

SUBMISSION

from the

AUSTRALIAN ANTI-BASES CAMPAIGN COALITION

to the

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
LEGISLATION COMMITTEE'S**

INQUIRY INTO THE

**DEFENCE AMENDMENT (PARLIAMENTARY
APPROVAL OF OVERSEAS SERVICE) BILL 2008 [No. 2]**

AUSTRALIAN FEDERAL GOVERNMENT

16 OCTOBER 2009

The passage of this bill would, by entrusting the decision to go to war to a full parliament, improve the health of Australian democracy and may reduce the risk of Australian involvement in unjustifiable and preventable wars. At present, five people can make the decision to take the nation to war—the prime minister and members of the inner cabinet. With only five people making the decision and the rest of cabinet and government required to swing in behind that decision, Australian democracy does seem extremely inadequate to deal with the major implications of involvement in overseas war.

We thank the Senate Foreign Affairs, Defence and Trade Legislation Committee for undertaking an inquiry into this important bill (the Bill) and for inviting our group, the Australian Anti-Bases Campaign Coalition, to make a submission. We hope that the Committee has been able to inform a representative proportion of the population about the inquiry: we are concerned that many Australians are unaware, not only of the inquiry, but of the deficiency in our legal order that allows government to take the nation to war without parliamentary approval.

We wish to express strong support for the purpose of the Bill, that is, to ensure that “... members of the Defence Force may not serve beyond the territorial limits of Australia except in accordance with a resolution, which is in effect and agreed to by each House of the Parliament, authorising the service” (subsection 2).

The proclamation of war is one of the most momentous and onerous acts a nation can make—it involves high risk of death and serious injury to combatants and, in today’s world, a disproportionate number of non-combatants; loss of essential resources for, and impoverishment and dislocation of, local people; irreversible environmental damage; undermining of international relations; fuelling of fear and hatred between human groups that may last generations; and diversion of public money from human need. War brings inevitable tragedy and devastation, and it must be an action of last resort. Modern warfare is horrific, as 20th century history starkly shows; it has no winners, only losers of greater or lesser degree. Governments must keep in mind that it is ordinary people who bear the brunt of war, not those in power.

A nation that places the power to take it to war in the hands of the executive branch of government alone, is a nation whose commitment to

peace and democracy lacks credibility. To make the decision to go to war a parliamentary power does not necessarily guarantee a sound decision but it guarantees a decision that reflects the level of democracy embedded in the Houses of Parliament, a level that may not be as deep as we would wish but is, by definition, superior to that in the executive alone.

The Australian parliament is—technically, symbolically and to an important degree practically—the ‘authority of the people’. While it often seems all too easy to dismiss as the rubber stamp of those currently in power, parliament remains an important arena of public debate and scrutiny, where opposition can be voiced and recorded, and where the prime minister and cabinet can be challenged and made accountable for their decisions. Parliament’s role as a place where matters of public importance can be scrutinised, debated and given greater transparency makes subsection 10 of the Bill as essential as subsection 2. Subsection 10 of the Bill, in obliging the minister for defence to regularly report to parliament (every 2 months) about current overseas deployments and to justify their continuation, recognises that without ongoing comprehensive information about matters of national significance, members of parliament cannot meet their obligations to their constituencies.

Australia’s military involvement in the second Gulf war underscores the importance of the Bill. In the face of opposition from most Australians and, in all likelihood, most parliamentarians had they been adequately informed, the Howard government committed Australian forces to participate in the 2003 invasion of Iraq without the approval of parliament—the first time in our history that parliamentary approval was bypassed, indicating that neither democratic principles nor international law is always enough to constrain government behaviour.

A government that engages in war without the approval of the full parliament is treating the people not only paternalistically but disdainfully; it fails in its representative duty. And, in not seeking parliamentary authority, it puts at risk the morale of the men and women of the armed forces, who expect to be fighting for their country not just their government; it exploits their heavy obligation to obey. This bill will put a necessary, although not always sufficient, constraint on such a government.

The list of countries whose processes for making the decision to go to war are more democratic than Australia’s is long, and includes Denmark, Finland, Germany, Ireland, Slovakia, South Korea, Spain, Sweden, Switzerland and Turkey. Even the USA has checks and balances on the

war powers of its president. It is also noteworthy that the UK government is currently under pressure from its conservative opposition to make its war powers more broadly based.

We can find no argument that justifies keeping the prerogative to take the nation to war with the executive branch of government. To argue that the prime minister and cabinet are likely to be closer to, and have greater insight into, a given international situation is to admit that the government has failed to keep parliament and the public adequately informed. The argument that the decision to deploy troops needs to be made more rapidly and surreptitiously than is practically possible for parliaments is to put greater value on efficiency than democracy, a dangerous path for a government to take. Further, the Bill mitigates any concerns about the possible impracticality of seeking parliamentary resolutions by providing for deployment in genuine emergency circumstances without prior parliamentary authority.

We support the conditions that the bill obliges the executive branch of government to meet for an emergency proclamation of war to remain legitimate, the most important of which are: any such proclamation must be made public within 24 hours; and it must be laid before each House of the Parliament within 2 days of being made, accompanied by comprehensive information. The information government must make available to parliament includes: an explanation of why it is not expedient to seek parliamentary approval before the overseas deployment; reasons necessitating war and the legal authority for the decision; and details of size, geographical extent and expected duration of the deployment.

We also note that this bill would not require parliamentary authorisation for overseas peaceful deployment of ADF personnel, such as training, procurement of equipment or as part of an Australian diplomatic mission.

The constraints that the Bill places on governments are not exacting. War-like deployments that are in effect exempted by the Bill from the need to have prior parliamentary authority include: deployments within Australian territory; overseas deployments in an emergency; overseas deployments that come under the rubric of 'peacekeeping'; and deployments that are part of humanitarian and disaster relief efforts. These exemptions and the Bill's overall moderation should commend it to those who would otherwise oppose it.

Most Australians expect that their government will take the nation to war only as a last resort, that is, only after 1) it has been clearly established

that a national security crisis exists and that war is a proportionate response; 2) all reasonable avenues to resolve the conflict non-violently have been exhausted; 3) parliament and public have been fully informed and have had the opportunity to pursue debate; and 4) respect for international law and support of the United Nations have been assured. Ensuring that a government decision to take the nation to war has parliamentary approval does not guarantee that these expectations will be met but it is a necessary initial step—the Bill would not only put an end to the decision making mechanism that resulted in Australian participation in the illegal invasion of Iraq in 2003, but make Australia a more vigorous democracy.