

for flexibility in decisions, allowing them to be sensitive to the position of all parties to a dispute. As Lacey points out, this inevitably brings the potential for abuse. In order to prevent this she suggests that principles and guidelines for the exercise of discretion should be developed, and that international human rights norms form part of the body of law which influences those principles and guidelines. The sensible result Lacey prefers is for the courts to develop a rebuttable presumption that when exercising a judicial discretion, judges take account of any human rights which may be affected, guided in the process by Australia's commitments under international law. If the Australian courts were to adopt such a position it would not only allow for better protection of human rights, but do so in a way which was coherent, reasonable and justifiable. Encouraging judges to engage with international human rights norms would force them to consider and explain why they should maintain or discard the rights involved in a particular case, regardless of the conclusion they eventually reached. Wendy Lacey's book makes a timely and important contribution to the debate about and understanding of the role of human rights in the Australian legal system.

*Simon McKenzie**

Calling out the Troops: The Australian Military and Civil Unrest, the Legal and Constitutional Issues

Michael Head

Sydney: The Federation Press, 2009, 256pp, \$49.95

Calling out the Troops is a concise, yet particularly insightful text, which addresses Australia's legislative response to the threat of terrorism. In particular, it closely examines recent developments contained in the *Defence Legislation Amendment (Aid to Civilian Authorities) Act 2006* (Cth). Dr Head, a recognised expert in military call-out law, examines the legislation which was implemented in 2000 and significantly expanded in 2006 to allow the Australian Defence Force (ADF) troops to be called out against civilians in the event of broad, ill-defined triggering events such as 'aviation incidents,' 'mobile terrorism', 'threatened domestic violence' or in defence of 'Commonwealth interests' (page 105). Once called out, the ADF may (among other things) use lethal force, interrogate people and shoot down civilian aircraft – all without any requirement to notify the public. Head foresees this text as being particularly useful for

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scholars, students and practitioners of law; however, his primary goal is to stimulate public debate about the implications of, and justifications for, this legislation. As a result, this text is written in accessible language, provides useful definitions of legal terms and concise summaries of the real effects of the legislation under discussion.

Head identifies the significant legal, constitutional and democratic implications of this legislation. He is particularly critical of the increased powers allocated to the Commonwealth Government in the name of terrorism, and the serious implications the expansion of militarism has on civil liberties. He also identifies with scepticism the bases and justifications for the expansion of these powers. These dramatic changes to Australian policy pose a real threat to society and Head does not reassure the reader in any way – instead identifying the trend of militarisation occurring all over the world. As a result of the lack of reassurance on the issue, Head is possibly on the right track to achieving his aim of stimulating public debate on call-out legislation.

Part One provides a section addressing key definitions, including definitions of ‘terrorism’, ‘acts of violence’ and legal and constitutional terms such as ‘the defence power’ and ‘reasonable necessary force’. This section is particularly useful for the general public, to whom many of these terms would be unfamiliar. Chapter one provides a clear explanation of the current legislation and the details of Australia’s parliamentary response to the ‘War on Terror’ declared by George W Bush.

Chapter two is dedicated to a historical discussion of call-out legislation in Australia including British legacy of declarations of martial law and a concise summary of the declarations of martial law against Indigenous Peoples in 1804 – a topic Head returns to in relation to the Northern Territory Intervention of 2007. Head also provides an analysis of the 1978 call-out in response to a bomb that exploded outside the Sydney Hilton Hotel, which triggered call-out legislation being rushed through parliament. Head argues that this unprecedented parliamentary response had no legal basis and no public discussion was entertained. Head also highlights the lack of transparent investigations into the perpetrators of the bombing, suggesting that the security agencies themselves might have played some role in the explosion. Although these suggestions may be merely a conspiracy theory as Head cites only his own opinion as authority for these claims (page 50), the facts suggest very mysterious circumstances. This is primarily a concern as these ‘mysterious circumstances’ were the sole justification for the unprecedented boosting of military power, and resources of police and intelligence agencies.

More recent examples of military deployment in civilian circumstances are discussed in chapter four, including naval vessels being deployed to repel asylum seekers, troops being deployed at the 2007 Asia-Pacific Economic Cooperation (APEC) Summit and major sporting events such as Sydney Olympic Games (2000), Melbourne Commonwealth Games (2006), and finally the Northern Territory Intervention (2007). Head explores the specific involvement of the military at each of these events along with an account of the constitutional and legal framework of the call-out legislation involved (chapter eight).

Part two provides an in depth discussion of the specific legislation at issue – the *Defence Legislation Amendment (Aid to Civilian Authorities) Act 2006* (Cth). Amendments were made to this legislation in 2006 which expanded military power, while expediting the procedures required to prevent the military being called out unnecessarily (such as informing the public or a parliamentary voting system). Chapter nine addresses the scope of these powers. Crucial questions remain undefined and unclear, such as how much force is permissible and whether a minister who calls out the troops can be made criminally or civilly liable for damage or loss that occurs as a result of an unjustified call-out. The legislation leaves the Government virtually unaccountable, especially in the absence of provisions for legal review. However, Head suggests that there may be avenues for redress against Government ministers in international law (page 188).

Head also provides a brief but particularly relevant discussion of the expanding militarisation of police in the form of paramilitary squads and riot/counter-terrorism units (page 138). He raises questions as to why there has been a rise in paramilitary policing, and whether actions designed to ‘counter terrorism’ are moving from policing extreme acts of political violence to policing dissent and social protest. After addressing each constitutional head of power, Head doubts whether the call-out legislation as it stands today is constitutionally valid. He calls for vital debate on the issue, while providing a succinct summary of the law in the area - allowing potential for the public debate to be educated and well informed. The text also raises the potential impact of Human Rights legislation implemented in Victoria and the ACT on the call-out powers of the Commonwealth. This issue is particularly pertinent given the current debate about a bill of rights in Australia, and amendments to the Constitution to include express human rights.

Part Three addresses Head’s conclusions. After identifying many controversial issues associated with the Australian *Defence Legislation Amendment Act*, the reader is left wanting answers. Instead, the text provides details of the global trend of increasing military involvement in internal matters eroding basic democratic and legal rights (page 204).

Brief comparative analyses of emergency responses over the last 10 years are provided from Italy, United States, Canada, Britain, Germany and Japan. Head concludes that these emergency responses have triggered significant global concern about the future of democracy and civil rights. These international examples demonstrate a concerning trend of governments all over the world using the threat of terrorism to justify the increased militarisation of society.

This convincing and informative book provides a particularly concise summary of all the key issues in relation to call-out legislation in Australia and the powers of the Commonwealth under the Australian Constitution. The detailed examples of events in recent Australian history, and the critical analyses of the Australian Government response to terrorism provide a valuable source of information both to the academic world, but also a vital resource for an informed public debate that is not only necessary in Australia, but internationally.

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