Australian government uses Sydney Olympics to strengthen military powers

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Without any publicity or public discussion whatsoever, the Australian government is using the Sydney Olympics to introduce permanent legislation allowing the military to be called out against domestic unrest. Innocuously titled the *Defence Legislation Amendment (Aid to Civilian Authorities) Bill*, the law seeks to pave the way for the mobilisation of troops against civilians, reversing a centuries-old British legal principle that the armed forces should be confined to external defence.

With the bipartisan support of the Labor Party Opposition, the Bill was passed through the House of Representatives in just one day—June 28—and is due to be finalised in the Senate by the end of August, just in time to deal with any incidents during the Olympic Games. Speaking in the lower house, Labor's shadow defence minister, Steven Martin, referred to the Olympics as the "catalyst" for the Bill.

While its timetable is clearly related to the deployment of thousands of troops for the Olympics, the government is pushing through legislation that will fundamentally alter the military's role. In the words of Martin's colleague, shadow attorney-general Robert McClelland: "These measures should not be seen as simply a short-term measure that can be sunsetted after the Olympics. They are in themselves important measures that are certainly required."

The Bill authorises the Prime Minister, the Defence Minister and the Attorney-General to advise the Governor-General (the Commander-in-Chief of the armed forces under the Australian Constitution) to call out military personnel to deal with "domestic violence".

The term "domestic violence" does not refer to conflicts within families or households. It is a vague and undefined expression used in section 119 of the Constitution. Adopted in 1901, in the wake of the maritime and shearers' strikes of the 1890s, it refers to civilian disorder that the state police forces cannot control. Section 119 provides that the federal government shall, on the application of a state government, protect that state against domestic violence.

In the brief debate in the House of Representatives, the Labor Party spokesmen echoed Defence Minister John Moore in seeking to justify the Bill as a necessary measure to deal with "terrorism". But clearly "domestic violence" extends far beyond terrorism. One text on the Constitution refers to "riots". In the 1951 Communist Party dissolution case, High Court Justice Dixon spoke of the "putting-down of all individual or concerted attempts to obstruct or interfere with the discharge of the proper business of government".

In the early years of the 20th century, state governments requested military intervention on at least six occasions, to deal with incidents such as "general strike riot and bloodshed", "disturbances", wharf strike "violence", "labour troubles" and the 1923 Victorian police strike. On each occasion, it seems, the federal government declined on the basis that the state police could deal with the problem (although troops were sent to guard federal buildings, including post offices, during the Victorian police strike). Nevertheless, the requests point to the scope of the term "domestic violence" under conditions of labour militancy and political upheavals.

Section 51A of the new Bill goes much further than the existing section 51 of the Defence Act, which merely mirrors section 119 of the Constitution. In the first place, the new section will allow a military callout where the three ministers say they are satisfied that domestic violence is occurring "or is likely to occur". Secondly, troops can be mobilised to protect "Commonwealth interests" (which are also undefined)—without any request by a state or territory government.

Once deployed, the military forces will have wide-ranging powers that they currently do not have in civilian situations. Under Sections 51I to 51Y they will be able to:

* seize buildings, places and means of transport
* detain people
* search premises
* seize possessions.

If the three ministers declare a "general security area" these powers will be expanded to include personal searches; erection of barriers; and stopping means of transport. If a "designated area" is declared, the powers will increase further. The military will be able to halt and control all movement of traffic and people, and issue directions to individuals.

The most revealing measures, however, are those contained in section 51T on the use of "reasonable and necessary force". In essence, the section will allow military personnel to shoot to kill. They will be permitted to cause death or grievous bodily harm where they believe "on reasonable grounds" that such action is necessary to protect the life of, or prevent serious injury to, another person—including the military personnel involved.

In recent years, police killings of civilians have become virtually commonplace in a number of Australian states, with the police authorities invariably claiming that the killings were required for self-defence. The Bill will see the same power extended to troops, armed with even more deadly weapons, operating under conditions of serious unrest.

Both the government and the Labor Party have claimed that the Bill merely codifies the law that already exists. But the Bill will shield military personnel from actions or prosecution for assault, false imprisonment and homicide. Criminal law text writers have warned that without such legal protection, soldiers could, for example, face murder charges if they killed someone in the course of quelling a civil

disturbance, even if they were acting under superior orders.

