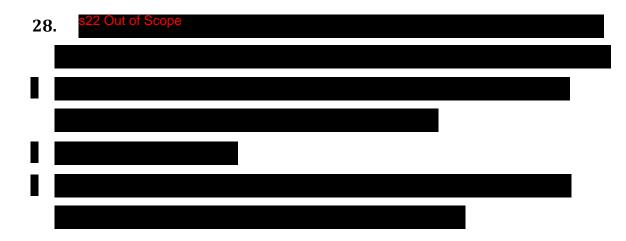


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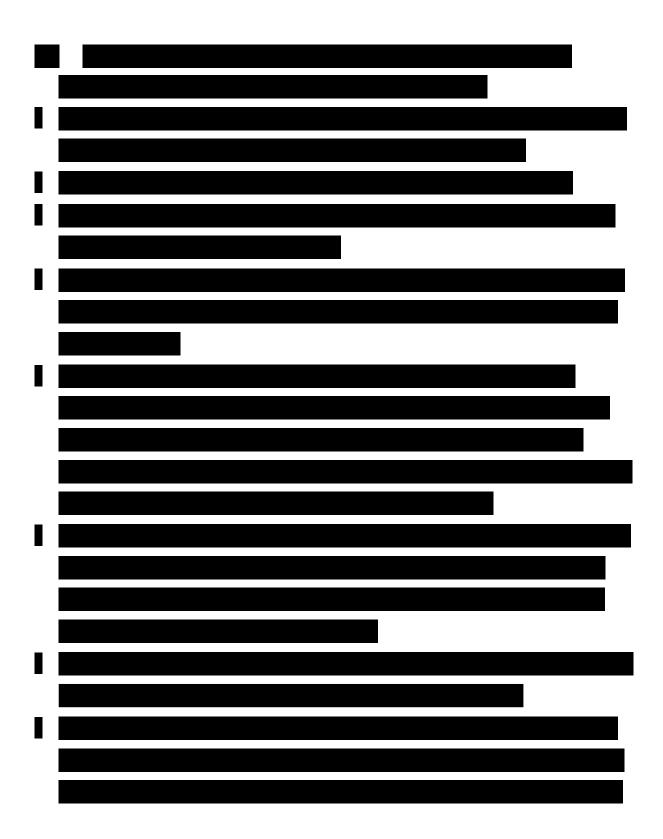
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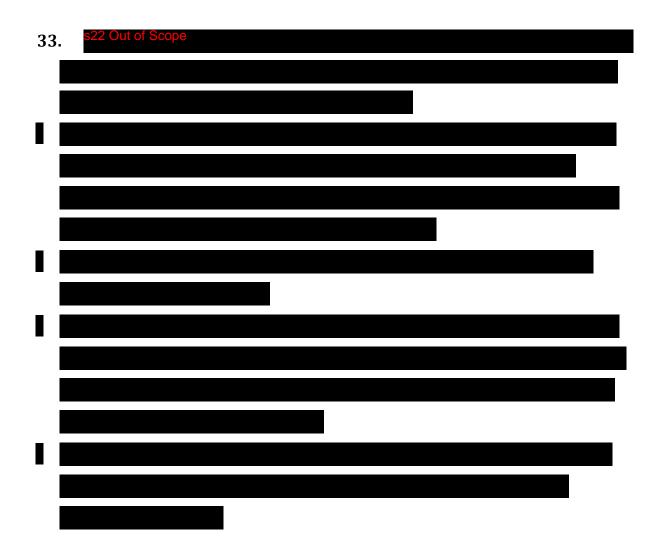
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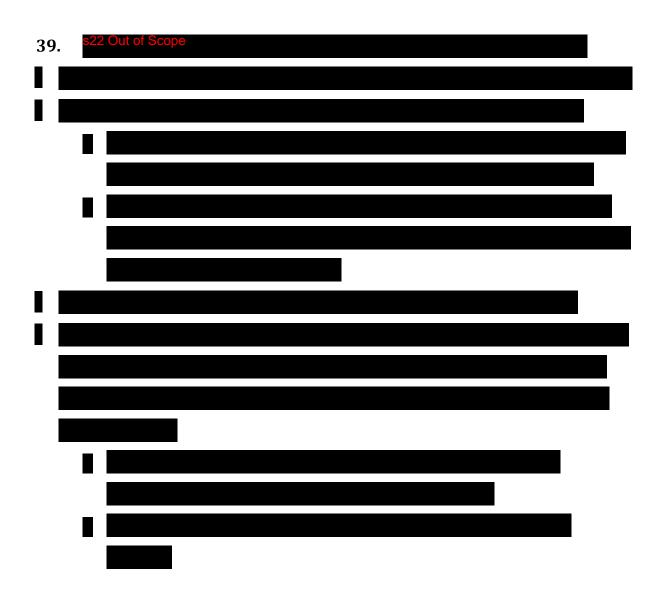
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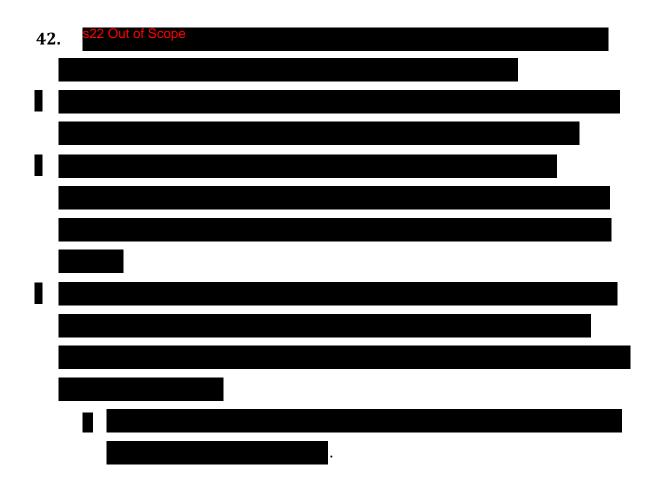
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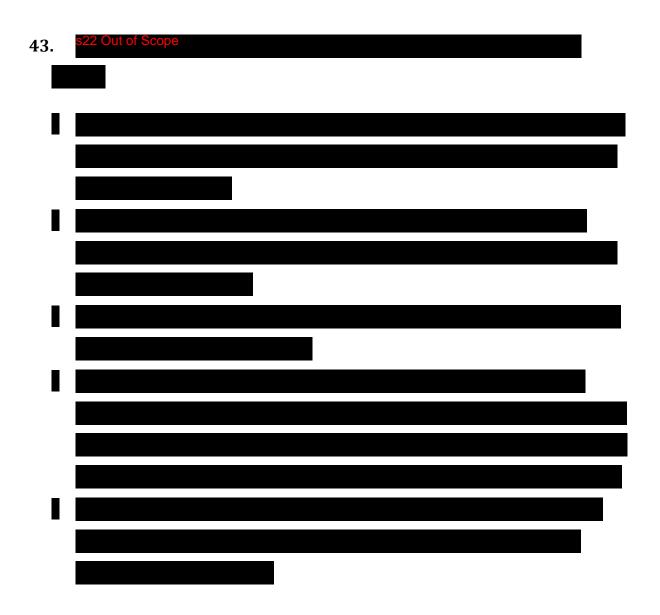
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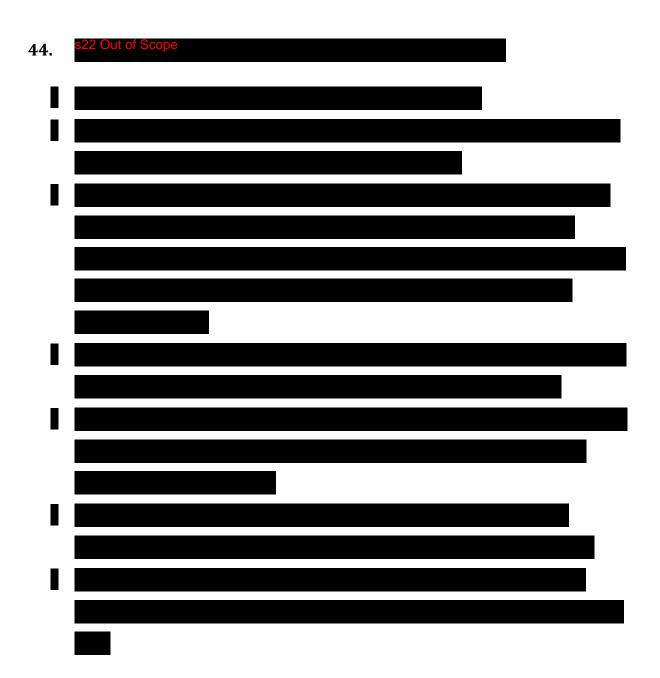


