

24 September 2009

Prof G J Lindell

Senator Mark Bishop  
Chair  
Senate Foreign Affairs, Defence and Trade Legislation Committee

Dear Senator Bishop

**Inquiry into the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No 2] – Invitation to make a written submission**

Thank you for your letter dated 7 September 2009 in which you extended an invitation for me to make a written submission in relation to the above mentioned inquiry.

I regret that the unrealistic deadline set for the lodgement of submissions when combined with my other commitments, does not make it possible for me to do more than draw your Committee's attention to an article which I had published in case the Committee is not already aware of its existence: see Geoffrey Lindell, "The constitutional authority to deploy Australian military forces in the Coalition war against Iraq" (2002) 5 *Constitutional Law and Policy Review* 46. (A shorter version of the article appeared in "About the House", House of Representatives Magazine, No 16 (May/June 2003)).

My views have not changed since the article was written and all I can do here is to indicate that, on balance, I believe the arguments in support of ensuring that parliamentary approval is required for the deployment of troops for overseas combat outweigh those that are against the adoption of such a requirement. I understand that there are similar moves to adopt the requirement in the United Kingdom and - at least when I last considered the matter - it appeared that that these moves had a serious chance of succeeding.

Even though it was not accepted, I had also expressed a similar view regarding the need to obtain require parliamentary approval in the analogous field of treaty making: see Australian Constitutional Commission: *Distribution of Powers Advisory Committee Report* (1987) at pp 233 – 6 (Appendix 6) and cf pp 88-9 and see also the support given by Professor Leslie Zines in the *Final Report of the Constitutional Commission* (1988) at pp 745 – 6 and cf the view of the majority at p 745.

I regret that the circumstance mentioned above has not made it possible for me to examine the terms of the above Bill in order to determine whether the Bill is an appropriate vehicle for giving effect to the requirement which I favour.

Thank you

Yours faithfully

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