



AUSTRALIANS FOR
WAR POWERS REFORM

**AWPR Submission to the Joint
Standing Committee on Foreign
Affairs, Defence and Trade (JSCFADT)
Inquiry into international armed
conflict decision making**

27 October 2022

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Executive summary

Australians for War Powers Reform (AWPR) welcomes the invitation to provide a submission to the Inquiry.

We point out that:

- The *decision to go to war* is one of the most serious any government can make. The costs of all kinds to the nation are enormous, and resort to the use of force can have disastrous consequences.
- It is in the *public interest* for governments that take these decisions to be responsible for them to the people's elected representatives. Following a war, to ensure that failures are not repeated, governments should establish independent public inquiries into its origins, conduct, and outcomes.
- *Successive proposals* in Australia for legislative change to the way decisions are made for war have been rejected since 1986. An amendment to s8 of the Defence Act, requiring such decisions first to be debated and voted on by both Houses of Parliament, can achieve the necessary reform.
- Australia has entered all our overseas *conflicts as an ally* of Britain, the United States, or both. No decision for war was proposed to the Parliament as an option, only as an accomplished fact.
- If the *anticipated war* with China over Taiwan or the South China Sea occurs, Australia will again be on the losing side, with calamitous effects on our trade, and this time, exposing our country to attack.
- Those who present *arguments against reform* usually mention the need to respond to an emergency, to ensure security of intelligence, and to counter the influence of minor parties. Contradicting this, they express concern about a vote being taken on party lines. In this submission, AWPR effectively dismisses all these objections.
- Since the 1950s, Australia has offered to commit our forces to successive American wars, or has done so at the direction of the United States. All these conflicts have *ended in failure*. No responsible Australian government should repeat this behaviour.

Introduction

Australians for War Powers Reform (AWPR) responds to the JSCFADT announcement of the Inquiry on 30 September 2022, and to the sub-committee's invitation to provide a submission. Our representatives are available to appear before the sub-committee.

AWPR

AWPR is a civil society organisation established in 2012, whose mission is to 'ensure that decisions for Australian troops to go to war, barring emergencies, are made only after full debate and vote by Federal Parliament.' More information on AWPR can be found at

<https://warpowersreform.org.au/>

Our members have long experience of Australian law, intelligence, foreign policy, military service, military operations planning, strategic security policy, and public health. We are concerned by the impact of wars on the environment, on civilians, and on the economy. After a career in the ADF and in DFAT, one AWPR Committee member points to the self-evident truth that ‘war is awful, cruel and always fails to achieve its objectives.’ He considers that talk about war by those who have not experienced it is a waste of time and adds to the pain of those who have experienced it.¹ We are a voice for Australians with a lived experience of conflict, of PTSD sufferers and of others who have faced the tragic costs of military operations.

Exercise of the War Powers

The decision to go to war is one of the most serious any government can make. The costs of all kinds to the nation are enormous, and resort to the use of force can have disastrous consequences.

Australia’s war powers are defined by the Constitution (Commonwealth of Australia Constitution Act) and the Defence Act 1903, which defines ‘War’, ‘Time of War’ and ‘Time of Defence Emergency’.²

Australia entered World War I in 1914 as a result of the (British) Governor-General committing an Australian expeditionary force and the Navy, even before the UK had declared war. In 1939 Prime Minister Menzies advised the Governor-General, Brigadier-General Lord Gowrie, and the people that Australia was at war, as a result of Britain being at war. Since then, we know of no consultation with a governor-general before Australia went to war. Nor has any decision by a prime minister been preceded by a Parliamentary debate.

This practice derives from the ancient royal prerogative of British sovereigns, and in Australia it results in an undemocratic convention under which a prime minister, alone or with the Executive Government can decide in secret, and without reference to the Parliament, to deploy troops to conflict overseas. A minister for defence can implement that decision by ordering the deployment.³ Prime Minister Howard committed Australia in this way to the ‘war on terror’ in 2001. A similar process led to Australia joining the Iraq War in 2003, in the face of widespread public protest and objections in the Parliament. A decision to deploy armed forces in response to a genuine emergency – such as a direct military attack on Australia – is justifiable in international law, as expressed in the United Nations Charter (1945, Article 51). Australia has legitimately responded in the past to resolutions of the UN Security Council for military deployments, as in Kuwait (1990-1) and Afghanistan (2001), and has provided peacekeeping forces elsewhere. Our obligations under the UN Charter are repeated in the ANZUS Treaty (1952, Article 1), in which the parties undertake to ‘settle any international disputes in which they may be involved by peaceful means...and to refrain...from the threat or use of force in any manner inconsistent with the purposes of the United Nations.’

