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Submission to the Senate DFAT committee inquiry into the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008

I make this brief submission in order to reiterate my strong in principle support for a War Powers Bill, a view I originally expressed in my first speech to parliament.¹

The Howard Government's commitment of Australian personnel to war in Iraq in 2003, without UN or Australian Parliamentary approval, and in the face of very significant community opposition, was the most recent example of the deficiency that exists in our parliamentary democracy which allows the executive to make such an important decision without reference to, or endorsement by, the Australian Parliament.

Committing the nation to war is one of the most profound decisions a government can make, not least because it almost always results in the violent death of Australian citizens, and yet currently this occurs at the sole discretion of the Prime Minister and Cabinet without any prescribed involvement of the Parliament. This is done through the exercise of prerogative powers – and by convention rather than pursuant to the Australian Constitution, which is silent on the matter.

Blackshield and Williams have quoted the view of noted English legal scholar Sir Frederick Pollock where he stated: "Prerogative is nothing more mysterious than the residue of the King's undefined powers after striking out those which have been taken away by legislation or fallen into desuetude (disuse)."²

I note further the view expressed in the report of UK House of Lords Constitution Committee, entitled "Waging War: Parliament's Role and Responsibility", 27 July 2006:

"The exercise of the Royal prerogative by the Government to deploy armed force overseas is outdated and should not be allowed to continue as the basis for legitimate war-making in our 21st century democracy. Parliament's ability to challenge the executive must be protected and strengthened. There is a need to set out more precisely the extent of the Government's deployment powers, and the role Parliament can – and should – play in their exercise."³

¹ Hansard, 14 February 2008, pp 365

² T. Blackshield and George Williams, Australian Constitutional Law and Theory: commentary and materials, 4th ed, Federation Press, 2006, p523

³ p41 of the Committee's report

Attadale
Atwell
Aubin Grove
Banjup
Beaconsfield
Beeliar
Bibra Lake
Bicton
Cockburn Central
Coogee
Coolbellup
East Fremantle
Fremantle
Hamilton Hill
Hammond Park
Henderson
Hilton
Jandakot
Kardinya
Munster
North Coogee
North Fremantle
North Lake
O'Connor
Palmyra
Rottnest Island
Samson
South Fremantle
South Lake
Spearwood
Success
Wattleup
White Gum Valley
Willagee
Yangebup

Notably, the Brown Government in the UK has stated its support for the view that the executive should seek the approval of the elected representatives in the House of Commons before committing the country to war.

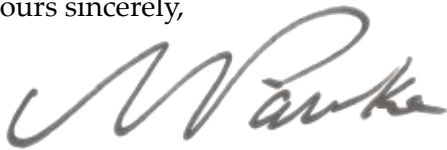
Of course, many other national parliaments operate under rules that require significant parliamentary supervision or consultation as a precondition of troop deployment, including the parliaments of Denmark, Germany, Switzerland, Sweden, South Korea, Spain, Slovakia, Turkey, Ireland, Italy, Japan, the Netherlands, Norway, the Czech Republic and Luxembourg.

The current Australian Government has made a general commitment to greater transparency and accountability in governance, and has delivered democratic improvements in the areas of electoral law and in the transparency of access to Ministers. It would be in keeping with reforms of this kind that any decision by the Australian Government to go to war – with its dramatic impact upon both Australians and on citizens of other nations – be made subject to the proper public debate, scrutiny, and processes of the Australian Parliament.

I do not have particular comments about the terms of the Bill except to note that subsection (11) should also provide for service in United Nations missions to be included in the definition of “normal, non-warlike overseas service”.

The costs and the lessons of the Iraq war continue to mount. Amendments to the Defence Act 1903 to provide for parliamentary approval of overseas service by members of the Defence Force would be an indication that we have learned at least some of those lessons.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Melissa Parke', written in a cursive style.

Melissa Parke MP
Federal Member for Fremantle