



PARLIAMENT OF AUSTRALIA

Inquiry into international armed conflict decision making

Parliamentary Joint Committee

Joint Standing Committee on Foreign Affairs, Defence and Trade

March 2023

CANBERRA

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Chair's Foreword

The power to declare war and send military personnel into conflict is arguably the most significant and serious institutional power, and the gravest decision a government can make. Australia's involvement in past wars has invoked public and political debate regarding key issues, including: the power and method by which the Australian Government commits to war or conducts warlike operations; the nature and extent of parliamentary involvement in such decisions; and the accountability of the Executive for its objectives, related decisions, conduct of operations, and outcomes.

Through this inquiry, the Committee has carefully and seriously considered fundamental questions regarding the quality of decision-making and oversight in relation to international armed conflict involving the deployment of the Australian Defence Force. Thank you to the many stakeholders and submitters who contributed thoughtfully to the inquiry and whose carefully formed and expert views are acknowledged with respect and drawn upon in this report.

The Committee has concluded there is a clear need to improve the transparency and accountability of government decision-making in relation to armed conflict. Australia's system of parliamentary democracy is likely to be kept healthy, effective and well-adapted to present and emerging challenges by making sensible changes that nevertheless respect our well-established institutions and conventions.

Key recommendations are to:

- Reaffirm that decisions regarding armed conflict are fundamentally a prerogative of the Executive, while acknowledging the key role of Parliament in considering such decisions, and the value of improving the transparency and accountability of such decision-making in the pursuit of national interests.
- Amend the Cabinet Handbook to:
 - Restore the primacy of the Governor-General under Section 68 of the Australian Constitution to give effect to decisions of government in relation to war or warlike operations, particularly in relation to conflicts that are not supported by resolution by the United Nations Security Council, or an invitation of a sovereign nation
 - Require a written statement to be published and tabled in the Parliament setting out the objectives of major military operations, the orders made and their legal basis
 - Require Parliament to be recalled as soon as possible to be advised, and facilitate a debate in Parliament at the earliest opportunity following a ministerial statement, based on the 2010 Gillard model, including a statement of compliance with international law and advice as to the legality of an operation

- Introduce Standing Resolutions of both Houses of Parliament to establish expectations of Executive Government regarding accountability for decisions in relation to international armed conflict, including regular Statements and Updates from the Prime Minister and Minister for Defence.
- Establish via legislation a new Joint Statutory Defence Committee, modelled on the Parliamentary Joint Committee for Intelligence and Security, able to receive classified information to improve parliamentary scrutiny of defence strategy, policy, capability development acquisition and sustainment, contingency planning, and major operations.

The Committee encourages the Government to exercise leadership and establish the Joint Statutory Committee on Defence which would be a strong enhancement to national security while providing for increased parliamentary scrutiny of Defence.

In 1988 Prime Minister Bob Hawke created the Parliamentary Joint Committee on ASIO against the advice of the Hope Royal Commissions not to enhance parliamentary oversight of the intelligence agencies. History has proved he was right to do so, and the Government is encouraged to emulate Prime Minister Hawke's example and act to strengthen national security and enhance the accountability of defence to the Parliament.

The Committee is convinced that greater transparency and parliamentary consideration of the decision to commit forces to an armed conflict can and must occur, and through this inquiry has formed and advanced recommendations that would deliver substantial improvement by extending tried and tested forms of parliamentary process like tabling expectations, debate opportunities, and committee oversight.

On that basis the Committee commends this report, on this most serious of subjects, to the Government.

Mr Julian Hill MP
Chair
Defence Subcommittee

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Mr Colin Boyce MP

Mr Scott Buchholz MP *(from 22 March 2023)*

Mr Josh Burns MP

Senator Raff Ciccone

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Ms Zoe Daniel MP

Senator Mehreen Faruqi *(to 26 October 2022)*

Mr Steve Georganas MP

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Ms Kate Thwaites MP

Senator David Van

Ms Maria Vamvakinou MP

Mr Josh Wilson MP



Terms of reference

The Joint Standing Committee on Foreign Affairs, Defence and Trade will inquire into how Australia makes decisions to send service personnel into international armed conflict having regard to:

- 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.

List of recommendations

Recommendation 1

- 2.97** The Committee recommends that in implementing these recommendations the Government reaffirm that decisions regarding armed conflict including war or warlike operations are fundamentally a prerogative of the Executive, while acknowledging the key role of parliament in considering such decisions, and the value of improving the transparency and accountability of such decision-making and the conduct of operations.

Recommendation 2

- 2.106** The Committee recommends that the Cabinet Handbook be amended to clarify that:
- Executive power in relation to armed conflict and the deployment of military force flows from section 61 of the Constitution
 - In the modern era, Executive power is in practice exercised collectively via the National Security Committee of the Cabinet, whose decisions can be given effect via section 8 of the Defence Act or by advice to the Governor-General as Commander in Chief under section 68 of the Constitution
 - In the event of war or warlike operations:
 - It is preferable that section 68 of the Constitution be utilised, particularly in relation to conflicts that are not supported by resolution by the United Nations Security Council, or an invitation of a sovereign nation given that complex matters of legality in public international law may arise in respect of an overseas commitment of that nature
 - A written Statement be published and tabled in the Parliament setting out the objectives of such major military operations, the orders made and its legal basis

Recommendation 3

- 3.55** The Committee recommends the Government include a new section in the Cabinet Handbook outlining expectations for practices to be followed in the event of a decision to engage in major international armed conflict including war or warlike operations. This should include:

- a requirement that the Parliament be recalled as soon as possible to be advised, unless this was not possible due to extenuating and appropriate circumstances (e.g., it was unsafe for the Parliament to meet due to conflict)
- a requirement that the Executive facilitate a debate in both Houses of Parliament at the earliest opportunity, either prior to deployment of the Australian Defence Force or within thirty (30) days of deployment. Debate should occur after a formal ministerial statement is made which explains the reasons for the operation, based on the 2010 Gillard model, as well as a statement of compliance with international law and advice as to the legality of the operation

These practices should contain the caveat that the Governor-General is able to approve deferral of any of these requirements in specific circumstances, such as high risks to national security or imminent threat to Australian territories or civilian lives.

Recommendation 4

3.60 The Committee recommends the Government introduce standing resolutions of both Houses of Parliament to establish Parliament's expectations in relation to accountability for decisions in relation to international armed conflict, providing for sensible exemptions to enable timely and flexible national security responses and requiring at a minimum that, when war or warlike operations are occurring:

- a Statement to both Houses of Parliament be made at least annually from the Prime Minister and Government Senate Leader and debate facilitated
- an Update to both Houses of Parliament be provided at other times during the year (at least twice) from the Minister for Defence and Minister representing the Minister for Defence in the other Chamber and debate facilitated

These practices should be replicated in the Cabinet Handbook.

Recommendation 5

3.61 The Committee recommends the Government:

- revert to a traditional approach whereby Defence white papers and national security or strategy updates should be tabled in both Houses of Parliament within 30 days of their presentation to the Minister
- consider and apply mechanisms to codify this practice, such as embedding them in the Cabinet Handbook or by Standing Resolutions of both Houses of Parliament

Recommendation 6

3.97 The Committee recommends the Government introduce legislation to establish a Joint Statutory Committee on Defence to supersede and enhance the Defence related functions currently undertaken by the Joint Standing Committee of Foreign Affairs, Defence and Trade. This committee should have its powers set out in legislation, including oversight and accountability functions in relation to the Australian Defence Force, the Department of Defence and specified portfolio agencies including:

- scrutiny of Defence portfolio annual reports
- consideration of white papers, strategy, planning and contingencies
- scrutiny of Defence capability development, acquisitions, and sustainment
- consideration of matters relating to Defence personnel and veterans' affairs
- inquiry into matters referred by the Minister for Defence or either House of Parliament
- general parliamentary oversight of war or warlike operations, including ongoing conflicts and involvement in significant non-conflict-related operations domestically and internationally

The proposed committee should be explicitly permitted to request and receive classified information and general intelligence briefings while also being subject to clear legislative constraints to its mandate, including restrictions on access to:

- individual domestic intelligence reports
- intelligence sourced from foreign intelligence bodies where such provision would breach international agreements
- detail regarding operational matters or information regarding highly sensitive capabilities or protected identities, except where specifically authorised by the Minister for Defence

Statutory restrictions should be placed on members, their staff (one of whom should be able to obtain a security clearance at minimum NV2 level) and secretariat staff regarding the disclosure or publication of classified information with appropriate penalties including imprisonment for breaches.

Notwithstanding the proposed committee's powers and ability to receive and request classified briefings, the legislation should also provide that the Minister for Defence should have an overarching power to veto the provision of any classified information to the committee whenever the Minister considers that the provision of the classified information in question would compromise national security.

The committee's membership should be appointed by the Prime Minister, and, in consultation with the Leader of the Opposition, constituted by:

- **Six Government members and five non-Government members, with a minimum of:**
 - **One Government Member of the House and one Government Senator**
 - **One Opposition Member of the House and one Opposition Senator**
- **One Government Member as committee chair**

The Prime Minister and Minister for Defence should be provided with the ability to authorise specified members of Parliament (Ministers or senior Opposition Shadow Ministers) to be part of particular meetings, briefings or activities of the committee, during which they would not be considered members of the committee but would be able to participate subject to the same statutory restrictions regarding the disclosure or publication of classified information as committee members.

Recommendation 7

- 3.98 The Committee recommends that, subject to Recommendation 6, the Cabinet Handbook codify an expectation that the Prime Minister or Minister for Defence will facilitate appropriate briefings of the Defence Committee regarding the conduct of significant military operations, subject to ongoing national security considerations as determined by the Prime Minister and Minister for Defence. This would include necessary authorisations to enable Ministers or senior Opposition Shadow Ministers to participate in such meetings.**



1. Background and conduct of the inquiry

- 1.1 The power to declare war and send military personnel into conflict situations is arguably the most significant and serious institutional power, regardless of the type of governance system involved. In the Australian context, the power to go to war or conduct warlike operations rests with the Executive Government. The weight of the burden of this responsibility is evident in previous leaders' public statements when going to war, such as former Prime Minister Robert Menzies upon announcing the outbreak of World War II in 1939:

Fellow Australians, it is my melancholy duty to inform you officially that, in consequence of the persistence of Germany in her invasion of Poland, Great Britain has declared war upon her, and that, as a result, Australia is also at war. No harder task can fall to the lot of a democratic leader than to make such an announcement.¹

- 1.2 Australia has been involved in a number of wars over its comparatively short history, many of which have been tarnished by controversy. Much of the public and political debate in such instances has been in relation to two key factors: the power and method in which the Australian Government can go to war or conduct warlike operations, and the nature and extent of parliamentary engagement involved in such decisions and the subsequent conduct of a conflict.
- 1.3 This inquiry delved into a range of issues raised in this debate and has grappled with the very serious questions relating to decision-making regarding Australia's involvement in international armed conflict and the substance and timing of parliamentary oversight.

'War' in the contemporary Australian context

- 1.4 The concepts of 'war' and 'armed conflict' have changed significantly since the early twentieth century. In undertaking this inquiry, the Committee has considered evidence regarding the more expansive nature of what 'armed conflict' may look like in future, and how best to accommodate these new understandings into the Australian framework.
- 1.5 Section 4 of the *Defence Act 1903* (Defence Act) provides the following definitions:

¹ Australian War Memorial, 'Prime Minister Robert G. Menzies: wartime broadcast', 24 December 2019, https://www.awm.gov.au/articles/encyclopedia/prime_ministers/menzies, accessed 24 February 2023.

"War" --Means any invasion or apprehended invasion of, or attack or apprehended attack on, Australia by an enemy or armed force.

...

"Time of War" --Means any time during which a state of war actually exists and includes the time between the issue of a proclamation of the existence of war or of danger thereof and the issue of a proclamation declaring that the war or danger thereof, declared in the prior proclamation, no longer exists.

- 1.6 The concept of 'war' was recognised by most stakeholders to be far broader than was originally envisaged during the drafting of the Defence Act or other legislation. It was observed by submitters and witnesses that conflict is no longer isolated to situations involving open warfare as traditionally understood, but also in other arenas such as cyber and space.² The Department of Defence (Defence) supported this view, stating that:

The nature of warfare has ... shifted, with the growth of grey-zone activities and offensive operations in the space and cyber domains challenging traditional concepts of 'conflict'.³

- 1.7 Cyber warfare was noted as being particularly unsettled in terms of the other types of conflict due to the uncertainty around international regulation around the use of force online.⁴
- 1.8 Further, what it means to be 'at war' or in a 'time of war' is similarly opaque in comparison to historical understandings of the concept. 'International conflict' today now represents a wide range of adversarial activity and operations, including espionage, foreign interference, and other forms of indirect hostilities. Activity exists on a spectrum ranging from competition, confrontation to conflict and old binary notions of being 'at war' (*i.e.*, major kinetic conflict) vs. 'at peace' (*i.e.*, the absence of major kinetic conflict) no longer reflect our strategic circumstances or the reality of the doctrine of authoritarian states and potential adversaries.
- 1.9 It is nevertheless the case that in essence 'war' involves the prospect, occurrence, and practice of violence from one nation to another, or to foreign non-state actors, and it is the grave consequences of war that properly place such decisions in a category that deserves specific consequences.
- 1.10 In conducting its inquiry, the Committee has thus taken these factors into consideration, and is conscious of the importance of making recommendations in the context of current and emerging forms of conflict.

² Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 11.

³ Department of Defence, submission 110, 5.

⁴ Professor Ben Saul, Private capacity, *Committee Hansard*, 9 December 2022, 14-15.

History of Australian decisions regarding international armed conflict

- 1.11 Australia has committed its armed forces to war or warlike operations multiple times in its relatively short history since Federation. According to statistics provided by the Parliamentary Library, the Australian Government has committed forces to ten separate formal international conflicts:
- World War I (1914-1918)
 - World War II (1939-1945)
 - Malayan Emergency (1950-1960)
 - Korean War (1950-1953)
 - Confrontation (Indonesia; 1963-1966)
 - Vietnam War (1962-1973)
 - Gulf War (1990-1991)
 - Afghanistan (2001-2021)
 - Iraq (2003-2010) and
 - Iraq 2014/Syria 2015
- 1.12 In addition to these, the Australian Defence Force (ADF) and related agencies have contributed forces and other resources to international conflict areas at various points in time, such as peacekeeping and training units.
- 1.13 Appendix C, provided by the Parliamentary Library, outlines the ten key instances of Australian decisions in relation to international armed conflict, and how the Parliament was engaged in these decisions by the Executive Government of the time.

Past legislative reform attempts

- 1.14 Prior efforts to amend legislation or change processes regarding parliamentary involvement in deployment or warlike operations decisions include:⁵
- The Defence Amendment Bill 1985, introduced by Senator Colin Mason, Australian Democrats, in April 1985, which proposed both Houses of Parliament being required to vote on any deployment of military personnel overseas except in specific circumstances. This bill was subsequently reintroduced in 1988 by Senator Paul McLean, Australian Democrats
 - The Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003, introduced jointly by Senator Andrew Bartlett and Senator Natasha Stott Despoja, Australian Democrats, in 2003

⁵ Australian Senate, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]*, February 2010, 3-4.

- The Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 (the 2008 Bill), presented in the Senate by Senator Andrew Bartlett in February 2008 and then later reintroduced by Senator Scott Ludlam, Australian Greens, in September 2008
- The Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020 (the 2020 Bill), which was introduced as a private senator's bill by Senator Jordon Steele-John

1.15 The four bills do not substantially differ in their main proposals or provisions over the different iterations. Most of these bills were debated in the Senate but adjourned without a vote or successful implementation. As of 20 February 2023, the 2020 bill remains before the Senate after having been restored to the Notice Paper after lapsing at the end of the 46th Parliament.⁶

Recent parliamentary inquiries

1.16 Since 2010, there have been three parliamentary reviews which have either directly or indirectly examined issues regarding parliamentary engagement in relation to war or warlike operations:

- The 2010 inquiry into the 2008 Bill by the Senate Foreign Affairs, Defence and Trade Legislation Committee (Senate FADT Committee)
- The 2018 inquiry into the benefits and risks of a Bipartisan Australian Defence Agreement, as a basis of planning for, and funding of, Australian Defence capability, conducted by the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT)
- The inquiry into the 2020 Bill by the Senate FADT Committee

Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2] inquiry

1.17 This inquiry was prompted by the introduction of the 2008 Bill in September 2008, which was subsequently referred to the Senate FADT Committee in August 2009. The 2008 Bill's stated purpose was 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'.⁷ It proposed that ADF personnel must not serve in locations beyond the territorial limits of Australia unless first authorised by resolution, agreed to by both Houses of Parliament. The 2008 Bill also made provisions to enable the Houses to meet after the Governor-General declares an emergency requiring ADF service.

⁶ Parliament of Australia, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020* [undated]
<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fs1281%22>, accessed 20 February 2023.

⁷ Australian Senate, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]*, February 2010, 1

- 1.18 While the Committee ultimately did not support the passage of the 2008 Bill due to a range of concerns, it commented:

The committee is not in any way against the involvement of both Houses of Parliament in open and public debates about the deployment of Australian service personnel to warlike operations or potential hostilities. It agrees with the views of most submitters that the Australian people, through their elected representatives, have a right to be informed and heard on these important matters.⁸

Inquiry into a Bipartisan Australian Defence Agreement and Australian Defence capability

- 1.19 In November 2018, the Joint Standing Committee on Foreign Affairs, Defence and Trade tabled the report *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence*. This report contained the findings of the inquiry into the benefits and risks of a Bipartisan Australian Defence Agreement as the basis of planning for, and funding of, Australian Defence capability. One of the key areas of the inquiry's focus was how parliamentary engagement could enhance bipartisanship, which would benefit Defence, the Government, and the Australian people at large.
- 1.20 The findings of this inquiry, while not directly relevant to the decision to go to war or conduct warlike operations, touched on several relevant issues that were reiterated in the course of this inquiry. In particular, the Committee made observations regarding the nature of how Defence as an entity engages with the Parliament, and how best to facilitate increased and more effective engagement. The findings and recommendations relevant to this inquiry will be discussed further in Chapter 3.

Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020 inquiry

- 1.21 The 2020 Bill was referred to the Senate FADT Committee for scrutiny by the Senate Selection of Bills Committee. In reviewing the 2020 Bill, The Senate FADT Committee observed that the 2020 Bill was 'a revised version' of the 2008 Bill, with key differences including provisions relating to emergency situations and what information should be provided to the public and the Parliament.⁹
- 1.22 The Senate FADT Committee found that submitters to the 2020 Bill inquiry were generally supportive of the broad intent of the proposals, but that detailed examination of the provisions was limited in evidence.¹⁰ The Senate FADT Committee again did not support that the proposed reforms pass, citing concerns regarding a lack of evidence of how the changes would work in practice,

⁸ Australian Senate, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 [No. 2]*, February 2010, 28.

⁹ Australian Senate, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020*, November 2021, 1.

¹⁰ Australian Senate, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020*, November 2021, 4.

intelligences, and potentially impacting Defence's capability to flexibly respond to fast-developing situations.¹¹

- 1.23 Similarly, to 2010, the Senate FADT Committee expressed that its intention was not to stymie parliamentary involvement in decisions relating to armed conflict or warlike operations:

The committee observes that ultimately the government is accountable to parliament and the Australian people. There are checks and balances on executive power through the normal parliamentary process and there is nothing preventing parliamentary discussion of an overseas deployment. As in 2010, the committee is not against the involvement of both Houses of Parliament in open and public debates about the deployment of Australian service personnel to warlike operations or potential hostilities. Indeed, there are many parliamentary processes that allow for debate and scrutiny.¹²

Conduct of the inquiry

- 1.24 Under its resolution of appointment, the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee) is appointed to inquire into and report on such matters relating to foreign affairs, defence and trade as may be referred to it by either House of the Parliament or a Minister.
- 1.25 The inquiry was referred to the Committee by the Deputy Prime Minister and Minister for Defence, the Hon Richard Marles MP, on 28 September 2022. The Committee resolved to task the Defence Subcommittee to undertake the inquiry in line with the terms of reference as provided by the Minister (see Terms of Reference, p. xi). The Committee publicly announced its inquiry by media release on 30 September 2022 and requested submissions by 18 November 2022.
- 1.26 Over 113 submissions were received by the Committee. One public hearing was held in relation to this inquiry on 9 December 2022.
- 1.27 This report, the Hansard transcripts of the public hearing, and all submissions to the inquiry are available on the Committee's website at:
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Armedconflict/.
- 1.28 The Committee thanks the organisations and individuals who provided submissions to the inquiry and appeared at the public hearing. The Committee particularly recognises the submitters and witnesses who appeared before the Committee who served as Defence personnel in military conflict internationally and values their unique perspectives on the issues raised.

¹¹ Australian Senate, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020*, November 2021, 10-11.

¹² Australian Senate, Senate Foreign Affairs, Defence and Trade Legislation Committee, *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2020*, November 2021, 11.

1.29 The Committee also recognises the extensive research assistance conducted by the Parliamentary Library during the inquiry, and thanks the researchers involved for their work.



2. The source, nature and exercise of power regarding armed conflict and war

- 2.1 One of the key questions that has formed part of the public debate regarding the decision to go to war is the source of the relevant power and who can exercise it. Generally, it is accepted that a “*decision to commit the Australian Defence Force to operations as part of an international armed conflict is an exercise of prerogative power pursuant to s 61 of the Constitution*”.¹ Historically, for example in World War II prior to the adoption of the Statute of Westminster, a decision to declare war was given effect via section 68 (s 68) of the Constitution via advice to the Governor-General as Commander-in-Chief of the ADF. However, in recent times it appears that section 8 (s 8) of the *Defence Act 1903* (Defence Act) has more commonly been relied upon as the way by which the elected government exercises control over the ADF and could be used to give effect to executive decisions to participate in a war or warlike operations.
- 2.2 This section discusses the potential sources of power to go to war and deploy the ADF internationally, the nature of how these powers operate, and who can and should exercise them.

Source of power to decide to go to war

- 2.3 The Constitution does not expressly provide powers to deploy military personnel or the declaration of war or warlike operations, nor does it contain any powers for the Parliament in relation to any decision regarding armed conflict. In the Constitution’s early history, Australian Governments were ‘unsure as to whether it could even declare war against another country without British Government approval’.²
- 2.4 Due to the Constitution’s absence of specific reference to war and other related operations, powers regarding these topics have been implied in Chapter II of the Constitution, which outlines the Executive Government’s powers and functions. The two provisions most relevant to the exercise of powers in relation to war or warlike operations are sections 61 and 68 of the Constitution.
- 2.5 Section 61 of the Constitution provides that:

¹ Attorney-General’s Department, *submission 113*, 1.

² Deirdre McKeown and Roy Jordan, *Parliamentary involvement in declaring war and deploying forces overseas*, Parliamentary Library, Background Note, 22 March 2010 (2009-10), 1.

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

2.6 Following on, s 68 states:

The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

2.7 These two sections, when read together, have been interpreted as placing the prerogative power of the Monarch to declare war or conduct warlike operations in the Governor-General.³ The placement of the two sections also indicates that the power is an executive power, exercised by the Governor-General. This section stipulates that the Governor-General is the commander in chief, rather than 'in Council'. When understood through the lens of responsible government conventions, this section should be interpreted as being exercised on the advice of a Minister. By convention, the Governor-General exercises his or her power based on advice from the Prime Minister, which in the modern era would arise from deliberations of the National Security Committee of the Cabinet.

2.8 The Governor-General's power to exercise authority over the armed forces is consistent with most Westminster systems, which generally consider the command of the military to be 'one of the oldest and most honoured prerogatives of the Crown'. The section more broadly also vests the power to 'determine the organisation, structure, placement, arming and equipment of the ADF' in the Governor-General.⁴ Importantly, it enables the Governor-General to *command* the Chiefs of the Armed Forces to deploy the ADF, as opposed to *advising* them to do so.⁵

2.9 The prerogative power provided by s 68 has been argued to be fundamentally different to the other executive powers in section 61 of the Constitution, confirmed by the High Court in *White v Director of Military Prosecutions*. Rather than forming part of the Executive Government and forming part or the entirety of a portfolio, the commander-in-chief exists separately to the elected government of the day.⁶ As an executive power, the Parliament may regulate the command power via legislation, but the prerogative cannot be entirely removed from the Governor-General.

³ Air Commodore Patrick Keane, Director General, Military Legal Service, Department of Defence, *Committee Hansard*, 9 December 2022, 44; Attorney-General's Department, *submission 113*, 1.

⁴ Cameron Moore and Jo Brick, 'Australian civil-military relations: distinct cultural and constitutional foundations', *Australian Journal of Defence and Strategic Studies*, 2022, 4(2): 224-225. <https://defence.gov.au/ADC/publications/AJDSS/documents/volume4-number2/civil-military-cultural-constitutional-foundation.pdf> (accessed 22 March 2023)

⁵ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 15.

⁶ Cameron Moore and Jo Brick, 'Australian civil-military relations: distinct cultural and constitutional foundations', *Australian Journal of Defence and Strategic Studies*, 2022, 4(2): 225-226. <https://defence.gov.au/ADC/publications/AJDSS/documents/volume4-number2/civil-military-cultural-constitutional-foundation.pdf> (accessed 22 March 2023)

- 2.10 The use of powers under sections 61 and 68 are not qualified with requirements to notify, consult, or seek approval from the Parliament.⁷ There is also no requirement to issue certification that a decision to go to war or conduct warlike operations is consistent with the scope and authority of the constitutional provisions.⁸

The role of the *Defence Act 1903*

- 2.11 While the Constitution is widely considered the source of authority by which the Executive decides to go to war or conduct warlike operations, there has also been commentary suggesting the Defence Act could be an alternative authority.
- 2.12 Section 8 of the Defence Act provides that:
- (1) The Minister has general control and administration of the Defence Force.
Note: Command in Chief of the Defence Force is vested in the Governor-General: see section 68 of the Constitution.
 - (2) In performing and exercising functions and powers under this Part, the Chief of the Defence Force and the Secretary must comply with any directions of the Minister.
- 2.13 Further, the Defence Act provides the Governor-General with powers of conscription during times of war. Section 60 provides that, in ‘times of war’ as defined by the Act, the Governor-General may by proclamation call upon all persons who meet eligibility requirements in section 59 to serve for the duration of the time of war. In 1992, this power was amended to require that a resolution of both Houses of Parliament be passed for the proclamation to take effect in relation to conscription.⁹
- 2.14 In addition, section 50D permits the Governor-General to callout the ADF Reserves during situations involving warlike operations and was until 2001 subject to the requirement that Parliament meet within ten days after the Proclamation is issued.¹⁰
- 2.15 Section 8 is said to have two critical functions in relation to the conduct of war or warlike operations, which was that ‘it helps responsible government, but it also keeps the ADF apolitical’.¹¹ According to Professor Cameron Moore, the latter function provides a level of separation between the Executive (such as the Minister) and the armed forces.

⁷ Deirdre McKeown and Roy Jordan, *Parliamentary involvement in declaring war and deploying forces overseas*, Parliamentary Library, Background Note, 22 March 2010 (2009-10), 1; Air Commodore Patrick Keane, Director General, Military Legal Service, Department of Defence, *Committee Hansard*, 9 December 2022, 43.

⁸ Air Commodore Patrick Keane, Director General, Military Legal Service, Department of Defence, *Committee Hansard*, 9 December 2022, 43.

⁹ *Defence Legislation Amendment Act 1992*, s 7.

¹⁰ Professor Ernst Willhelm, *submission 6*, 16.