¹ Haigh, Bruce, AWPR internal communication, 6 October 2022.

² Defence Act 1903, Section 4, Interpretation at AustLII Australian Consolidated Acts, [www.http://classic.austlii.edu.au/au/legis/cth/consol_act/da190356/](http://classic.austlii.edu.au/au/legis/cth/consol_act/da190356/) accessed 4 October 2022.

³ Barratt, Paul, *The War Powers in Australia: Why Reform is Needed*, in *How Does Australia go to War: a Call for Accountability and Change*, Broinowski, Alison (Ed), AWPR, Melbourne, June 2015, pp 25-39.

The Constitution (s61) empowers the Executive Government to commit Australia to conflict without reference to the Parliament. This can be changed simply by amending the Defence Act (1903, s8) to require a debate and a vote in both Houses before the ADF is dispatched.

If Australia is fighting a war for existential survival, little or no time will be available to debate the issues. In such circumstances, the government and Parliament need to act quickly, in confidence that the emergency is real – and not concocted to safeguard other interests which don't threaten Australia's survival. We are not aware of any occasion when the time for Parliament to take a decision for war would have delayed the effective deployment to it of the ADF.

Deciding to go to war against an adversary that poses no direct threat to Australian interests, unless in response to a UN Security Council resolution, is a war of choice, and may be illegal. It could expose those ordering it, and those deployed, to charges of aggression before the International Criminal Court.

AWPR argues that Parliament should debate and vote on a proposal to send troops into overseas conflict. This should be treated by Parliament as a matter of national importance, scrutinised by Members and Senators, and the options and alternatives transparently considered. Only in this way can a robust decision be reached. Experience of past wars shows that when the facts are concealed, and decisions are made in secret, disastrous mistakes can be made.

Terms of reference

The central question underlying this Inquiry is whether our Parliament should decide when Australia goes to war or should continue to entrust the decision to prime ministers and the Executive Government, and go on bypassing the Governor-General. Our submission addresses the terms of reference, numbered 1-4 below:

- the approach of similar Westminster system democracies around the world;
- parliamentary processes and practices, including opportunities for debate to provide greater transparency and accountability on the deployment of the ADF;
- the security implications of pre-notification of ADF deployment that may compromise the safety of ADF personnel, operational security, intelligence and/or have unintended consequences; and
- any related matters.

1. Other democracies

Of democratic countries, Australia's war powers are among the weakest. Research by the Parliamentary Library (2010) on this is to be updated at the request of the JSCFADT sub-

committee. It will show that most comparable democracies have conditions for war in either their constitutions or legislatures.⁴

Members of the 'old Commonwealth' do not. Australia, Canada, and New Zealand do not require parliamentary consideration of decisions for military deployments. The UK has conventions on the matter, and British efforts to legislate its war powers have failed.

In the UK, Prime Minister Blair's motion for the invasion of Iraq succeeded in the House of Commons in 2003. His successor David Cameron submitted the proposed 2014 deployment to Syria for debate in the House of Commons, which authorised the deployment of UK forces in Iraq but gave no authorisation for operations in Syria. Prime Minister May in April 2018 bypassed the Commons and contrived an 'emergency' attack on Syria together with the US and France.

In the US, efforts to reform the War Powers Act of 1973 have repeatedly been defeated. Congress has several times approved and even increased funds for war requested by presidents. The list of continuing Emergency Deployments covers three decades.

In Europe, Asia, and Latin America, many countries' constitutions or laws mandate parliamentary approval of military deployment, and in some cases, require reports on the progress of wars. But NATO member states are obliged to regard an attack on any other member as an attack on themselves. In such circumstances, Article 5 of the NATO Treaty requires each member to take the action it deems necessary, including using armed force.