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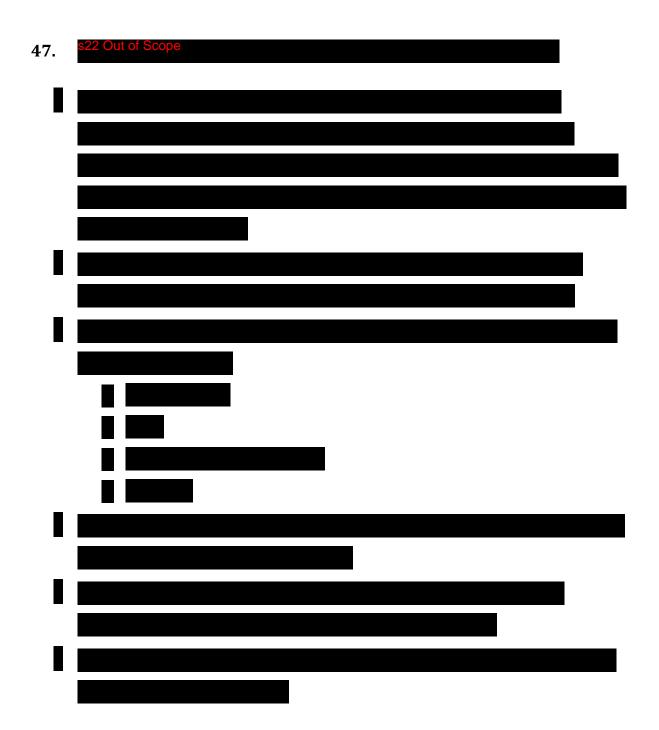


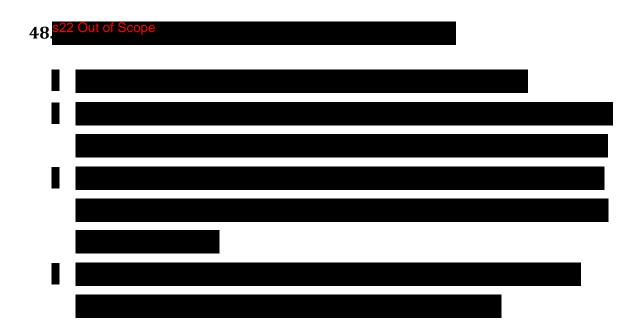






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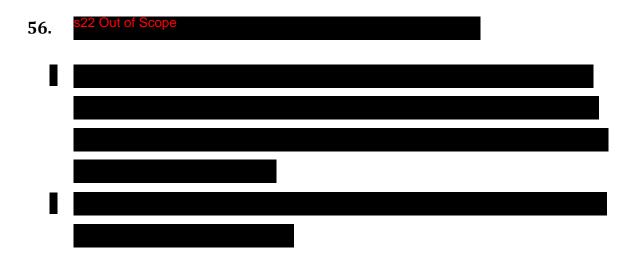
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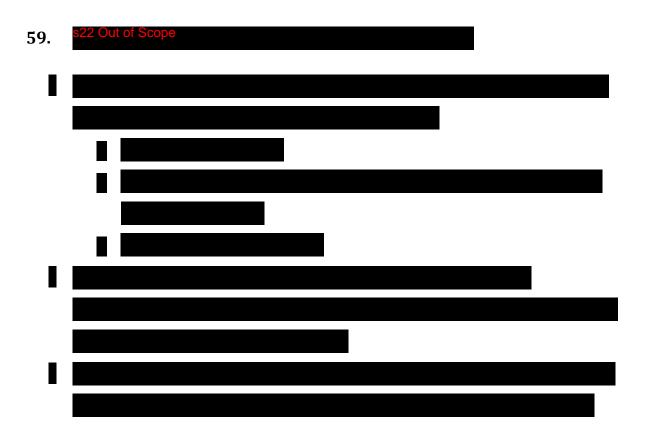
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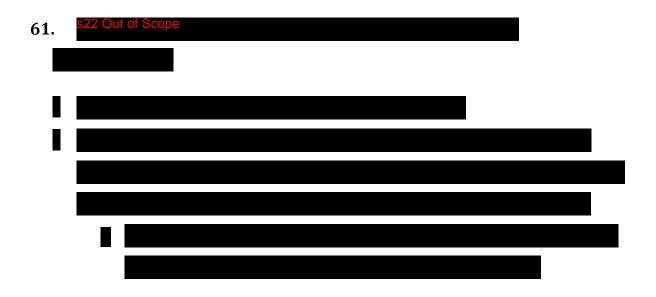


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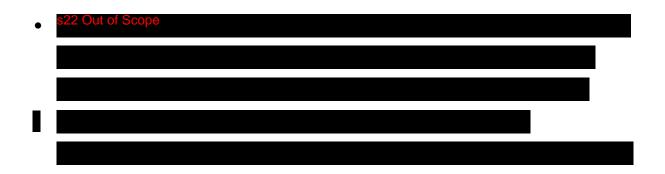


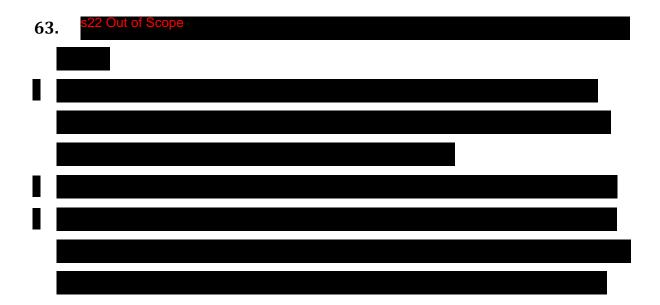




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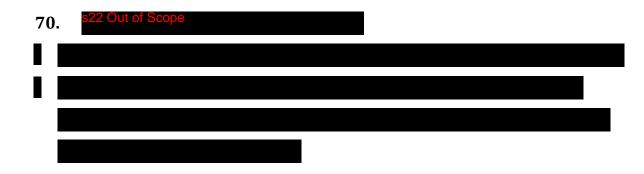
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### **Driver, Sarah MS**

From:Moore, Dominic MRSent:Wednesday, 17 October 2018 9:17 AMTo:Lippis, Zoe MAJCc:Halward, Richard MAJ (GBR); Thai, Helen MSSubject:Senates Estimates Briefs [SEC=UNCLASSIFIED]Attachments:QB18-000805 - IIIAAA only.docx; QB18-000805 - CT excl. IIIAAA.docx

#### UNCLASSIFIED

Hi Zoe,

Senate Estimates briefs on Defence's Role in CT/the Part IIIAAA Bill attached.

Cheers,

Dominic

**Dominic Moore** Senior Policy Officer, Domestic Security and Counter-Terrorism Strategic Policy Branch

Strategic Policy Division Department of Defence *Ph*: 02 6265 2781 *Location*: R1-1-A025 E: dominic.moore@defence.gov.au

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SB18-000965

# PART IIIAAA OF THE DEFENCE ACT 1903

Please refer to QB18-000805 for matters relating to Defence's Role in Counter-Terrorism.

# ISSUE

- The Government has introduced a Bill to enhance the ability of the ADF to support state and territory police in responding to incidents of domestic violence occurring in Australia, including terrorism.
- The Parliamentary Committee process has raised a number of issues in relation to the Bill, which is yet to be debated in Parliament.



# **HEADLINE RESPONSE**

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of domestic violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.
  - States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.

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- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to resolve incidents of domestic violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
  - simplify, expand and clarify the ADF's powers to search, seize, and control movement during a violent or terrorist incident; and
  - enhance the ability of the ADF to respond to incidents occurring in more than one jurisdiction.
- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Government in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- The contemporary terrorist threat environment is more complex than the threat Australia faced almost 20 years ago when Part IIIAAA was introduced.
- The threat is characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- Under the amendments, state and territory governments will continue to have primary responsibility for protecting life and property in their jurisdictions.
- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.

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- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures to enhance Defence's support to national counter-terrorism arrangements.
- Since the Government's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlining police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.

Current media	
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## Will the proposed amendments enable the ADF to be deployed to

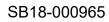
### respond to protests?