¹¹ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 13

2.16 A small number of stakeholders suggested that s 8 could be read as providing an alternative to the constitutional power. Professor Charles Sampford, of the Accountability Round Table, suggested the provision in the Defence Act could potentially be viewed as an unintentional 'duplicate' mechanism, but that it 'could not be interpreted as replacing the s61 prerogative'.¹² Professor Cameron Moore however argued that s 8 should not be considered as a 'power of command', as this would effectively provide that the Minister can direct the armed forces, creating an 'obligation of obedience'.¹³ This was echoed by Professor Sampford, who suggested the use of s 68 of the Constitution is 'bulletproof, constitutionally', whereas s 8 of the Defence Act is less reliable as a source of authority.¹⁴

2.17 Professor Moore was in favour of the use of the constitutional powers as the primary mechanism for the Executive to declare war or engage in warlike operations for three key reasons:¹⁵

- It would promote transparency and clarity in the Executive and its decision, by ensuring that the decision is made formally by the only official empowered by the Constitution to do so
- It would enhance accountability to the Parliament 'without removing the flexibility and decisiveness required by the executive for making such decisions', thus promoting responsible government
- Ensuring the ADF (both heads of missions and deployed personnel) understand the legal authority and legitimacy of the decision, which would ultimately shift the onus of any uncertainty onto the government of the day rather than the ADF

2.18 Defence clarified the intent and scope of s 8 in regard to decisions to go to war or conduct warlike operations:

Section 8 of the Defence Act 1903 sets out that the minister has general control and administration of the Defence Force and that both the Chief of the Defence Force and the secretary must comply with directions from the minister, which is a codification of the general principle of civil control of the military. The control and administration provisions of section 8 do not restrict the deployment of the Australian Defence Force overseas in international armed conflict under the executive power.¹⁶

2.19 The Attorney-General's Department (AGD) stated that Defence 'is not aware of any practice or requirement, under successive Governments, for a direction to be made

¹² Professor Charles Sampford, *submission 109*, 1.

¹³ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 13.

¹⁴ Professor Charles Sampford, Director, Accountability Round Table, *Committee Hansard*, 9 December 2022, 13.

¹⁵ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 11.

¹⁶ Air Commodore Patrick Keane, Director General, Military Legal Service, Department of Defence, *Committee Hansard*, 9 December 2022, 43.

by the Minister for Defence under s 8 of the Defence Act in order to deploy the Australian Defence Force on operations'.¹⁷

Has the Defence Act been used previously?

- 2.20 Research submitted in evidence to the inquiry suggested that s 8 was used by a previous government to enable the Executive to make the decision to go to war. According to Professor Sampford and Margaret Palmer, in 2003 the Defence Minister used s 8 in the Defence Act as a means to direct the heads of the ADF to deploy forces to Iraq.¹⁸ They argued that s 8 was 'not intended to be used for the decision to go to war, and that such instructions are for peacetime or in bello decisions'.¹⁹
- 2.21 Sampford and Palmer asserted that there are three key reasons to reject interpreting s 8 as a source of power to make decisions regarding war or warlike operations:
- 1 Assuming that the power to go to war or conduct warlike operations was duplicated in the Defence Act, it would be unlikely that the power would be concentrated in only one person (i.e., the Minister for Defence)
 - 2 Such a change in interpretation would likely be preceded by an explanation by the Minister for Defence
 - 3 When amending s 8 in 1975, it was done within the context of the release of the Tange Report, which had suggested that the section be reframed to enable the Minister for Defence with the administrative command of the ADF. This suggests that the government's intention was to achieve 'more effective strategic and Defence policymaking and more efficient operational arrangements'²⁰
- 2.22 Professor Moore argued that the lack of public documentation on which power is used and on what legal basis effectively opacifies effective scrutiny of the decision to engage in conflict, particularly in situations where the source of the power is unclear (for example, in a situation where the Minister has directed the Chief of the ADF to act).²¹
- 2.23 When asked to clarify the use of s 68 of the Constitution and s 8 of the Defence Act, the AGD advised that it was unable to provide further clarity. However, they confirmed that the constitutional prerogative power is the recognised mechanism in relation to war and warlike operations in the context of international armed conflict.²²

¹⁷ Attorney-General's Department, *submission 113*, 2.

¹⁸ Charles Sampford and Margaret Palmer, *The constitutional power to make war: Domestic legal issues raised by Australia's actions in Iraq*, Griffith Law Review (2009) Vol 18, No 2, 350.

¹⁹ Charles Sampford and Margaret Palmer, *The constitutional power to make war: Domestic legal issues raised by Australia's actions in Iraq*, Griffith Law Review (2009) Vol 18, No 2, 350.

²⁰ Charles Sampford and Margaret Palmer, *The constitutional power to make war: Domestic legal issues raised by Australia's actions in Iraq*, Griffith Law Review (2009) Vol 18, No 2, 364.

²¹ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 15.

²² Attorney General's Department, *submission 113*, 1.

Defence similarly stated that it had obtained advice from AGD and the Australian Government Solicitor, which indicated that:

[T]he decision to commit the Australian Defence Force to operations as part of an international armed conflict is an exercise of prerogative power pursuant to section 61 of the Constitution. Defence is further advised by these departments there is no constitutional requirement for the Government to act through the Governor-General in such circumstances.²³

2.24 Drawing on submissions, hearings and advice including from Professor Cameron Moore and the Parliamentary Library, the arguments for the s 8 approach of the Minister directing the CDF to order the ADF to use major force can be summarised as follows:

- *It is the current practice.* No new thinking or processes are required to use the s 8 approach
- *It gives the CDF more latitude to contest the Minister's direction.* Advice from the Parliamentary Library states that it does not involve the s 68 constitutional considerations of advising the Governor-General
- *It is likely to be quicker.* There is essentially a direct path from the National Security Committee of Cabinet to the CDF, without involving the Office of the Governor-General. It is important to note that this would not prevent the subsequent making of a s 68 order by the Governor-General, which could be backdated to take effect from the date of the ministerial direction. In any case, it would be a likely and preferable course of action to have a ministerial direction under s 8 prior to obtaining any s 68 order from the GG. The CDF would still have the opportunity to contest any ministerial direction, and even resign, before the making of any subsequent s 68 order by the Governor-General

2.25 The arguments against the s 8 approach provided by submitters are as follows:

- The process lacks clarity and transparency. There is no public document clearly stating the authority to deploy the ADF in war or conduct warlike operations. There is no detailed specific record of the decision which can be debated in parliament or pleaded in defence to a disciplinary or criminal prosecution. This may be more significant when relying upon the foreign affairs prerogative and act of state doctrine, such as for INTERFET in Timor, which has a more uncertain basis in law than the war prerogative
- In the case of war, there is also no clear statement of who the enemy might be. This is relevant to the pleading of the combat immunity doctrine in domestic law or claiming combatant immunity (or privilege) in international law. It is also relevant to the prosecution of military disciplinary offences such as conduct in relation to the enemy, and civilian criminal offences involving the enemy, such as trading, treason and so on

²³ Department of Defence, *submission 110.2*, 1.

- There is no immunity deriving from an administrative direction. Given that it is not an offence for CDF to fail to comply with the direction, there can be no defence in domestic or international law of following lawful orders for CDF. Other members of the ADF may argue lawful orders but there would be no public document to rely upon
- The minister's direction may still be justiciable. It is more open to seek judicial review, and an administrative law remedy such as an injunction or declaration of unlawfulness, for a decision of a minister than a decision of the Governor-General. A court may decide that the subject matter of a decision to go to war is itself non-justiciable, but minister's decisions are not normally immune from judicial review in the way that those of the Governor-General normally are. Even if CDF issued a public order following a ministerial direction, it could still be subject to judicial review in the same way as for the Minister
- An unseen administrative s 8 direction process may lack the legitimacy of an open constitutional s 68 process invoking the duty of members of the ADF. This could be a significant consideration for ADF operations which involve deliberate causing of death, destruction, and capture, particularly in foreign countries, and even more so in circumstances where there is no UN Security Council Resolution or invitation of the foreign country in question

Who can exercise the power?

2.26 As outlined above, the constitutional prerogative power to go to war is vested in the Governor-General by virtue of s 61. While the Governor-General has the formal power to make decisions regarding armed conflict and exercise control of the armed forces, by convention the Executive branch of government – that is, the Prime Minister and the Cabinet – will ultimately decide whether to go to war or conduct warlike operations.²⁴

Criticism of current arrangements

2.27 A significant majority of stakeholders expressed their opposition to the longstanding constitutional prerogative of the Governor-General, in practice exercised by Executive Government, to make decisions regarding Australia's involvement in international armed conflict. This section succinctly summarises their arguments without seeking to repeat the detail contained in the publicly available submissions.

2.28 The key criticisms of the current arrangements included:

- The perception that current arrangements, which vest the power in a single person in authority (or small group of people), is outdated and out of step with broader developments in other legislatures²⁵

²⁴ Deirdre McKeown and Roy Jordan, *Parliamentary involvement in declaring war and deploying forces overseas*, Parliamentary Library, Background Note, 22 March 2010 (2009-10), 2.

²⁵ Professor George Williams, Private capacity, *Committee Hansard*, 9 December 2022, 12.

- Suggestions that the current system is ‘undemocratic’ and open to potential misuse
- Arguments that the Australian public has higher expectations for open and accountable government, which includes stronger accountability via parliamentary engagement²⁶

‘Outdated’ concentration of power

- 2.29 The concept that one person or one branch of government (*i.e.*, the Executive) should be solely responsible for exercising the power in relation to war or warlike operations was strongly criticised by a number of witnesses. Submitters argued that this model does not match public expectations of how decisions of such magnitude should be made in modern government.²⁷
- 2.30 Professor George Williams argued that the current legislative arrangements reflect ‘the best state of the law in the 1800s’ and are inconsistent with contemporary expectations regarding armed conflict decisions.²⁸ He noted that the Constitution and the *Defence Act* were drafted and enforced prior to Australia’s submitting to the UN Charter framework relating to international obligations regarding the use of force.²⁹

‘Undemocratic’

- 2.31 Other witnesses argued that the current system, in which the Executive has the ultimate power to determine whether to engage in armed conflict, is ‘fundamentally undemocratic’.³⁰ The current process was suggested to be open to potential ‘distortion and ... political manipulation’.³¹

Lack of accountability and transparency

- 2.32 A prominent issue raised was whether the executive’s power to decide to go to war or conduct warlike operations is appropriate and balanced against contemporary expectations of accountability and transparency in government.
- 2.33 The current model’s lack of transparency was argued by most submitters and witnesses to be a key flaw in how Australia decides to go to war or conduct warlike operations. As discussed above, the Constitution does not require on the decision-maker to provide any form of public accountability for the decision to go to war or conduct warlike operations. Williams and Hall noted that there is no requirement for governments to explain any criteria for going to war.³²

²⁶ Professor George Williams and Winsome Hall, *submission 19*, 2.

²⁷ Professor George Williams and Winsome Hall, *submission 19*, 1-2.

²⁸ Professor George Williams, Private capacity, *Committee Hansard*, 9 December 2022, 12

²⁹ Professor George Williams and Winsome Hall, *Submission 19*, 1.

³⁰ Major Cameron Leckie, *Submission 22*, 6; Mr Nick Deane, *submission 78*, 1.

³¹ Mr John Phillips, Private capacity, *Committee Hansard*, 9 December 2022, 26.

³² Professor George Williams and Winsome Hall, *submission 19*, 2.

Support for the status quo

- 2.34 While most submitters criticised the current arrangements, some submitters took a different view and argued in favour of the retention of Executive prerogative regarding the power to make decisions regarding war and warlike operations.³³ Dr Alex Bristow argued that changes to current arrangements would not be ‘conducive to Australia’s national security interests’.³⁴
- 2.35 Defence asserted its strong view that current decision-making arrangements ‘remain appropriate’. The Department stated that current practices permit the Executive to have access to a complete range of intelligence which enabled considered and informed decisions regarding whether to commit resources to war or warlike operations. Defence argued that ‘[a]ny shift in these decision-making powers to the Parliament would risk significant adverse consequences for Australia’s national security interests’.³⁵

The power in practice

- 2.36 As reflected broadly in submissions, there is limited public understanding of how the Australian Government practically decides to go to war. Defence provided an explanation as to how this decision may be arrived at:

The process, of which I appreciate many committee members are aware—decisions on the employment (sic) of the ADF, in my experience, have all been taken through the National Security Committee of cabinet, for the consequential deployments we have experienced. It is based on the advice of the Department of Defence matched by Foreign Affairs and Trade and other key stakeholders, informed by the national intelligence community, through advice, in our case, offered through the Minister for Defence into the National Security Committee, where the decisions are made, and it then translates back into the orders the ADF uses as the executive authority to deploy.³⁶

- 2.37 As indicated above, a range of other entities are involved with the decision to go to war or conduct warlike operations. These include:
- The National Security Committee (NSC), which ‘considers matters related to Australia’s national security, including strategic priorities, operational matters and activities of the intelligence community’³⁷

³³ Dr Alex Bristow, Private capacity, *Committee Hansard*, 9 December 2022, 31.

³⁴ Dr Alex Bristow, Private capacity, *Committee Hansard*, 9 December 2022, 31.

³⁵ Department of Defence, *submission 110*, 2.

³⁶ Vice Admiral David Johnston AC, Vice Chief of the Defence Force, Department of Defence, *Committee Hansard*, 9 December 2022, 42.

³⁷ Australian Government Directory, ‘National Security Committee’, 13 July 2022, <https://www.directory.gov.au/commonwealth-parliament/cabinet/cabinet-committees/national-security-committee>, accessed 24 February 2023.

- The Federal Cabinet, which includes formerly established specialised subcommittees of Cabinet, such as the War Cabinet established by Prime Minister Robert Menzies in 1939³⁸
 - A range of other government entities, such as the Department of Defence, the Department of Foreign Affairs and Trade, and other security agencies
- 2.38 Participants argued that the current arrangements in determining whether Australia should go to war are problematic. Some witnesses argued passionately that the decision to go to war has historically not considered aspects such as whether a genuine threat was present and the costs of war (including monetary costs, costs to Australia’s international reputation, and the cost of lives lost by both personnel and civilians).³⁹
- 2.39 A particular issue noted was the long-term consequences of Australian Governments committing to war. Armed forces veterans explained that their experiences in wars without approval or appropriate scrutiny from the Parliament had impacted their mental health over the course of their lives. They particularly expressed concern that ‘wars of choice’ (*i.e.*, where Australia had not been responding in self-defence) were particularly damaging to the morale and long-term psychological health of ADF personnel.⁴⁰ This group of witnesses also strongly argued that the Executive should cautiously approach the decision to go to war or conduct warlike operations, considering a range of factors:
- The factors that I would include in terms of my criteria would be whether it’s legally justified under international law, which has already been referred to, and I agree with that; whether it’s morally justified in all the circumstances; whether the economics stack up—Can we afford to go to war? Is it justified?—whether it is environmentally justified; whether it will have a positive or negative impact on building a culture of world peace, which is also referred to by other people; and, then, whether in all the circumstances, over and above those previous five criteria, it’s in the national interest, and there are a number of suggestions as to what kind of list would go on to that.⁴¹
- 2.40 Similarly, the Australians for War Powers Reform argued that humanitarian considerations must be a factor when determining whether to engage in conflict, including the impact on civilians and the consequential costs of caring for potential displaced persons and refugees.⁴²

International comparisons

- 2.41 There is a wide variety of models across the world in terms of how governments engage with the legislature on matters regarding international armed conflict. See

³⁸ Department of Defence, *submission 110*, 2.

³⁹ Mr Noel Turnbull, Private capacity, *Committee Hansard*, 9 December 2022, 22.

⁴⁰ Mr John Phillips, Private capacity, *Committee Hansard*, 9 December 2022, 23.

⁴¹ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 27.

⁴² Dr Sue Wareham, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 6.

Appendix C for an overview of comparative international jurisdictions and their legislative frameworks in relation to international armed conflict.

- 2.42 It should be noted, however, that comparative analysis in considering international armed conflict decision-making powers may be of limited benefit. Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow argued that there are risks in comparative analysis between like Westminster countries. They noted that while other systems may have similar models of parliamentary engagement or are strategic partners (for example, the United Kingdom and the United States of America), each country's system must be contextualised within their own strategic and political environments. Consequently, they warned against an exact copy of a model from another jurisdiction to be imported into the Australian context.⁴³

The 'threshold issue'

- 2.43 At what point the Parliament should be engaged to become involved or be consulted or notified in relation to a particular operation was a key theme during the inquiry. This question drew a diversity of opinions from stakeholders, which ranged from the relatively high threshold (such as, only operations which were deemed 'wars of choice') to the significantly lower threshold (i.e., all operations should be subject to parliamentary debate and approval, regardless of any particular factor).

- 2.44 Representing the 'low' threshold case, Professor George Williams AO and Ms Winsome Hall argued:

The threshold should remain the same regardless of the "type" of military operation: if a cyberspace operation, for example, required an exercise of executive prerogative power to commence the operation that should be subject to approval by parliament.⁴⁴

- 2.45 In contrast, many submitters argued that there should be a lower threshold for any potential conflict or warlike operations which could be considered 'wars of choice', or conflicts which do not arise out of self-defence, whereas some forms of conflict which should not be considered as requiring the same level of scrutiny by the Parliament. Professor Clinton Fernandes described the distinction between the two categories of conflict, describing 'wars of necessity' in the following terms:

Wars of necessity refer to military actions taken in self-defence. If any part of Australia is attacked or threatened, the Executive must have the freedom to act without parliamentary involvement. It then notifies the United Nations Security Council, as provided for in Article 51 of the UN Charter. A war of necessity is not restricted to circumstances when an attack on Australia has already occurred; it has long been understood that whoever fires the first shot is not always the aggressor. Under certain circumstances, self-defence may be justified even before an enemy has fired the first shot or sent its troops across the border.

⁴³ Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow, *submission 86*, 1.

⁴⁴ Professor George Williams AO and Winsome Hall, *submission 19*, 5.

Australia cannot stand by idly whilst her enemies' preparations result in an actual strike, preventing an effective defence. Wars of necessity can occur either on Australian territory or anywhere else in the world. No parliamentary approval would be required because the danger is "instant, overwhelming, leaving no choice of means, and no moment for deliberation."⁴⁵

2.46 The definition of a 'war of choice', he contrasted, involves any form of armed conflict 'for any reason other than self-defence of Australia'. Situations that might come under this category were said to include:

- humanitarian operations
- peacekeeping missions or peace enforcement missions
- coalition operations
- any operation conducted in conjunction with another country as part of a security treaty
- any armed conflict operation which would require notification to the UN Security Council as per Article 51 of the UN Charter⁴⁶

2.47 Similarly, Mr Cameron Leckie submitted that proposals for operations intended to defend 'national interests' should be subject to a different threshold, while self-defence operations require immediate response.⁴⁷

2.48 Professor Fernandes further explained what kinds of situations could fall either side of the threshold:

If a foreign country were to seize Ashmore Reef or Christmas Island or Cocos Island, there's no parliamentary debate. You would send an amphibious tactical task force, which would conduct a lodgement. You wouldn't discuss anything; you would just go and try and destroy the enemy. If you had an urgent, time sensitive overseas hostage recovery situation, there would be no parliamentary debate. But if you distinguish between those wars of necessity and wars of choice, such as coalition operations, all I'm suggesting is we should be on the same footing as other countries that we respect and admire, like, for example, Norway, Germany, the Netherlands. These are all NATO members, which require a higher level of treaty commitments. If a NATO member is attacked, there's no parliamentary debate; it's done by NATO itself. But if they need to send troops to Afghanistan or renew their commitment to Afghanistan, then the Netherlands parliament has to first approve it. The US can't just say, 'Do it' and they just go and do it. That's the difference between a war of choice and a war of necessity.⁴⁸

⁴⁵ Professor Clinton Fernandes, *submission 31*, 1-2.

⁴⁶ Professor Clinton Fernandes, *submission 31*, 2.

⁴⁷ Mr Cameron Leckie, Private capacity, *Committee Hansard*, 9 December 2022, 25.

⁴⁸ Professor Clinton Fernandes, Private capacity, *Committee Hansard*, 9 December 2022, 29.

Intelligence issues

2.49 For the Parliament to be able to make fully informed decisions there would have to be access to the intelligence that are being relied upon for the decision. To this end, stakeholders were sharply divided in their views regarding the extent to which access should be permitted, although most recognised that full access to all levels of highly classified intelligence should not be available to the entire Parliament.

2.50 Some submitters suggested that the Parliament should have access to ‘the maximum possible information to make a well-informed decision’.⁴⁹ The Australians for War Powers Reform took a slightly different view, arguing that the information required for parliamentarians to make an informed decision does not need to be highly classified. While recognising that certain kinds of information should remain secret (such as targets, strategies, and tactics of warfare), they argued that certain details were essential for public accountability and informed choice:

What would be disclosed would be the nature of the threat, the capacity of Australia to meet it and the necessity for Australia to do so. None of that needs to be classified information. If that information is not known, then it should be known and it should be made clear to the representatives of the Australian people.⁵⁰

2.51 Mr Behm agreed that certain forms of highly classified intelligence should not be revealed in broader parliamentary debate, but that in his experience with the Department of Defence that it is:

...entirely possible for the ADF to conduct operations successfully with a much higher level of general accountability to the parliament and not necessarily accountability about the specifics of the way in which those operations are conducted.⁵¹

2.52 On the other hand, other stakeholders expressed strong concerns about any proposal involving the public disclosure of intelligence. Defence stated:

The provision of the full suite of policy, military, and intelligence advice to Parliament to enable informed decisions risks the disclosure of highly classified information in the public domain, most prominently through discussion during open parliamentary debate. This in turn could severely compromise the safety and security of ADF operations. For example, any public pre-notification of the nature of a potential ADF deployment – timing, size, or geographical location – could provide adversaries with the kind of tactical advantage that could place ADF personnel in harm’s way in otherwise avoidable situations. Such operational information could also limit the ADF’s ability to undertake clandestine activity, including activities necessary to reduce risks to ADF personnel.⁵²

⁴⁹ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 28.

⁵⁰ Dr Broinowski, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 3.

⁵¹ Mr Allan Behm, Director, International and Security Affairs Program, The Australia Institute, *Committee Hansard*, 9 December 2022, 3.

⁵² Department of Defence, *submission 110*, 3-4.

2.53 Mr Justin Bassi, Bec Shrimpton and Dr Alex Bristow similarly expressed concern in relation to intelligence matters. They suggested that the Executive:

...must retain discretion about whether and how to report certain types of deployment, even retrospectively. Such discretion is, for example, likely to be appropriate around the deployment of special forces, submarines, or surveillance aircraft, where secrecy may be paramount even after a mission is complete.⁵³

2.54 Some witnesses also argued that intelligence, even in the best of circumstances, is imprecise and thus should not be the main determinant of whether to engage in hostilities. Mr Scott MacInnes warned that intelligence should always be scrutinised carefully, as it is by its nature 'partial, incomplete and predictive about a future that can't be known'. He recommended that questions regarding whether to share intelligence with the broader Parliament should be referred to a specially empowered committee for decision (see below).⁵⁴

2.55 Similarly, Professor Fernandes suggested that the Parliamentary Joint Committee on Intelligence and Security (PJCIS), or a similarly constructed committee, be empowered to receive highly classified information in relation to decisions to go to war and engage in warlike operations.⁵⁵ He observed that such a model would be similar to that which is practiced in the United States, where the Intelligence Committees and Judiciary Committees of the Senate and House of Representatives receive regular briefings on 'all authorized intelligence collection programs'. Further, specific types of operations require that the United States Executive is required to brief the Chairs and most senior opposition members of the Intelligence Committees but are not empowered to approve or veto any proposed operations. Professor Fernandes suggested that this kind of model would be well-suited to the Australian context, particularly in the context of Australia's ANZUS obligations.⁵⁶

Time-sensitive situations

2.56 Time-critical scenarios were a contentious issue in considering potential reforms to parliamentary engagement in international armed conflict decision-making. One of the main arguments against reform – particularly which would require the Parliament to meet, consider and vote to authorise any operations or conflict – was that there could be strategic challenges caused by lengthy time delays.

2.57 Defence argued that the current arrangements allow for flexibility and rapidly evolving needs of the armed forces. It stated:

The efficacy of ADF deployments overseas for international conflicts is in part a function of their timeliness and flexibility. In some emergency situations, Australian troops will deploy to a foreign country within 24 hours. For example, following a decision by the Executive to evacuate Australian citizens and visa

⁵³ Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow, *Submission 86*, 2.

⁵⁴ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 28.

⁵⁵ Professor Clinton Fernandes, Private capacity, *Committee Hansard*, 9 December 2022, 29.

⁵⁶ Professor Clinton Fernandes, *Submission 31*, 3.

holders from Afghanistan in August 2021, an ADF aircraft departed Australia to commence operations within 24 hours. Similarly, Australian governments require the ability to flexibly and rapidly pre-position the ADF overseas to deter and, if necessary, effectively respond to military contingencies during periods of tension or crisis. Such scenarios underscore the reality that modern conflict is fluid and dynamic, with the potential for security incidents to escalate and de-escalate in a matter of days and even hours.⁵⁷

2.58 The Department warned that there would be significant negative consequences if Parliament's powers regarding war were broadly expanded. It posited that requiring parliamentary approval, for instance, could significantly undermine the ADF's capacity to operate quickly and flexibly, if hindering factors such as the recall of Parliament or the provision of adequate time for consideration before voting were to be introduced. Defence pointed to two major potential impacts that such a scenario would result in:

- Australia being unable to rapidly respond to fast-emerging threats
- The loss of confidence in Australia's capacity to engage effectively on the part of Australia's strategic partners⁵⁸

2.59 Dr Alex Bristow similarly argued that the proposal to require prenotification prior to operations would not be 'consistent with Australia's national security interests'.⁵⁹

2.60 In contrast to these concerns, some stakeholders put the view that it was unlikely that a delay to the beginning of a conflict would substantially alter Australia's tactical position. Mr Leckie stated that while there may be a 'short-term risk of increased casualty' by introducing new requirements that may delay action (particularly regarding parliamentary preauthorisation), this would likely 'be much less than the longer-term consequences of making the wrong decision'.⁶⁰

2.61 Similarly, some submitters argued that likely threats, even in new situations such as a nationwide cyber-attack, there would likely be sufficient warning leading up to the attack which would allow the Executive to bring the matter before the Parliament. Professor Sampford stated:

When it comes to dealing with ... cyberattacks and so forth or things where it's not a war of choice, it obviously needs to be simpler, but it is unlikely to just come out of the blue. It's likely governments won't know exactly what's going to happen, but they'll know that there are threats. I think it's very important that [a proposed] security subcommittee of cabinet and their shadows be engaged in active discussion of those threats and understand them in the lead-up ... they need to be involved in discussion and to be ready.⁶¹

⁵⁷ Department of Defence, *submission 110*, 3.

⁵⁸ Department of Defence, *submission 110*, 2-3.

⁵⁹ Dr Alex Bristow, Private capacity, *Committee Hansard*, 9 December 2022, 31.

⁶⁰ Mr Cameron Leckie, Private capacity, *Committee Hansard*, 9 December 2022, 24.

⁶¹ Professor Charles Sampford, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 8.

2.62 Professor Ben Saul agreed with this perspective, arguing that the majority of ADF deployments since 1945 have ‘almost all been preceded by often months of public debate, including discussion by the government itself’.⁶²

2.63 However, this point was contested by Associate Professor Cameron Moore, who observed that while such concerns were reflective of events such as in the 2003 Iraq War, a more likely scenario that Australia may face in future may be more complex in terms of its lead-up:

I don’t agree with the view that we’ve had lots of lead time. The situation in Kabul in August last year had very little lead time. The situation in Honiara last year had very little lead time. The situation in the South China Sea will have very little lead time if anything happens now. A laser in a P-8 cockpit happens right there and then. That’s the situation we’re in now. It might be a blockade of Taiwan. They’re not the defence of Australia, but they’re not wars of choice either. We’re not looking at luxurious peacekeeping deployments where there’s lots of time and the ability to get things together and debate them in parliament. I just don’t think that’s the situation we’re in now.⁶³

2.64 Professor Clinton Fernandes observed that time issues may pose challenges in requiring that Parliament meet to consider and vote on a proposed operation, even in conflict situations which did not arise out of direct threat (or ‘wars of choices’, as discussed above). He suggested that:

In such circumstances, the Executive should have the freedom to deploy troops into action but must still notify Parliament of the reasons for the deployment, the legal authority, the expected geographical extent, the expected duration, the approximate number of ADF personnel involved, and a certification that an instantaneous response was needed. Parliament can then choose to persist with (or revoke) a deployment post facto. If Parliament decides to revoke the deployment, the military would advise the government on how such a withdrawal should occur – exactly as it would if the government itself had decided to withdraw.⁶⁴

‘Emergency situations’

2.65 Comparative jurisdictions generally recognise exceptions to the requirement to engage the legislative body. For example, the formal conventions contained in the United Kingdom’s Cabinet Manual recognise that parliamentary involvement may not be practical in emergency situations that require quick response.⁶⁵ The *Cabinet Manual* states that the UK Government had accepted that parliamentary

⁶² Professor Ben Saul, private capacity, *Committee Hansard*, 9 December 2022, 14.

⁶³ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 15.

⁶⁴ Professor Clinton Fernandes, *submission 31*, 2.