No such obligation applies to Australia under the ANZUS Treaty, whose parties undertake merely to consult in the event of an attack on either of them 'in the Pacific area', and to respond 'in accordance with their constitutional processes.' Those wishing for Australia to join NATO, even as a 'Pacific partner', should be careful about its potential costs.

How Australia goes to war is out of step with most middle-power countries, whose only recourse is to international law. In the current climate, it is more than ever in our interests to require Parliamentary approval for deployment of the ADF into international armed conflict.

2. Parliamentary processes

When the JSCFADT considered earlier Bills tabled in 1985, 2008, 2014, and 2020, all were rejected by members of major parties on the grounds of drafting, and concerns were cited about the handling of classified intelligence. Risks to operational security require clearer definition and exploration by the current Inquiry (see 3. Security implications, below).

In 2016, former NSW RSL President and retired Army Lieutenant-Colonel, James Brown,⁵ analysed how Australia makes the decision to go to war and listed ten questions to be asked of our leaders the next time they intend to commit Australian forces to war:

⁴ McKeown, Deirdre and Roy Jordan, 2010:

https://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/ParliamentaryInv

⁵ James Brown is an Adjunct Associate Professor at the University of Sydney and Fellow at the United States Studies Centre. He was a director of the 2018 Sydney Invictus Games and founded Veteran Sports Australia, a national program that continues the Invictus legacy of connecting veterans to the healing power of sport. His

1. Are our national interests threatened?
2. Is there a clear political objective?
3. Are our military aims linked to this political objective?
4. Can the case be made to the Australian people that this campaign is in their interests, and can their support for the campaign be sustained through casualties and setbacks?
5. Do we understand the costs - to the country, to civilian victims to the enemy and to our veterans?
6. What new dangers might this campaign cause?
7. What proportion of the Australian Defence force will it commit?
8. What options will close to us if we take this action, and if we don't?
9. Will the Opposition remain committed, should it form government?
10. How does this end?

Such questions merit consideration by the sub-committee, and by Parliament during debates about proposed military deployments. To James Brown's list could be added three further questions:

11. Is this campaign legal?
12. What are its assessable environmental, economic, and social impacts?
13. How long it will be fought?

Four arguments against reform are commonly raised by those who wish to preserve the status quo.

'Minor parties might block the necessary resolution in the Senate.' A negative vote by a minor party would carry the day only if there was also a negative vote from the major Opposition party: if not, the combined votes of Government and Opposition would make the views of minor parties irrelevant. No party in either House is likely to vote against deployment of the ADF when Australia is genuinely under threat. But a war of choice could well be opposed by a majority.

'The Parliamentary process will take too long.' With a few notable exceptions, most of the ADF are held at a low state of readiness. Before they can be deployed a major investment in both personnel training and materiel is required. As argued above, force preparation takes much longer than consideration by the Parliament of a proposal for war. The Reserve Forces are maintained for emergencies.

'The Government has access to intelligence which it cannot reveal.' Today's Opposition Leader could be tomorrow's Prime Minister – even without an election. Our national security requires that leading members of the Opposition be cleared to deal with classified information, and be kept properly informed. Moreover, to safeguard lives and security operations, sanitising or redacting content is achievable, while keeping the Parliament informed of the issues being considered by the government.

'Politicians will simply vote on party lines.' This may be so. Members and Senators share an obligation to the ADF personnel who are to be put in harm's way. All

Army service includes service as a cavalry troop commander in Iraq and in an attachment to coalition special forces in Afghanistan. Read more [here](#).

Australians are reluctant to undermine the morale of the troops once deployed, by suggesting that they should not be participating in the conflict. This makes all politicians even more responsible to their electorates for the outcome, for good or ill. By debating and voting on a decision before their deployment, all politicians become responsible. A debate after deployment achieves nothing.

