

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 24 August 1995

(Mr G D Gibson)

A BILL

FOR

**An Act to prohibit defence cooperation between the
Australian Defence Forces and the armed forces of any
State which uses its armed forces to suppress basic human
rights**

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Defence Cooperation Control Act 1995*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears:

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Armed Forces has the same meaning as in the *Defence Act 1903*.

Basic human rights means those rights proclaimed in the Universal Declaration of Human Rights and formulated in the International Covenant on Civil and Political Rights;

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Chief of the Defence Force means the Chief of the Defence Force appointed under section 9 of the *Defence Act 1903*; and includes any person for the time being acting in that capacity;

Chief of staff means each Chief of staff appointed under section 9 of the *Defence Act 1903* and includes any person for the time being acting in that capacity;

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Defence cooperation means any exercise, training, exchange of information and/or technology carried out by the Defence Forces in association with the armed forces of any other State; and includes any secondment or exchange of personnel;

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Department means the Department of Foreign Affairs and Trade;

Government means the Executive Government of Australia and includes the Australian Defence Force;

Minister means the Minister of Foreign Affairs and Trade.

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Act to bind the Crown

4. This Act shall bind the Crown.

Defence cooperation to comply with this Act

5. Notwithstanding anything in the *Defence Act 1903* or any other Act, upon the commencement of this Act the Government shall not enter into or continue any defence cooperation with any other State except in accordance with this Act.

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Inquiry as to basic human rights

6. (1) The Government shall not enter into or continue any defence cooperation unless the following provisions are complied

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with:

- (a) The Minister shall ascertain whether the Government of the State with which it is proposed to enter, or has entered, defence cooperation is using its armed forces as a matter of deliberate policy to deny basic human rights to the people of that State or any other State;
 - (b) In carrying out the provisions of paragraph (a) of this subsection, the Minister shall obtain advice in writing from the Department;
 - (c) Having carried out the provisions of paragraph (a) of this subsection, the Minister shall:
 - (i) if, and only if, satisfied that the Government of the state concerned is not using its armed forces to deny basic human rights to the people of that State or any other State, give a certificate under the Minister's hand according to that tenor; or
 - (ii) if not so satisfied, decline to give such a certificate.
- (2) Where the Minister gives a certificate under subparagraph (1)(c)(i) the Minister shall:
- (a) provide forthwith a copy of that certificate to:
 - (i) the Prime Minister;
 - (ii) the Minister for Defence;
 - (iii) the Chief of the Defence Force;
 - (iv) each Chief of Staff;
 - (b) lay before each House of the Parliament not later than 6 sitting days after the Minister has given the certificate:
 - (i) a copy of the certificate; and
 - (ii) a copy of the advice that the Minister obtained from the Department;
 - (c) publish the certificate as soon as reasonably practicable by notice in the *Gazette*.
- (3) Certificates given by the Minister under this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Change of circumstances

7. (1) Where it comes to the notice of the Minister that, since giving a certificate under subparagraph 6(1)(c)(i) of this Act, the Government of the State concerning which the certificate was given

is as a matter of deliberate policy using its armed forces to deny basic human rights to the people of that State or any other State, the Minister shall by certificate revoke the certificate given previously under section 6, and shall:

- (a) forthwith notify in writing accordingly: 5
 - (i) the Prime Minister;
 - (ii) the Minister for Defence;
 - (iii) the Chief of the Defence Force;
 - (iv) each Chief of Staff;
 - (b) lay before each House of the House not later than 6 10
 - sitting days after the Minister has revoked the certificate:
 - (i) A copy of the certificate revoking the earlier certificate; and
 - (ii) A copy of the advice that the Minister obtained 15
 - from the Ministry;
 - (c) Publish that certificate as soon as reasonably practicable by notice in the *Gazette*.
- (2) Certificates given by the Minister under this section 20
 revoking certificates given under section 6 are disallowable instruments for the purposes of section 46A the *Acts Interpretation Act 1901*.

Monitoring

8. For the purposes of this Act, the Minister shall monitor the position relating to basic human rights for the people of any State with which the Government of Australia has entered into defence cooperation and shall have regard to any activities of the armed forces of such a state in relation to the human rights of the people of any other State. 25

Duty of Chiefs of Staff

9. (1) Neither the Chief of the Defence Force nor any Chief of Staff shall take, or cause to be taken, any action that will facilitate defence cooperation unless that person has received a copy of the certificate referred to in section 6(1)(c)(i) of this Act. 30

(2) Upon being notified that any such certificate has been 35
 revoked, the Chief of the Defence Force and each Chief of Staff shall cease, or cause to cease, any action facilitating or implementing defence cooperation with the State concerned.

Contribution to peacekeeping forces not affected

5 **10.** Nothing in this Act shall limit or affect the ability of the Government to contribute armed forces to, or for any of the purposes of, the United Nations, or in association with other organisations or States in accordance with the principles of the Charter of the United Nations.



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