⁶⁵ Professor George Williams, Private capacity, *Proof Committee Hansard*, 9 December 2022, 16.

authorisation is required 'except when there [is] an emergency and such action would not be appropriate'.⁶⁶

- 2.66 A number of submitters argued that the proposed requirements to consult the Parliament should be relaxed in emergency situations.⁶⁷ The Australians for War Powers Reform conceded that some situations may require an emergency response which would prevent the Executive from consulting the Parliament within the suggested timeframe:

In the case of an emergency we have always said, and most other democracies also say, that if there is a genuine threat to the country, like an attack or an imminent attack, and it is—I stress—genuine, then of course you respond at once. That's an emergency situation and nobody is suggesting that you should take weeks or even months debating it...⁶⁸

- 2.67 However, it was not clear in evidence that such scenarios would be always easily identifiable as an 'emergency' or something lesser. It was also not clear whether a scenario such as an imminent cyber-attack would qualify as an 'emergency', and by what or whose definition would an 'emergency' be defined.

Role of the Parliament in providing scrutiny

- 2.68 Some witnesses argued that, due to Australia's general bipartisanship on matters relating to defence, it was 'implausible' that (outside the most extreme circumstances) there would not be bipartisan support for military action relating to a genuine threat.⁶⁹
- 2.69 The Australians for War Powers Reform further added that the Parliament served as a means for the Government to convince the Australian public regarding the necessity for the war and holds parliamentarians accountable to their electorates for any decisions they make.⁷⁰

Requirement for vote to authorise action

- 2.70 While most submitters agreed that increased parliamentary engagement with the decision to go to war or conduct warlike operations, there was significant division amongst stakeholders on whether the Parliament should be required to authorise military action.

⁶⁶ Cabinet Office (United Kingdom), *The Cabinet Manual*, 1st edition (October 2011), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf (accessed 13 January 2023), 44.

⁶⁷ Mr Cameron Leckie, Private capacity, *Committee Hansard*, 9 December 2022, 25.

⁶⁸ Dr Broinowski, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 8.

⁶⁹ Dr Sue Wareham, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 9.

⁷⁰ Dr Broinowski, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 9.

- 2.71 On one hand, many submitters and witnesses called for reforms to require that the Parliament holds a vote to authorise engagement in armed conflict.⁷¹ Graeme Dobell noted the previous example of former Prime Minister John Howard, who introduced a parliamentary resolution in the wake of the September 11, 2001, terrorist attacks in the United States, which outlined the ‘fundamental arguments for why Australia would act’.⁷²
- 2.72 Submitters put forward a range of models in which this could occur, including:
- a House of Representatives-only vote, following the precedent set by the UK House of Commons’ parliamentary convention
 - individual votes of both Houses of Parliament
 - a joint sitting of both Houses of Parliament⁷³
- 2.73 The importance of parliamentarians being permitted to vote without constraint by party direction, or being allowed a ‘conscience vote’, was also highlighted.⁷⁴
- 2.74 The Australians for War Powers Reform recognised that a parliamentary vote in the House of Representatives would likely approve any military decision proposed by the Government of the day due to the almost certain Government majority and the likelihood that parliamentarians would vote in accordance with party lines. However, they argued that the mechanism of a vote would mean that ‘the democratic process has been satisfied’, noting that their proposal to require a vote was not designed to prevent the Parliament voting on war but to ensure a process which is ‘open, transparent and public, not private’.⁷⁵ Nonetheless, Professor Williams observed that such an outcome was not to be assumed; in 2013, the UK Government lost its House of Commons motion to engage in armed conflict in Syria by 13 votes due to a number of Government members of parliament voting against the proposed action.⁷⁶
- 2.75 On the other hand, other stakeholders raised significant concerns regarding proposals to require parliamentary authority for decisions involving armed conflict or warlike operations. For example, Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow, Australian Strategic Policy Institute, submitted that some limitations should remain in regard to notification requirements prior to proposed action and parliamentary authorisation of war or warlike operations.⁷⁷
- 2.76 Professor Fernandes outlined that his research suggests that it was ‘not feasible’ to introduce parliamentary authorisation of decisions relating to armed conflict or warlike

⁷¹ Professor Ben Saul, *submission 53*, 1.

⁷² Mr Graeme Dobell, *submission 92*, 8.

⁷³ Professor George Williams, Private capacity, *Committee Hansard*, 9 December 2022, 16.

⁷⁴ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 24; Mr Robert Mathews, *Submission 66*, 3.

⁷⁵ Dr Alison Broinowski, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 2.

⁷⁶ Nicholas Watt, Rowena Mason and Nick Hopkins, ‘Blow to Cameron’s authority as MPs rule out British assault on Syria’, *The Guardian*, 30 August 2013, <https://www.theguardian.com/politics/2013/aug/30/cameron-mps-syria> (accessed 13 February 2023).

⁷⁷ Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow, *submission x*, 2.

operations except under certain circumstances.⁷⁸ He stipulated that in time-pressured situations, where a speedy response was required, it may not be possible for the Parliament to vote to authorise operations (see section below on 'Time issues').⁷⁹

- 2.77 Concerns were also raised that the likely reality of a future war may not lend itself to preauthorisation by the Parliament. Professor Cameron Moore gave the following example:

The concern over war powers arises primarily because of Australia's participation in the invasion of Iraq in 2003 and a strong desire not to be drawn into United States led military misadventures. This is understandable, but it is not the situation we are facing now. If China blockaded Taiwan, as it practised doing in August, or if the ongoing incidents in the South China Sea turned deadly, or if civil war erupted again in the Solomon Islands—as it threatened to do only a year ago, and the ADF deployed there—these situations would pose a direct threat to Australia's interests, but they would not need the direct defence of Australia. The government would have to make difficult decisions with limited time and with limited information. A current challenge to the rules based order seeks to undermine it by creating uncertainty and ambiguity both domestically and internationally. This would be the likely context in which any Australian government would need to make a decision to use military force in the foreseeable future. This will likely be very difficult and will be equally likely to evoke a range of responses in parliament. We need to find a way to ensure that the executive government can be decisive in such situations but also accountable to the parliament.⁸⁰

- 2.78 Professor Moore further observed that requiring prior parliamentary authorisation before engaging in conflict could create resentment amongst serving personnel who may feel that parliamentarians have the capacity to make decisions that have a direct impact on tactical conditions.⁸¹

Legislation or codification?

- 2.79 The question of how to implement reforms to parliamentary engagement is complex. The most accepted avenues suggested during the inquiry comprised of either legislating the required changes (such as via the Defence Act) or codifying the new requirements and obligations via frameworks such as parliamentary resolutions. Evidence was divergent in determining which route was most appropriate.
- 2.80 Professor Sampford, called for a legislated process rather than reliance on convention due to the prerogative powers of the Governor-General to authorise

⁷⁸ Professor Clinton Fernandes, Private capacity, *Committee Hansard*, 9 December 2022, 23.

⁷⁹ Professor Clinton Fernandes, *submission 31*, 2.

⁸⁰ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 11.

⁸¹ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 20.

military action. He argued that, without legislative codification, a government intent on going to war wanting to bypass the Parliament could avoid consultation by going directly to the Governor-General for authorisation. Legislative requirements were said to prevent such a situation occurring.⁸²

- 2.81 Professor Williams and Ms Hall argued for a legislative framework which ensures that the executive is required to consult and potentially obtain approval from Parliament when considering war or warlike operations. They highlighted that among the benefits of such a system would be that it could define the scope of parliamentary involvement, including in emergency situations, and defining the extent to which the Parliament will be able to consider sensitive material such as classified information.⁸³
- 2.82 In contrast, Mr Graeme Dobell argued that current precedents should be codified via conventions, which would mean that ‘the parliament could test policy, shape thinking and record the detail that makes the history’.⁸⁴ Further, formally recognised conventions could be argued to be more flexible in adapting to new practices and may offer a ‘testing ground’ for the Parliament in deciding whether to legislate changes.
- 2.83 While conventions are developing across parliaments worldwide in relation to armed conflict, Professor Sampford noted that compliance mechanisms – that is, consequences for breaching the conventions – are critical to their effectiveness.⁸⁵ Therefore, how breaches of any conventions (either in legislation or in codification) are managed are also a matter which must be considered during implementation.

The United Kingdom and parliamentary codification

- 2.84 The United Kingdom (UK) has recently made significant changes in the last decade in relation to the Parliament’s role in war or warlike decision-making processes. Williams and Hall submitted that the UK Government had recognised the importance of transparency in decision-making in relation to war and warlike operations. In a 2007 Policy Paper, the UK Government expressed the view that the prerogative to exercise these powers without a form of parliamentary approval ‘is now an outdated state of affairs in a modern democracy’.⁸⁶
- 2.85 Since 2011, a new parliamentary convention has been emerging that the House of Commons should have ‘an opportunity to debate’ any proposals for war or warlike operations. The convention was incorporated into the United Kingdom Cabinet Manual in October 2011. It was further developed in 2013 to also include that Parliament should approve the deployment of armed forces internationally, with exceptions recognised for emergencies and where such action ‘would not be appropriate’.⁸⁷

⁸² Professor Charles Sampford, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 4.

⁸³ Professor George Williams and Winsome Hall, *submission 19*, 5.

⁸⁴ Mr Graeme Dobell, *submission 92*, 12.

⁸⁵ Professor Charles Sampford, Accountability Round Table, *Committee Hansard*, 9 December 2022, 16.

⁸⁶ Cited in Professor George Williams and Ms Winsome Hall, *submission 19*, 2.

⁸⁷ United Kingdom Cabinet Manual cited in Professor George Williams and Winsome Hall, *submission 19*, 2.

2.86 Under the convention, the criteria for situations where the convention will be engaged has been identified:

On the basis of the evidence, one could make the argument that, at the very least, prior parliamentary approval will be sought under the convention if any of the following applies:

- The possibility of premeditated military action exists.
- Military forces are to be deployed in an offensive capacity.
- Deployments for training, humanitarian aid or logistical assistance would not meet these threshold criteria. However, should an existing non-combat operation evolve into one which offensive action is envisaged (mission creep), then it could feasibly be expected that the threshold would be reached and fresh approval would have to be sought from Parliament.⁸⁸

2.87 In cases which involved urgent or emergency action where consultation prior to deployment was not possible, the Convention stipulates that the House could be consulted retrospectively.⁸⁹

2.88 Williams and Hall argued that the existing UK parliamentary convention is insufficient due to the possibility of it not being appropriately followed. They noted the example of the April 2018 Syrian airstrikes ordered without parliamentary debate or approval by the May Government. The response provided by former Prime Minister Theresa May at the time drew considerable criticism and caused uncertainty as to the extent of the convention, given the action taken was ultimately the same type previously considered and not supported by Parliament in votes in 2013, 2014 and 2015. Williams and Hall asserted that this incident illustrates that ‘the boundaries of the convention continue to be uncertain because, in the absence of legislation modifying the prerogative, the executive can assert exceptions to the convention’. They further argued that the capacity for the executive to ‘reinterpret’ the convention raises the risk that it will ultimately be ignored.⁹⁰

Committee Comment

2.89 The Committee has carefully and seriously considered the arguments put by stakeholders during the inquiry and acknowledges most submitters have strongly argued that Executive power be constrained by the requirement for parliamentary approval or ratification.

2.90 Putting aside serious doubts as to the Constitutional validity of legislation purporting to constrain the Governor-General’s Constitutional prerogatives, the Committee

⁸⁸ Claire Mills, House of Commons Briefing Paper CBP 7166, “Parliamentary approval for military action”, cited in Professor George Williams and Ms Winsome Hall, *submission 19*, 3.

⁸⁹ Claire Mills, House of Commons Briefing Paper CBP 7166, “Parliamentary approval for military action”, cited in Professor George Williams and Ms Winsome Hall, *submission 19*, 3.

⁹⁰ Professor George Williams and Ms Winsome Hall, *submission 19*, 3-5.

accepts and respects the fact these positions are strongly and genuinely held, but nevertheless disagrees that Executive decision-making in relation to armed conflict including war or warlike operations should be made subject to parliamentary approval or ratification.

2.91 The Committee concludes that to make decisions regarding armed conflict subject to parliamentary approval or ratification would unacceptably diminish Australia's national security including by:

- providing an asymmetric advantage to potential adversaries by complicating, constraining, and slowing Australia's decision-making processes
- being inappropriate with respect to the increasingly complicated nature of Australia's strategic circumstances and the nature of grey-zone and cyber conflict, including:
 - an increasingly outdated and simplistic binary notion of being 'at war' (*i.e.* major kinetic armed conflict) or 'at peace' (*i.e.* the absence of major kinetic armed conflict) given the dynamic spectrum of contestation, competition, confrontation and conflict which may manifest in our region
 - the difficulty in codifying the point at which parliamentary approval or ratification of action may be required – for example one submitter suggested that if a cyberspace operation required an exercise of executive prerogative power that should be subject to approval by Parliament which is unrealistic
- providing enormous scope for disinformation campaigns and political interference by potential adversaries during prolonged decision-making processes
- holding critical national security decisions, that can only be made with the benefit of full and classified information, hostage to the vagaries of partisan politics via parliamentary processes which can never receive the full scope of intelligence briefings available to a government's most senior Ministers

2.92 The Committee is not persuaded that requiring parliamentary approval or ratification is, on balance, a better democratic outcome, especially because parliamentary democracy involves, in different circumstances, both decision-making and the consideration, review and oversight of decisions.

2.93 Executive Government is formed in – and can fall in – the House of Representatives and is accountable to both Houses of Parliament. There should be some confidence in the proposition that if the government of the day does not have the support of the Parliament or of the community it represents, a different government in due course will be formed.

2.94 War is inherently and unavoidably political; indeed, war or state sponsored violence is in some respects the greatest failure of politics. The Committee agrees that decisions of this gravity should not be taken based on partisan interests but does not consider that past decisions have been determined on what could properly be called a 'partisan' basis. In any case it is noted that all parliamentary processes can be regarded as partisan to the extent that they involve members of parties taking and exercising generally collective positions.

- 2.95 The Committee is also concerned that a requirement for parliamentary ratification would diminish the critical ability of the Opposition and of Parliament as a whole to hold a government to account for its decisions, and for the conduct of operations and achievement of outcomes in the national interest. The political pressure on an Opposition to support the Government of the day would in the short term likely be overwhelming, as it has been in most previous major conflicts. Yet an Opposition's ability, and even the ability of Parliament as a whole, to scrutinise a government's war effort is diminished to a considerable degree if the initial decision to engage in armed conflict has been sanctioned by the Parliament.
- 2.96 In concluding that there is no basis for overturning established Executive prerogative in relation to armed conflict, the Committee recognises that our practice of parliamentary democracy has and can evolve for the better. Hence the Committee accepts the way in which Executive Government is accountable to the Parliament could be improved. The majority of submitters, including civil society representatives and Defence/security experts argued for greater transparency and accountability. As discussed in Chapter 3, the Committee considers the exercise of prerogative powers in relation to armed conflict should be subject to stronger parliamentary accountability and oversight than is currently provided.

Recommendation 1

- 2.97 The Committee recommends that in implementing these recommendations the Government reaffirm that decisions regarding armed conflict including war or warlike operations are fundamentally a prerogative of the Executive, while acknowledging the key role of parliament in considering such decisions, and the value of improving the transparency and accountability of such decision-making and the conduct of operations.**
- 2.98 The balance of evidence indicates the primary source of power by which a government can make decisions regarding international armed conflict is executive power provided to the Governor-General pursuant to section 61 of the Constitution. In the modern era, such power is exercised by convention via decisions of the National Security Committee of Cabinet.
- 2.99 In terms of giving effect to such decisions in the case of war or warlike operations, s 68 of the Constitution could then be used to advise the Governor-General as Commander-in-Chief of the ADF. Alternatively, s 8 of the *Defence Act 1903* (Defence Act) could also be used to give administrative effect to decisions by executive government. Section 8 is not a power of command but was added in the 1970s to make clear that the Defence diarchy (the Chiefs of the Australian Defence Force and the Secretary of Defence) is subject to civilian control by the Minister for Defence.
- 2.100 In the ordinary day-to-day administration of Defence and the ADF, s 8 appears to be appropriate in outlining where the divisions of power and responsibility lie and to give effect to decisions by executive government regarding the deployment of military capabilities and force. However, in major recent conflicts such as Iraq and

Afghanistan – clearly war or warlike operations – evidence suggests that s 8 was relied upon.

- 2.101 The Committee considers there is merit in seriously considering the arguments put forward by submitters in favour of restoring the primacy of s 68 of the Constitution in relation to war or warlike operations, especially in circumstances where there is no UN Security Council Resolution or invitation of a sovereign nation. While not entirely unique to s 68, this approach appears to have some advantages over the administrative power conferred by s 8 of the Defence Act including:
- potentially greater clarity and transparency including the possibility of a public document clearly stating the authority to use lethal force and a specific record of the decision which can be debated in parliament or pleaded in defence to a disciplinary or criminal prosecution
 - in the case of war, a clear statement of who the enemy might be which may be relevant to the pleading of the combat immunity doctrine in domestic law or claiming combatant immunity (or privilege) in international law, as well as the prosecution of military disciplinary offences such as conduct in relation to the enemy, and civilian criminal offences involving the enemy, such as trading, treason *etc*
 - clarity that such decisions of the Governor-General are not justiciable, unlike a minister's direction which may be subject to judicial review and an administrative law remedy such as an injunction or declaration of unlawfulness
 - greater legitimacy arising from an open constitutional s 68 process invoking the duty of members of the ADF
- 2.102 The Committee notes that this approach would not prevent initial use of s 8 for reasons of convenience and speed and the subsequent making of a s 68 order by the Governor-General, which could be backdated to take effect from the date of the ministerial direction. In any case, it would be a likely and preferable course of action to have a ministerial direction under s 8 prior to obtaining any s 68 order from the GG. The CDF still can contest any ministerial direction, and even resign, before the making of any subsequent s 68 order by the Governor-General.
- 2.103 The Committee acknowledges that much of the complexity regarding this debate is due to an absence of documentation detailing the way in which decisions have been given effect in previous conflicts. This is a significant gap in transparency and accountability of the Executive and hence in the nation's collective understanding of how Australia took its path to war, particularly in reference to Iraq and Afghanistan. Shining a light on this issue is critical to both understanding the legal basis for Australia's actions in war, but also in understanding our history.
- 2.104 To overcome this deficiency, a written Statement should be published and tabled in the Parliament setting out the objectives of such major military operations, the orders made and its legal basis, understanding that a government may prefer not to publish its actual legal advice (though may choose to).

2.105 The Committee notes the Governor-General's power to call-up the ADF Reserves was until 2001 subject to the recall of the Parliament within ten days of a Proclamation. The Second Reading Speech for the amending legislation is silent on why this caveat was removed. While a case can be made to reinstate that requirement, given the broad arguments for ensuring greater parliamentary opportunity to consider and debate decisions to involve Australia in war or warlike operations, the Committee is also aware there are a range of non-warlike circumstances in which the ADF Reserve can be called upon, and there is a difference between a 'call out' and a 'call for' in relation to the Reserve. On that basis, the Committee believes on balance that reinstating the earlier provision is not required, considering the range of other recommended improvements that if accepted by government would significantly improve parliamentary debate and scrutiny.

Recommendation 2

2.106 The Committee recommends that the Cabinet Handbook be amended to clarify that:

- **Executive power in relation to armed conflict and the deployment of military force flows from section 61 of the Constitution**
- **In the modern era, Executive power is in practice exercised collectively via the National Security Committee of the Cabinet, whose decisions can be given effect via section 8 of the Defence Act or by advice to the Governor-General as Commander in Chief under section 68 of the Constitution**
- **In the event of war or warlike operations:**
 - **It is preferable that section 68 of the Constitution be utilised, particularly in relation to conflicts that are not supported by resolution by the United Nations Security Council, or an invitation of a sovereign nation given that complex matters of legality in public international law may arise in respect of an overseas commitment of that nature**
 - **A written Statement be published and tabled in the Parliament setting out the objectives of such major military operations, the orders made and its legal basis**



3. Parliamentary oversight of decisions relating to armed conflict

3.1 In the context of the Committee's findings and recommendations in Chapter 2, this chapter considers how parliamentary engagement in decisions relating to armed conflict and the subsequent conduct of operations could be strengthened as well as general improvements to parliamentary oversight of Defence.

Previous instances of parliamentary engagement in armed conflict

3.2 Chapter 1 provides an outline of the ten prior instances where Australia has formally engaged in international armed conflict. Further information in relation to these events can be found in Appendix C, including the history of parliamentary motions on each occasion and other relevant details.

3.3 In general, previous decisions to go to war or conduct warlike operations often (but not always) have been accompanied by formal and informal consultation between the Executive and the Parliament, either before a formal decision by the Executive is made or afterwards. This was particularly the case after World War II, where the Opposition of the day began to suggest that Parliament should be consulted. Consultation was generally accomplished via formal debate in the Houses of Parliament, or – more commonly – it was informally practiced 'behind the scenes' between the Government of the day and the Opposition.¹

3.4 Examples of prior parliamentary consultation regarding the commitment to war or warlike operations include:

- recalling Parliament within a short timeframe after a decision to declare war or conduct warlike operations has been announced²

¹ Dr Sue Wareham, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 3.

² An example of such a practice was in September 1939, where Prime Minister Robert Menzies recalled the Parliament three days after the announcement that Australia would be joining Britain in World War II, where he then provided a ministerial statement to the House of Representatives regarding the war, and parliamentary debate followed: Department of Defence, *submission 110*, 2.

- forming Cabinet subcommittees or other forms of committees to monitor the operation's progress and provide input³
 - discussing the matter in Parliament, including on motions relating to ministerial statements on the conflict in question
- 3.5 Of the ten instances where the Australian Government has decided to engage in international armed conflict or conduct warlike operations, there are identifiable trends in how the Parliament has engaged with the issue.
- 3.6 Firstly, in virtually every instance, the Executive had already formed the view, and made the decision, to go to war or to undertake warlike operations *prior to* the matter being brought to the Parliament in any form.
- 3.7 Secondly, in most cases the Opposition of the day had been supportive of the Government's actions to go to war or engage in warlike operations (particularly in the early history of the nation, such as the two World Wars). However, there have been increasing instances of non-government parliamentarians expressing opposition to Australia's participation in the relevant conflict, such as in Malaya, Vietnam and Iraq. Another approach taken by non-government parties or independent parliamentarians suggests the Parliament should be consulted on war operations, which occurred in debate during World War II.
- 3.8 Finally, the most common form of parliamentary mechanism which enables parliamentarians to engage with the topic is a motion 'that the paper be printed' when discussing a ministerial statement or paper. This provides parliamentarians with the opportunity to debate the contents of the motion, and was recognised by former Speaker, the Hon. Archie Cameron, in 1955 as 'only a formal method of securing debate'.⁴ While such motions are generally agreed to without the need for divisions, they can also be amended by a protesting Opposition or other non-government parliamentarians and passed in a form to oppose warlike engagement; such an instance occurred in 2003, where the Senate motion in relation to the Iraq War was amended by the Opposition and minor parties to express their opposition.

Increasing parliamentary engagement and Executive accountability

- 3.9 While much of the evidence received during the inquiry focused on proposed changes to decision-making before the deployment of armed forces to international conflict, some stakeholders also raised the need for ongoing public accountability of the Executive to the Parliament as a conflict continued.

³ For example, Prime Minister Robert Menzies established a 'bipartisan Advisory War Council to ensure all major political parties had the opportunity to provide input into decisions on Australia's war effort' during World War II. However, its functions were advisory only and did not bind the executive to any particular decision nor did it have any executive powers: Department of Defence, *submission 110*, p. 2.

⁴ The Hon Mr Archie Cameron MP, Foreign Affairs and Defence – Ministerial Statement, House of Representatives, *Debates*, 5 May 1955, 523.

- 3.10 Increased parliamentary engagement and debate both regarding decisions taken by government and subsequently was argued to have a range of positive aspects and benefits by stakeholders, noting that Parliament's responsibilities do not end after debating a decision to enter into armed conflict. Key arguments included:
- reflecting public support for increased parliamentary engagement, particularly in relation to decisions regarding international armed conflict
 - improving the perceived 'quality' of decision-making when considering issues involving armed conflict
 - enhancing transparency and accountability of the executive branch of government and the Defence sector
 - building community support for potential military action or conflict
 - ongoing accountability of Executive Government for the conduct of military operations

Public support for increased parliamentary engagement

- 3.11 Public polling regarding parliamentary engagement in relation to international armed conflict decisions indicates that submitters' general support for reform is broadly reflective of the Australian community. The Australians for War Powers Reform noted that several recently conducted polls indicate that there is widespread support for change, including:
- A 2021 Digital Edge poll finding that 87 per cent of Australians agreed with the proposition that 'war decisions should be subject to parliamentary approval always or unless there is immediate danger to Australia'⁵
 - Roy Morgan research conducted in 2020 which identified that 83 per cent of respondents supported reforms to require parliamentary approval prior to any decision being taken⁶
- 3.12 Witnesses also pointed to previous public demonstrations of public sentiment, particularly during the 2003 Iraq conflict, as examples of public opinion being misaligned to the Executive's decision.⁷

Improving accountability for decision-making

- 3.13 Some witnesses put the view that increased parliamentary engagement may result in better decision-making in relation to armed conflict and warlike operations. Mr Scott MacInnes argued that 'there needs to be many more checks and balances and more opportunities for genuine well-informed debate, if we are to make sounder judgments'. He put the view that the small number of people involved in decisions

⁵ Australia for War Powers Reform, *submission 12*, 1.

⁶ Australians for War Powers Reform, 'Huge majority of Australians support war powers reform', Media Release, 1 December 2020, available at: <https://warpowersreform.org.au/wp-content/uploads/2020/12/AWPR-Release-26-Nov.pdf> (accessed 8 February 2023).

⁷ Ms Donna Mulhearn, *submission 89*, 2.

relating to armed conflict resulted in decision-making which is often 'narrow' and of low quality given the consequential outcomes.⁸

- 3.14 Similarly, while arguing in favour of Parliament having a formal role in decision-making, Professor George Williams argued that parliamentary engagement would increase the quality of decision-making due to the importance of deliberation by a large number of people.

It really gets down to the basic proposition that this is a really important decision when it's made, one of the most important a nation will make. What's the way to get the best quality of decision? We would say parliament should be involved for quality reasons. Deliberation is important, more than a closed cabinet room or a small group of people.⁹

Enhancing transparency and accountability of the Executive

- 3.15 A significant majority of stakeholders argued that increased parliamentary engagement and potential involvement in the decision to go to war or conduct warlike operations would enhance transparency and accountability of the Executive branch of government.¹⁰ Some submitters criticised the 'secrecy' culture that was said to permeate in Australian government and institutions, which resulted in lack of transparency and poor decision-making.¹¹

- 3.16 It was asserted that a lack of open transparency and accountability in the past had not led to positive outcomes in the context of international armed conflict:

Looking back at all the conflicts that Australia has been involved in, there is no indication that keeping secrets led to, or would have lead (sic) to better decision making, or would have caused any real strategic disadvantage to Australia in the conflict. In fact, a more transparent process might have avoided the grave waste of Australian lives - for example, with the War in Iraq, which as we know now was entered into based on false intelligence about non-existent weapons of mass destruction. A more transparent debate and a vote might have avoided participation in such a pointless conflict.¹²

- 3.17 Similarly, decisions to enter into international armed conflict were said to have been 'made mostly in secret by a very (sic) few people, based on information that they wanted to keep secret'.¹³

⁸ Mr Scott MacInnes, *submission 23*, 6.

⁹ Professor George Williams AO, Private capacity, *Committee Hansard*, 9 December 2022, 19.

¹⁰ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 27.

¹¹ Mr Stephen Gentle, *submission 17*, 2; Independent and Peaceful Australia Network, *Submission 40*, 1.

¹² Mr Stephen Gentle, *submission 17*, 3.

¹³ Mr Scott MacInnes, *submission 23*, 5.

Building community understanding and support for deployed forces

3.18 Many stakeholders argued that increased parliamentary engagement would provide a forum in which the community could learn more about the proposed conflict and potentially provide support for the armed forces. A range of stakeholders argued that increased parliamentary engagement could require the government to explain to the Parliament the reasons for entering into international armed conflict. This would enable the Parliament, and thereby the public, to understand the reasoning behind the proposal. It would also permit the Executive to ‘put its case’ to the Parliament and the public at large, in addition to demonstrating its intentions to international partners.