3. Security implications

Governments have not encouraged most parliamentarians to develop expertise on foreign affairs and defence. Some Ministers and Committee members may claim to be more knowledgeable about security matters than their colleagues – especially because they have access to classified intelligence.⁶

It is the secrecy around the process that is most cited as an impediment to change. Secrecy cloaks every step from intelligence collection, through assessment of adversary capability and intent, to changes in ADF capability and preparedness and the culminating military operation. Every effort should be made to correlate and align such matters with the Senate hearings on budgetary estimates, where the resource implications of changes in military capabilities and preparedness are probed and carefully scrutinised.

Not all intelligence is reliable. By its nature, intelligence is an assessment of intent, made subjectively on the basis of the assessors' preconceptions or other influences. It should always be subjected to rigorous questioning, no matter where it comes from. Passive acceptance of our Five Eyes allies' assertions is lazy and irresponsible.⁷ For example, falsehoods about weapons of mass destruction were accepted before the Iraq invasion, and the Vietnam war began with a 'false flag' operation by the US.

ADF operations near contested areas of the South China Sea is inadequately reported in Australian media. Much, if not most, current media criticism of China appears to emulate or emanate from US sources, and it reflects the steady deterioration of the US-China and Australia-China relationships. This has its origins in geo-strategic competition between the two major powers for regional influence or global hegemony.

Australian intelligence assessments draw on American content under Five Eyes. This may be useful, but excessive reliance upon it exposes Australia to the risk of making assessments based on potentially misleading or biased US information, particularly about China. The first step on the path to war over Taiwan or the South China Sea should not be taken on the basis of inaccurate reporting or false flag events. Australia should ensure independent collection, evaluation, and management of intelligence about our regional neighbours. Only then will assessments which inform our Parliament about decisions of war be truly reliable.

Much 'secret' intelligence soon appears in the media, or may even be found in private homes, indicating that those handling it are not to be trusted. Skilled redaction and sanitising of intelligence reports without loss of salience is possible and essential for informing MPs and Senators – all of whom have 'a need to know'. In order to make informed decisions, each Parliamentarian has a 'duty of care' to their respective constituents to consider, evaluate and decide on matters affecting the lives and wellbeing of

⁶ Solomon, David, *Australia's Government and Parliament*, 6th Ed, 1984, Nelson, Melbourne, p 67.

⁷ AUSCANZUSUK – or 'Five-Eyes' Intelligence Sharing Agreement.

the nation. AWPR is not suggesting that all classified information should be revealed, where sources could be compromised, for instance. But the facts relevant to a government decision to commit the ADF abroad must be transparently presented and fully examined. Other democracies are capable of managing this.

4. Other considerations

Kept in the dark

The risks of Australia's failure to reform the war powers and repeat past bad decisions are revealed by Clinton Fernandes, a former Australian Army intelligence analyst and now Professor of International and Political Studies at the University of NSW.⁸ His work is available on ABC's Radio National podcast, giving it further traction and a wide audience.⁹ Professor Fernandes reveals that:

1. the Australian parliament and the public are 'kept in the dark' about what really motivates our national security and defence actions,
2. according to the *New York Times*, Australia is the most secretive of all liberal democracies,
3. expertise is missing from the Australian security establishment, and
4. Parliament is not permitted to examine past, present or proposed intelligence operations.

AWPR urges the Inquiry to probe these revelations, to better understand their intent. Denying the Parliament a role in decisions about the use of lethal force has serious implications for our democracy.

Public opinion ahead of the Parliament

An overwhelming majority of Australians want a change in how we go to war. The evidence for this comes from a national [opinion poll conducted by market research firm The Digital Edge in 2021](#). It found that 87% of Australians agree the PM's war decisions should be subject to Parliamentary approval always or unless there is immediate danger to Australia.

A similar [nationwide survey undertaken by Roy Morgan research](#) in 2020 found that 83% of Australians wanted the war powers changed to give all MPs and Senators a vote on overseas deployments.

Surveys of parliamentarians on war powers reform by Michael West Media (Szumer 2022) show that many are out of step with public opinion on this matter.

A two-year public consultation conducted by Independent and Peaceful Australia Network <https://ipan.org.au> will show (in its final report, November 2022) overwhelming support for reform of the war powers.