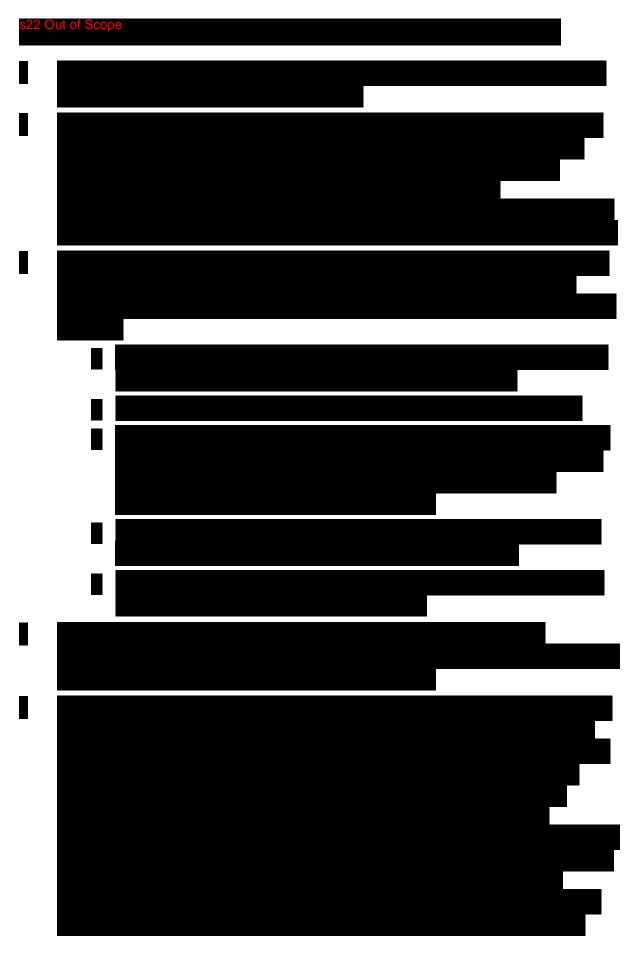
- The Bill does not impact on the rights of people to engage in peaceful protest, industrial action or civil disobedience.
- It is a fundamental precondition of a call out order that there is domestic violence occurring or likely to occur.
- The Bill contains a range of limitations and safeguards where the ADF is called out to respond to domestic violence.
- These ensure that the exercise of any power under a call out order is necessary, reasonable and proportionate in the circumstances.
- These limitations and safeguards operate at various levels, including at the Ministerial level, at the ADF command level, and also at the level of individual ADF members.
- At the Ministerial level, authorising Ministers may only call out the ADF after taking into account the nature of the violence and whether the ADF would be likely to enhance the state and territory response to that violence.
- The Bill also imposes limitations on the way in which the Chief of the Defence Force (CDF) may utilise the ADF.
- The CDF must only utilise the ADF under a call out order for the purposes specified in the order.
- The Bill is explicit that the CDF must not utilise the ADF to stop or restrict any protest, dissent, assembly or industrial action, except if there is a reasonable likelihood of either the death of, or serious injury to, persons, or serious damage to property.
- Therefore, the ADF could not, and would not, be called out in response to non-violent protests, industrial action or civil disobedience.
- There may be circumstances where a terrorist attacks a peaceful protest, or conducts an attack in the vicinity of a peaceful protest.
- ADF members may be exercising powers in the Bill, such as establishing a cordon or directing people away from a location of violence, which could incidentally impact on people engaged in peaceful protest.
- However, this would only be in a manner which is reasonable and necessary to protect the lives and safety of people from actors, such

as terrorists, who are carrying out or are likely to carry out acts of violence.

• It is important to note that state or territory police would be the first responders to such incidents.

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# Will amendments to Part IIIAAA result in increased military

## presence or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the primary responders for domestic security incidents in their respective jurisdictions.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the powers it needs to assist police in quickly responding to such incidents.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory police forces.
- As far as reasonably practicable and even after the ADF has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently relocate or pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.





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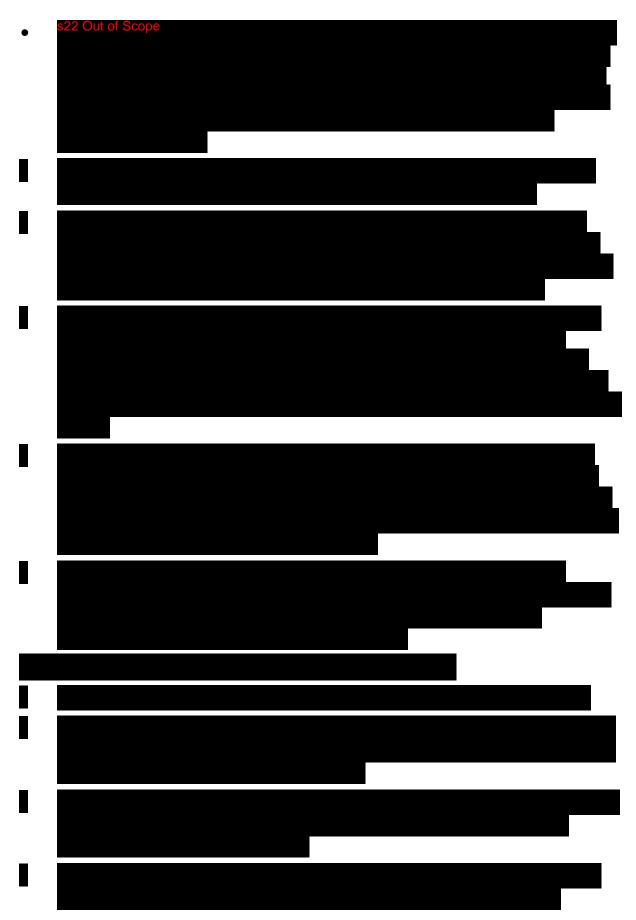
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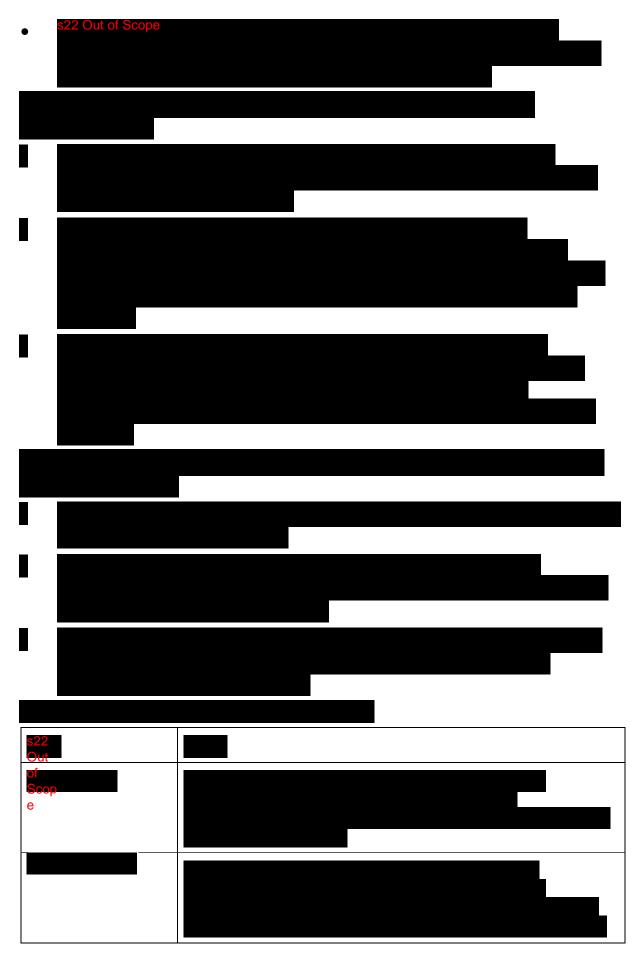


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#### **RELEVANT MEDIA**

14 August 2018, 'Military call-out power is too important to get the wording of an amendment wrong' ABC News Online, criticises the Bill, noting that "the amended law will, beyond argument, allow the Federal Government to call out the Army, whether or not a State Government wants it, to respond to an incident of mass civil disturbance — such as the 2005 or 2012 Sydney riots."

21 July 2018, The Saturday Paper, 'Siege mentality', is an opinion editorial by Richard Ackland on the Part IIIAAA amendments. It suggests that the legislation was framed as a necessity post-Lindt Café siege but goes beyond that – allowing the Australian Defence Force "to be called out anywhere in Australia, or overseas, for any purpose, at a moment's notice, and there's no need for consultations with state or territority officials."

29 June 2018, Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'. Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth ... it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."

29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

### Current media

Nil

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#### **QUESTIONS ON NOTICE**

Nil

#### **Other Questions on Notice**

Nil

#### **SSCFADT Questions on Notice**

Nil

#### FREEDOM OF INFORMATION (FOI)

Nil

#### **RECENT RELEVANT MINISTERIAL COMMENTS**

#### House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself.

That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.

For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space



of about 43 minutes, three suicide bombers detonated bombs. There were three separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Contact:	Helen Thai, a/Director, Domestic Security and Counter-Terrorism, 02 6265 3499	Min ID: QB18-000973 Division: Strategic Policy
Cleared by:	Samantha Higgins, Acting First Assistant Secretary Strategic Policy 02 6265 1883	Created: 26 Sept 2018 Updated: 04 Oct 2018
Consulted:	Military Strategic Commitments, Defence Legal, SOCOMD	11:27AM

QB18-000805

# **DEFENCE'S ROLE IN COUNTER-TERRORISM**

# ISSUE

Defence's role in countering terrorism is primarily overseas. Defence provides support to national counter-terrorism arrangements to respond to domestic incidents when requested.

