

# Chapter 1

## Introduction

### Background

1.1 On 17 September 2008, Senator Scott Ludlam introduced in the Senate the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]. On 20 August 2009, the Senate referred the bill to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 19 November 2009. On 17 November, the Senate granted the committee an extension to its reporting date to 25 February 2010.<sup>1</sup>

### Purpose of the Bill

1.2 The stated purpose of the bill is 'to ensure that, as far as is constitutionally and practically possible, Australian Defence Force (ADF) personnel are not sent overseas to engage in warlike actions without the approval of both Houses of Parliament'.<sup>2</sup> Its main provision stipulates clearly that members of the Defence Force may not serve beyond the territorial limits of Australia except in accordance with a resolution authorising the service. This resolution must be agreed to by both the Senate and the House of Representatives. By proclamation, the Governor-General may declare that an emergency exists requiring such service. The bill makes provisions for both Houses to meet after such a proclamation is made.

### Submissions

1.3 The committee advertised the inquiry on its website and in *The Australian* on 22 September and on subsequent occasions. The committee wrote to the Minister for Defence and the Attorney-General inviting them or their departments or related agencies to make a submission. A number of other organisations, commentators, academics were also contacted and invited to make submissions to the inquiry.

1.4 The committee received 31 submissions, which are listed in Appendix 1.

### Scope and structure of inquiry

1.5 The proposal that Australian Defence Force personnel cannot serve overseas in warlike service unless both Houses of Parliament have approved the deployment is not new. Over the past half century, bills designed to confer on the Parliament this authority have been presented to the Senate. The matter has been debated in the chamber at least twice and on each occasion both major parties rejected the proposal.

1.6 The bill before the committee shows that it has not yet addressed the problems identified with earlier versions of the legislation. Further, after close consideration of the submissions supporting the bill, the committee is of the view that they repeat the

---

1 *Journals of the Senate*, 17 November 2009, p. 2736.

2 *Explanatory Memorandum*, Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2], p. 2.

opinions and arguments put forward previously and bring nothing new to the debate. With that in mind, the committee decided that little would be gained from holding public hearings that would rework old ground. Instead, in this report, the committee provides an account of the consideration given to the previous proposals; the concerns and objections raised over the years; and the efforts made to rectify the identified problems. It hopes that by doing so, it will focus on the major concerns impeding progress with this type of legislation and contribute to moving the debate forward.

### **Scrutiny of Bills Committee**

1.7 The Senate Standing Committee for the Scrutiny of Bills considered the bill but had no comments to make.<sup>3</sup>

### **Acknowledgements**

1.8 The committee thanks those who assisted with the inquiry, especially the many people who made submissions. The committee appreciates their contribution.

---

3 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest*, no.1 of 2009, 4 February 2009, p. 17.