Some so-called limits exist on the use of the military. Section 51B retains an existing proviso in section 51 of the Defence Act that Army Reserve and Emergency Forces cannot be used to deal with a state-based industrial dispute, yet no such restriction applies to the use of the armed forces to protect Commonwealth interests in an industrial dispute. Section 51G will prevent military personnel being utilised to "stop or restrict any lawful protest or dissent" but that limitation is for all practical purposes meaningless. Almost any political demonstration can be rendered "unlawful" by refusal of official permission (as for example under the array of security legislation passed for the Olympics).

The underlying aim of the Bill is not only to legalise but also politically legitimise what is termed "military aid to the civil power"—the use of the armed forces in political or industrial emergencies.

For decades successive governments have backed away from introducing such legislation because, to use the words of McClelland in the House of Representatives: "The public will always be apprehensive when they see the defence forces used in any number in that sort of situation".

This nervousness appears to account for the extraordinary lack of publicity surrounding the Bill. Despite the historic character of the legislation, neither Defence Minister Moore nor the Defence Department issued a media statement announcing it, and no reports appeared in the media. There is no reference to the Bill on the Defence or other government websites.

The Bill was tabled just one day after the government initiated a round of "public consultations" on a discussion paper, *Defence Review 2000*, which calls for a strategic shift toward military intervention in the Asia-Pacific region, together with a major boost in military spending. Yet the *Defence Review* makes no mention of the Bill.

Large numbers of troops have only ever been mobilised onto the streets in Australia once, following the 1978 bomb blast outside the Sydney Hilton Hotel. Without bothering with any clear legal or constitutional mandate, the Fraser federal government and the Wran state government jointly called out 2,000 soldiers in Sydney and the nearby town of Bowral. Fraser and Wran claimed that the explosion signalled a new "age of terrorism". Nevertheless, the sight of heavily-armed troops patrolling urban areas provoked considerable public outcry.

In an effort to smooth the way for the future use of the armed forces, the Fraser government commissioned a *Protective Security Review* by Justice Robert Hope, a legal opinion on military call-outs by retired judge Sir Victor Windeyer, and a report on police-military procedures by former British police chief Sir Robert Mark.

Based on his experience with troops in Northern Ireland, Mark advocated the deployment of the military in critical situations, but warned that: "Military aid to the civil power can be an unnecessarily emotive procedure in free societies, especially those in which it has rarely been invoked."

While many of Hope's and Mark's recommendations were implemented, leading to the establishment of Crisis Policy Centres to coordinate the police, intelligence and military forces in times of political or civil disturbance, the Fraser government retreated from translating these arrangements into legislation.

Instead, the only legal power was contained in Part 5 of the Australian Military Regulations, headed "Duties in Aid of the Civil Power During Domestic Violence". It provided that a magistrate must accompany the defence forces into any civilian area and "read the Riot Act" before troops moved in. This, as MPs discussed in the House of Representatives, is now regarded in official circles as an impossibly cumbersome procedure. There are also internal Defence Instructions (General) on Defence Force Aid to the Civil Power, which are so sensitive that they remain classified documents.

Apart from the 1978 Hilton bombing call-out, the only recent resort to troops for use against civilians came in 1989 when the Hawke government deployed soldiers against anti-war protestors at the Nurrungar military base. Earlier in the same year, the Labor leaders called out the air force to break the air pilots' strike. Neither of these operations invoked the "domestic violence" clause.

Now, under the cover of the Olympics, the Howard government has finally brought forward the type of legislation canvassed by Mark, Hope and Windeyer. At least 4,000 troops, including elite commando units, will be in Sydney on alert throughout the Games, in addition to more than 35,000 police and security guards. This will be the largest security operation in Australian history.

To justify the unprecedented mobilisation, police and military authorities have claimed that the Olympics will be a "magnet" for terrorists.

Of greater concern to federal and state governments, the Olympic authorities and their commercial sponsors is that numerous demonstrations and protests are planned during the Games—on issues ranging from the corruption and corporate profit-making that dominate the Olympics, to the social impact of the Games and the deplorable conditions of Aborigines.

Doubts remain about the Constitutional validity of both the military involvement in the Olympics and the *Aid to Civilian Authorities Bill*. But the government is proceeding nonetheless. It is apparent that the authorities are preparing for possible clashes between troops and political demonstrators not just during the Olympics but also in the period ahead.

The introduction of the Bill amplifies the earlier warning made by the *World Socialist Web Site*: the Olympic security operation "will set a precedent and provide extensive practice for the future use of 'military aid to the civil power' as social tensions in Australia continue to rise".