KEY FACTS AND FIGURES
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# **HEADLINE RESPONSE**

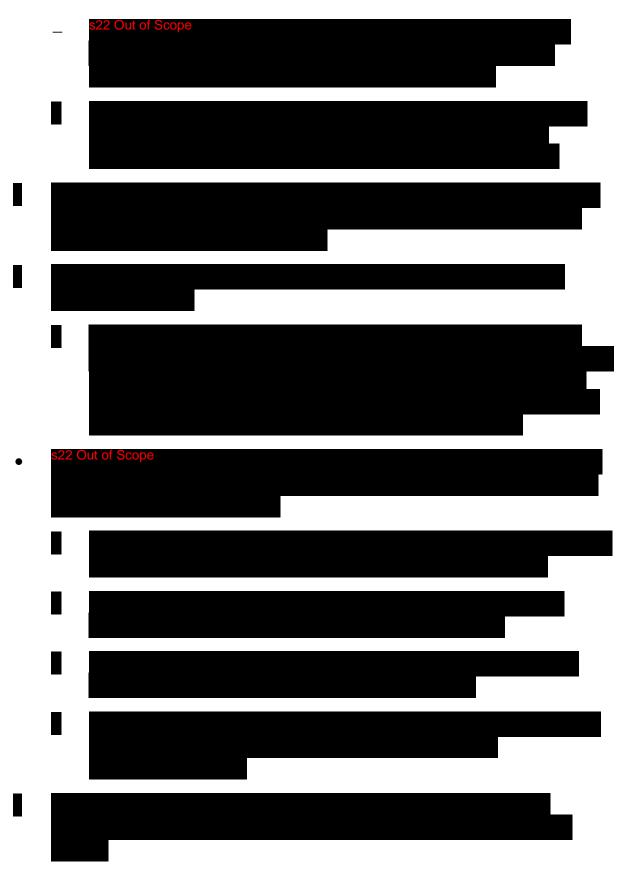
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#### **Overview of Recent Events / Relevant Timeline**

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**RELEVANT MEDIA** (up to one month prior to date of brief creation/update)

# **Current media**

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### **Other Questions on Notice**

Nil

# SSCFADT Questions on Notice [Insert Estimates] Hearing XX Month XXXX

Nil



#### **FREEDOM OF INFORMATION (FOI)**

Nil

#### **RECENT RELEVANT MINISTERIAL COMMENTS**

Nil

Cleared by:

Contact: Helen Thai a/Director – Domestic Security and Counter-Terrorism Strategic Policy Division 02 6265 3499

Samantha Higgins

02 6265 1883

Strategic Policy Division

Policy

a/First Assistant Secretary Strategic

Min ID: QB18-0003305 Division: Strategic Policy

Created:	12 April 2018
Updated:	27 Sept 2018

Consulted: \$33 Defence; \$47F(1) Personal privacy

QB18-001036

# PART IIIAAA OF THE DEFENCE ACT 1903

Please refer to QB18-000805 for matters relating to Defence's Role in Counter-Terrorism.

# ISSUE

• The Government has introduced a Bill to enhance the ability of the ADF to support state and territory police in responding to incidents of domestic violence occurring in Australia, including terrorism.

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# **HEADLINE RESPONSE**

- The Government has introduced a Bill to enhance the ability of the Australian Defence Force (ADF) to support state and territory police in responding to incidents of domestic violence occurring in Australia, including terrorism.
- The Defence Amendment (Call Out of the Australian Defence Force) Bill 2018 was developed in close consultation with state and territory governments to ensure a cohesive and coordinated approach to combating violent incidents, including terrorism.

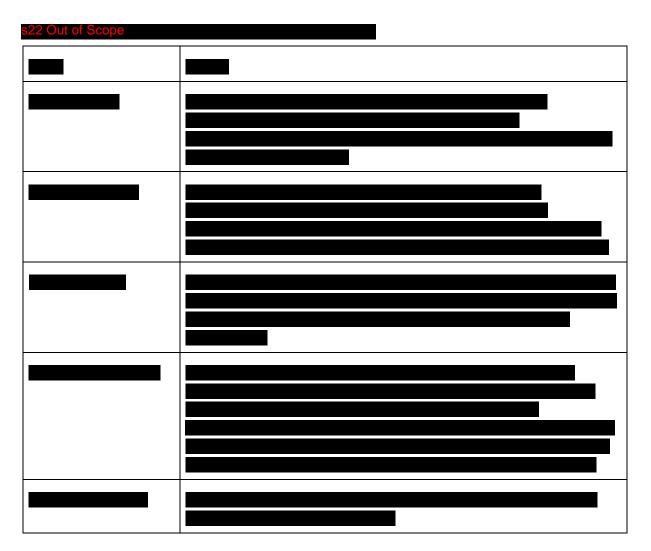
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- The Bill will amend Part IIIAAA of the *Defence Act 1903* which provides the legislative framework authorising the ADF to be called out to resolve incidents of domestic violence occurring in Australia.
- In particular, the Bill will:
  - make it easier for states and territories to request ADF support where necessary to assist in the event of a violent or terrorist incident;
  - allow the Government to pre-authorise the ADF to respond to threats on land, at sea and in the air;
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- These amendments give effect to the recommendations of the Review of Defence Support for National Counter-Terrorism Arrangements (Defence Counter-Terrorism Review), announced by the Government in July 2017.
- The amendments are the most significant changes to the ADF call out powers since the provisions were enacted in 2000, in the lead-up to the Sydney Olympics. They will ensure that the ADF is better able to respond effectively to the contemporary terrorist threat.
- The contemporary terrorist threat environment is more complex than the threat Australia faced almost 20 years ago when Part IIIAAA was introduced.
- The threat is characterised by highly-mobile attackers that move quickly across large areas. The recent events in Borough Market, London, and at the Bataclan Theatre in Paris are illustrative of this type of attack. At the same time, the Manchester bombing showed that more traditional bomb attacks continue to pose a significant threat.
- Under the amendments, state and territory governments will continue to have primary responsibility for protecting life and property in their jurisdictions.



- State and territory police forces are well-equipped to respond to domestic terrorism incidents, and have the primary role as first responders to attacks.
- However, the amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.
  - The amendments remove the existing legislative threshold requirement that the states and territories are not, or are unlikely to be, able to protect themselves against incidents of significant violence.
  - Instead, in deciding whether to call out the ADF, the Commonwealth will need to consider the nature of the incident and whether the ADF would enhance the state or territory's response.
  - The Government will be able to pre-authorise the ADF to respond to threats on land, at sea and in the air.
- They will also ensure that the ADF has the powers it needs to respond quickly and effectively to contemporary terrorist attacks in support of states and territories.
- The reforms are part of a suite of measures to enhance Defence's support to national counter-terrorism arrangements.
- Since the Government's announcement of the outcomes of the Defence Counter-Terrorism Review last year, Defence has made substantial progress to further enhance the practical support it provides to state and territory police, including through:
  - an enhanced counter-terrorism liaison network;
  - an increased and broadened program of support for specialist training activities; and
  - streamlining police access to Defence facilities such as rifle ranges.
- These reforms will ensure the Commonwealth can be more flexible and agile in the way it supports states and territories.

Current media





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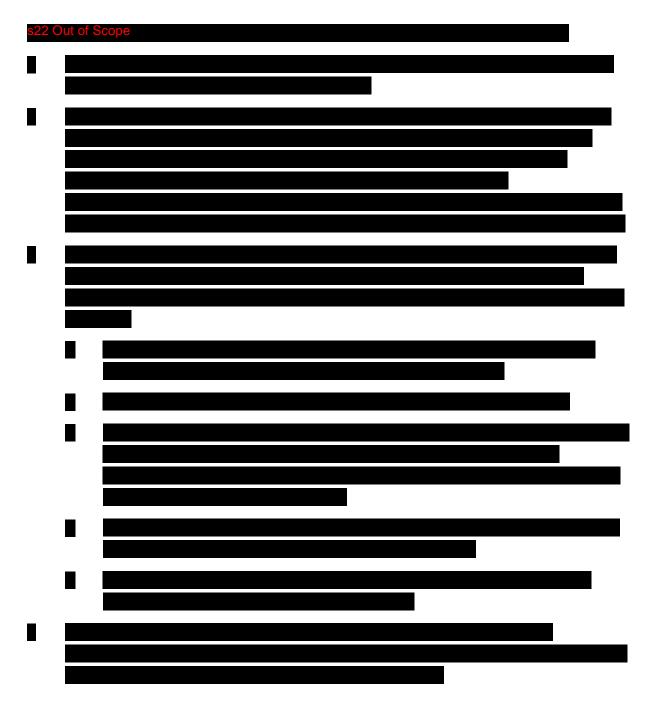
# Will the proposed amendments enable the ADF to be deployed to respond to protests?

- The Bill does not impact on the rights of people to engage in peaceful protest, industrial action or civil disobedience.
- It is a fundamental precondition of a call out order that there is domestic violence occurring or likely to occur.
- The Bill contains a range of limitations and safeguards where the ADF is called out to respond to domestic violence.
- These ensure that the exercise of any power under a call out order is necessary, reasonable and proportionate in the circumstances.
- These limitations and safeguards operate at various levels, including at the Ministerial level, at the ADF command level, and also at the level of individual ADF members.
- At the Ministerial level, authorising Ministers may only call out the ADF after taking into account the nature of the violence and whether the ADF would be likely to enhance the state and territory response to that violence.
- The Bill also imposes limitations on the way in which the Chief of the Defence Force (CDF) may utilise the ADF.
- The CDF must only utilise the ADF under a call out order for the purposes specified in the order.
- The Bill is explicit that the CDF must not utilise the ADF to stop or restrict any protest, dissent, assembly or industrial action, except if there is a reasonable likelihood of either the death of, or serious injury to, persons, or serious damage to property.
- Therefore, the ADF could not, and would not, be called out in response to non-violent protests, industrial action or civil disobedience.
- There may be circumstances where a terrorist attacks a peaceful protest, or conducts an attack in the vicinity of a peaceful protest.
- ADF members may be exercising powers in the Bill, such as establishing a cordon or directing people away from a location of violence, which could incidentally impact on people engaged in peaceful protest.