3.19 The importance of building support for the armed forces and the mission at hand was deemed particularly important to the success of the operation and the mindset of the ADF personnel involved. Mr Allan Behm, Director of the International and Security Affairs Program, The Australia Institute, stated:

We have an all-volunteer Australian Defence Force. It is a defence force which is deeply enmeshed in the community. It belongs to the community, as indeed does the parliament and its representatives. For that reason alone, it seems to me that any decision taken by the executive that involves the deployment of our young people in places where there is a fair chance that they might be injured or killed is something which is of much broader significance. It is worth the time and the effort of the parliament to consider it and to talk about it.¹⁴

3.20 Similarly, Professor Moore put the view that community support, expressed via parliamentary engagement, can have a significant impact on the outcomes of operations by way of providing legitimacy for the operations.¹⁵ Professor George Williams concurred with this view, arguing that community respect and confidence for armed force service people can be impacted due to a perceived lack of accountability, such as the UK public’s reaction to the Iraq War. He further stated:

One of the parliament’s main functions is ... to build community confidence in contentious and difficult areas by demonstrating that the people’s representatives have gone through a deliberative process and listened to the arguments publicly and transparently. That’s the way we as a community resolve issues and move forward. It’s when there’s the absence of that, as we’ve seen in Iraq, Vietnam, and other contexts—there are a number of them—that, in fact, sometimes it’s much more difficult, I think, to actually sustain community confidence. Again, that’s the UK experience. It’s why they’ve gone down this path because the response to the Iraq conflict was the deep divisions, the anger, the bitterness, and the disharmony. They felt it demanded a better process in order that

¹⁴ Mr Allan Behm, Director, International and Security Affairs Program, Australia Institute, *Committee Hansard*, 9 December 2022, 10.

¹⁵ Associate Professor Cameron Moore, School of Law, University of New England, *Committee Hansard*, 9 December 2022, 14.

decisions are better made, and that people can live with the consequences more ably than under the old system.¹⁶

Opposition to increased parliamentary engagement

3.21 Defence was one of a small number of witnesses who urged against changing current decision-making arrangements and in any way constraining executive prerogative, however the Department did not oppose or express a view on the possibility of improving accountability to Parliament and parliamentary oversight.

3.22 The Department explained that it currently engages with the Parliament via a range of mechanisms, including:

- parliamentary committees which play an oversight role, including the Joint Standing Committee on Foreign Affairs, Defence and Trade and the Senate Standing Committee on Foreign Affairs, Defence and Trade (Senate FADT Committee)
- the Senate estimates process
- parliamentary motions, such as urgency motions and Question Time, which enable scrutiny of the Executive¹⁷

3.23 This point was also noted by Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow, who pointed to the findings of the 2021 Senate FADT Committee's inquiry, which stated that current parliamentary processes already provide a multitude of ways to scrutinise the deployment of ADF troops via mechanisms such as Question Time, motions, Senate estimates and committee inquiries. These tools were said to form 'part and parcel of Government accountability to Parliament and the Australian people'.¹⁸

3.24 Defence also argued that historical practice, where the Parliament has been consulted informally despite having no legal obligation to do so, should not be amended. It stated:

Defence assesses these decision-making arrangements remain appropriate and recommends against any changes. These arrangements enable timely and flexible decision making, as well as the necessary confidentiality of highly classified information. Any shifts could lead to potential implications for: the ADF's operational security; the ADF's relative strategic and tactical advantages over adversaries; and Australia's international credibility as a security and intelligence partner.¹⁹

¹⁶ Professor George Williams, Private capacity, *Committee Hansard*, 9 December 2022, 20.

¹⁷ Department of Defence, *submission 110*, 2.

¹⁸ Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow, *submission 86*, 2.

¹⁹ Department of Defence, *submission 110*, 1.

- 3.25 Defence's primary objection was in relation to proposals to require a parliamentary vote to authorise actions, which was discussed in Chapter 2.
- 3.26 Other submitters observed that while parliamentary engagement should be strengthened to improve accountability and transparency, it does not guarantee the quality of debate or the decisions involved. Professor Fernandes noted that the Parliament debated and voted on motions relating to the Vietnam War, often indicating support for continued involvement.²⁰ However, it provided the Opposition the capacity to indicate their disapproval of the commitment of ADF personnel and resources, which was expressed during debate on motions regarding ministerial statements on Vietnam.²¹

Methods of parliamentary engagement

- 3.27 A range of methods was suggested by inquiry stakeholders which would increase parliamentary engagement in relation to decisions regarding international armed conflict and warlike operations. This section outlines proposals to enhance parliamentary involvement in decisions involving international armed conflict *prior to or at the time* that the decision is made by the Executive.
- 3.28 The key mechanisms suggested, which will be discussed in detail below, include:
- a mandatory recalling of the Parliament upon the declaration of war, or where the Executive wishes to consult the Parliament prior to entering armed conflict
 - requiring a statement of the reasons for the conflict, including certification of compliance with international law
 - a requirement that either or both Houses of Parliament debate the proposal
- 3.29 In addition, consideration of whether a specialised committee with powers to consider Defence matters including those relating to international armed conflict is discussed later.

Recall of Parliament

- 3.30 The recall of the Parliament (assuming it is not sitting at the time) at a date as soon as practicable was suggested as a means of involving the Parliament in the decision-making process.²² This could play two key functions in enhancing parliamentary engagement: it would ensure that the Parliament was able to consider and potentially debate the proposal at the earliest opportunity, and also that it would provide information to the public via a ministerial statement to the Parliament.

²⁰ Professor Clinton Fernandes, Private capacity, *Proof Committee Hansard*, 9 December 2022, 25.

²¹ Deirdre McKeown and Roy Jordan, *Parliamentary involvement in declaring war and deploying forces overseas*, Parliamentary Library, Background Note, 22 March 2010 (2009-10), 16-17.

²² Honorary Professor Ernst Willheim, *submission 6*, 16 and 25; Mr Justin Tutty, *submission 49*, 3.

3.31 Requirements to recall the Parliament within a defined timeframe are also present in overseas jurisdictions, such as the Canadian Parliament.²³

Requiring an explanation

3.32 One of the most common suggestions for reform was introducing a requirement for the Executive to provide an explanation to the Parliament as to the reasons for entering a conflict or conducting an operation.

3.33 Submitters raised concerns there is currently no obligation on the Executive to provide Parliament with a formal explanation as to the reasoning for entering an international armed conflict. Moreover, while this has been practiced informally over time, it has been inconsistent in terms of how regularly the Executive has provided an explanation and how fulsome that explanation has been.

3.34 Stakeholders provided a range of lists of criteria which should form the basis of an explanation provided to the Parliament.²⁴ Common questions or themes included:

- the aim or objective of the operation
- whether and why the proposed operation was considered necessary as opposed to diplomatic avenues of de-escalation
- the details of what the ADF was expected to be providing to the operation, including types of units, whether operating as part of a joint operation, and the number of personnel involved
- the associated costs and risks of the proposed operation (including potential civilian and personnel casualties, impact on personnel mental health and budgetary considerations)
- the expected duration of the operation

Previous examples of Government explanations

3.35 There have been previous instances where the Executive has explained to the Parliament the reasons for conducting an operation or engaging in armed conflict. For example, former Prime Minister John Howard provided an explanation to the Parliament after the announcement of the commitment of troops to the US-led invasion of Iraq.²⁵

3.36 Similarly, in 2014, in a statement to the House of Representatives, former Prime Minister Tony Abbott presented a set of considerations to determine when deciding whether to engage in armed conflict in the context of a potential further commitment in Iraq:

²³ The Australia Institute, *submission* 9, 5.

²⁴ Mr Richard Jones, *Submission* 27, 1; Australians for War Powers Reform, *Submission* 12, 5-6; Mr Scott MacInnes, *Submission* 23.1, 4; Fr Claude Mostowik msc, *Submission* 57, 1-2.

²⁵ Mr John Howard MP, Prime Minister, House of Representatives Hansard, Thursday 20 March 2003, pp. 13085 and 13167.

Should such a request come from the Obama administration, and be supported by the government of Iraq, it would be considered against these criteria: Is there a clear and achievable overall objective? Is there a clear and proportionate role for Australian forces? Have all the risks been properly assessed? And is there an overall humanitarian objective in accordance with Australia's national interests?²⁶

3.37 Submitters also pointed to the example set in 2010 where the Australian Government outlined the reasons for continued ADF involvement in the Afghanistan conflict in a statement to Parliament. In her speech, then Prime Minister Julia Gillard stated:

A national government has no more important task than defending the nation, its people and their interests. That is why we take so seriously any decision to go to war. The war in Afghanistan is no different. Today I will answer five questions Australians are asking about the war:

- why Australia is involved in Afghanistan;
- what the international community is seeking to achieve and how;
- what Australia's contribution is to this international effort—our mission;
- what progress is being made; and
- what the future is of our commitment in Afghanistan.²⁷

3.38 Ms Gillard acknowledged that, given ADF personnel were still involved in operations, she must be 'responsible in how much I say', potentially indicating issues regarding intelligence. However, she emphasised the importance of openness and transparency in the Government's approach to the ongoing conflict:

...in answering those questions, I want to be as frank as I can be with the Australian people. I want to paint a very honest picture of the difficulties and challenges facing our mission in Afghanistan. The new international strategy and the surge in international troops responded to a deteriorating security situation. This means more fighting, more violence. It risks more casualties. There will be many hard days ahead.²⁸

3.39 Several stakeholders suggested that the precedent set by Ms Gillard should be adopted as the accepted standard in future for the Executive, which would provide it with the opportunity to explain to the Parliament and the public the reasoning behind the proposed decision. Mr Graeme Dobell also noted that such a standard should continue the precedent's aim of establishing the 'fundamentals—aims, means and ends', even if the conflict in question was already afoot.²⁹

²⁶ Mr Tony Abbott MP, Prime Minister, House of Representatives Hansard, Monday 1 September 2014, p. 9147.

²⁷ Ms Julia Gillard MP, Prime Minister, House of Representatives Hansard, Tuesday 19 October 2010, p. 692.

²⁸ Ms Julia Gillard MP, Prime Minister, House of Representatives Hansard, Tuesday 19 October 2010, p. 692.

²⁹ Mr Graeme Dobell, *Submission x*, 9-10.

Compliance with international law

3.40 The importance of armed conflict-related decisions' compliance with international law was a key theme of importance. Professor Ben Saul noted that, while there are likely to be situations which are uncontroversial legally (such as self-defence against armed attack on Australian territory), there were others that may be less clear under international law, including:

... humanitarian intervention, protection of nationals, hostage rescues, anticipatory or pre-emptive self-defence, expansive self-defence against terrorism, countering the use of chemical, biological or nuclear weapons, punitive reprisals, intervention in civil wars, covert operations, and regime change.³⁰

3.41 Professor Saul argued that any proposal by the Executive to engage in armed conflict or conduct other warlike operations should be required to table a Statement of Compatibility with International Law, which would outline the proposed action's compliance with article 2(4) of the UN Charter.

3.42 Detailed advice regarding the legal validity of the decision to go to war or conduct warlike operations was argued by Professor Saul to be critical for bolstering both the public's confidence and 'political legitimacy' in the decision. He posited that, in determining whether to engage in conflict, a government would receive 'extensive legal advice about all aspects of military deployments—the use of force, international humanitarian law, criminal law, the full range', and that making such advice public would be 'a really progressive and valuable step'.³¹ He also noted that such detail would ensure that legal liability issues regarding Australian operations, officials and personnel could be addressed.³² Professor Saul also suggested the Statement of Compatibility should also include information on two legal issues:

(i) Any international legal risks arising from joint operations with coalition forces, as where a partner state uses weapons which are prohibited by treaty for Australia to use (such as cluster munitions or landmines); or uses means or methods of warfare which exceed Australia's interpretation of what is permitted under international humanitarian law (IHL) or Australian rules of engagement (including regards targeting, and assessing the proportionality of civilian casualties); and

(ii) What preparatory and operational measures Australia has, or will, put in place, given the risks in the particular conflict, to ensure that Australian forces will comply with IHL, international criminal law and international human rights law. These may include, for example, additional, tailored training on the IHL rules on the conduct of hostilities or treatment of prisoners; the availability of legal advisers on operations; and robust procedures for reporting and promptly

³⁰ Professor Ben Saul, Private capacity, *Committee Hansard*, 9 December 2022, 12.

³¹ Professor Ben Saul, Private capacity, *Committee Hansard*, 9 December 2022, 18.

³² Professor Ben Saul, submission 53, 2.

investigating suspected violations in the field, and ensuring criminal accountability and other remedies (including compensation for victims).³³

- 3.43 Despite this view, Professor Saul recognised that this model could potentially allow a government to ‘whitewash’ legal advice, noting that in 2003 the UK Attorney-General’s advice on the legal validity of the Iraq War ‘omitted his private warning that the UK risked committing aggression’.³⁴ Nonetheless, he argued that the disclosure of legal advice to the Parliament would at least provide a mechanism for scrutiny and debate.

Requirement to debate

- 3.44 Most submitters in favour of increased parliamentary engagement were supportive of introducing a formal requirement for the Parliament to debate major military actions. While convention generally permits debate on motions in relation to armed conflict, there is currently no formal requirement to provide for parliamentary debate.³⁵ This also applied to related matters, including the acquisition of Defence projects which can be used during warfare.³⁶

- 3.45 The risk of having no or highly limited debate in Parliament was highlighted by the Medical Association for Prevention of War (Australia), which stated:

Australia’s involvement in the Afghanistan war received no meaningful debate in parliament as to its likely impacts or even its purpose. The war was initially said to be to “smoke them [al Qaeda] out of their holes”, then to “prevent Afghanistan from again becoming a training ground for terrorists”, then to “stabilise Afghanistan”, then to “improve the lives of the Afghan people”. The appalling lack of strategy and monitoring of civilian welfare by the US-led coalition ended in the tragic situation in which the Afghan people now find themselves. It is estimated that more than 70,000 civilians were killed in the Afghanistan/Pakistan warzone since 2001.

While both major parties supported the Afghanistan war, the absence of debate in parliament ensured that other views would not be heard and addressed, key questions would remain unasked and unanswered, shifting goalposts were accepted with apparent equanimity, and mounting civilian casualties were kept out of the spotlight.³⁷

- 3.46 The Australia Institute noted that in recent times there has been an emerging convention in the UK Parliament that enables the House of Commons to have the opportunity to debate a proposed action, although the results of the debate are not binding on the Executive. Nonetheless, it appears that the results are generally respected by the Government, such as in 2013 when then Prime Minister David

³³ Professor Ben Saul, submission 53, 2.

³⁴ Professor Ben Saul, Private capacity, *Committee Hansard*, 9 December 2022, 13.

³⁵ Ms Kathryn Kelly, *submission 68*, 1.

³⁶ Name withheld, *submission 74*, 2.

³⁷ Medical Association for Prevention of War (Australia), *submission 77*, 4.

Cameron did not proceed with planned military action in Syria after the House of Commons voted against the proposed action.³⁸

3.47 Professor Ben Saul stipulated that, assuming the Executive provides an explanation for its proposed course of action, Parliament should 'have the opportunity to debate the Statement, including by tabling independent legal opinion, or holding a committee inquiry to call legal experts to consider the Executive's Statement'.³⁹

3.48 Parliament's responsibilities do not end once the initial decision to go to war is made.

After initial deployment, we might get a better understanding of rationale, objectives, cost, and legality. We may also become aware of objectionable features, such as war crimes (e.g., torture at Abu Ghraib) and illegal weapons (e.g., cluster munitions). Parliament should be required to take responsibility for an active decision to extend deployments and engagements in international conflict. Formalised official parliamentary scrutiny of ongoing conflict might also help structure rational decision making as objectives change. Rather than allowing mission-creep to bleed from an initial rationale to a later set of objectives without examination, formal review, and transparent debate by both houses of parliament could help ensure that these changes are well understood and deliberately evaluated.⁴⁰

3.49 Ongoing reporting to the Parliament was suggested as an important mechanism in improving accountability and transparency in relation to international armed conflict decision-making. Mr Graeme Dobell noted the precedent set by former Prime Minister Julia Gillard, where – upon addressing Parliament on the Afghanistan conflict – she stated:

'[T]oday I announce as Prime Minister that I will make a statement like this one to the House each year that our Afghanistan involvement continues. This will be in addition to the continuing ministerial statements by the Minister for Defence in each session of the parliament.'⁴¹

3.50 A range of other suggestions were raised in how the Parliament may be better engaged in the oversight and scrutiny of an ongoing conflict or operation, including:

- creating a mechanism which works to automatically create a standing reference to the Joint Standing Committee on Foreign Affairs, Defence and Trade whenever Australian forces are deployed overseas, which could include holding annual hearings with the Chief of the ADF and the Secretary of Defence to provide public evidence 'on the deployment or conflict and how the aims of the mission are being met'⁴²

³⁸ The Australia Institute, *submission 9*, 5.

³⁹ Professor Ben Saul, *submission 53*, 2.

⁴⁰ Mr Justin Tutty, *submission 49*, 2.

⁴¹ Cited in Mr Graeme Dobell, *submission 92*, 10.

⁴² Mr Graeme Dobell, *submission 92*, 10.

- regular briefings to a specialised committee, subject to national security considerations (see below for discussion of a specialised committee)
- resuming the practice of presenting Defence white papers to the Parliament⁴³

Committee comment

- 3.51 The Committee is firmly of the view that parliamentary engagement and oversight must be strengthened in relation to decisions by the Executive regarding international armed conflict and the subsequent ongoing conduct of such operations.
- 3.52 Reforms to improve parliamentary engagement would draw Australian practice closer to that of similar Westminster jurisdictions and improve democratic accountability of the Executive to the Parliament.
- 3.53 The Executive should be accountable to the Parliament and the public for its actions, providing a clear rationale for its decisions in relation to armed conflict, the objectives and legality of such conflict. There is and would be no prohibition on the Executive bringing forward a debate if it wished to do so prior to taking a decision in relation to armed conflict including war or warlike operations; however, the ordinary practice is for the Executive to advise the Parliament of decisions taken.
- 3.54 There should also be improvements to parliamentary engagement and oversight of the subsequent management of any conflict.

Recommendation 3

- 3.55 The Committee recommends the Government include a new section in the Cabinet Handbook outlining expectations for practices to be followed in the event of a decision to engage in major international armed conflict including war or warlike operations. This should include:**
- **a requirement that the Parliament be recalled as soon as possible to be advised, unless this was not possible due to extenuating and appropriate circumstances (e.g., it was unsafe for the Parliament to meet due to conflict)**
 - **a requirement that the Executive facilitate a debate in both Houses of Parliament at the earliest opportunity, either prior to deployment of the Australian Defence Force or within thirty (30) days of deployment. Debate should occur after a formal ministerial statement is made which explains the reasons for the operation, based on the 2010 Gillard model, as well as a statement of compliance with international law and advice as to the legality of the operation**

⁴³ Mr Graeme Dobell, *submission 92*, 10-11.

These practices should contain the caveat that the Governor-General is able to approve deferral of any of these requirements in specific circumstances, such as high risks to national security or imminent threat to Australian territories or civilian lives.

- 3.56 While there have been various approaches to accountability and parliamentary engagement during periods of armed conflict, the Committee considers these expectations as to parliamentary accountability should be formalised as outlined below.
- 3.57 Parliament and the public have every right to expect a Government to be and remain accountable for the conduct of military operations and engage in ongoing reporting whenever ADF personnel are deployed internationally, and especially so in relation to major conflicts, war or warlike operations.
- 3.58 The Committee considers the precedent set by former Prime Minister Gillard should be formally recognised and codified as the minimum standard which the Parliament expects in the future. This would set a minimum requirement for a Prime Minister to provide an annual Statement to Parliament and the Minister for Defence to provide an update during each session codified in the Cabinet Handbook and via Standing Resolutions of each House of Parliament.
- 3.59 In addition, the Committee acknowledges evidence which suggested that the practice of tabling Defence white papers and other national security or strategic updates for debate in the Parliament has fallen away in recent years. Returning to the practice of tabling these documents for parliamentary debate is appropriate and respectful of the Parliament and would assist in fostering deeper parliamentary engagement and knowledge of strategic issues and promoting transparency in defence.

Recommendation 4

- 3.60 The Committee recommends the Government introduce standing resolutions of both Houses of Parliament to establish Parliament's expectations in relation to accountability for decisions in relation to international armed conflict, providing for sensible exemptions to enable timely and flexible national security responses and requiring at a minimum that, when war or warlike operations are occurring:**
- **a Statement to both Houses of Parliament be made at least annually from the Prime Minister and Government Senate Leader and debate facilitated**
 - **an Update to both Houses of Parliament be provided at other times during the year (at least twice) from the Minister for Defence and Minister representing the Minister for Defence in the other Chamber and debate facilitated**

These practices should be replicated in the Cabinet Handbook.

Recommendation 5

3.61 The Committee recommends the Government:

- **revert to a traditional approach whereby Defence white papers and national security or strategy updates should be tabled in both Houses of Parliament within 30 days of their presentation to the Minister**
- **consider and apply mechanisms to codify this practice, such as embedding them in the Cabinet Handbook or by Standing Resolutions of both Houses of Parliament**

A new Joint Statutory Defence Committee

3.62 The current parliamentary committee system does not specifically address how major armed conflict including war or warlike operations can or should be subject to appropriate parliamentary oversight.

3.63 There are two parliamentary committees within the Australian Parliament with broad oversight functions of the Defence portfolio: the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), and the Senate Standing Committee on Foreign Affairs, Defence and Trade, plus the Parliamentary Joint Committee on Intelligence and Security (PJCIS) which oversees intelligence related functions of specific Defence portfolio agencies. Neither these committees are specifically empowered to examine matters relating to major armed conflicts or war or warlike operations and neither of the two Defence portfolio related Committees are empowered or equipped to receive classified information, instead being confined to examinations of the Defence portfolio via inquiries, consideration of the Department's annual report, and Senate estimates.

3.64 One method of parliamentary engagement which has been discussed periodically for many years and which has support from multiple stakeholders is the creation of a new parliamentary committee on Defence.⁴⁴ This model was suggested by the Australians for War Powers Reform, who recommended a sub-committee of Cabinet be empowered to 'hear full evidence and basically hear independent legal and military advice, so that when it does go to parliament the government have got a good chance of actually having the support of both sides of parliament'.⁴⁵ Professor Sampford noted that this approach was adopted in World War II with the establishment of the Advisory War Council, and could be implemented on a permanent basis where the conflict situations arise.⁴⁶ The committee could also be empowered to oversee either parts or the entirety of conflict operations, as suggested by former Prime Minister John Howard in relation to the phase 4 of the Iraq War which he suggested could be referred to the JSCFADT.⁴⁷

⁴⁴ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 24.

⁴⁵ Professor Charles Sampford, Australians for War Powers Reform, *Committee Hansard*, 9 December 2022, 4.

⁴⁶ Professor Charles Sampford, Accountability Round Table, *Committee Hansard*, 9 December 2022, 11.

⁴⁷ Mr Graeme Dobell, *submission* 92, 9.

- 3.65 Mr Scott MacInnes illustrated how a new Defence committee could engage on Executive decisions in relation to armed conflict or warlike operations, including potential powers of the committee in relation to access to information and sharing intelligence with the broader parliament:

If we had a genuinely expanded decision-making national defence security committee doing this, what I would envisage happening is that the Prime Minister comes back from America and says 'It looks like we might need to go to war.' Before he were to make that decision, he should put it to this expanded national defence committee, and that committee should have access to all of the security information, absolutely everything, it needs to make a well-informed decision. The committee would then advise the Prime Minister or come to a joint decision, depending on its status, as to whether it wishes to proceed with that. If it did wish to proceed with that, then part of that committee's function could well be to recommend what parts of that advice should go to parliament and what part of that advice is too sensitive.⁴⁸

- 3.66 It was acknowledged that the design of any new Defence related committee could be informed by the PJCIS which has legislative underpinnings and for decades has operated in sensitive environments including with classified information. The PJCIS is appointed under section 28 of the *Intelligence Services Act 2001* (IS Act) and has a range of functions as specified in the legislation. The PJCIS built on the previous Parliament Joint Committee for ASIO created in the 1980's by the Hawke Government. The creation of the PJCIS was prompted by the 1995 Commission of Inquiry into the Australian Secret Intelligence Service (ASIS), which found that effective parliamentary scrutiny of ASIS's operations and activities was being hampered by the need for secrecy to maintain the agency's operations.⁴⁹
- 3.67 The PJCIS model could provide guiding precedents for a new Defence related Committee in how to ensure the balance of providing oversight and accountability while maintaining appropriate controls on sensitive material. The PJCIS's composition and functions are set out in the legislation which also establishes limits to the committee's role and powers.⁵⁰ Unlike most parliamentary committees, the PJCIS's enabling legislation permits the release of classified information to its members in order to 'fulfil its legislated mandate', but places restrictions on members and secretariat staff regarding disclosure or publication of such information. Breaches of these restrictions constitute an offence under the IS Act and can be penalised with up to two years' imprisonment.⁵¹

⁴⁸ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 28.

⁴⁹ Australian Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence* (November 2018), 104-105.

⁵⁰ *Intelligence Services Act 2001*, ss 28-29.

⁵¹ Australian Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence* (November 2018), 106.

3.68 Stakeholders identified a range of potential benefits of a dedicated Defence statutory committee across:

- *Parliament*: Improving parliamentary oversight of Defence-related matters, particularly where classified information currently cannot be accessed by parliamentarians or committees; providing a venue for the Parliament to express well informed support for ADF operations and personnel during times of conflict; encouraging parliamentarians with a particular interest in Defence matters to become ‘subject matter experts’ through participation in the proposed committee; providing a venue for Defence to provide classified briefings to the Parliament (where required and appropriate); increasing informed accountability and scrutiny by the Parliament over Defence-related matters through the ability to interrogate issues which are otherwise difficult due to classification issues; improving cross-party cooperation between parliamentarians in relation to matters involving Defence and particularly during times of armed conflict
- *Defence*: Improving accountability and transparency of Defence matters, including improving parliamentary oversight and engagement as discussed in the 2018 report *Contestability and Consensus* (see below) and ongoing monitoring of the implementation of parliamentary committee recommendations⁵²; an alternative to public disclosure of highly sensitive information addressing concerns regarding the amount of information on capability acquisition and capital planning in the public domain; allowing for broader policy discussion with parliamentarians and stakeholders; enabling ‘shared ownership’ with the Parliament of contested or controversial decisions, such as high-risk acquisitions or operations where sensitive details cannot be publicly released; promoting long-term stability in strategic direction and capability acquisitions and sustainment
- *Defence industry and stakeholders*: Providing greater certainty to industry partners that a cross-party approach increases stability in Australian Government policy
- *International partners*: Developing strategic policy based on cross-party supported findings; providing a forum for international counterparts to consult with parliamentarians via a specialist committee
- *Australian public*: Enhancing confidence in the Parliament’s ability to oversight Defence policy, acquisitions, and agencies

3.69 Defence has raised concerns regarding a dedicated Defence Committee that could receive classified information which were outlined in its response to the JSCFADT’s prior report into parliamentary engagement, discussed below.

⁵² In April 2021, the Australian National Audit Office (ANAO) reported that only 10 out of 18, or 56 per cent of agreed parliamentary committee recommendations had been fully or largely implemented by Defence. While Defence agreed to all three ANAO recommendations to improve their implementation rate, further oversight mechanisms could be introduced to ensure timely implementation of recommendations: ANAO, *Auditor-General Report No. 34 of 2020-21: Implementation of ANAO and Parliamentary Committee Recommendations – Department of Defence* (April 2021), available at: <https://www.anao.gov.au/work/performance-audit/implementation-anao-and-parliamentary-committee-recommendations-department-defence> (accessed 1 February 2023)

Previous committee recommendations

- 3.70 In 2018, the Defence Subcommittee of the JSCFADT inquired into the benefits and risks of a Bipartisan Australian Defence Agreement as the basis of planning for, and funding of, Australian Defence capability. The resulting report, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence*, discussed how parliamentary engagement could enhance bipartisanship to improve Defence's engagement with Parliament in addition to improving public accountability and transparency.
- 3.71 A major proposal of the report was the establishment of a new statutory parliamentary Defence committee. The Subcommittee noted the importance of Defence oversight by parliamentary committees, but that this can be limited by the lack of access to sensitive and classified information, which stymies effective and well-informed scrutiny of Defence expenditure and operations.⁵³
- 3.72 The Committee pointed to the PJCIS as an example of a highly sensitive parliamentary committee which had been successful in operating in a bipartisan manner to scrutinise Australia's intelligence agencies. It acknowledged, however, that there were elements of the PJCIS's legislated scope and operations which limited its impact on national security policy, such as: limited powers and resources, a lack of inquiry self-referral provisions, and limited capacity to review controversial legislation.⁵⁴ It also observed that the UK Intelligence and Security Committee had a significantly broader remit than the PJCIS, which has a 'wider, more intrusive oversight mandate'.⁵⁵
- 3.73 The Committee's proposed model was designed to:
- improve parliamentary engagement with and oversight of the Department of Defence (Defence) and its portfolio agencies and should focus on the development and implementation of Defence strategy.⁵⁶
- 3.74 The proposed committee was based on the PJCIS model of a statutory committee with specific powers to review a range of Defence matters and access to classified information. It also recommended the implementation of self-referral provisions for the new committee, including to inquire into Defence portfolio agencies' annual

⁵³ Australian Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence* (November 2018), 100, 103.