These are the voices of our modern democracy, peacefully wanting change. They acknowledge that the Royal prerogative is inappropriate and outdated. They are among those who voted in May 2022 to change who represents them in Parliament. They all want

⁸ Fernandes, Clinton, *Sub-imperial Power: Australia in the International Arena*, Melbourne University Press, October 2022,

⁹ ABC Radio National, *Late Night Live*, Australia the 'subimperial power', 5 October 2022, interview hosted by Phillip Adams, at <https://www.abc.net.au/radionational/programs/latenightlive/australia-the-subimperial-power-/101503728> accessed 6Oct2022.

the prime minister to be divested of the war powers prerogative and for it to be vested in the parliament.

View of the Minister for Defence

Even as he referred the Inquiry to the JSCFADT, Minister of Defence Richard Marles wrote to its Chair, Shayne Neumann MP, stating that he is 'firmly of the view' that the current war powers arrangements 'are appropriate and should not be disturbed.' The current arrangements, the Minister said, 'enable the duly elected government of the day to act expeditiously on matters of utmost national importance in the interests of the safety and security of our nation and its people.'

Pre-empting the Committee's deliberations, Mr Marles' letter added: *'There is, however, an important role for public discussion and scrutiny, including by the Parliament, when the ADF is deployed into hostilities abroad. Governments have typically, as a matter of practice rather than necessity, provided explanations to the Parliament of their decisions to deploy the ADF into hostilities abroad. This has provided an important opportunity for scrutiny by the Parliament of such decisions.'*

The Minister's only expressed concern was about an emergency. This is not in question: if attacked, Australia would immediately and legitimately respond with armed force. But he evidently wants any deployment to take place ahead of scrutiny. This perpetuates the status quo. He apparently prefers, as always, to oblige our American allies by dispatching Australian forces on demand, with or without proof of an emergency, or clarity about the consequences, and to explain it later to the Parliament.¹⁰

National interest, national security

Since 2001, more than 70 laws have been enacted in Australia to strengthen our national security. Many of them were aimed protecting us against the threat of terrorism, which was aggravated by Australia's deployment in Afghanistan and invasion of Iraq. As a result, the intelligence agencies have dramatically expanded in size, operations, and cost. Individual Australians and journalists can be jailed for knowing or even asking about a 'Special Intelligence Operation.' The time people can be held in detention without outside contact and without charge has been lengthened, and the age of those so held has been lowered.

Expenditure on the military, on weapons, and all their associated demands now exceeds 3% of GDP and is rising, even without counting enormous amounts to be spent on the AUKUS program. All this is justified as being in the national interest, and therefore increasing national security.

AWPR suggests that the national interest has in recent years become indistinguishable from the agenda of government, and that far from making Australia and its people more secure, it has endangered us. 'National security' is the excuse for the creeping militarisation of our institutions and media, and for reducing freedom of information to a minimum. A poorly informed public is the preference of dictatorships, not of genuine democracies.

We urge those putting forward any of the four arguments against reform of the way Australia goes to war (2. Parliamentary processes, above) to consider why we do so. The answer is because the US asks or orders Australia to join a military coalition, or because

¹⁰ Broinowski, Alison, *Pearls & Irritations*, 16 October 2021. <https://johnmenadue.com/ukraine-military-instructor-decision-echoes-lead-up-to-australias-deployment-in-vietnam/>

Australia offers to be invited. The sub-committee should consider if this practice is in the national interest, and if it strengthens Australia's national security.

Conclusion

AWPR has consulted widely for this submission, drawing on the professional resources of its membership, its affiliate institutions and on public sources. It proposes:

- The decision to go to war is the most important decision that any government can make.
- Australia is now in a situation which could involve conflict with its largest trading partner without the Parliament deciding whether this furthers the national interest or not.
- This position is intolerable for a democracy and presents the gravest of risks to Australia's security and prosperity.
- Only by legislative reform of the war powers can this existential danger be eliminated.
- 'Reform' to allow scrutiny and debate of a decision already taken changes nothing. Only a Parliamentary vote represents genuine reform.

Recommendation

AWPR recommends that the Inquiry decide in favour of war powers legislation to require a debate and vote in both Houses of Parliament before Australian forces are committed to overseas conflict, in all circumstances except defence against a direct attack on Australia or in response to a resolution of the UN Security Council.

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