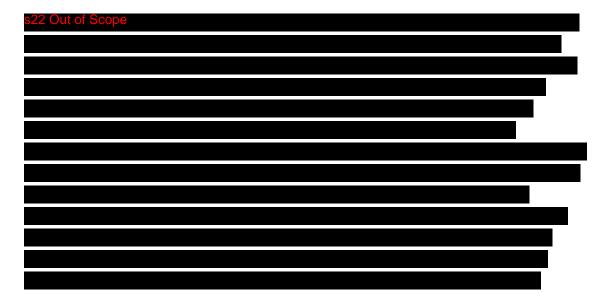


- However, this would only be in a manner which is reasonable and necessary to protect the lives and safety of people from actors, such as terrorists, who are carrying out or are likely to carry out acts of violence.
- It is important to note that state or territory police would be the first responders to such incidents.

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#### QB18-001036



# Will amendments to Part IIIAAA result in increased military presence or the imposition of martial law?

- The amendments will not result in the imposition of martial law.
- Civilian law enforcement agencies remain the primary responders for domestic security incidents in their respective jurisdictions.
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.
- They will also ensure the ADF has the powers it needs to assist police in quickly responding to such incidents.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory police forces.
- As far as reasonably practicable and even after the ADF has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- The ADF can currently relocate or pre-position forces in anticipation of providing security support to state and territory law enforcement agencies, and will retain this ability under the amendments.



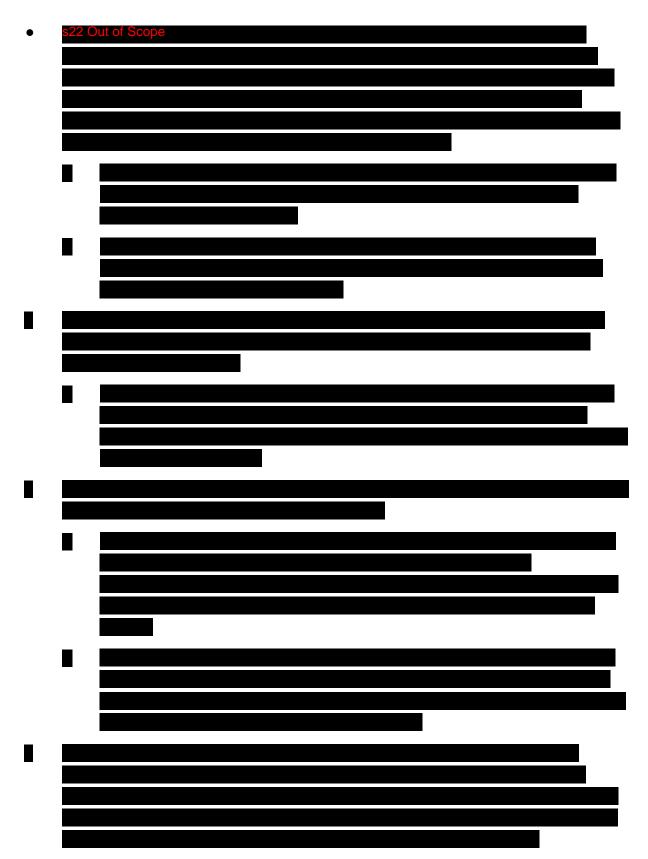


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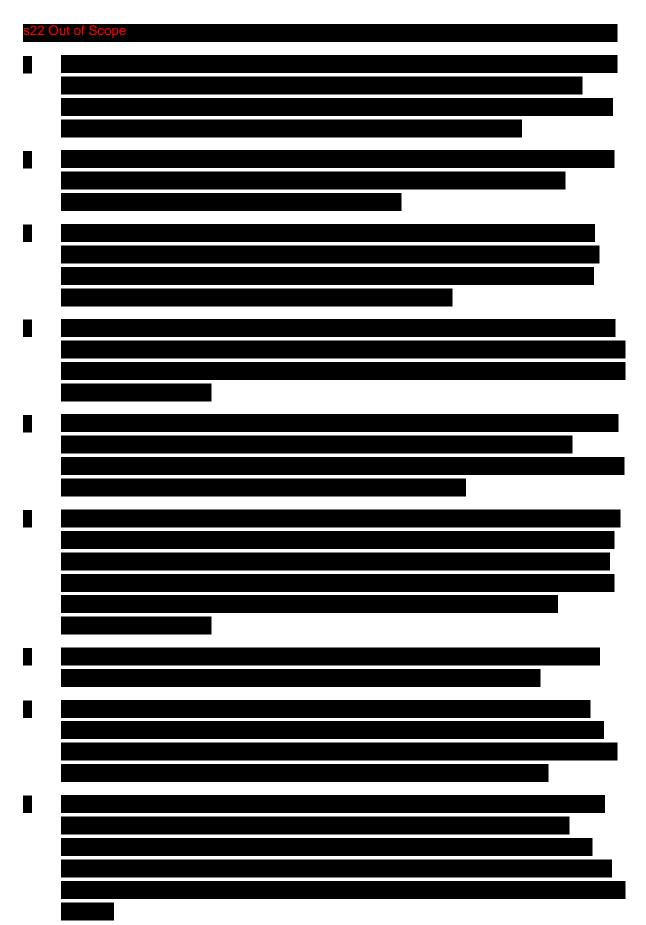
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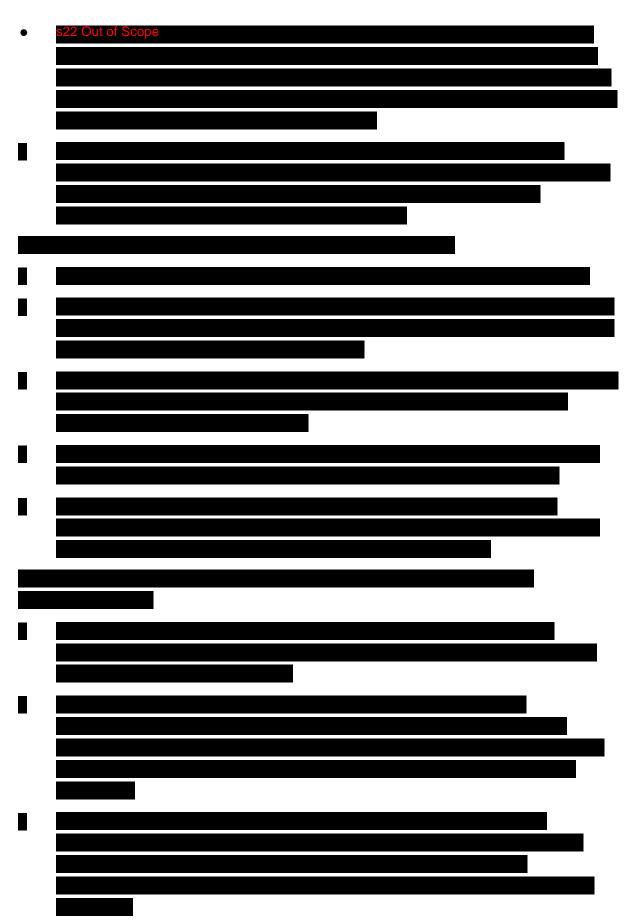
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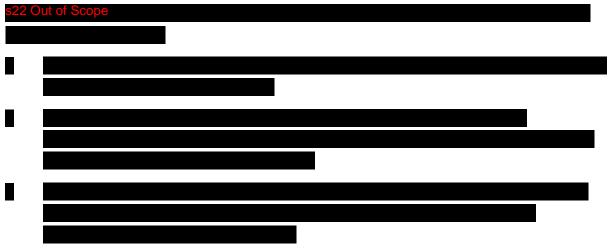


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## **RELEVANT MEDIA**

14 August 2018, 'Military call-out power is too important to get the wording of an amendment wrong' ABC News Online, criticises the Bill, noting that "the amended law will, beyond argument, allow the Federal Government to call out the Army, whether or not a State Government wants it, to respond to an incident of mass civil disturbance — such as the 2005 or 2012 Sydney riots."

21 July 2018, The Saturday Paper, 'Siege mentality', is an opinion editorial by Richard Ackland on the Part IIIAAA amendments. It suggests that the legislation was framed as a necessity post-Lindt Café siege but goes beyond that – allowing the Australian Defence Force "to be called out anywhere in Australia, or overseas, for any purpose, at a moment's notice, and there's no need for consultations with state or territority officials."