⁵⁴ Australian Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence* (November 2018), 106-107.

⁵⁵ Professor Russell Trood and Mr Anthony Bergin, 'Creative tension: Parliament and national security', Australian Strategic Policy Institute, cited in Australian Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence* (November 2018), 107.

⁵⁶ Australian Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence* (November 2018), 114 (Recommendation 2).

reports.⁵⁷ Importantly, however, the model recommended in the 2018 inquiry did not include the proposed committee having any powers in relation to the decision to go to war.

- 3.75 The model suggested in *Contestability and Consensus* was broadly supported by submitters in this inquiry. Some suggested improvements on the model. Mr Scott MacInnes recommended additional features such as:
- ensuring that the proposed committee exists *in addition* to other mechanisms to improve parliamentary scrutiny and engagement
 - a nonpartisan, rather than bipartisan, membership, with a strong diversity of views across party, political and gender divisions⁵⁸

- 3.76 In response to the previous inquiry, the then Australian Government disagreed with the Committee's recommendation to create a new statutory committee on Defence matters, stating:

There are already substantial Parliamentary oversight measures in place for the Department of Defence. Australia has enjoyed a long period of broad bipartisan agreement on Defence policy, operations and force structure and additional measures to enhance bipartisanship are not necessary at this time. Defence's funding base has been secured through a long-term funding arrangement announced by the Government.⁵⁹

- 3.77 The Government Response further noted:

It is not clear how the additional step of a Committee being deeply engaged in the operational management issues of the Department of Defence would lead to any greater sense of bipartisanship either in the Parliament or in the broader community above what already exists.⁶⁰

- 3.78 Finally, the response expressed concern that the proposed committee would be an addition to a number of parliamentary committees who examine Defence matters, and that this recommendation may not 'reduce the administrative burden for Defence to support other committees'.⁶¹

⁵⁷ Australian Parliament, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence* (November 2018), 115 (Recommendation 2).

⁵⁸ Mr Scott MacInnes, Private capacity, *Committee Hansard*, 9 December 2022, 27.

⁵⁹ Australian Government, *Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report: Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence*, March 2019, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=239baab8-865b-45d7-a96d-8a8dae36c4e8>

⁶⁰ Australian Government, *Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report: Contestability and Consensus: A bipartisan approach to more effective parliamentary engagement with Defence*, March 2019, available at: <https://www.aph.gov.au/DocumentStore.ashx?id=239baab8-865b-45d7-a96d-8a8dae36c4e8>

⁶¹ Australian Government, *Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report: Contestability and Consensus: A bipartisan approach to more effective*

3.79 In response to this Committee's suggestion of the *Contestability and Consensus* model being adopted, the Department did not express any particular objection in introducing this type of parliamentary committee, noting that it was a decision for the Government and the Parliament.⁶² It did, however, suggest that certain matters should be considered if this model was pursued:

Relevant security factors in considering any proposal to establish a PJCIS-like body would include the critical importance of maintaining timely and flexible decision-making for ADF deployments, and ensuring the ongoing confidentiality of highly classified information. Any such proposal would also need to consider the potential impacts on the ADF's operational security; the ADF's relative strategic and tactical advantages over adversaries; and Australia's international credibility as a security and intelligence partner.⁶³

Comparative models in international jurisdictions

3.80 Appendix C provides an outline of comparative models in other jurisdictions. Some jurisdictions utilise committees in legislative bodies to oversee and scrutinise activities of their Defence forces or intelligence services. Such examples include:

- the United States Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, which have strong oversight and scrutiny powers (including access to classified briefings and documents on a wide range of topics) over the intelligence community in the United States
- the Defence Committee of the House of Commons in the United Kingdom Parliament, which has oversight of the expenditure and administration of the Ministry of Defence and its related agencies⁶⁴
- the Belgian Federal Parliament's Special Parliamentary Committee for Defence Acquisitions and Sales, which operates alongside the Defence Committee, and has access to classified information on material relating to Defence acquisitions and sales projects⁶⁵

3.81 It should be noted that all models are unique to the individual country's culture, history, and legislative body. For example, the United States operates as a co-government system, and Congress has specific rights under their Constitution which can be asserted. This model therefore operates significantly differently in comparison to Westminster systems of government.

parliamentary engagement with Defence, March 2019, available at:
<https://www.aph.gov.au/DocumentStore.ashx?id=239baab8-865b-45d7-a96d-8a8dae36c4e8>

⁶² Department of Defence, *submission 110.2*, 2.

⁶³ Department of Defence, *submission 110.2*, 2.

⁶⁴ UK Parliament, 'Defence Committee', (no date) <https://committees.parliament.uk/committee/24/defence-committee>, accessed 3 March 2023.

⁶⁵ Yf Reykers, 'Strengthening parliamentary oversight of defence procurement: lessons from Belgium', *European Security*, 30:4, 2021, 505-525.

- 3.82 There are some international direct comparisons of committees empowered with responsibilities over classified Defence material, and it may reasonably be expected that this may evolve in other jurisdictions in the future. Some international committees have experienced issues in accessing classified information despite having oversight authority of those areas. For example, in November 2022 the UK Defence Select Committee requested access to the UK Special Forces, which was taken up with UK Secretary of State for Defence, who suggested that the Committee did not have oversight powers of the Special Forces.⁶⁶ Further, examples from other jurisdictions such as the Belgian Parliament indicate that such a model can work, particularly in the context of Defence acquisitions and project management.⁶⁷

Committee comment

- 3.83 The Committee proposes the establishment of a Joint Statutory Committee on Defence. The current committee system effectively blocks parliamentary engagement with Defence on classified matters aside from those that relate to the operations of the PJCIS. Changing strategic circumstances make enhanced parliamentary literacy and engagement in Defence issues more important than ever. The now Shadow Minister for Defence, Hon Andrew Hastie MP, rightly described parliamentary scrutiny of Defence as “broken” with only “surface level” scrutiny possible in dire need of “fixing” as “without it, our Parliament can’t exercise proper civilian oversight of the military”.⁶⁸
- 3.84 The Committee accepts that certain Defence operational, intelligence and security matters must be classified and require reduced public disclosure and acknowledges there will be pressure to further reduce public disclosure of sensitive capabilities, acquisitions, and sustainment issues. However, limits to public disclosure must be balanced with increased accountability and transparency to and through the Parliament.
- 3.85 A statutory Defence committee, established and empowered by legislation, should have the ability to receive and request classified briefings, subject to sensible limitations. A model was also recommended in the 46th Parliament’s JSCFADT report on parliamentary engagement with Defence. The consistent findings over time suggest that there is a recognition across parties of the importance of these functions and issues.
- 3.86 The Committee is of the view that a statutory committee on Defence matters should be modelled on the PJCIS to provide similar levels of oversight and accountability for

⁶⁶ Iain Overton, ‘UK’s Defence Committee refused access to UK Special Forces in heated debate with Defence Minister’, *Action on Armed Violence*, 3 November 2022, <https://aoav.org.uk/2022/uks-defence-committee-refused-oversight-of-uk-special-forces-in-heated-debate-with-defence-minister/>, accessed 17 January 2023.

⁶⁷ Yf Reykers, ‘Strengthening parliamentary oversight of defence procurement: lessons from Belgium’, *European Security*, 30:4, 2021, 505-525.

⁶⁸ Hon Andrew Hastie MP, *Opinion: Andrew Hastie MP/ex-SAS – on Brereton Inquiry*, 24 November 2020, www.contactairlandandsea.com/2020/11/24/opinion-andrew-hastie-mp-ex-sas-on-brereton-inquiry/ (accessed 28 March 2023)

Defence as applies to intelligence agencies, including scrutiny of annual reports, strategy and planning for capability development, acquisitions, and contingencies.

- 3.87 If established, such a committee could also contribute significantly to promoting broad support across parties on matters relating to Defence policy, capability acquisition and sustainment, noting that:
- ‘bipartisanship’ should fundamentally be a process of open-minded formal and informal discussion and inquiry that is more likely to provide contestability while producing the largest amount of consensus
 - constructive bipartisan contestability and consensus is highly desirable given the long investment cycles and benefits of strategic certainty, which has been demonstrated to great effect in the PJCIS and the increased bipartisanship on national security matters
 - a properly constituted Defence Committee would enhance scrutiny and debate, but in a classified and therefore less public and partisan environment and would provide assurance of appropriate and enhanced accountability of Defence to Parliament
 - current arrangements make it largely impossible for the Parliament to exercise appropriate supervision of such a significant, consequential, and costly Commonwealth activity
- 3.88 A dedicated Statutory Defence Committee would significantly address the well-documented concerns regarding a lack of transparency regarding Defence activities and expenditure. Audits, reviews, and inquiries in recent years have consistently identified that Defence can too easily hide lack of agency preparation or sub-optimal performance behind classification issues. Parliament has both an obligation and a right to access information necessary to oversight how the Executive expends public funds. Cross-party parliamentary engagement with Defence (via a Government-majority committee with improved powers of scrutiny and access to classified information) could better support strategic policy and objectives in the long term by:
- building greater parliamentary and public consensus regarding principles, strategy, and goals
 - improving Defence performance and accountability through enhanced parliamentary scrutiny
- 3.89 The Committee’s proposal outlined in the recommendation below is directly informed by the model provided by the PJCIS. The Government of the day would retain a majority on the committee and holding of the Chair’s position and the proposed approach would not diminish the Executive’s powers and prerogatives. The legislation could provide for membership that is broadly proportional to representation of parties in the Parliament. Learning from the experience of members on the PJCIS, the Committee specifically recommends that members of the new Joint Statutory Committee on Defence should have the ability to have one staff member cleared to at least NV2 level. It is impractical to expect members to assume a greater workload without this support.

- 3.90 The Committee is firmly of the view that a separate Defence Committee is needed and that this cannot and should not be combined with the PJCIS. They are fundamentally different subject matters, and the PJCIS should not be distracted from its core role in overseeing the intelligence agencies and reviewing national security legislation, balancing the perpetual tension between individual liberties and collective security.
- 3.91 Similarly, it would be impractical and unwise to seek to deliver an enhanced Defence Committee via the existing Defence Subcommittee. The proposed Joint Statutory Defence Committee, as with the PJCIS, would require appropriate security precautions around its operations and security clearances for Secretariat staff, which would be more expensive and complicated if applied to a Subcommittee of a larger Committee. Greater security risks, costs and complexities arise, and it would be peculiar and needlessly complicated to try to establish a legislative regime over a Subcommittee of a Committee that is only created by Joint Resolution, as well as set up a peculiar dynamic within the broader Committee.
- 3.92 Day to day, the proposed Joint Statutory Committee would operate like other parliamentary committees with information handling requirements akin to the PJCIS. Provision is also proposed to be made however for the Prime Minister and Minister for Defence to authorise specified members of Parliament (Ministers or senior Opposition Shadow Ministers) to be part of particular meetings, briefings or activities of the Committee (including but not only in relation to armed conflicts). During such activities they would not be considered members of the Committee but would be able to participate subject to the same statutory restrictions regarding the disclosure or publication of classified information as Committee Members.
- 3.93 The creation of a Joint Statutory Defence Committee would mean that the existing Parliamentary Joint Standing Committee on Foreign Affairs Defence and Trade would need to be reconstituted without its Defence responsibilities, for example as the Parliamentary Joint Standing Committee on Foreign Affairs, Aid, Human Rights and Trade. It may be desirable to maintain a large enough membership of the successor Committee to allow enough members to seek appointment to both committees, maintaining a level of coordination and broader awareness of the non-Defence dimensions of international policy.
- 3.94 It is intended that the existing responsibilities of the Senate Foreign Affairs, Defence and Trade Committee would continue without change. In particular, legislation relating to the Defence portfolio including Veterans' Affairs would continue to be reviewed by the Senate Committee rather than the new Joint Committee. An exception to this default approach may be if a piece of legislation raised issues which warranted highly classified briefings in which case the Joint Statutory Defence Committee could provide an alternative, but that is not seen as a likely common occurrence.
- 3.95 It is acknowledged that it will take some time for the Government to establish the new Committee given the need for legislation, and to provide for appropriately secure facilities for Committee staff and meetings. It is timely that a new Parliamentary Secure Compartmentalised Information Facility is currently being constructed as the

new Joint Statutory Committee on Defence could share use of this facility with the PJCIS.

- 3.96 The Committee recognises that the proposal for a new Joint Statutory Committee on Defence may create concern within the Defence establishment given previous debates, proposals, and security considerations. The Committee encourages the Government to exercise leadership as if carefully designed and with sufficient safeguards, the proposed committee could be a strong enhancement to national security while providing for increased scrutiny. In 1988 Prime Minister Bob Hawke created the Parliamentary Joint Committee on ASIO after rejecting the advice of the Hope Royal Commissions not to enhance parliamentary oversight of the intelligence agencies. History has proved he was right to do so, and the Government is encouraged to emulate Prime Minister Hawke's example and act to strengthen national security and enhance the accountability of defence to the Parliament.

Recommendation 6

- 3.97 The Committee recommends the Government introduce legislation to establish a Joint Statutory Committee on Defence to supersede and enhance the Defence related functions currently undertaken by the Joint Standing Committee of Foreign Affairs, Defence and Trade. This committee should have its powers set out in legislation, including oversight and accountability functions in relation to the Australian Defence Force, the Department of Defence and specified portfolio agencies including:**

- **scrutiny of Defence portfolio annual reports**
- **consideration of white papers, strategy, planning and contingencies**
- **scrutiny of Defence capability development, acquisitions, and sustainment**
- **consideration of matters relating to Defence personnel and veterans' affairs**
- **inquiry into matters referred by the Minister for Defence or either House of Parliament**
- **general parliamentary oversight of war or warlike operations, including ongoing conflicts and involvement in significant non-conflict-related operations domestically and internationally**

The proposed committee should be explicitly permitted to request and receive classified information and general intelligence briefings while also being subject to clear legislative constraints to its mandate, including restrictions on access to:

- **individual domestic intelligence reports**
- **intelligence sourced from foreign intelligence bodies where such provision would breach international agreements**

- detail regarding operational matters or information regarding highly sensitive capabilities or protected identities, except where specifically authorised by the Minister for Defence

Statutory restrictions should be placed on members, their staff (one of whom should be able to obtain a security clearance at minimum NV2 level) and secretariat staff regarding the disclosure or publication of classified information with appropriate penalties including imprisonment for breaches.

Notwithstanding the proposed committee's powers and ability to receive and request classified briefings, the legislation should also provide that the Minister for Defence should have an overarching power to veto the provision of any classified information to the committee whenever the Minister considers that the provision of the classified information in question would compromise national security.

The committee's membership should be appointed by the Prime Minister, and, in consultation with the Leader of the Opposition, constituted by:

- Six Government members and five non-Government members, with a minimum of:
 - One Government Member of the House and one Government Senator
 - One Opposition Member of the House and one Opposition Senator
- One Government Member as committee chair

The Prime Minister and Minister for Defence should be provided with the ability to authorise specified members of Parliament (Ministers or senior Opposition Shadow Ministers) to be part of particular meetings, briefings or activities of the committee, during which they would not be considered members of the committee but would be able to participate subject to the same statutory restrictions regarding the disclosure or publication of classified information as committee members.

Recommendation 7

- 3.98 The Committee recommends that, subject to Recommendation 6, the Cabinet Handbook codify an expectation that the Prime Minister or Minister for Defence will facilitate appropriate briefings of the Defence Committee regarding the conduct of significant military operations, subject to ongoing national security considerations as determined by the Prime Minister and Minister for Defence. This would include necessary authorisations to enable Ministers or senior Opposition Shadow Ministers to participate in such meetings.
- 3.99 In conclusion, the Committee is strongly of the view that Australia's system of parliamentary democracy is likely to be kept healthy, effective, and well-adapted to face emerging challenges when there is both respect for its well-established institutions, regulations, and practices, and a preparedness to consider in a

measured way how those elements may sensibly evolve and improve as they are tested and as circumstances change.

- 3.100 There is a balance to be struck between the value of stability and the value of calibration through proper process, guided by evidence, expertise, and history. The Committee believes this inquiry and its recommendations observe that balance by advancing calibrations that make substantial change but do so by extending tried and tested forms of parliamentary process like tabling expectations, debate opportunities, and committee oversight.
- 3.101 In the Committee's view, this inquiry into the question of Australia's approach to decision making with respect to war or warlike operations is timely and even somewhat belated, and the Committee acknowledges those individuals and civil society groups that have made that case in recent years.
- 3.102 The evidence to the Committee sustains a conclusion that the transparency and parliamentary consideration of such decision making has become less clear and less substantial in recent decades. The Committee is convinced that greater transparency and parliamentary consideration of such decisions can and should occur, and commends its recommendations to that effect, on this most serious of subjects, to the Government.

Mr Julian Hill MP
Chair
Defence Subcommittee
30 March 2023

Hon Shayne Neumann MP
Chair
Joint Standing Committee on Foreign Affairs, Defence and Trade
30 March 2023



A. Submissions

- 1 Mr Peter Sainsbury
- 2 *Name Withheld*
- 3 Mr David Kinsey
- 4 Mr Robert Heron
- 5 Mr Noel Turnbull and Mr John Phillips
 - 5.1 Supplementary to submission 5
- 6 Professor Ernst Willheim
 - 6.1 Supplementary to submission 6
 - 6.2 Supplementary to submission 6
- 7 Ms Jane Errey
- 8 Mr Glen Davis
- 9 The Australia Institute
- 10 *Name Withheld*
- 11 Mr Geoffrey Taylor
 - 11.1 Supplementary to submission 11
 - 11.2 Supplementary to submission 11
- 12 Australians for War Powers Reform
 - 12.1 Supplementary to submission 12
- 13 Ms Carol Dance
- 14 Dr Anthony Bergin
- 15 Mr Rod Barton
- 16 Mr David Larkin
- 17 Mr Stephen Gentle

- 18** Ms Dianne Jones
- 19** Professor George Williams and Winsome Hall
- 19.1 Supplementary to submission 19
- 20** Assoc Prof Philippe Lagassé
- 21** Mr Ray Hartley
- 22** Mr Cameron Leckie
- 23** Mr Scott MacInnes
- 23.1 Supplementary to submission 23
- 24** Ms Annette Brownlie
- 25** Vintage Reds of the Canberra Region
- 26** Swee Ee Bruggisser
- 27** Mr Richard Jones
- 28** Ms Shamin Fernando
- 29** Ms Ann Kreger
- 30** Ms Keri James
- 31** Professor Clinton Fernandes
- 31.1 Supplementary to submission 31
- 32** Ms Gabrielle Duigu
- 33** Ms Michele Madigan
- 34** Mr Gerard Gillespie
- 35** Sr Patricia Williams, rsj
- 36** Ms Cecilia Cairns
- 37** Ms Pamela Collett
- 38** Ms Suraya Coorey
- 39** Mr Mark Robinson
- 40** Independent and Peaceful Australia Network

- 41 Dr Iris Iwanicki
- 42 Sam Typuszak
- 43 Robin Westcott
- 44 Josephite Justice Network
- 45 Ms Catharine Clements
- 46 Ms Margaret Pestorius
- 47 Sr Elizabeth Morris rsj
- 48 Mr Greg Chapman
- 49 Mr Justin Tutty
- 50 Dr Richie Gun AO
- 51 *Name Withheld*
- 52 Peacifica
- 53 Professor Ben Saul
- 54 Dr Erik Paul
- 55 Dr Douglas Newton
- 56 Ms Maureen Keady
- 57 Fr Claude Mostowik msc
- 58 Mr Gareth W R Smith
- 59 Mr Niall McLaren
- 60 Mr Richard Kelly Barnes
- 61 Mr William G. Aitken
- 62 Mr Rob Parnell
- 63 Mr Edward Birt
- 64 Mr Andrew Wilkie MP
- 65 Civil Liberties Australia
- 66 Mr Robert Mathews

- 67 Ms Prue Gill
- 68 Ms Kathryn Kelly
- 69 Mr John Quelch
- 70 Australia Defence Association
- 71 Mr Lawry Herron
- 72 *Name Withheld*
- 73 Mr Tom Hayes
- 74 *Name Withheld*
- 75 *Name Withheld*
- 76 Mr Robert Baker
- 77 Medical Association for Prevention of War
- 78 Mr Nick Deane
- 79 No War No AUKUS ACT
- 80 Ms Monica Oppen
- 81 Mr Robyn Bird
- 82 Mr Senator Jim Molan
- 83 Emeritus Professor Louise Edwards
- 84 Mrs Christine and Jonathan Pilbrow
- 85 Mr Peter Murphy
- 86 Mr Justin Bassi, Ms Bec Shrimpton and Dr Alex Bristow
- 87 Professor Richard Tanter
- 88 Ms Diana Rickard
- 89 Ms Donna Mulhearn
- 90 Mr Peter Griffin
- 91 Prof Helen Ware
- 92 Mr Graeme Dobell

- 93** Geoffrey Reid
- 94** Australian Citizens Party
- 95** *Name Withheld*
- 96** Mr Michael Smith
- 97** Mr Sebastian Adams
- 98** Mr Guy LeNoir
- 99** Ms Mikayla Brier-Mills
- 100** Mr Benjamin Cronshaw
- 101** Mr Ordan Andreevski
- 102** Ms Jane Timbrell
- 103** Cairns Central Branch of the Labor Party
- 104** Alice Springs Peace Action Think Tank (ASPATT)
- 105** Mr Max Atkinson
- 106** Ms Bernadette McPhee
- 107** WILPF Australia
- 108** Religions for Peace Australia
- 109** Professor Charles Sampford
- 109.1 Supplementary to submission 109
 - 109.2 Supplementary to submission 109
- 110** Department of Defence
- 110.1 Supplementary to submission 110
 - 110.2 Supplementary to submission 110
 - 110.3 Supplementary to submission 110
- 111** Mrs Dawn Richardson
- 112** Major Kevin Walsh
- 113** Attorney-General's Department



B. Public Hearing

Friday, 9 December 2022

Committee Room 1R3
Parliament House
Canberra

Australians for War Powers Reform

- Dr Alison Broinowski AM, President
- Dr Sue Wareham OAM, Secretary
- Professor Charles Sampford, Adviser

The Australia Institute

- Mr Allan Behm, Director, International & Security Affairs Program

Australian Defence Association

- Mr Neil James, Executive Director

Department of Defence

- Vice Admiral David Johnston AC RAN, Vice Chief of the Defence Force
- Air Vice Marshal Stephen Chappell DSC CSC OAM, Head, Military Strategic Commitments
- Mr Adrian D'Amico, Chief Counsel
- Mr Steve Moore, Acting Deputy Secretary, Strategic Policy and Industry
- Air Commodore Patrick Keane AM CSC, Director General, Military Legal Service
- Commodore Peter Leavy CSM RAN, Acting Deputy Chief of Joint Operations
- Dr Peter Sawczak, First Assistant Secretary, Strategic Policy

Private Capacity

- Dr Alex Bristow
- Mr Graeme Dobell
- Professor Clinton Fernandes
- Ms Winsome Hall
- Mr Cameron Leckie
- Mr Scott MacInnes

- Associate Professor Cameron Moore
- Mr John Phillips
- Professor Charles Sampford
- Professor Ben Saul
- Mr Noel Turnbull
- Professor George Williams

C. Parliamentary Library Papers

The following papers were provided courtesy of the Parliamentary Library, Department of Parliamentary Services.

Table 1. Overseas experience: declarations of war and military deployments in select countries

The table below summarises the requirements in select democratic countries for declaring war and deploying military forces overseas. It highlights whether constitutional and other legislative provisions require parliamentary approval for both declaring war and deploying military forces to conflict zones. In some instances, governments or heads of state have ignored the requirement for parliamentary approval, while others have sought parliamentary approval to establish a convention despite the absence of constitutional or legislative requirements.

The table includes applicable laws where available in English, as well as some examples of parliamentary involvement in deploying military forces overseas (contemporary declarations of war are rare). Instances where parliament has been consulted, despite laws to the contrary, are included in the notes column.

Declaring war and deploying military forces: select countries

Country	Declaring war	Deploying military forces	Law	Notes
Australia	No	No		<p>The Australian Constitution does not say expressly who is responsible for declaring war or deploying military forces. In addition, there is no requirement in the Constitution or defence legislation for parliamentary involvement in most aspects of declaring war and deploying military forces.¹</p> <p>While Australia contributes to various overseas military actions, the parliament has not been consulted prior to any decision by the government to deploy military forces overseas.</p>

¹ Deirdre McKeown and Roy Jordan, *Parliamentary Involvement in Declaring War and Deploying Forces Overseas*, Research paper series, 2009–10, (Canberra: Parliamentary Library, 22 March 2010), 3.

				There is no dedicated parliamentary committee to oversee military deployments. ²
Belgium	No	No		<p>Article 167 of the constitution explicitly entrusts the executive power with the conduct of military operations. If, on 2 occasions, the government has wished to address parliament to seek its approval, it is only because the government was operating under current affairs (election caretaker mode).</p> <p>The principle of current affairs is not included in the constitution or in any other legal provision, but a democratic tradition that a government in current affairs considers it necessary to have certain decisions covered by the legislature. This constitutional custom is connected with the continuity of the public service and the ministerial responsibility in the Belgian parliamentary system and is recognised through the case law of the Council of State and legal doctrine, and is considered to be of public order. No parliamentary approval is needed, except in case of current affairs.³</p> <p>The 2 occasions in which the Belgian Parliament authorised overseas military deployments was for the Libyan crisis in 2011 and against Islamic State in Iraq in 2014. In both cases, the government was in caretaker mode and there was cross-party agreement to seek parliamentary authorisation.⁴</p> <p>Both decisions were brought to parliament for a formal vote of approval:</p> <p><i>In the Libya case, the decision to participate with six F16 fighter jets, a marine minesweeper and approximately 200 military support personnel were voted upon on March 18, 2011, receiving a quasi-unanimous parliamentary support.</i></p> <p><i>On September 26, 2014, also the decision to deploy again six F16 fighter jets and an additional 120 military support troops to Iraq</i></p>

² Karen Elphick, *United States Senate Shows President a Red Light on War Powers as Labor Promises a War Powers Inquiry in Australia*, Parliamentary Library, *FlagPost*, 21 December 2018.

³ Embassy of Belgium, personal communication, 19 December 2017.

⁴ Yf Reykers and Daan Fonck, 'Who is Controlling Whom? An Analysis of the Belgian Federal Parliament's Executive Oversight Capacities Towards the Military Interventions in Libya (2011) and Iraq (2014–2015)', *Studia Diplomatica* vol. LXVIII (9 June 2016): 98.

				<p>again received convincing parliamentary support, with only the extreme-left <i>Partij van de Arbeid-Parti du Travail de Belgique (PVDA-PTB)</i> voting against and the green <i>Ecolo-Groen</i> fraction abstaining.⁵</p> <p>The Belgium Parliament has a Special Committee for the Monitoring of Foreign Missions (SCMFM) which provides some operational oversight of military operations. The SCMFM has access to concluding decisions from the Council of Ministers, the Rules of Engagement and military intelligence reports.⁶</p>
Canada	No	No		<p>The Library of Parliament noted in 2006 that under the constitution, the prime minister and Cabinet exercise command of the armed forces in the name of the monarch, with parliament having 'little direct role in such matters'.⁷</p> <p>The Library highlighted, however, that there had been attempts to change the practice:</p> <p><i>In its April 2000 report, the Standing Senate Committee on Foreign Affairs considered the lack of parliamentary approval of overseas deployments of Canadian Forces to be "unacceptable" and stated that "Parliament should always be consulted ... when Canadian troops are deployed abroad." It also noted that the 1994 Special Joint Committee on Canada's Defence Policy and the 1997 Commission of Inquiry into the Deployment of Canadian Forces to Somalia had called for enhanced parliamentary oversight of defence matters and made recommendations to that effect, with little impact. In his May 1996 Report, the Auditor General of Canada had done the same. In addition, Members of Parliament have used private Members' motions and opposition days in an attempt to require such a vote, at least in the House of Commons, before a decision is made. However, the government has consistently defeated these initiatives.</i>⁸</p>

⁵ Daan Fonck, Tim Haesebrouck and Yf Reykers, 'Parliamentary Involvement, Party Ideology and Majority-Opposition Bargaining: Belgian Participation in Multinational Military Operations', *Contemporary Security Policy* 40, no. 1 (26 July 2018).

