



THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF LAW

GEORGE WILLIAMS

ANTHONY MASON PROFESSOR
AUSTRALIAN RESEARCH COUNCIL
LAUREATE FELLOW
FOUNDATION DIRECTOR, GILBERT + TOBIN
CENTRE OF PUBLIC LAW

22 September 2009

Committee Secretary
Senate Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary

Inquiry into Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]

I direct the committee to my article 'The Power to Go to War: Australia in Iraq' (2004) 15 *Public Law Review* 5. The article comments on a precursor to this Bill, the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas Conflicts) Bill 2003. Based upon this article, I reach the following conclusions:

- The prerogative power of the Commonwealth in this area should be altered by legislation.
- The Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2], in requiring a resolution by each House of the Parliament to deploy troops abroad, should not be enacted in its current form.
- The Bill should instead provide that a resolution of a joint sitting of both Houses is required. This would emphasise the importance of the decision and would involve all Members and Senators. However, it would also generally allow the government of the day, with its greater majority in the lower house offsetting its deficit in the Senate, to gain the outcome it wishes so long as it can maintain party discipline. This would involve an appropriate measure of symbolism and deliberation. It would not, however, remove the capacity of the executive in most cases to determine the course for which it will ultimately have to answer at the ballot box.

I note that the United Kingdom government has initiated a like debate. On becoming Prime Minister in June 2007, Gordon Brown's first major announcement started a public debate on far-reaching changes to how Britain is governed. His green paper on *The Governance of Britain*

calls for constitutional change that 'entrusts more power to parliament and the British people'. One proposal is to reform the power of government to deploy troops abroad. The suggestion is to give Parliament the ultimate say on such decisions, perhaps in the form of a veto. The Brown Government 'believes that on regarding the deployment of troops abroad, the executive should seek the approval of the elected representatives in the House of Commons.'

Yours sincerely

A handwritten signature in black ink that reads "George Williams". The signature is written in a cursive style with a large, prominent 'G' and a long, sweeping underline.

George Williams