29 June 2018, Ten Daily, 'Enlisting our soldiers to shoot-to-kill during a terror attack isn't a clear shot at making us safer, experts warn'. Reports that "it's visually confronting, and a sight usually reserved for foreign conflicts, but seeing troops on the streets of Australia may become more common". "The military should be able to be called out to protect the Commonwealth ... it was clear after the Sydney siege that we needed legislation that clearly sets out how the defence force would be used in these sorts of situations," said counter terrorism law expert Dr Kieran Hardy from Griffith University". "Professor Michael Head from Western Sydney University's Faculty of Law argues Australia does not need more national security powers, given they were already significantly increased in 2000 and 2006."

29 June 2018, SMH, OpEd 'Increasing militarisation of the police risks tragedy' notes that "the new federal "call-out' powers, which lower the threshold for deployment of the military to help police deal with major terrorist and violent attacks, are welcome [and] this is better than greater militarisation of the police".

28 June 2018, ABC news, 'Shakeup of Defence 'call out' powers will make it easier for police to request military backup during terror attacks'. The article states "the Government stresses that the military's Tactical Assault Groups dedicated to counter-terrorism may not be able to do so in time if attacks occur away from their bases in Sydney and Perth."

# **Current media**

Nil

**QUESTIONS ON NOTICE** 

Nil

**Other Questions on Notice** 

Nil

## **SSCFADT** Questions on Notice

Nil

## FREEDOM OF INFORMATION (FOI)

Nil

## **RECENT RELEVANT MINISTERIAL COMMENTS**

## House of Representatives Question Time 28 June 2018 (pp 64-65)

Mr ROBERT (Fadden) (15:15): My question is to the Attorney-General. Will the Attorney update the House on the impact the Commonwealth's changes to call-out powers for the ADF will have for Australia's national security?

Mr PORTER (Pearce—Attorney-General) (15:16): I thank the member for his question and for his fine contribution to our Defence Force over the years. Today the Turnbull government introduced the most significant and substantial reforms to the way in which defence call-out powers operate in over 20 years. Of course, as well as the economic security of Australia, the national security in keeping Australians safe is the foremost priority of this government.

To explain to the members of the House the substance of this change, it's necessary to have a quick look and an understanding of how the present rule operates. At present, the ADF is not able to be requested by a state who might be in a terror situation unless that state and the relevant authorities consider that the state is utterly overwhelmed and unable to respond to that threat.

The difficulty with that is that it has been an incredibly high threshold, a very inflexible threshold, and it is not a question that could be properly answered by any state or authority until some distance down the time line of an offence itself.

That has not worked. The view that was taken after the inquiries into the Lindt Cafe siege was that that was a standard that needed to be cautiously and sensibly changed. At the heart of the changes that we have brought in with the bill in the House today is that that standard changes to a more flexible and sensible standard where the state authorities—usually state police—would need to consider the nature and scale of the terrorist threat that they were facing and then consider whether there were any particular specialist ADF assets, skills or service personnel who could be brought to bear to improve the situation and the response and help save Australian lives.



For the benefit of members of the House: it's not particularly difficult, unfortunately, to consider and conceive of the types of the situations that we and the Turnbull government are now preparing our country for. When we look at the terrible and tragic events that occurred in Paris on 13 November 2015, we see that, in the space of about 43 minutes, three suicide bombers detonated bombs. There were three separate shootings at different locations in cafes and bars across Paris. The Bataclan Theatre was subject to a multiple-shooter incident where 89 French citizens lost their lives. Those people died. Others were subsequently used in a hostage situation where the attackers were wearing suicide vests.

It is an unfortunate reality of the world in which we live that that type of situation is not inconceivable in any Western democracy, and it's also not inconceivable that, had that or an analogous situation unfolded in Australia, the present standard for the ADF call-out would not have been met. It is very sobering to think that there is a need for legislative change that we have brought into this House today with great cooperation from all of the states and territories, coalition and Labor governments.

I'm looking forward to working with members opposite on the passage of this bill. This is an example of a way in which on a bipartisan basis we can make Australians safer, the way in which the Turnbull government has that as an absolute priority and the way in which the fine service men and women of our ADF can potentially help save Australian lives.

Contact:	Helen Thai, a/Director, Domestic Security and Counter-Terrorism, 02 6265 1725	Min ID: Division:	QB18-000973 Strategic Policy
Cleared by:	Samantha Higgins, Acting First Assistant Secretary Strategic Policy 02 6265 1883	Created: Updated: 10:30AM	26 Sept 2018 23 Oct 2018
Consulted:	Military Strategic Commitments, Defence Legal, SOCOMD		

# Driver, Sarah MS

Cc:Copeland, Damian LTCOL; Wallis, Simon MR 2; Waddell, Jim COL; Lippis, Zoe MAJ; Moore, Dominic MR; Driver, Sarah MSSubject:RE: Part IIIAAA   Senate Debate   GG Question [DLM=Fer Official Use Only] Document1_Defence comments.docx	
Importance: High	
Categories: Blue Category, No Security Classification Required	

#### For Official Use Only-

Robbie,

Some minor comments as attached. We will print out some hard copies.

Helen

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From: Crofts, Robert <Robert.Crofts@ag.gov.au>

Sent: Tuesday, 27 November 2018 11:01 AM

**To:** Thai, Helen MS <helen.thai@defence.gov.au>; Galluccio, Julia <Julia.Galluccio@ag.gov.au>; Najdovski, Natasa <Natasa.Najdovski@ag.gov.au>

**Cc:** Copeland, Damian LTCOL <damian.copeland@defence.gov.au>; Wallis, Simon MR 2

<simon.wallis2@defence.gov.au>; Waddell, Jim COL <jim.waddell@defence.gov.au>; Lippis, Zoe MAJ <zoe.lippis@defence.gov.au>; Moore, Dominic MR <dominic.moore@defence.gov.au>; Driver, Sarah MS <sarah.driver@defence.gov.au>

**Subject:** RE: Part IIIAAA | Senate Debate | GG Question [DLM=For-Official-Use-Only]

## For Official Use Only

Thank you all!

Here are our proposed responses. We'd be grateful for your urgent consideration (especially in relation to Senator Patrick's questions at the end).

Cheers,

Robbie

From: Thai, Helen MS [mailto:helen.thai@defence.gov.au]
Sent: Tuesday, 27 November 2018 10:48 AM
To: Galluccio, Julia; Crofts, Robert; Najdovski, Natasa
Cc: Copeland, Damian LTCOL; Wallis, Simon MR 2; Waddell, Jim COL; Lippis, Zoe MAJ; Moore, Dominic MR; Driver, Sarah MS
Subject: FW: Part IIIAAA | Senate Debate | GG Question [DLM - For Official Use Only]

#### For-Official-Use-Only

Robbie - see below for response to your question (thanks Damian).

Helen

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From: Copeland, Damian LTCOL
Sent: Tuesday, 27 November 2018 10:46 AM
To: Thai, Helen MS <<u>helen.thai@defence.gov.au</u>>; Driver, Sarah MS <<u>sarah.driver@defence.gov.au</u>>
Cc: Waddell, Jim COL <<u>jim.waddell@defence.gov.au</u>>; Lippis, Zoe MAJ <<u>zoe.lippis@defence.gov.au</u>>; Moore, Dominic MR <<u>dominic.moore@defence.gov.au</u>>; Moore,
Subject: RE: Part IIIAAA | Senate Debate | GG Question

Hi Sarah

The short answer is yes.

s42 Legal professional privilege; s47C(1) Deliberative proc

Damian

Damian Copeland LTCOL Legal Advisor Military Strategic Commitments Ph: +61 2 6266 7517 Mob: <u>\$47F(1)</u>

**IMPORTANT:** Legal professional privilege can be claimed in respect of the above legal advice. Care should be taken to avoid unintended waiver of that privilege. Unintended waiver can occur if the existence or content of the advice is disclosed. Stating a view that is based on legal advice does not waive privilege, providing the legal advice is not referred to or quoted from. If legal professional privilege is waived, the whole of the legal advice may have to be produced in litigation or under FOI. To keep this privilege, the purpose and content of this advice must only be disclosed to persons who have a need to know and on the basis that those persons also keep it confidential.