⁶ Daan Fonck and Yf Reykers, 'Who is Controlling Whom? An Analysis of the Belgian Federal Parliament's Executive Oversight Capacities Towards the Military Interventions in Libya (2011) and Iraq (2014–2015)', *Studia Diplomatica*, (3 June 2016): 95–96.

⁷ Michael Dewing and Corinne McDonald, *International Deployment of Canadian Forces: Parliament's Role*, Library of Parliament, 18 May 2006.

⁸ Dewing and McDonald, *International Deployment of Canadian Forces*.

				<p>In February 2006 the Harper Government promised to make 'Parliament responsible for exercising oversight over the conduct of Canadian foreign policy and the commitment of Canadian Forces to foreign operations'. There were occasions when the parliament was consulted on such matters.⁹ For instance, in May 2006, Prime Minister Harper initiated parliamentary debate seeking approval to extend Canada's military commitment in Afghanistan.¹⁰ The House of Commons voted in favour of the mission extension on 17 May 2006.¹¹ As Philippe Lagassé noted:</p> <p><i>Harper's Conservatives would hold several votes in the years that followed, notably for a further extension of the Kandahar mission in 2008 and to secure the Commons' support for missions in Libya (2011) and Iraq (2014).¹²</i></p> <p>While a convention to consult parliament on significant military deployments has not emerged in Canada, there has since been one occasion when the practice was exercised.</p> <p>On 8 February 2016, Prime Minister Justin Trudeau acknowledged, during his announcement about Canada's military deployment to Iraq and Syria, that 'while we recognize the exclusive role of the executive in military matters, we will bring this mission to a Parliamentary debate...'.¹³</p> <p>A motion was moved in the House of Commons on Canada's contribution to the effort to combat Daesh/Islamic State and was agreed to on 8 March 2016.¹⁴</p>
Denmark	Yes	Yes	Declaring war in Section 19(1) of Denmark's Constitution:	The unicameral Danish Parliament mandates Danish military deployments and approves any changes to mission

⁹ Conservative Party of Canada, *Stand up for Canada: Conservative Party of Canada Federal Election Platform*, 2006, 45; S Harper (Canadian Prime Minister), 'The Right Honourable Stephen Harper, PC, MP', media release, 6 February 2006 [link no longer available].

¹⁰ House of Commons Canada, 'Canadian Forces in Afghanistan: Report of the Standing Committee on National Defence', June 2007, 89.

¹¹ Talia Chung, *Afghanistan: Chronology of Canadian Parliamentary Events*, Library of Parliament, *InfoSeries*, 20 November 2007.

¹² Philippe Lagassé, 'Improving Parliamentary Scrutiny of Defence', *Canadian Military Journal* 22, no. 3 (Summer 2022).

¹³ Justin Trudeau (Canadian Prime Minister), 'Prime Minister Justin Trudeau: New Approach to Address the Ongoing Crises in Iraq and Syria and the Impact on the Surrounding Region', transcript, 8 February 2016.

¹⁴ Canadian House of Commons, 42nd Parliament, First Session, Vote no. 19, 8 March 2016.

			<p><i>The King shall act on behalf of the Realm in international affairs. Provided that without the consent of the Parliament the King shall not undertake any act whereby the territory of the Realm will be increased or decrease, nor shall he enter into any obligation which for fulfillment requires the concurrence of the Parliament, or which otherwise is of major importance; nor shall the King, except with the consent of the Parliament, terminate any international treaty entered into with the consent of the Parliament.</i></p> <p>Deploying forces in Section 19(2) of Denmark's Constitution:</p> <p><i>Except for purposes of defence against an armed attack upon the Realm or Danish forces the King shall not use military force against any foreign state without the consent of the Parliament. Any measure which the King may take in pursuance of this provision shall immediately be submitted to the Parliament. If the Parliament is not in session it shall be convoked immediately.</i></p>	<p>mandates. In addition, the Defence Committee of the Danish Parliament addresses a variety of issues including 'whether Denmark should contribute to international military missions'.¹⁵</p> <p>Below are some examples of Danish military operations endorsed by the Danish Parliament.</p> <p>Since 2004 Denmark has contributed fighter aircraft in support of NATO's Air Policing operations in the Baltic States. Denmark's military contribution was authorised under motion B 210 in the Danish Parliament on 2 May 2004.¹⁶</p> <p>On 19 August 2016 the Danish Parliament unanimously approved motion B 197 authorising the Danish military to remove the last of Libya's chemical weapons stockpile.¹⁷</p> <p>The expansion of Denmark's military contribution to the Global Coalition against Daesh/Islamic State was approved by the Danish Parliament on 19 April 2016. The mandate allows Danish forces, including special forces, to operate in Iraq and Syria. In January 2017, the government consulted parliament about its intention to expand the mandate, by allowing special forces to 'contribute in a more direct role'. This motion was supported by the majority of parliamentarians.¹⁸</p> <p>Approval for operations in the Sahel involved the adoption of motion B6 by the parliament on 24 October 2019 in support of Denmark's military contribution to MINUSMA and motion B7 for Operation Barkhane.¹⁹</p>
Finland	Yes	Yes	<p>Declaring war in Section 93 of Finland's Constitution:</p> <p><i>The foreign policy of Finland is directed by the President of the Republic in co-operation with the Government. However, the Parliament accepts Finland's</i></p>	<p>In August 2021 the Parliament of Finland was recalled from summer break to debate the deployment of Finnish forces to Kabul airport, Afghanistan to assist with evacuation efforts. According to an English-language media report:</p>

¹⁵ Folketinget, 'Defence Committee', Danish Parliament website, n.d.

¹⁶ Danish Ministry of Defence (DMoD), 'Air Policing in the Baltic States', DMoD website, n.d.

¹⁷ DMoD, 'Unanimous Parliament puts Denmark in Head of Libya Operation', DMoD website, 19 August 2016.

¹⁸ Ministry of Defence, 'Danish Special Forces Assigned with New Tasks in the Coalition's Fight Against Da'esh', media release, 20 January 2017.

¹⁹ DMoD, 'Danish Military Contributions to the Sahel Region', DMoD website, 24 October 2019; DMoD, 'The Danish Effort in the Sahel Region (MINUSMA and Operation Barkhane)', DMoD website, n.d.

		<p><i>international obligations and their denouncement and decides on the bringing into force of Finland's international obligations in so far as provided in this Constitution. The President decides on matters of war and peace, with the consent of the Parliament.</i></p> <p><i>The Government is responsible for the national preparation of the decisions to be made in the European Union, and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution.</i></p> <p><i>The communication of important foreign policy positions to foreign States and international organisations is the responsibility of the Minister with competence in foreign affairs.</i></p> <p>Mobilising forces in Section 129 of Finland's Constitution:</p> <p><i>On the proposal of the Government, the President of the Republic decides on the mobilisation of the defence forces.</i></p> <p><i>If the Parliament is not in session at that moment, it shall be convened at once.</i></p> <p>Section 3 of Finland's Act on Military Crisis Management deals with parliament's participation in decision-making:</p> <p><i>(1) Before submitting a proposal referred to in section 2 concerning Finland's participation, the Government must consult Parliament's Foreign Affairs Committee. If the proposal concerns a crisis management operation that presents a particularly demanding military challenge or an operation that is not based on a UN Security Council mandate, the Government must, before submitting its proposal, consult Parliament by providing it with a report on the matter. If the proposal</i></p>	<p><i>Legislators expressed broad support for the deployment at a plenary session of parliament on Friday afternoon, although a vote was not held. Discussion then moved to parliament's foreign affairs committee, before being passed to the government and then the president for final approval.²⁰</i></p> <p>Finland's military can take part in international peace and security operations as well as crisis management (including humanitarian assistance and civilian protection) under the Act on Military Crisis Management. The main conditions for Finnish deployment include:</p> <ul style="list-style-type: none"> - the operation promotes peace and security - the president's decision, the Government's and Parliament's support - in principle a UN Security Council resolution on the execution of an operation in exceptional circumstances the possibility to participate in other operations as well, for e.g. as part of an EU battlegroup.²¹ <p>Additionally, the Act on Military Crisis Management limits the number of personnel serving in crisis management activities to 2,000. This could include crisis management forces, individual units and private persons.²²</p>
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²⁰ Editorial, 'Parliament and President Approve Finnish Troop Deployment in Kabul', *Yle News*, 20 August 2021.

²¹ The Finnish Defence Forces (FDF), 'Finland's Participation in Crisis Management', FDF website, n.d.

²² The Act on Military Crisis Management, Section 5(3); FDF, 'Finland's Participation', FDF website, n.d.

			<p>concerns the assignment of no more than ten persons to military crisis management duties, the Government must provide a report on the matter to Parliament's Foreign Affairs Committee before submitting its proposal.</p> <p>(2) If plans are made for significant changes to the duties assigned to a Finnish crisis management force during the course of an operation, the Government must consult Parliament or Parliament's Foreign Affairs Committee in accordance with subsection 1.</p> <p>(3) Before submitting a proposal concerning the establishment of a standby unit, the Government must consult Parliament by providing it with a report on the matter. Before submitting a proposal on the participation of Finland in crisis management by using a standby unit, the Government must consult Parliament's Foreign Affairs Committee.</p>	
France	Yes	Yes	<p>Declaring war and deploying forces in Article 35 of France's Constitution:</p> <p><i>A declaration of war shall be authorized by Parliament.</i></p> <p><i>The Government shall inform Parliament of its decision to have the armed forces intervene abroad, at the latest three days after the beginning of said intervention. It shall detail the objectives of the said intervention. This information may give rise to a debate, which shall not be followed by a vote.</i></p> <p><i>Where the said intervention shall exceed four months, the Government shall submit the extension to Parliament for authorization. It may ask the National Assembly to make the final decision.</i></p> <p><i>If Parliament is not sitting at the end of the four-month period, it shall express its decision at the opening of the following session.</i></p>	<p>While Article 35 of the constitution is explicit about France's bicameral parliament's role in declaring war, the government of the day is required to inform the parliament when deploying military forces, but the parliament's endorsement is not required. However, the parliament must authorise any extension to a deployment beyond the first 4 months.</p> <p>An occasional paper by the then Geneva Centre for the Democratic Control of Armed Forces (DCAF) assessed:</p> <p><i>Article 35 of the constitution states that 'a declaration of war shall be authorised by Parliament', yet military actions short of war are not mentioned. In these cases the government has 'the opportunity to decide whether a parliamentary authorisation is required' (Rozenberg, 2002: 126). As military deployments nowadays are rarely if ever bound to declarations of war, the executive can usually decide freely whether it puts a deployment up to a parliamentary vote or not. Obviously this confines parliament to a very weak position, as it can be circumvented by the executive at will. A few examples from French deployment practice illustrate that the executive is indeed the decisive actor in determining troop deployments.</i></p>

				<p><i>'President Mitterrand asked for a vote in January 1991 at the beginning of the Gulf war whereas Prime Minister Jospin refused a vote during the Kosovo crisis in April 1999 given the divisions in its majority on the question' (ibid.). Concerning the EUFOR DRC mission in 2003 and the EUFOR Althea mission in 2004, the French parliament was informed by the executive and debated the deployments in advance but did not enjoy veto power (Born et al., 2007: 23ff).</i></p> <p><i>As it is the executive that decides whether and how the French parliament is involved in a deployment decision, we classify France as a country in which ex ante parliamentary veto power is absent.²³</i></p> <p><i>Another example is the authorisation by France's parliament to extend the deployment of French forces in Mali.²⁴ This deployment has since concluded and forces have been redeployed within the region.²⁵</i></p>
New Zealand	No	No		<p>In a 2014 New Zealand Parliamentary Library research paper, it states:</p> <p><i>There is no legal requirement in New Zealand for the government to obtain Parliament's consent to deployments of troops abroad. Over the last 25 years, however, it has generally been the practice for significant initial commitments of troops to overseas operations to be debated in Parliament.²⁶</i></p> <p>The NZ Parliament has debated military deployments initiated by government ministers and sometimes the opposition. These typically take place prior to, and sometimes afterwards, the government's announcement to deploy personnel overseas.</p> <p>The Library publication lists the following examples of NZ parliamentary involvement in military deployments:</p> <p><i>Persian Gulf</i></p> <p><i>Government announcement of a decision to commit units of the armed forces to provide air transport and medical services as part of the multinational commitment to uphold the UN</i></p>

²³ Wolfgang Wagner, Dirk Peters and Cosima Glahn, 'Parliamentary War Powers Around the World, 1989–2004. A New Dataset', Geneva Centre for the Democratic Control of Armed Forces (DCAF), Occasional Paper, no. 22 (2010): 52–53.

²⁴ Editorial, 'French Parliament Votes to Prolong Mali Mission', *France24*, 22 April 2013.

²⁵ Lauriane Noelle Vofu Kana, 'France and European Allies to Withdraw Troops from Mali but Remain in Region', *Africa News*, 17 February 2022 (updated 1 July 2022).

²⁶ New Zealand Parliamentary Library, *Troop Deployments Abroad: Parliamentary Consent*, Research Paper, 24 November 2014.

				<p>resolutions passed following Iraq's invasion of Kuwait, 3 December 1990.</p> <p><i>Parliament.</i> Urgent debate, requested by the opposition, on the Prime Minister's announcement that the government intended to commit military personnel to the Persian Gulf, 5 December 1990.</p> <p><i>Parliament recalled.</i> Address in reply debate to the Governor-General's speech on New Zealand's contribution of two RNZAF Hercules aircraft and a New Zealand Army medical team to support the multinational force in the Gulf area, 22 January 1991.</p> <p>Bosnia-Herzegovina</p> <p><i>Parliament.</i> Prime Minister's statement, followed by a brief debate, on a further contribution of a reinforced infantry company group of around 250 personnel to the United Nations Protection Force in the former Yugoslavia, 24 May 1994.</p> <p><i>Parliament.</i> Adjournment debate, on a government motion, on the troop commitment to the United Nations Protection Force in the former Yugoslavia, 24 May 1994.</p> <p>Iraq</p> <p>Announcement by the Prime Minister that New Zealand would contribute up to 20 Special Air Services personnel and two RNZAF Orions to participate in the multinational coalition formed to pursue Iraq's compliance with United Nations obligations to abandon its illegal weapons of mass destruction programmes, 2 February 1998.</p> <p><i>Parliament.</i> Special debate on a government motion for the House to take note of the government's decision to support the Coalition of Countries prepared to take action to enforce UN Security Council resolutions if all practicable diplomatic efforts failed to convince the Iraqi regime to comply with them, 18 February 1998. Motion carried, 71-49.</p> <p>Timor-Leste</p> <p><i>Parliament.</i> Urgent debate, requested by the opposition, on the situation in East Timor, 7 September 1999.</p> <p>Announcement by the Prime Minister and the Minister of Defence of a contribution of an initial force of around 420 personnel to the international peacekeeping force to be assembled in East Timor, and the deployment of an additional 300-400 personnel if necessary, 16 September 1999.</p> <p><i>Parliament recalled.</i> Adjournment debate, on a government motion, on the commitment of up to</p>
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			<p>1,000 armed forces personnel to East Timor, 17 September 1999.</p> <p>International Coalition against Terrorism</p> <p><i>Announcement by the Prime Minister that New Zealand was responding to the United States and the UN Security Council's calls for effective action to combat terrorism, and that New Zealand was prepared to make a military contribution, 21 September 2001.</i></p> <p><u>Parliament.</u> <i>Special debate on a government motion for the House to declare its support for the offer of Special Air Services troops and other assistance as part of the response of the United States and the international coalition to the terrorist attacks that were carried out on 11 September 2001 in New York, Washington and Pennsylvania, 3 October 2001. Motion amended to include, as well, total support for the approach taken by the United States and a declaration of support for UN Security Council resolutions 1368 and 1373, and carried, 112-7. The Prime Minister said in her speech that the Minister of Foreign Affairs and Trade had conveyed New Zealand's already public offer of special forces in person the previous week.</i></p> <p>Iraq and Afghanistan</p> <p><u>Parliament.</u> <i>Debate on Iraq, as decided by the Business Committee, 18 March 2003. At the conclusion of the debate an opposition motion for the House to recognise the threat that Iraq's non-compliance with UN Security Council resolutions and proliferation of weapons of mass destruction posed to international peace was defeated, 35-84.</i></p> <p><i>Announcement by the Prime Minister of the provision of a Defence Force engineering group of up to 60 personnel to work on reconstruction tasks in southern Iraq and, as part of New Zealand's continuing participation in Operation Enduring Freedom, of the intention to contribute to a Provincial Reconstruction Team in Afghanistan, 9 June 2003.</i></p> <p><u>Parliament.</u> <i>Prime Minister's statement on New Zealand's assistance to Iraq and Afghanistan, followed by a brief debate, 10 June 2003.</i></p> <p>Solomon Islands</p> <p><u>Parliament.</u> <i>Urgent debate, requested by the opposition, on a decision in principle to send police officers and military forces to the Solomon Islands as part of the South Pacific's intervention in that country, 1 July 2003. The Minister of Foreign Affairs and Trade said in his speech that Cabinet would shortly be making a decision on the deployment.</i></p> <p><i>Government announcement of the deployment of 35 police officers for two years, supported by</i></p>
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				<p>105 Defence Force personnel, to assist the Solomon Islands government, 15 July 2003. https://www.parliament.nz/en/pb/research-papers/document/00PLLawRP2014051/troop-deployments-abroad - footnote_19</p>
United Kingdom	No	No		<p>The UK House of Commons Library describes the Royal Prerogative:</p> <p><i>The decision to deploy the Armed Forces in situations of armed conflict is currently a prerogative power. In the event of a declaration of war or the commitment of British forces to military action, constitutional convention requires that authorisation is given by the Prime Minister, on behalf of the Crown. Decisions on military action are taken within the Cabinet with advice from, among others, the National Security Council and the Chief of the Defence Staff.</i></p> <p><i>In constitutional terms Parliament has no legally established role and the Government is under no legal obligation with respect to its conduct, including keeping Parliament informed. In practice however, successive Governments have consulted and informed the House of Commons about the decision to use force and the progress of military campaigns, although there has been little consistency in how that has been achieved.</i></p> <p><i>Nor is the Government under any constitutional obligation to abide by the result of any Parliamentary vote on military action, although in reality it would be politically difficult to engage in military action without Parliamentary support.</i>²⁷</p> <p>On 18 March 2003 the Blair Government asked the parliament to vote on a motion to deploy UK forces to Iraq. The motion was agreed on division 412 to 149.²⁸</p> <p>In July 2007 the Brown Government proposed limiting the executive's powers and moving the Royal Prerogative powers to parliament on a number of matters, including the deployment of military forces abroad.²⁹</p> <p>Subsequently, the Brown Government published a consultation paper in October 2007 that included options for parliamentary involvement in deploying</p>

²⁷ Claire Mills, *Parliamentary Approval for Military Action*, House of Commons Library, Briefing Paper, 8 May 2018, 4.

²⁸ Mills, *Parliamentary Approval*, 14.

²⁹ Gordon Brown (UK Prime Minister), *The Governance of Britain*, Green Paper, July 2007, 15–19.

				<p>armed forces abroad.³⁰ The outcome of this consultation was included in the 2008 White Paper on the Governance of Britain, which proposed a formal role for the parliament in deploying armed forces through the draft Constitutional Renewal Bill.³¹ The 2008 white paper stated:</p> <p><i>On War Powers, the Government will propose a House of Commons resolution which sets out in detail the processes Parliament should follow in order to approve any commitment of Armed Forces into armed conflict. The resolution will define a clear role for Parliament in this most important of decisions, while ensuring our national security is not compromised.</i>³²</p> <p>In 2008 the Joint Committee (House of Commons and House of Lords) examined the Draft Constitutional Renewal Bill in the context of the 2008 white paper.³³ The Public Administration Select Committee also inquired into the proposals. Both committees broadly supported a greater role for the parliament in war powers decisions, but the proposals were not adopted prior to the change of government in 2010.³⁴</p> <p>In 2011, statements in parliament suggested the emergence of a convention to consult parliament when deploying armed forces abroad.³⁵ The existence of such a convention was tested during the Libya conflict in 2011. The deployment of UK military forces to Libya was announced on 18 March 2018 and a retrospective motion debated in parliament on 21 March, which was affirmed 557 to 13.³⁶</p> <p>The convention was not employed for the UK military deployment to Mali in 2013.³⁷ However, in August 2013 the parliament was recalled to debate, and vote on, a motion about the UK's response to the Assad regime's alleged use of chemical</p>
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³⁰ UK Ministry of Justice, *The Governance of Britain: War Powers and Treaties: Limiting Executive Powers*, 25 October 2007.

³¹ UK Ministry of Justice, *The Governance of Britain: Constitutional Renewal*, White Paper, Part 1, March 2008.

³² UK Ministry of Justice, *The Governance of Britain: Constitutional Renewal*, 8. Note: pages 47–56 discuss war powers consultations and debates, and include a draft war powers resolution to parliament.

³³ Mills, *Parliamentary Approval*, 21.

³⁴ Mills, 22.

³⁵ Mills, 24.

³⁶ Mills, 25–26.

³⁷ Mills, 27–28.

				<p>weapons against civilians in Syria. The motion was defeated by a vote of 272 to 285.³⁸</p> <p>Parliament convened in September 2014 to debate a motion on the UK's potential military air strikes against Daesh (ISIS) targets in Iraq:</p> <p><i>The motion explicitly ruled out deploying UK troops in ground combat operations and did not endorse UK air strikes in Syria, which the Government indicated would be subject to a separate vote in Parliament, should it become necessary.</i>³⁹</p> <p>The motion was affirmed by a vote of 524 to 43.⁴⁰ As the Daesh threat expanded to Tunisia and Paris in 2015 the parliament voted in the affirmative on a government motion in December 2015 to extend airstrikes against Daesh targets in Syria (while explicitly ruling out the use of land forces in Syria).⁴¹</p> <p>In 2018 the May Government did not consult parliament about military air strikes conducted against targets in Syria and was criticised for not applying the convention in this instance.⁴² Prime Minister Theresa May clarified the government's position:</p> <p><i>Let me begin by being absolutely clear about the Government's policy in relation to the convention that has developed, because there is a fundamental difference between the policy and the perception of it that is conveyed in today's motion. The Cabinet manual states:</i></p> <p><i>"In 2011, the Government acknowledged that a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter and said that it proposed to observe that convention except where there was an emergency and such action would not be appropriate."</i></p> <p><i>More detail on the Government's position was then set out in 2016 in a written ministerial statement from the then Defence Secretary, my right hon. Friend the Member for Sevenoaks (Sir Michael Fallon), who wrote:</i></p> <p><i>"The exception to the convention is important to ensure that this and future Governments can</i></p>
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³⁸ Mills, 29.

³⁹ Mills, 32.

⁴⁰ Mills, 32.

⁴¹ Mills, 34.

⁴² Mills, 38–39.

				<p>use their judgment about how best to protect the security and interests of the UK. In observing the convention, we must ensure that the ability of our armed forces to act quickly and decisively, and to maintain the security of their operations, is not compromised...If we were to attempt to clarify more precisely circumstances in which we would consult Parliament before taking military action, we would constrain the operational flexibility of the armed forces and prejudice the capability, effectiveness or security of those forces”—[Official Report, 18 April 2016; Vol. 608, c. 10WS.]⁴³</p> <p>May went on to say that she was ‘very clear that the Government follow that convention, but the assumption that the convention means that no decision can be taken without Parliamentary approval is incorrect—it is the wrong interpretation of the convention’.⁴⁴</p>
United States	Yes	Yes	<p>Declaring war in War Powers Resolution 1973 (WPR) (also known as the War Powers Act) permitted under Article 1, Section 8 of the US Constitution.</p> <p>Section 2 of the WPR states:</p> <p><i>(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.</i></p> <p><i>(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.</i></p>	<p>The Congressional Research Service (CRS) describes the basis of US war powers requirements:</p> <p><i>By the Framers’ apparent design, to keep the nation’s “purse” and the “sword” in separate hands and in other ways hinder the nation’s embroilment in unnecessary wars, the Constitution divides war powers between Congress and the President. Congress is empowered to declare war, provide for and regulate the Armed Forces, and issue letters of marque and reprisal, as well as to call forth the militia to suppress an insurrection, repel an invasion, or “execute the Laws of the Union.” The President, as the Commander in Chief, has the responsibility to direct the Armed Forces as they conduct hostilities, put down insurrections, or execute the law when constitutionally authorized to do so.</i>⁴⁵</p> <p>The CRS publication, Instances of use of United States armed forces abroad, 1798–2022, lists hundreds of occasions when US forces were deployed overseas, and 11 declarations of war.</p> <p>The CRS publication, War powers resolution: presidential compliance (last updated in 2012), details the presidential actions at the time military forces were deployed. For example,</p>

⁴³ UK House of Commons, ‘Military Action Overseas: Parliamentary Approval’, *Debates*, 17 April 2018.

⁴⁴ UK House of Commons, ‘Military Action Overseas’.

⁴⁵ Jennifer K. Elsea, *Defense Primer: Legal Authorities for the Use of Military Forces*, Congressional Research Service, 26 January 2022.

			<p>Deploying forces in War Powers Resolution 1973</p> <p>Section 3 of the WPR states:</p> <p><i>The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.</i></p> <p>Section 4 of the WPR requires the president to report to Congress, in the absence of a declaration of war, within 48 hours on the deployment of military forces.</p>	<p>Yugoslavia/Bosnia, Kosovo, Iraq, Haiti, Somalia and Libya. The latter, in particular, did not receive congressional authorisation. The publication notes:</p> <p><i>Debate continues on whether using the War Powers Resolution is effective as a means of assuring congressional participation in decisions that might get the United States involved in a significant military conflict. Proposals have been made to modify or repeal the resolution. None have been enacted to date.</i>⁴⁶</p> <p>In 2018 the Senate passed a resolution (S.J.Res. 54) directing the US president to withdraw military forces from the conflict in Yemen.⁴⁷ A similar resolution was introduced into the House in 2019 (H.J.Res. 37), which was vetoed by the Trump administration.</p> <p>The Biden administration has deployed a large number of military personnel to NATO countries in response to the Ukraine situation, but has not made the required notifications under Section 4 of the WPR.⁴⁸</p>
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Table 2: Parliamentary involvement in declaring war and deploying military forces to overseas conflicts

Although the Australian Government is not legally required to consult parliament when declaring war or deploying military forces overseas, on most occasions the prime minister or defence minister has informed parliament of Cabinet’s decision through a ministerial statement and/or tabled paper(s). In most instances, a debate followed, and in some cases, a vote on the motion.

The following table lists the major conflicts in which Australia was involved and summarises parliamentary involvement during the first parliamentary sitting weeks after the decision to deploy military forces to conflicts overseas. Non-parliamentary events are also recorded to show the parallel activities of the Executive branch of government.

The table shows that the Executive’s decision to declare war and deploy military forces overseas has always been taken before parliament has debated the issue. Parliament is, in effect, asked to endorse a decision already taken. It also shows that, though the opposition of the day has usually supported the government’s action, there have been occasions when

⁴⁶ *War Powers Resolution: Presidential Compliance*, Congressional Research Service, 25 September 2012, i.

⁴⁷ Elphick, *United States Senate shows President a Red Light*.

⁴⁸ Matthew C. Weed, *Ukraine: New U.S. Deployments to Europe Might Raise War Powers Resolution Questions*, Congressional Research Service, 15 March 2022, 1–2.

the opposition has opposed Australia’s involvement in a conflict (for example Malaya, Vietnam, and Iraq), or called for parliament to be consulted on the conduct of war (for example, the Second World War).