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From: Crofts, Robert <<u>Robert.Crofts@ag.gov.au</u>>

Sent: Tuesday, 27 November 2018 10:33 AM

**To:** Thai, Helen MS <<u>helen.thai@defence.gov.au</u>>; Driver, Sarah MS <<u>sarah.driver@defence.gov.au</u>>; Galluccio, Julia <<u>Julia.Galluccio@ag.gov.au</u>>

**Cc:** Najdovski, Natasa <<u>Natasa.Najdovski@ag.gov.au</u>>; Waddell, Jim COL <<u>jim.waddell@defence.gov.au</u>>; Lippis, Zoe MAJ <<u>zoe.lippis@defence.gov.au</u>>; Moore, Dominic MR <<u>dominic.moore@defence.gov.au</u>>; Copeland, Damian

# For Official Use Only

Thanks for this. S22 Out of Scope

Robbie

From: Thai, Helen MS [mailto:helen.thai@defence.gov.au]
Sent: Tuesday, 27 November 2018 10:23 AM
To: Driver, Sarah MS; Galluccio, Julia; Crofts, Robert
Cc: Najdovski, Natasa; Waddell, Jim COL; Lippis, Zoe MAJ; Moore, Dominic MR; Copeland, Damian LTCOL
Subject: RE: Part IIIAAA | Senate Debate | GG Question [DLM For Official Use Only]

#### For-Official-Use-Only

Hi all,

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Helen

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From: Driver, Sarah MS

Sent: Tuesday, 27 November 2018 10:02 AM

To: 'Galluccio, Julia' <<u>Julia.Galluccio@ag.gov.au</u>>; Crofts, Robert <<u>Robert.Crofts@ag.gov.au</u>>
Cc: Najdovski, Natasa <<u>Natasa.Najdovski@ag.gov.au</u>>; Waddell, Jim COL <<u>jim.waddell@defence.gov.au</u>>; Lippis, Zoe
MAJ <<u>zoe.lippis@defence.gov.au</u>>; Thai, Helen MS <<u>helen.thai@defence.gov.au</u>>; Moore, Dominic MR
<<u>dominic.moore@defence.gov.au</u>>; Copeland, Damian LTCOL <<u>damian.copeland@defence.gov.au</u>>
Subject: RE: Part IIIAAA | Senate Debate | GG Question [<u>DLM=For\_Official\_Use\_Only</u>]

#### For-Official-Use-Only

Hi Julia!

The information we have from MSC's corporate memory is as follows:

s22 Out of Scope

S.

#### Sarah Driver A/AS Strategic Capability and Security Policy

Strategic Policy Division Department of Defence *Ph*: 02 6265 1718 *Mob*: **547F(1)** *Location*: R1-1-A108 E: sarah.driver@defence.gov.au

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From: Galluccio, Julia <<u>Julia.Galluccio@ag.gov.au</u>>
Sent: Tuesday, 27 November 2018 9:41 AM
To: Driver, Sarah MS <<u>sarah.driver@defence.gov.au</u>>; Crofts, Robert <<u>Robert.Crofts@ag.gov.au</u>>
Cc: Najdovski, Natasa <<u>Natasa.Najdovski@ag.gov.au</u>>; Waddell, Jim COL <<u>jim.waddell@defence.gov.au</u>>; Lippis, Zoe
MAJ <<u>zoe.lippis@defence.gov.au</u>>; Thai, Helen MS <<u>helen.thai@defence.gov.au</u>>; Moore, Dominic MR
<<u>dominic.moore@defence.gov.au</u>>; Copeland, Damian LTCOL <<u>damian.copeland@defence.gov.au</u>>
Subject: RE: Part IIIAAA | Senate Debate | GG Question [<u>DLM=For Official Use Only</u>]

# For Official Use Only

Hi Sarah

s22 Out of Scope

Kind regards, Julia.

From: Driver, Sarah MS [mailto:sarah.driver@defence.gov.au]
Sent: Tuesday, 27 November 2018 9:30 am
To: Crofts, Robert
Cc: Galluccio, Julia; Najdovski, Natasa; Waddell, Jim COL; Lippis, Zoe MAJ; Thai, Helen MS; Moore, Dominic MR; Copeland, Damian LTCOL
Subject: Part IIIAAA | Senate Debate | GG Question [\_\_\_\_\_]
Importance: High

#### For-Official-Use-Only-

Hi Robbie!



Thanks, Sarah Sarah Driver A/AS Strategic Capability and Security Policy

Strategic Policy Division Department of Defence *Ph*: 02 6265 1718 *Mob*<mark>\$47F(1) *Location*: R1-1-A108 E: <u>sarah.driver@defence.gov.au</u></mark>

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- There are <u>two</u> very important points to remember.
- The <u>first</u> is that state and territory police are the **first responders to any violent Civilian law enforcement agencies remain paramount during a call out.**
- The amendments in the Bill are aimed at making it easier for the ADF to assist states and territories in responding to terrorist incidents.

- They will also ensure the ADF has the powers it needs to assist police in quickly responding to such incidents.
- States and territories will retain responsibility as first responders for domestic security incidents in their respective jurisdictions.
- In particular, the amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with state and territory police forces.
  - As far as reasonably practicable and even after it has been called out, the ADF will not act unless formally requested to by the relevant state or territory police force.
- <u>Secondly</u>, the Bill contains a range of **limitations and safeguards** where the ADF is called out to respond to domestic violence.
- These ensure that the exercise of any power under a call out order is necessary, reasonable and proportionate in the circumstances.
- These limitations and safeguards operate at various levels, including at the Ministerial level, at the ADF command level, and also at the level of individual ADF members.
- At the Ministerial level, authorising Ministers may only call out the ADF after taking into account the nature of the violence and whether the ADF would be likely to enhance the state and territory response to that violence.
- The Bill also imposes limitations on the way in which the Chief of the Defence Force (CDF) may utilise the ADF.
- The CDF must only utilise the ADF under a call out order for the purposes specified in the order.
- The Bill is explicit that the CDF must not utilise the ADF to stop or restrict any
  protest, dissent, assembly or industrial action, except if there is a reasonable
  likelihood of either the death of, or serious injury to, persons, or serious damage
  to property.
- Therefore, the ADF could not, and would not, for example, be called out in response to non-violent protests, industrial action or civil disobedience.

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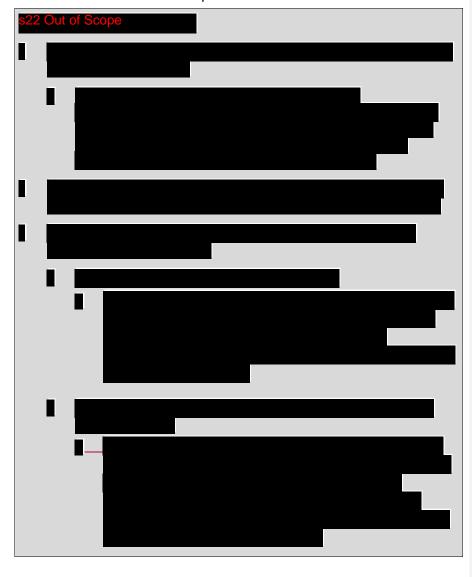
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# **DEFENCE'S ROLE IN COUNTER-TERRORISM**

### ISSUE

Defence's role in countering terrorism is primarily overseas. Defence provides support to national counter-terrorism arrangements to respond to domestic incidents when requested.



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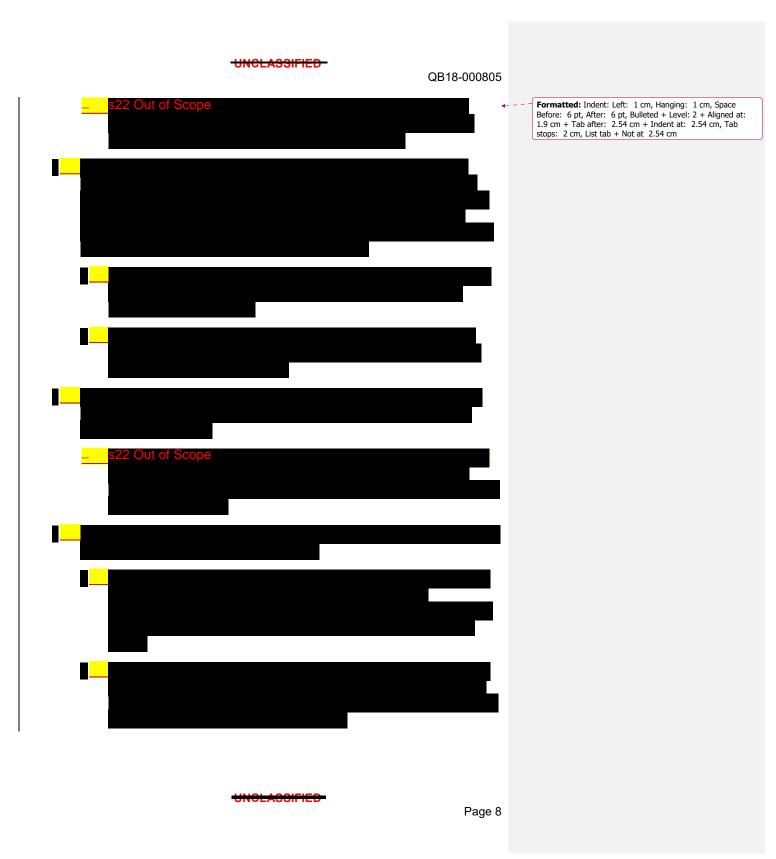
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<ul> <li>The ADF will not be deployed in preference to state and enforcement.</li> </ul>	<u>d territory law</u>
<ul> <li>It is a fundamental principle of call out that civilian authors paramount, and that the ADF is used only to support state</li> </ul>	
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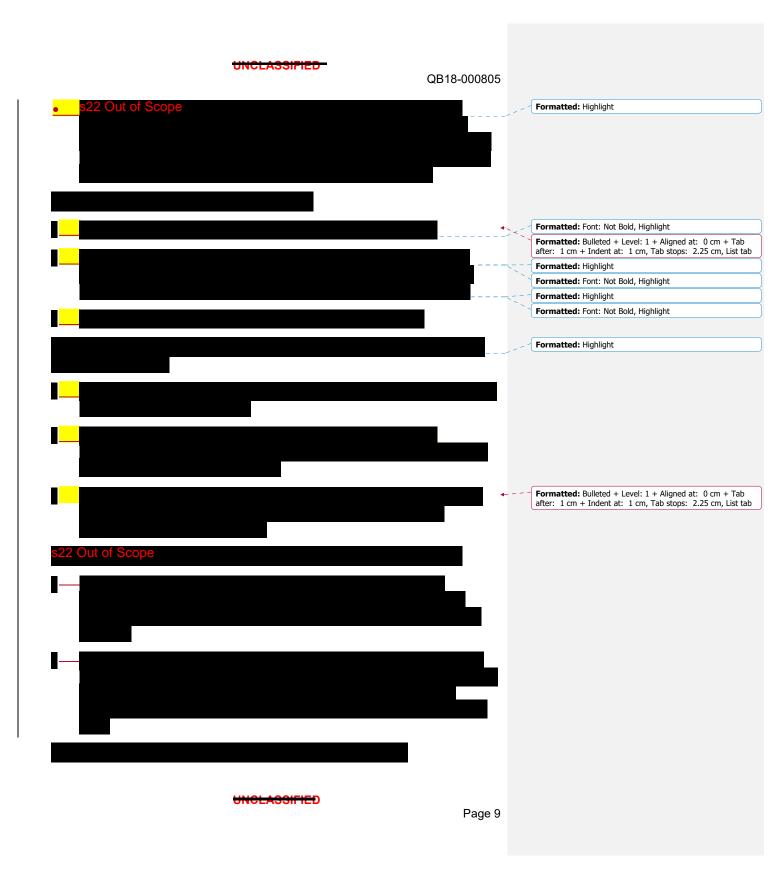
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territory law enforcement agencies as the primary responders to incidents of domestic violence, including terrorism.	
<ul> <li><u>Under the amendments, states and territories will retain</u> responsibility as first responders for domestic security incidents. State and territory police forces are well-equipped to respond to domestic terrorism incidents, and will continue to play this primary role.</li> </ul>	
<ul> <li>The amendments will ensure that the Commonwealth can more easily respond to requests from states and territories for ADF assistance.</li> </ul>	
<ul> <li>The proposed amendments make it clear that when operating under a call out order, the ADF must assist and cooperate with affected state and territory police forces.</li> </ul>	
<ul> <li>As far as reasonably practicable, and even after it has been called out, the ADF will not act unless the relevant state or territory police force formally requests assistance.</li> </ul>	
<u>Will the proposed amendments enable the ADF to be deployed to respond to protests?</u>	Formatted: Font: Not Italic, Highlight
<ul> <li>The Bill does not impact on the rights of people to engage in peaceful protest, industrial action or civil disobedience.</li> </ul>	Formatted: Highlight
<ul> <li>It is a fundamental precondition of a call out order that there is domestic violence occurring or likely to occur.</li> </ul>	
<ul> <li>The Bill contains a range of limitations and safeguards where the ADF is called out to respond to domestic violence.</li> </ul>	
<ul> <li>These ensure that the exercise of any power under a call out order is necessary, reasonable and proportionate in the circumstances.</li> </ul>	
<ul> <li>These limitations and safeguards operate at various levels, including at the Ministerial level, at the ADF command level, and also at the level of individual ADF members.</li> </ul>	
<ul> <li>At the Ministerial level, authorising Ministers may only call out the ADF after taking into account the nature of the violence and whether the ADF would be likely to enhance the state and territory response to that violence.</li> </ul>	
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<ul> <li>The Bill also imposes limitations on the way in which the Chief of the Defence Force (CDF) may utilise the ADF.</li> </ul>
<ul> <li>The CDF must only utilise the ADF under a call out order for the purposes specified in the order.</li> </ul>
• The Bill is explicit that the CDF must not utilise the ADF to stop or restrict any protest, dissent, assembly or industrial action, except if there is a reasonable likelihood of either the death of, or serious injury to, persons, or serious damage to property.
<ul> <li>Therefore, the ADF could not, and would not, be called out in response to non-violent protests, industrial action or civil disobedience.</li> </ul>
<ul> <li>There may be circumstances where a terrorist attacks a peaceful protest, or conducts an attack in the vicinity of a peaceful protest.</li> </ul>
<ul> <li>ADF members may be exercising powers in the Bill, such as establishing a cordon or directing people away from a location of violence, which could incidentally impact on people engaged in peaceful protest.</li> </ul>
<ul> <li>However, this would only be in a manner which is reasonable and necessary to protect the lives and safety of people from actors, such as terrorists, who are carrying out or are likely to carry out acts of violence.</li> </ul>
<ul> <li>It is important to note that state or territory police would be the first responders to such incidents.</li> <li>s22 Out of Scope</li> </ul>
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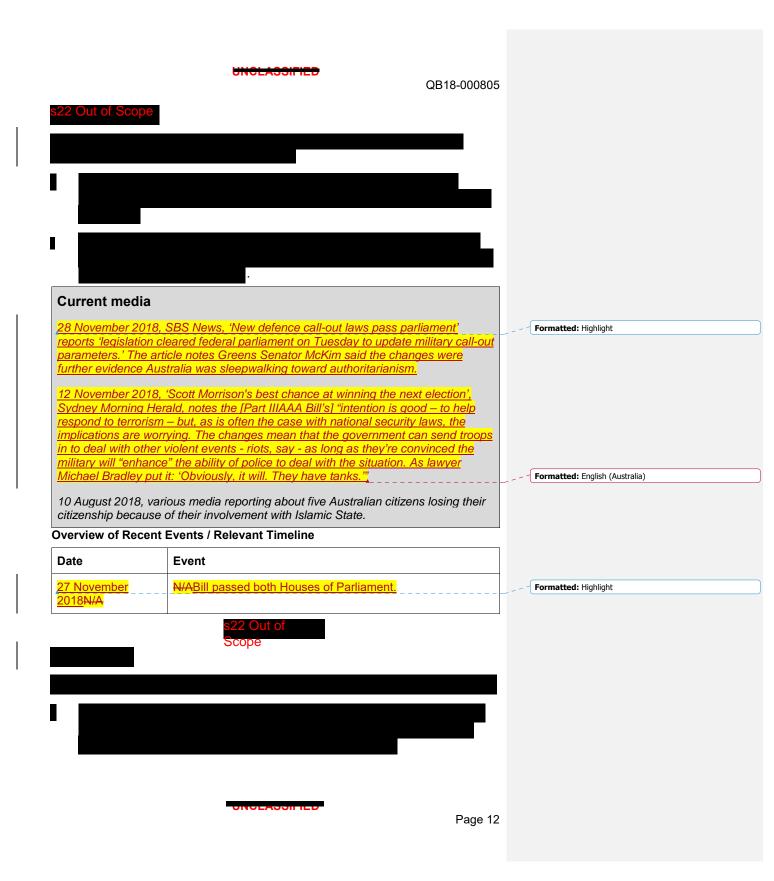




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- Senator PATRICK: I have a slightly different line of questions. Have the current Governor-General and/or his office participated in any national counterterrorism exercises during his term?
- Mr Fraser: No, he has not.
- Senator PATRICK: I note similar questions were asked back in February 2005, so that was probably not something that you're familiar with. This relates to the Governor-General's role as commander-in-chief of the Defence Force and the command structure arrangements when there is a requirement

Page 14

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	arrange just won	ut Australia's armed forces in respect of ments. Particularly noting the Governor- dered if that command chain had ever l ne current terrorism environment that we	General's previous career, I been exercised, particularly	<b>Formatted:</b> Indent: Left: 1 cm, No bullets or numbering
•	those ar briefings Governo governm the Gove	er: Thank you for the question. The Gov rangements, as is the office. I have a co s that relate to arrangements that my off or-General—in terms of contingency pla nent. About call-out powers and things, ernor-General is briefed on or are matter for consideration, but he hasn't participa	opy of certain classified fice is apprised of—the nning on behalf of the sometimes these are matters ers that come to Executive	⊢ – – – <b>Formatted:</b> Indent: Left: 0 cm, First line: 0 cm
•	and/or s went to	PATRICK: I'd point out that back in 200 omeone from his office were involved ir command areas and so forth. That was I follow some of these questions up with	n actual exercises, where they the nature of the questions. I	
SSCF	FADT Qu	estions on Notice		
•	Nil			
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•	Nil			
REC	ENT REL	EVANT MINISTERIAL COMMENTS		
•	Nil		•	Formatted Table
Con	tact:	Helen Thai a/Director – Domestic Security and Counter-Terrorism Strategic Policy Division 02 6265 3499	Min ID: QB18-0003305 Division: Strategic Policy	
			Page 15	

#### QB18-000805

Cleared by:	Samantha Higgins a/First Assistant Secretary Strategic Policy Strategic Policy Division 02 6265 1883	Created: Updated: 2018	12 Apr_2018 <del>5-<u>28 Oct-Nov</u></del>
Consulted:	s33 Defence; s47F(1) Personal privacy		
	s47F(1) Personal privacy		