The motion most frequently moved in debate (on a ministerial statement or paper) is ‘that the paper be printed’. This technique was described in 1955 by the Speaker, Archie Cameron, as ‘only a formal method of securing debate’.

Motions have usually been passed without divisions being required, although there have been exceptions. In 2003, when the Senate debated the government’s motion on the Iraq war, opposition and minor parties succeeded in amending the motion to oppose the war.

The involvement of parliament may not be an essential step in the process of declaring war and deploying military forces overseas but ‘the calling of Parliament [is] an essential, and, indeed, natural step to take in waging war as a democracy’.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
First World War 1914 to 1918	<p>There was no ministerial statement to parliament.</p> <p>The Governor-General, Sir Ronald Ferguson, opened the sixth Parliament of the Commonwealth of Australia on 8 October 1914. In his speech he said:</p> <p><i>You have been called together at the earliest moment after the return of the writs to deal with matters of great national importance, many of them arising out of the calamitous war in which the Empire has been compelled to engage.</i></p> <p>...</p> <p><i>It has been necessary to anticipate Parliamentary approval of expenditure urgently required for war purposes. A Bill covering all such unauthorized expenditure will be submitted for your consideration at the earliest possible moment.</i>⁴⁹</p>	<p>The motion moved was ‘That the Address be agreed to by the House’.⁵⁰</p> <p>A government senator speaking in the Address-in-Reply debate stated that ‘Our duty to the British Empire must never be questioned – must never be forsaken in any degree’.⁵¹</p> <p>During the debate, the Leader of the Opposition, Joseph Cook, said:</p> <p><i>I wish to say to the Government that we shall be behind them most cordially with our best support – and not critical support – in prosecuting this war right to the end, and in financing it to the full in every legitimate and reasonable way.</i>⁵²</p>	<p>Prime Minister Joseph Cook’s Liberal Government was in power prior to the declaration of war by Britain.⁵⁴</p> <p>Federal Parliament was prorogued on 27 June and dissolved on 30 July 1914.⁵⁵</p> <p>On 31 July 1914 the Opposition Leader, Andrew Fisher, declared at an election event:</p> <p><i>Should the worst happen, after everything has been done that honour will permit, Australians will stand beside the mother country to help and defend her to our last man and our last shilling.</i>⁵⁶</p> <p>Speaking on the same night at a separate event Prime Minister Joseph Cook said:</p>

⁴⁹ Ronald Ferguson, Governor-General’s Speech, Senate, *Debates*, 8 October 1914, 1.

⁵⁰ Edward Jolley, Governor-General’s Speech: Address-in-Reply, House of Representatives, *Debates*, 8 October 1914, 34.

⁵¹ David Watson, Governor-General’s Speech: Address-in-Reply, Senate, *Debates*, 8 October 1914, 22.

⁵² Joseph Cook, Governor-General’s Speech: Address-in-Reply, House of Representatives, *Debates*, 14 October 1914, 174.

⁵⁴ Parliamentary Library, *The 46th Parliament: Parliamentary Handbook of the Commonwealth of Australia 2020*, 46th Parliament (Canberra: Parliamentary Library, 2020), 580.

⁵⁵ Rob Lundie and Joy McCann, *Commonwealth Parliament from 1901 to World War I*, Research paper series, 2014–15, (Canberra: Parliamentary Library, 4 May 2015), 16.

⁵⁶ Jonathan Curtis, *To the Last Man – Australia’s Entry to War in 1914*, Research paper series, 2014–2015, (Canberra: Parliamentary Library, 31 July 2014), 2.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
		The question was resolved in the affirmative, without division, in the House of Representatives and the Senate. ⁵³	<p><i>If there is to be a war, you and I shall be in it. We must be in it. If the old country is at war, so are we.</i>⁵⁷</p> <p>An emergency Cabinet was held on 3 August 1914 to discuss the imminent war.⁵⁸</p> <p>On 4 August 1914 Britain issued the first of 4 declarations of war; the first was against Germany,⁵⁹ the second against Austria-Hungary on 12 August 1914,⁶⁰ the third against Turkey on 5 November 1914,⁶¹ and Bulgaria was the fourth on 15 October 1915.⁶²</p> <p>A double dissolution election was held on 5 September 1914.⁶³ Andrew Fisher's ALP (Australian Labor Party) Government was elected.⁶⁴</p> <p>The new parliament did not meet until 8 October 1914.⁶⁵</p>
Second World War 1939 to 1945	On 6 September 1939 Prime Minister Robert Menzies tabled a white paper and delivered a ministerial statement on the war in Europe. The white paper contained texts of documents exchanged between the British and German governments. ⁶⁶ The motion 'that	In his ministerial statement the prime minister said: <i>However long this conflict may last, I do not seek a muzzled Opposition. Our institutions of parliament, and of liberal thought, free speech, and free criticism, must go on.</i> ⁶⁸	Coalition Government in power under Prime Minister Robert Menzies. ⁷³ The announcement by British Prime Minister, Neville Chamberlain, that Britain was at war with Germany was

⁵³ House of Representatives, *Debates*, 15 October 1914, 236, and Senate, *Debates*, 15 October 1914, 216.

⁵⁷ Charles Edwin Woodrow Bean, *First World War Official Histories: Volume I: The Story of Anzac from the Outbreak of War to the End of the First Phase of the Gallipoli Campaign*, (Canberra: Australian War Memorial, 1941), 16.

⁵⁸ Lundie and McCann, *Commonwealth Parliament from 1901 to World War I*, 16.

⁵⁹ Foreign Office, 'A State of War', Supplement to the London Gazette no. 28861, authorised on 4 August 1914, published on 5 August 1914.

⁶⁰ Foreign Office, 'Notice', Supplement to the London Gazette no. 28868, authorised on 12 August 1914, published on 13 August 1914.

⁶¹ Foreign Office, 'Notice', Second Supplement to the London Gazette no. 28963, authorised and published on 5 November 1914.

⁶² Foreign Office, 'Notification', Supplement to the London Gazette no.29329, authorised on 15 October 1915, published on 16 October 1915.

⁶³ Parliamentary Library, *The 46th Parliament: Parliamentary Handbook*, 283.

⁶⁴ Parliamentary Library, 580.

⁶⁵ Parliamentary Library, 460.

⁶⁶ Robert Menzies, White Paper, House of Representatives, *Debates*, 6 September 1939, 80–96.

⁶⁸ Robert Menzies, War in Europe, House of Representatives, *Debates*, 6 September 1939, 36.

⁷³ Parliamentary Library, *The 46th Parliament: Parliamentary Handbook*, 580.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	the paper be printed' was debated in both Houses. ⁶⁷	<p>During the debate, the Leader of the Opposition, John Curtin, expressed surprise that the prime minister had not:</p> <p><i>... seized this first opportunity of meeting the Parliament to outline, at least broadly, the intentions of the Government in respect of the defence of this Commonwealth, and of the general principles upon which it proposed to be influenced in framing its programme.</i>⁶⁹</p> <p>Curtin also read a statement endorsed by the Australian Labor Party caucus saying:</p> <p><i>...The democratic rights of the people must be safeguarded to the maximum ... To ensure that this be done, it is essential that the Parliament of the Commonwealth should remain in session.</i>⁷⁰</p> <p>Debate on the ministerial statement was adjourned in the House of Representatives.⁷¹</p> <p>In the Senate, the motion was resolved in the affirmative. There was no division.⁷²</p>	<p>received on short-wave wireless in Australia at 8 pm on 3 September 1939.⁷⁴</p> <p>Once the news from Britain had been authenticated (via official telegram), the Executive Council approved the Commonwealth's proclamation to declare war against Germany.⁷⁵ The Governor-General issued the proclamation in the Commonwealth Gazette.⁷⁶</p> <p>At 9:15 pm on the same evening, Prime Minister Robert Menzies made a radio address to the nation. Menzies said:</p> <p><i>It is my melancholy duty to inform you officially, that in consequence of a persistence by Germany in her invasion of Poland, Great Britain has declared war upon her and that, as a result, Australia is also at war.</i>⁷⁷</p> <p>The Second World War official histories notes that Menzies 'made no suggestion that Australia could have taken any other course than to stand beside Great Britain'.⁷⁸</p> <p>The Official histories record other events of that evening:</p> <p><i>At 10.14 [pm] a proclamation was issued in Canberra that Australia was at war, and at 10.25 [pm] Mr Shedden [Secretary, Department of Defence] signed a memorandum to the Secretary of</i></p>

⁶⁷ House of Representatives, *Debates*, 6 September 1939, 36; Senate, *Debates*, 6 September 1939, 3.

⁶⁹ John Curtin, War in Europe, House of Representatives, *Debates*, 6 September 1939, 36.

⁷⁰ Gavin Long, 'A Second A.I.F.', *Australia in the War of 1939–1945*, series 1, vol. 1, (Canberra: Australian War Memorial, 1953), 37.

⁷¹ House of Representatives, *Debates*, 6 September 1939, 79.

⁷² Senate, *Debates*, 7 September 1939, 118.

⁷⁴ Paul Hasluck, 'Australia Enters the War, September 1939–April 1940', *Australia in the War of 1939–1945*, series 4, vol 1, (Canberra: Australian War Memorial, 1952), 152.

⁷⁵ Hasluck, 'Australia Enters the War'.

⁷⁶ *Commonwealth Gazette*, 63, 3 September 1939.

⁷⁷ Robert Menzies, 'Prime Minister Robert G. Menzies: Wartime Broadcast', 3 September 1939.

⁷⁸ Long, 'A Second A.I.F.', 33.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
			<p><i>the Military Board, as to other Federal departments stating that "the action specified in the Commonwealth War Book for the War Stage (including that for the Precautionary Stage not yet taken) should be initiated forthwith;" at 11.47 [pm] a message that war had begun was sent to all military districts.⁷⁹</i></p> <p>The Official histories suggest that, although the Opposition accepted the existence of a state of war, 'as a fact with which, in the circumstances, Parliament had been unable to deal', it was developing the view that:</p> <p><i>... the nature and extent of Australian participation in the war should be determined or approved from time to time by the Commonwealth Parliament. The party's request that Parliament should remain in session was in keeping with such a view.⁸⁰</i></p>
	<p>On 7 September 1939, the Minister for Defence, Geoffrey Street, tabled a ministerial statement on defence preparations.⁸¹ No motion was moved.</p>	<p>The statement was not debated. The Leader of the Opposition, John Curtin, replied:</p> <p><i>... regularly the Minister should make a statement to the House indicating the progressive steps that have been taken in relation to this most important and vital matter ... it might be considered very serviceable if a motion could be moved on the occasion of the delivery of such a statement so that some opportunity could be provided ... for members of the Parliament either to criticize it, ... or to make suggestions that may be of use to the Government. In that way it could be made clear that the statement is made not merely as a recital of what has been done but as an intimation for the Parliament to consider and</i></p>	

⁷⁹ Long, 33–34.

⁸⁰ Hasluck, 'Australia Enters the War', 159–160.

⁸¹ Geoffrey Street, Ministerial Statements: Defence Preparations, House of Representatives, *Debates*, 7 September 1939, 122.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
		<i>even to express its mind thereon ... in that way this Parliament may not only act, ... as the masters of the Government, but also we shall give every demonstration that in a democracy defence of the country is not a one-man job</i> . ⁸²	
	<p>On 19 September 1939, Prime Minister Robert Menzies delivered a ministerial statement on the international situation.⁸³ No motion was moved.</p> <p>On 20 September 1939, Menzies informed parliament about the government's decision to offer the British Government an air expeditionary force of 6 squadrons.⁸⁴</p>	There was no debate on either statement and no reply from the Opposition.	<p>All decisions about Australian expeditionary forces at the outset of the war were made by the Executive under Menzies.⁸⁵</p> <p>On 28 October 1940, the Advisory War Council was established under national security regulations to advise government on the prosecution of the war. It was chaired by Menzies and comprised representatives from the government and opposition, including Curtin.⁸⁶ The agreement between the government and the ALP stated the council would allow a stronger 'war effort and give substantial effect to the requirements for internal security and post-war preparation'. The council was 'empowered to investigate, advise and assist the Government in its war efforts'. The ALP also agreed to place its members 'at the disposal of the Government to assist Ministers occupied on war and defence efforts', but would not take political advantage.⁸⁷</p>

⁸² John Curtin, Ministerial Statements: Defence Preparations, 125–126.

⁸³ Robert Menzies, Ministerial Statements: International Situation: War in Europe, House of Representatives, *Debates*, 19 September 1939, 681–683.

⁸⁴ Robert Menzies, Question: Air Expeditionary Force, House of Representatives, *Debates*, 20 September 1939, 840.

⁸⁵ Hasluck, 'Australia Enters the War', 165–166.

⁸⁶ Troy Bramston and Ted Ling, *Robert Menzies: Guide to Archives of Australia's Prime Ministers*, (Canberra: National Archives of Australia, 2021).

⁸⁷ Paul Hasluck, 'Clearing a Way to Total War, October 1940–January 1941', *Australia in the War of 1939–1945*, series 4, vol. 1, (Canberra: Australian War Memorial, 1952), 270.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p>On 16 December 1941, Prime Minister John Curtin delivered a statement on the international situation and tabled documents relating to US-Japan conversations and Australia's declaration on 8 December of the existence of a state of war with Finland, Hungary, Romania, and Japan. Curtin moved that the House approve the action of the government in issuing 'proclamations declaring the existence of a state of war with Japan, Finland, Hungary and Rumania'.⁸⁸</p>	<p>In his speech on 16 December 1941, Curtin noted that when a proclamation is issued calling up the military under the Defence Act, if parliament is not sitting, 'it shall be summoned to meet within ten days'. He stated:</p> <p><i>...Parliament is now asked to endorse the advice which led to the issue of the proclamation by the Governor-General of Australia on behalf of His Majesty the King.</i>⁸⁹</p> <p>The Official histories noted:</p> <p><i>It would appear from Curtin's words that the necessity to call Parliament together was presented by the Defence Act, but advantage was taken of the occasion to obtain formal parliamentary approval of the declaration of war. Although he [Curtin] created a precedent by seeking the passage of a resolution approving the Government's action in respect to the declaration of war, he did not appear to have advanced anywhere the thesis that it was constitutionally necessary to do so.</i>⁹⁰</p> <p>Leader of the Opposition, Arthur Fadden responded:</p> <p><i>The Opposition not only associates itself with the grave and important resolution before the House, but also wholeheartedly allies itself with the Government in the steps it has taken.</i>⁹¹</p> <p>The motion was passed by the House of Representatives and the Senate without division.⁹²</p>	<p>ALP Government in power under Prime Minister John Curtin.⁹³</p> <p>The War Cabinet met on 8 December 1941. That evening Prime Minister Curtin announced in a national broadcast that 'we are at war with Japan,' although the Official histories report that 'the formal decision to declare war was not made until the 9th [December 1941]'.⁹⁴</p> <p>On 9 December 1941, the government proclaimed, 'the existence of a state of war with Japan as from 5 p.m. on 8th December'. The previous day the government had 'declared the existence of a state of war with Finland, Hungary and Rumania respectively as from 5 p.m., 8th December'.⁹⁵</p>

⁸⁸ John Curtin, International Affairs: War with Japan, Finland, Hungary and Rumania, House of Representatives, *Debates*, 16 December 1941, 1068–1081.

⁸⁹ Curtin, International Affairs: War with Japan, Finland, Hungary and Rumania, 1069.

⁹⁰ Hasluck, 'War in the Far East', 10.

⁹¹ Arthur Fadden, International Affairs, House of Representatives, *Debates*, 16 December 1941, 1082.

⁹² House of Representatives, *Debates*, 16 December 1941, 1133; Senate, *Debates*, 17 December 1941, 1163.

⁹³ Parliamentary Library, *The 46th Parliament: Parliamentary Handbook*, 580.

⁹⁴ Hasluck, 'War in the Far East', 5.

⁹⁵ Hasluck, 5–6.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p>Parliament met on 20 February 1942. Prime Minister John Curtin moved:</p> <p><i>... a joint meeting of members of the Senate and of the House of Representatives be convened for 4pm this day, for the purpose of discussing in secret the present war and hearing confidential reports in relation thereto.</i>⁹⁶</p>	<p>Leader of the Opposition, Arthur Fadden responded that 'The Opposition wholeheartedly supports the motion'.⁹⁷</p> <p>The motion was passed by the Senate and the House of Representatives without division.⁹⁸</p>	<p>On 6 January 1942, Australia declared war on Bulgaria.⁹⁹</p> <p>On 2 March 1942, Australia declared war on Thailand.¹⁰⁰</p> <p>The Official histories noted:</p> <p><i>There was no reference to Parliament of any question related to the war on Bulgaria, but the decision was made in consultation with and with the concurrence of the Advisory War Council.</i></p> <p><i>Subsequently Australia declared war with Thailand by a similar procedure...</i>¹⁰¹</p>
	<p>On 25 February 1942, the Minister for External Affairs, Herbert V. Evatt, delivered a ministerial statement reviewing the war situation. He moved that the paper be printed.¹⁰²</p>	<p>Leader of the Opposition, Arthur Fadden, said:</p> <p><i>I am sure that the House joins with me in expressing appreciation of the trouble to which the Minister for External Affairs ... has gone in the compilation of the information he has just conveyed, and of the opportunity that is thereby afforded to us to debate and review the international position in the light of what we have heard.</i>¹⁰³</p> <p>The motion was passed by the House of Representatives without division. In the Senate, the statement was read and discharged.¹⁰⁴</p>	
Malayan Emergency 1950 to 1960	Prime Minister Robert Menzies delivered ministerial statements on	In his ministerial statement on 30 May 1950, Prime Minister	Coalition Government in power under Prime Minister Robert Menzies. ¹⁰⁸

⁹⁶ John Curtin, War Situation: Secret Meeting of Senators and Members, House of Representatives, *Debates*, 20 February 1942, 6.

⁹⁷ Arthur Fadden, War Situation: Secret Meeting of Senators and Members, House of Representatives, *Debates*, 20 February 1942, 7.

⁹⁸ House of Representatives, *Debates*, 20 February 1942, 8; Senate, *Debates*, 20 February 1942, 4.

⁹⁹ Hasluck, 'War in the Far East', 9.

¹⁰⁰ Hasluck, 9.

¹⁰¹ Hasluck, 9

¹⁰² Herbert Evatt, International Affairs: Review of War Situation, House of Representatives, *Debates*, 25 February 1942, 48–58.

¹⁰³ Arthur Fadden, International Affairs: Review of War Situation, House of Representatives, *Debates*, 25 February 1942, 59.

¹⁰⁴ House of Representatives, *Debates*, 26 March 1942, 486; Senate, *Debates*, 29 April 1942, 569.

¹⁰⁸ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	the situation in Malaya on 30 May 1950 and 31 May 1950. ¹⁰⁵	<p>Menzies said the government was:</p> <p><i>... giving careful consideration to the question of ways and means of assisting the United Kingdom Government in its Malayan problem.</i>¹⁰⁶</p> <p>In his ministerial statement on 31 May 1950, the prime minister informed the House that the government had considered the request for assistance from the British Government and decided to provide:</p> <p><i>... a transport squadron of Dakota aircraft, for supply dropping and general transport services. The Royal Australian Air Force crews and ground staff accompanying the squadron will total approximately 168. The Government has also agreed to provide assistance in servicing certain Royal Air Force aircraft in Australia.</i>¹⁰⁷</p>	<p>The Official histories notes:</p> <p><i>The first direct approach for Australian assistance in combating the communist insurgency in Malaya was made in April 1950, when the British Government asked if Australia could provide reinforcements for British air squadrons operating in Malaya.</i>¹⁰⁹</p> <p>Australian air units arrived in the Malayan theatre in June 1950.¹¹⁰</p>
	<p>The Prime Minister, Robert Menzies, delivered a ministerial statement on 20 April 1955 and moved that the paper be printed.¹¹¹ The statement included the following message from the acting chairperson of the Manila Treaty Council Representatives Meeting on 7 April 1955:</p> <p><i>...the Council Representatives of the South-East Asian Treaty Organization have taken note of the statement made by Your Excellency on the 1st instant</i></p>	<p>In his ministerial statement, Prime Minister Robert Menzies stated:</p> <p><i>I have already announced publicly that the Government proposes to contribute a comparatively small force to a strategic reserve in Malaya. I will, a little later in this speech, indicate the acceptance of more extensive military responsibilities in the event of war.</i>¹¹⁴</p>	<p>In 1955 the British Commonwealth Far East Strategic Reserve (FESR) was formed with Air Force, Army and Navy elements from Australia, Britain, and New Zealand. The key role of the FESR was to protect countries like Malaya and Singapore against communist forces.¹²⁰</p> <p>The ALP conference held in March 1955 did not support</p>

¹⁰⁵ Robert Menzies, Malaya, House of Representatives, *Debates*, 30 May 1950, 3349–3351; Robert Menzies, Malaya, House of Representatives, *Debates*, 31 May 1950, 3464.

¹⁰⁶ Menzies, Malaya, 30 May 1950, 3351.

¹⁰⁷ Menzies, Malaya, 31 May 1950, 3464.

¹⁰⁹ Peter Dennis and Jeffrey Grey, *Emergency and Confrontation: Australian Military Operations in Malaya and Borneo 1950–1966*, (North Sydney: Allen & Unwin in association with the Australian War Memorial, 1996), 22.

¹¹⁰ Dennis and Grey, *Emergency and Confrontation*, 25.

¹¹¹ Robert Menzies, Ministerial Statement: Foreign Affairs and Defence, House of Representatives, *Debates*, 20 April 1955, 44–54.

¹¹⁴ Menzies, 49.

¹²⁰ Karl James, 'Conflicts Since 1945: Australia's Other Asian Wars', *Wartime* 41, (January 2008): 12–15; Australian War Memorial website, 'Malayan Emergency'.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p><i>and welcome the decision of the Australian Government to seek parliamentary approval for participation by Australian forces in a strategic reserve to be established in Malaya as an important part of the Treaty Area.</i>¹¹²</p> <p>The strategic reserve to which Australia, Britain and New Zealand contributed to was known as the British Commonwealth Far East Strategic Reserve (FESR).¹¹³</p>	<p>The Leader of the Opposition, Herbert V. Evatt, responded:</p> <p><i>Australia's true role in South-East Asia will not be helped but obstructed by the present proposal to send our armed forces to Malaya...</i>¹¹⁵</p> <p>The Opposition moved an amendment that the following words be substituted after 'that': 'this House rejects the Government's proposals to despatch Australian armed forces to Malaya as set out in the paper read by the Prime Minister'.¹¹⁶ The amendment was defeated.¹¹⁷</p> <p>In the House of Representatives, the main question 'that the Paper be printed' was negatived. There was no division.¹¹⁸</p> <p>In the Senate, the motion was resolved in the affirmative. There was no division.¹¹⁹</p>	<p>sending military forces to Malaya. The motion stated:</p> <p>7. <i>The Australian Labor Party is satisfied that the use of Australian Armed forces in Malaya will gravely injure Australian relations with our Asian neighbours while in no way contributing to the prevention of aggression. The "guerrilla" operations in Malaya have lasted five years. They will eventually be ended by some form of agreement or amnesty. Action towards this end should begin now.</i></p> <p>8. <i>Labor policy is to oppose the use of Armed Forces in Malaya.</i>¹²¹</p> <p>The prime minister announced the commitment of additional forces after a Cabinet meeting on 15 June 1955. These military forces would be available for use in anti-terrorist operations. The Official histories note:</p> <p><i>... the press generally welcomed this decision regarding it as logical, indeed inevitable, but criticising the fact that it was announced when Parliament was in recess.</i>¹²²</p>
Korean War 1950 to 1953	Parliament was recalled on 6 July 1950. The motion moved by Prime Minister Robert Menzies stated:	On 6 July 1950, Prime Minister Robert Menzies delivered a statement on the situation in Korea and outlined the events	Coalition Government in power under Prime Minister Robert Menzies. ¹²⁸

¹¹² Menzies, Ministerial Statement: Foreign Affairs and Defence, 50.

¹¹³ Menzies, Ministerial Statement: Foreign Affairs and Defence, 51; David Watt, *The 70th Anniversary of the Malayan Emergency: a Quick Guide*, (Canberra: Parliamentary Library, 28 May 2020), 3.

¹¹⁵ Herbert V. Evatt, Ministerial Statement: Foreign Affairs and Defence, House of Representatives, *Debates*, 27 April 1955, 200.

¹¹⁶ Leslie Haylen, Foreign Affairs And Defence, House of Representatives, *Debates*, 4 May 1955, 403.

¹¹⁷ House of Representatives, *Debates*, 5 May 1955, 521–522.

¹¹⁸ House of Representatives, *Debates*, 5 May 1955, 523.

¹¹⁹ Senate, *Debates*, 24 May 1955, 398.

¹²¹ Australian Labor Party, *Official Report of Proceedings of the 21st Commonwealth Conference*, Hobart, 15–18 March 1955, 46.

¹²² Peter Edwards and Gregory Pemberton, *Crises and Commitments: the Politics and Diplomacy of Australia's Involvement in Southeast Asian Conflicts 1948–1965*, (North Sydney: Allen & Unwin in association with the Australian War Memorial, 1992), 175–176.

¹²⁸ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p>... this House, having before it the Charter of the United Nations and the recent resolutions of the Security Council in relation to Korea, approves of the action taken by the Government in placing at the disposal of the United Nations the forces indicated in the statement of the Prime Minister.¹²³</p>	<p>leading to Australia's involvement in the war.¹²⁴</p> <p>The Leader of the Opposition, Ben Chifley, indicated the Opposition would support the motion.¹²⁵</p> <p>In the Senate debate, William Ashley, Leader of the Opposition in the Senate, said: <i>Whilst it is not always opportune to call the Parliament together, and it is realized that certain matters must be dealt with urgently, I stress that any future Australian commitments should have the approval of Parliament.</i>¹²⁶</p> <p>The motion, debated in the Senate and the House of Representatives, was resolved in the affirmative. There was no division in either House.¹²⁷</p>	<p>The war commenced on 25 June 1950.¹²⁹</p> <p>In his statement to parliament on 6 July, the prime minister outlined the steps that led to Australia's involvement in the conflict:</p> <p>United Nations' Security Council resolutions were approved on 25 and 27 June 1950. The latter recommended that:</p> <p><i>'Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area'.</i>¹³⁰</p> <p>On 29 June Australia advised relevant authorities that it had decided to support the Security Council resolution by:</p> <p><i>... placing an Australian naval force in far eastern waters ... at the disposal of the United States authorities on behalf of the Security Council for the purpose of furnishing assistance to the Republic of Korea.</i>¹³¹</p> <p>On 30 June, the government announced it 'had decided to place at the service of the United Nations, through the American authorities, the Royal Australian Air Force fighter squadron stationed in Japan'.¹³²</p> <p>The Australian Army's Third Battalion (3RAR) deployed to</p>

¹²³ Robert Menzies, Korea, House of Representatives, *Debates*, 6 July 1950, 4836–4839.

¹²⁴ Menzies, Korea, 4835–4839.

¹²⁵ Ben Chifley, Korea, House of Representatives, *Debates*, 6 July 1950, 4839.

¹²⁶ William Ashley, Korea, Senate, *Debates*, 6 July 1950, 4834.

¹²⁷ Senate, *Debates*, 6 July 1950, 4834; House of Representatives, *Debates*, 6 July 1950, 4860.

¹²⁹ David Watt, *Anzac Day 2020: The 70th Anniversary of the Korean War: a Quick Guide*, (Canberra: Parliamentary Library, 15 April 2020).

¹³⁰ Menzies, Korea.

¹³¹ Menzies, Korea, 4837.

¹³² Menzies, Korea, 4837.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
			Korea in early October 1950. ¹³³
Confrontation (Indonesia) 1963 to 1966	<p>On 23 March 1965, the Minister for External Affairs, Paul Hasluck, delivered a ministerial statement on international affairs. He stated:</p> <p><i>... I shall confine my remarks to a few of the more urgent topics. This is not intended, however, to limit the range of debate.</i>¹³⁴</p> <p>Although the minister referred to the situation in Indonesia, he made no direct reference to the government's decision to send military forces to Borneo.¹³⁵ The minister stated:</p> <p><i>...it remains a primary objective of Australian policy to seek with Indonesia a relationship based on understanding and respect. Hence, while leaving Indonesia in no doubt at all of Australia's determination to assist Malaysia to defend herself against armed attack and subversion, we continue to demonstrate our willingness to search for the basis of an enduring peaceful relationship with Indonesia. In this spirit, the Government is continuing a limited programme of aid to Indonesia, details of which are available to honourable members in statements tabled in the Library. This aid has been and will be kept under close review and the decision to proceed with it has been made after the most careful consideration of all the relevant factors.</i>¹³⁶</p>	<p>The Leader of the Opposition, Arthur Calwell, responded by briefly noting:</p> <p><i>Aggression in all forms must be resisted. We believe, however, that the Australian Government has failed totally to take any diplomatic initiative either to end this dispute, or to reduce its temperature. I am optimistic enough to believe that war can be avoided; but if it is, it will be not because of any initiative taken by this Government.</i>¹³⁷</p> <p>Debate on the motion 'that the House take note of the Paper' was adjourned on 1 April 1965.¹³⁸</p>	<p>Coalition Government in power under Prime Minister Robert Menzies.¹³⁹</p> <p>In January 1963 the Indonesian Government, under President Sukarno, declared a policy of Konfrontasi (meaning confrontation) in opposition to the formation of Malaysia.¹⁴⁰</p> <p>Initially the Australian Government did not commit military assets and personnel to the Confrontation, despite requests for assistance by the British and Malaysian governments. Although, Australian military forces were:</p> <p><i>... used for the defence of the Malay peninsula against external attack. In the event, such attacks occurred twice, in September and October 1964, when Indonesia launched paratrooper and amphibious raids against Labis and Pontian on the south-western side of the peninsula. Members of the 3rd Battalion, Royal Australian Regiment (3 RAR) were used in clean-up operations against the invading troops. Although these attacks were easily repelled, they did pose a serious risk of escalating the fighting.</i>¹⁴¹</p> <p>By January 1965, the Australian Government decided that 3 RAR and a squadron of SAS personnel should be made available for</p>

¹³³ Watt, *Anzac Day 2020: The 70th Anniversary of the Korean War*, 3.

¹³⁴ Paul Hasluck, Ministerial Statement: International Affairs, House of Representatives, *Debates*, 23 March 1965, 230–238.

¹³⁵ Hasluck, Ministerial statement: International affairs, 235–236.

¹³⁶ Hasluck, Ministerial Statement: International Affairs, 236.

¹³⁷ Arthur Calwell, Ministerial Statement: International Affairs, 242.

¹³⁸ House of Representatives, *Debates*, 1 April 1965, 602.

¹³⁹ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

¹⁴⁰ Australian War Memorial website, 'Indonesian Confrontation, 1963–66'.

¹⁴¹ Australian War Memorial, 'Indonesian Confrontation, 1963–66'.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
			operations. The decision was announced by acting Prime Minister John McEwen on 3 February 1965 (Prime Minister Menzies was in Britain attending Winston Churchill's funeral). ¹⁴²
Vietnam War 1962 to 1973	No statement to parliament. Parliament adjourned on 17 May 1962 and did not meet again until 7 August 1962. ¹⁴³		Coalition Government in power under Prime Minister Robert Menzies. ¹⁴⁴ On 24 May 1962, the Minister for Defence, Athol Townley, issued a media release announcing: <i>... at the invitation of the government of the Republic of Vietnam, Australia was sending a group of military instructors to that country.</i> ¹⁴⁵ This was subsequently confirmed in another media release on 26 July 1962. ¹⁴⁶ These instructors became known as the Australian Army Training Team Vietnam and is considered the 'beginning of Australia's involvement in the Vietnam War'. ¹⁴⁷ The Official histories noted that, although there was no opportunity for a parliamentary debate, it was 'unlikely that the Opposition would have mounted a major challenge to the Government's policy'. ¹⁴⁸
	On 23 March 1965, the Minister for External Affairs, Paul Hasluck, delivered a ministerial statement on	The motions on both 23 March 1965 and 29 April 1965 moved	The first US proposal for the deployment of Australian combat forces to Vietnam was

¹⁴² John McEwen, 'Further Australian Military Assistance for the Defence of Malaysia – Statement by the Acting Prime Minister, The Rt. Hon. J. McEwen', 3 February 1965; Edwards and Pemberton, *Crises and Commitments*, 343.

¹⁴³ House of Representatives, *Debates*, 17 May 1962, 2519; House of Representatives, *Debates*, 7 August 1962.

¹⁴⁴ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

¹⁴⁵ Athol Townley (Minister for Defence), 'Australian Military Instructors for South Vietnam', media release, 24 May 1962.

¹⁴⁶ Athol Townley (Minister for Defence), 'Australian Army Training Team for Vietnam', media release, 26 July 1962.

¹⁴⁷ Australian War Memorial website, 'Australian Army Training Team Vietnam', and 'Vietnam War 1962–75'.

¹⁴⁸ Edwards and Pemberton, *Crises and Commitments*, 249.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p>international affairs that focused on the situation in Vietnam.¹⁴⁹</p> <p>In a ministerial statement delivered on 29 April 1965, Prime Minister Robert Menzies advised the parliament that the government had decided to send combat forces to Vietnam.¹⁵⁰</p>	<p>'that the House take note of the paper'.¹⁵¹</p> <p>In his ministerial statement Menzies said:</p> <p><i>The Australian Government is now in receipt of a request from the Government of South Vietnam for further military assistance. We have decided – and this has been after close consultation with the Government of the United States – to provide an infantry battalion for service in South Vietnam ... I should say ... that we decided in principle some time ago ... that we would be willing to do this if we received the necessary request from the Government of South Vietnam and the necessary collaboration with the United States.</i>¹⁵²</p> <p>Debate on the statement was postponed until parliament resumed on 4 May 1965. In response, the Leader of the Opposition, Arthur Calwell, said:</p> <p><i>... on behalf of all my colleagues of Her Majesty's Opposition, I say that we oppose the Government's decision to send 800 men to fight in Vietnam. We oppose it firmly and completely.</i>¹⁵³</p> <p>In the House of Representatives, the motion 'that the paper be printed' was resolved in the affirmative: ayes 60, noes 44.¹⁵⁴</p>	<p>made on 4 December 1964.¹⁵⁶</p> <p>On 13 April 1965 the Australian Government formerly offered to deploy an Army battalion, which was accepted by the US Government.¹⁵⁷</p> <p>The Official histories noted that, as the timing of the government's announcement on 29 April depended on when it received a response from South Vietnam, the prime minister's statement was delivered at the end of a parliamentary week. Both the Leader of the Opposition, Arthur Calwell, and Deputy Leader, Gough Whitlam, 'had left Canberra ... for a political appointment in Sydney'.¹⁵⁸</p> <p>Following Menzies' 29 April 1965 statement to parliament, Rendle Holten (National Country Party) highlighted:</p> <p><i>It seems rather an anti-climax to be the first speaker in a resumed debate on education after such an historic statement by the Prime Minister of Australia (Sir Robert Menzies) on so serious a matter as the position in Vietnam. His statement has fully awakened us to the responsibility that we have in this Parliament in making decisions to send members of our</i></p>

¹⁴⁹ Paul Hasluck, Ministerial Statement: International Affairs, House of Representatives, *Debates*, 23 March 1965, 230–238.

¹⁵⁰ Robert Menzies, Ministerial Statement: Vietnam, House of Representatives, *Debates*, 29 April 1965, 1060–1062.

¹⁵¹ House of Representatives, *Debates*, 23 March 1965, 238; House of Representatives, *Debates*, 29 April 1965, 1062.

¹⁵² Robert Menzies, Ministerial Statement: Vietnam, 1060.

¹⁵³ Arthur Calwell, Ministerial Statement: Vietnam, House of Representatives, *Debates*, 4 May 1965, 1102.

¹⁵⁴ House of Representatives, *Debates*, 6 May 1965, 1288.

¹⁵⁶ Ian McNeill, *To Long Tan: the Australian Army and the Vietnam War, 1950–1966*, (Sydney: Allen & Unwin, 1993), 53.

¹⁵⁷ Frank Frost, *Australia's War in Vietnam*, (Sydney: Allen & Unwin, 1987), 19.

¹⁵⁸ Peter Edwards, *A Nation at War: Australian Politics, Society and Diplomacy During the Vietnam War 1965–1975*, (Sydney: Allen & Unwin in association with the Australian War Memorial, 1997), 27.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
		In the Senate, the motion 'that the Senate take note of the paper' was resolved in the affirmative. There was no division. ¹⁵⁵	<i>fighting forces overseas into deadly combat.</i> ¹⁵⁹
Gulf War 1990 to 1991	On 21 August 1990 Prime Minister Bob Hawke delivered a ministerial statement to parliament. He said: <i>... I want to take this first opportunity available to me to inform the House of the view the Government has taken of the situation which has arisen in the Middle East over the past three weeks and of the measures we have adopted to meet that situation.</i> ¹⁶⁰	The prime minister's motion, in part, condemned Iraq's invasion of Kuwait; called upon Iraq to withdraw its forces from Kuwait; affirmed the fundamental importance of the United Nations Charter to preserve peace and protect international borders; supported the government's decision to send Royal Australian Navy ships to the Middle East to enforce UN sanctions against Iraq; and supported the government's implementation of UN sanctions. ¹⁶¹ In response, Leader of the Opposition, John Hewson, said 'The Opposition parties are pleased to support the motion that is before the House'. ¹⁶² In the House of Representatives, the motion was agreed to without a division. The Member for North Sydney, Ted Mack, asked that his dissent be recorded. ¹⁶³ In the Senate, the motion was agreed to without a division. The Australian Democrats asked that their objection to	ALP Government in power under Prime Minister Bob Hawke. ¹⁶⁵ Iraq invaded Kuwait on 2 August 1990. ¹⁶⁶

¹⁵⁵ Senate, *Debates*, 24–25 May 1965, 1211.

¹⁵⁹ Rendle Holten, Ministerial Statement: Tertiary Education in Australia, House of Representatives, *Debates*, 29 April 1965, 1062.

¹⁶⁰ Robert Hawke, Ministerial Statement: Middle East, House of Representatives, *Debates*, 21 August 1990, 1118.

¹⁶¹ Hawke, Ministerial Statement: Middle East, 1118.

¹⁶² John Hewson, Ministerial Statement: Middle East, House of Representatives, *Debates*, 21 August 1990, 1123.

¹⁶³ Edward (Ted) Mack, Ministerial Statement: Middle East, House of Representatives, *Debates*, 21 August 1990, 1194.

¹⁶⁵ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

¹⁶⁶ Nicole Brangwin, *Anzac Day 2020: 30th Anniversary of the Gulf War: a Quick Guide*, (Canberra: Parliamentary Library, 14 April 2020).

Conflict	Statement to parliament	Debate/vote	Other events and key dates
		paragraph 5, subsection 2 be recorded. ¹⁶⁴	
	<p>On 4 December 1990 Prime Minister Bob Hawke delivered a ministerial statement on the Middle East. He informed the parliament:</p> <p><i>... the Government unreservedly supports the United Nations Security Council resolution 678. Our support for the resolution imposes on us an obligation to respond to the request in its third paragraph for all nations to provide appropriate support for actions taken under the resolution. I emphasise that the resolution not only authorises all necessary means; it explicitly requests that member states provide support.</i>¹⁶⁷</p>	<p>The motion moved was 'that the House take note of the paper'.¹⁶⁸</p> <p>During the debate, the Leader of the Opposition, John Hewson, said that 'we are committed as an Opposition to building a united national position on this issue'. But he was critical of the government for failing 'to consult with the Opposition prior to its original decision to deploy Australian defence forces to the Gulf'.¹⁶⁹</p> <p>On 5 December 1990, in the House of Representatives, the question was resolved in the affirmative without division.¹⁷⁰</p> <p>On 4 December 1990, in the Senate, the question was resolved in the affirmative without division.¹⁷¹</p>	<p>On 29 November 1990, the UN Security Council adopted Resolution 678 (1990), which set 15 January 1991 as the deadline for an Iraqi withdrawal from Kuwait.¹⁷²</p> <p>On 17 January 1991, Operation Desert Storm commenced when US and coalition forces began an air bombardment of Iraq that continued without respite until the war ended 43 days later.¹⁷³</p> <p>On 17 January 1991, Prime Minister Bob Hawke issued a statement announcing the participation of the Naval Task Force in armed action in the Gulf and the recall of parliament on 21 and 22 January 1991 to debate the decision.¹⁷⁴</p>
	Parliament was recalled on 21–22 January 1991 to debate the Gulf War. The Manager of Opposition Business, Wallace Fife, protested that, as there would not be a question time on either day, there	<p>The motion moved by Prime Minister Bob Hawke on 21 January 1991 stated, in part, that this House:</p> <p><i>... reaffirms its support for an on-going role for the United Nations in promoting world peace and the self-determination of nations ...</i></p>	On 27 February 1991 Iraqi forces had withdrawn from Kuwait and on 28 February 1991 Prime Minister Hawke announced military operations against Iraq had been suspended. ¹⁸¹

¹⁶⁴ Senate, *Debates*, 21 August 1990, 1857. The section of the motion to which the Democrats objected read: 'supports the Government's decision to send ships of the RAN [Royal Australian Navy] to the Middle East to assist by means of identification, contact, interrogation and warning-in enforcing UN sanctions against Iraq under Article 51 of the UN Charter'.

¹⁶⁷ Robert Hawke, Ministerial Statement: Middle East, House of Representatives, *Debates*, 4 December 1990, 4322.

¹⁶⁸ House of Representatives, *Debates*, 4 December 1990, 4325.

¹⁶⁹ John Hewson, Ministerial Statement: Middle East, House of Representatives, *Debates*, 4 December 1990, 4325.

¹⁷⁰ House of Representatives, *Debates*, 5 December 1990, 4435.

¹⁷¹ Senate, *Debates*, 4 December 1990, 4938.

¹⁷² United Nations Security Council, 'Resolution 678 (1990)', 29 November 1990.

¹⁷³ US Central Command website, 'US Central Commission History'.

¹⁷⁴ Robert Hawke (Prime Minister), 'Statement by the Prime Minister: The Gulf', media release, 17 January 1991.

¹⁸¹ Brangwin, *Anzac Day 2020: 30th Anniversary of the Gulf War*, 3.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p>was no opportunity to question the prime minister or ministers.¹⁷⁵</p> <p>On 21 January 1991 Prime Minister Bob Hawke addressed the House and stated:</p> <p><i>The decision to commit Australian armed forces to combat is of course one that constitutionally is the prerogative of the Executive. It is fitting, however, that I place on parliamentary record the train of events behind this decision.</i>¹⁷⁶</p>	<p><i>affirms its support for Australia's positive response to the request made by the United Nations Security Council in Resolution 678 for support in implementing that Resolution; expresses its full confidence in, and support for, Australian forces serving with the UN-sanctioned multi-national forces in the Gulf; deplores Iraq's unprovoked attack upon Israel; and recognises ... the need to intensify efforts to establish peace and stability in the Middle East, including a just resolution of the Palestinian issue and the continuing security of Israel, once the crisis in the Gulf is resolved.</i>¹⁷⁷</p> <p>The Leader of the Opposition, John Hewson, said '... the Opposition parties strongly support this motion before the House'.¹⁷⁸</p> <p>On 22 January 1991, in the House of Representatives, the question was resolved in the affirmative without division. Member for North Sydney, Ted Mack, asked that his name be recorded as voting against the motion.¹⁷⁹</p> <p>On 22 January 1991, in the Senate, the question was resolved in the affirmative: ayes 59, noes 9.¹⁸⁰</p>	
Afghanistan 2001 to 2021	No ministerial statement to parliament.	On 17 September 2001 Prime Minister John Howard moved an 8-part motion in the House of Representatives. Of note,	Coalition Government in power under Prime Minister John Howard. ¹⁸⁷

¹⁷⁵ Wallace Fife, Motion: Day and Hour of Next Sitting, House of Representatives, *Debates*, 21 January 1990, 1.

¹⁷⁶ Robert Hawke, Motion: Middle East, House of Representatives, *Debates*, 21 January 1991, 2.

¹⁷⁷ Hawke, Motion: Middle East, 2–3.

¹⁷⁸ John Hewson, Motion: Middle East, House of Representatives, *Debates*, 21 January 1991, 9.

¹⁷⁹ Edward Mack, Motion: Middle East, House of Representatives, *Debates*, 22 January 1991, 268. Ten ALP parliamentarians did not support the Gulf War. See Ian Bickerton and Michael Pearson, *43 Days: the Gulf War*, (East Melbourne: ABC Books, 1991), 84; Editorial, 'War Vote Earns Censure for ALP Parliamentarians', *Canberra Times*, 12 February 1991, 6.

¹⁸⁰ Senate, *Debates*, 22 January 1991, 267. The Australian Democrats and the Greens WA senator did not support the motion. Three ALP senators spoke against the motion and abstained from the vote. Editorial, 'War Vote Earns Censure for ALP Parliamentarians', 6.

¹⁸⁷ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
		<p>points 6 and 7 of the motion stated:</p> <p><i>(6) Believes that the terrorist actions in New York City and Washington, DC, constitute an attack upon the United States of America within the meaning of Articles IV and V of the ANZUS Treaty.</i></p> <p><i>(7) Fully endorses the commitment of the Australian Government to support within Australia's capabilities United States-led action against those responsible for these tragic attacks.</i>¹⁸²</p> <p>Leader of the Opposition, Kim Beazley, supported the motion and affirmed bipartisan support for the impending military response. Beazley noted:</p> <p><i>[j]oining the strong international coalition to fight terrorism wherever it threatens democratic and peaceful nations, as suggested by [US] Secretary Powell, is the right way to go.</i>¹⁸³</p> <p>On the same day the motion was moved in the House of Representatives, the question was resolved in the affirmative.¹⁸⁴</p> <p>In the Senate on 17 September 2001, the motion was also resolved in the affirmative.¹⁸⁵ However, the Australian Democrats and the Australian</p>	<p>On 14 September 2001 Prime Minister John Howard announced the government's intent to invoke Article IV of the ANZUS Treaty in response to the terrorist attacks against the US on 11 September 2001.¹⁸⁸</p> <p>At a press conference on 4 October 2001 Prime Minister John Howard announced Australia's military commitment to the international coalition led by the US.¹⁸⁹</p> <p>On 7 October 2001, the US and allied nations commenced military operations against al-Qaeda and Taliban targets in Afghanistan.¹⁹⁰</p> <p>Federal Parliament was dissolved on 8 October 2001. A federal election was held on 10 November 2001. The 40th Parliament met on 12 February 2002.¹⁹¹</p> <p>The 200-strong Australian Special Forces Task Force deployed to Afghanistan from October 2001 and following 3 rotations, withdrew in November 2002.¹⁹²</p> <p>The North Atlantic Treaty Organization (NATO)-led international coalition effort (known as the International Security Assistance Force –</p>

¹⁸² John Howard, 'United States of America: Terrorist Attacks', House of Representatives, *Debates*, 17 September 2001, 30739.

¹⁸³ Kim Beazley, 'United States of America: Terrorist Attacks', 30745.

¹⁸⁴ House of Representatives, *Debates*, 17 September 2001, 30800.

¹⁸⁵ Senate, 'United States of America: Terrorist Attacks', *Debates*, 17 September 2001, 27209.

¹⁸⁸ John Howard (Prime Minister), 'Application of ANZUS Treaty to Terrorist Attacks on the United States', media release, 14 September 2001.

¹⁸⁹ John Howard (Prime Minister), 'Press Conference: Parliament House: Australia's Involvement in a US led Response, Defence, Leadership, APEC', transcript, 4 October 2001.

¹⁹⁰ Nicole Brangwin, *Australia's Military Involvement in Afghanistan Since 2001: a Chronology*, Background Note, (Canberra: Parliamentary Library, 16 July 2010), 1.

¹⁹¹ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 462.

¹⁹² Brangwin, *Australia's Military Involvement in Afghanistan*, 2.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
		Greens sought to amend parts 6 and 7 of the motion. ¹⁸⁶	ISAF) was officially established on 20 December 2001 via United Nations Security Council Resolution 1386. ¹⁹³ Australian combat forces withdrew from Afghanistan at the end of 2002 and did not re-deploy until August 2005. ¹⁹⁴
	<p>On 18 August 2005 the Minister for Defence, Robert Hill, responded to a Question without Notice on Australia's contribution to Afghanistan.¹⁹⁵ In his response, Hill recalled the prime minister's 13 July 2005 press conference about the deployment of a 150 strong Special Forces Task Group to Afghanistan, which would be increased to 190 personnel.¹⁹⁶</p> <p>On 9 August 2006 Prime Minister John Howard informed the House via a ministerial statement that the Australian Government had decided to send:</p> <p><i>... an additional 150 troops of the ADF to reinforce the reconstruction task force and to provide enhanced force protection.</i>¹⁹⁷</p>	The 9 August 2006 motion received bipartisan support. ¹⁹⁸	<p>On 13 July 2005, Prime Minister John Howard announced at a press conference that Australia would deploy approximately 150 personnel for 12 months to undertake security tasks like those of the 2001–02 deployment to Afghanistan.¹⁹⁹</p> <p>Consequently, Australia re-entered the Afghanistan conflict in August 2005.²⁰⁰</p> <p>Prior to the re-deployment, Australia had an exceedingly small non-combat presence in Afghanistan. From 2005–06, the authorised strength began to increase, eventually peaking at around 1,550 personnel from 2009 to 2012.²⁰¹</p> <p>The parliament was prorogued in October 2007 and a federal election held on 24 November.²⁰²</p>

¹⁸⁶ Bob Brown, 'United States of America: Terrorist Attacks', Senate, *Debates*, 17 September 2001, 27169; Natasha Stott Despoja, 'United States of America: Terrorist Attacks', Senate, *Debates*, 17 September 2001, 27164.

¹⁹³ Brangwin, 1.

¹⁹⁴ Brangwin, 2.

¹⁹⁵ Robert Hill, 'Question without Notice: Afghanistan', Senate, *Debates*, 18 August 2005, 72.

¹⁹⁶ Hill, 'Question without Notice: Afghanistan', 72.

¹⁹⁷ John Howard, 'Ministerial Statements: Afghanistan', House of Representatives, *Debates*, 9 August 2006, 83.

¹⁹⁸ Kim Beazley (Leader of the Opposition), 'Ministerial Statements: Afghanistan', Hansard, House of Representatives, 9 August 2006.

¹⁹⁹ John Howard (Prime Minister) and Robert Hill (Minister for Defence), 'Press Conference: Troop Deployment to Afghanistan, Telstra, Rau Family', transcript, 13 July 2005.

²⁰⁰ Brangwin, *Australia's Military Involvement in Afghanistan*, 2; 23.

²⁰¹ Nicole Brangwin, *Background to the Afghanistan Withdrawal: a Quick Guide*, (Canberra: Parliamentary Library, 26 August 2021), 10–11.

²⁰² Australian Electoral Commission (AEC) website, '2007 Federal Election Timetable'; Australian Parliament, 'Procedural Information Bulletin', no. 217, Senate, 15 October 2007.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p>On 19 October 2010, Prime Minister Julia Gillard presented a ministerial statement to parliament entitled No safe haven.²⁰³ The statement allowed the first parliamentary debate on Australia's contribution to the Afghanistan war and explained:</p> <p><i>... why Australia is involved in Afghanistan; what the international community is seeking to achieve and how; what Australia's contribution is to this international effort—our mission; what progress is being made; and what the future is of our commitment in Afghanistan.</i>²⁰⁴</p>	<p>Minister for Defence Stephen Smith moved the following motion which was agreed to:</p> <p><i>That so much of the standing and sessional orders be suspended to allow Mr S. F. Smith (Minister for Defence), Mr Robert, Mr Rudd (Minister for Foreign Affairs), Ms J. Bishop (Deputy Leader of the Opposition), Mr O'Connor (Minister for Home Affairs), Mr Keenan, Mr Wilkie and Mr Bandt to speak on the motion for 20 minutes and for all other members to speak on the motion for 15 minutes.</i>²⁰⁵</p> <p>As part of the debate, the Leader of the Opposition, Tony Abbott, stated:</p> <p><i>It is right that every member of parliament should now have the chance to reflect on Australia's mission in Afghanistan. War should never be popular, but it can sometimes be right. Our job is not to persuade people to like the work our armed forces are doing, but they need to understand it and be able to support it. Winning hearts and minds in Australia is no less important than winning them in Afghanistan if this mission is to succeed. Our challenge this week is to be just as effective and professional in our tasks as our soldiers are in theirs.</i>²⁰⁶</p>	<p>ALP Government in power under Prime Minister Rudd from December 2007.²⁰⁷</p> <p>On 24 June 2010, Kevin Rudd lost the support of his party and Julia Gillard became prime minister.²⁰⁸</p> <p>A federal election was held on 21 August 2010, which resulted in a hung parliament. Under the leadership of Julia Gillard, the ALP formed a minority government with support from 3 independents and one member of the Greens.²⁰⁹</p> <p>A parliamentary debate on Afghanistan was one of the agreements made between the ALP and the Greens to allow the ALP to form government.²¹⁰</p>

²⁰³ Julia Gillard, 'Ministerial Statements: Afghanistan', House of Representatives, *Debates*, 19 October 2010, 692.

²⁰⁴ Gillard, 'Ministerial Statements: Afghanistan', 692.

²⁰⁵ Stephen Smith, 'Ministerial Statements: Afghanistan', House of Representatives, *Debates*, 19 October 2010, 706.

²⁰⁶ Tony Abbott, 'Ministerial Statements: Afghanistan', House of Representatives, *Debates*, 19 October 2010, 700.

²⁰⁷ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

²⁰⁸ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

²⁰⁹ Parliamentary Library, *43rd Parliament: Parliamentary Handbook of the Commonwealth of Australia 2011*, 43rd Parliament, (Canberra: Parliamentary Library, 2011), 271

²¹⁰ Julia Gillard (Prime Minister) and Bob Brown (Australian Greens), *Australian Greens, Labor Commit to Agreement for Stable Government*, 2 September 2010; David Crowe, 'Gillard in Historic Alliance with Greens', *Australian Financial Review*, 2 September 2010, 1; 8.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
Iraq 2003 to 2009	<p>On 4 February 2003 Prime Minister John Howard delivered a ministerial statement to explain the 'government's belief that the world community must deal decisively with Iraq'.²¹¹</p> <p>On 18 March 2003, Prime Minister John Howard moved a motion that included endorsement of:</p> <p><i>... the Government's decision to commit Australian Defence Force elements in the region to the international coalition of military forces prepared to enforce Iraq's compliance with its international obligations under successive resolutions of the United Nations Security Council, with a view to restoring international peace and security in the Middle East region.</i>²¹²</p>	<p>The motion moved on 4 February 2003 was 'that the House take note of the paper'.²¹³ Attempts by the Opposition and independents to move motions on Iraq were not successful.</p> <p>Prime Minister John Howard's motion of 18 March 2003 prompted heated debate and divisions on the motion and proposed amendments by the Opposition.²¹⁴ During the debate, Leader of the Opposition Simon Crean said '... Labor opposes your commitment to war. We will argue against it, and we will call for the troops to be returned'.²¹⁵</p> <p>In the House of Representatives on 20 March 2003 the motion was agreed to in the affirmative: 80 ayes to 63 noes.²¹⁶</p> <p>On the same date in the Senate, an amended motion, which, in part, opposed the decision of the Australian Cabinet to commit military forces to an attack on Iraq without UN resolution authorising force and called for Australian military forces to be withdrawn and returned home, was resolved in the affirmative: ayes 37, noes 32. The Opposition, Australian Democrats, Australian Greens,</p>	<p>Coalition Government in power under Prime Minister John Howard.²¹⁸</p> <p>On 10 January 2003, the prime minister foreshadowed at a press conference, 'some forward deployment' of elements of the ADF (Australian Defence Force) to the Middle East.</p> <p>On 22 January 2003, Defence Minister Robert Hill announced the government's decision to forward deploy HMAS Kanimbla, lead elements of a Special Forces Task Group and an RAAF (Royal Australian Air Force) reconnaissance team to the Middle East.²¹⁹</p> <p>The pre-deployment of Australia military elements to the Middle East commenced on 23 January 2003, known as Operation Bastille.²²⁰</p> <p>On 13 March 2003, Prime Minister John Howard addressed the National Press Club where he presented the case for disarming Iraq of weapons of mass destruction.²²¹</p> <p>On 17 March 2003, the prime minister advised at a press conference that federal Cabinet would meet that evening to discuss Iraq and</p>

²¹¹ John Howard, 'Ministerial Statements: Iraq', House of Representatives, *Debates*, 4 February 2003, 10642.

²¹² John Howard, 'Motion: Iraq', House of Representatives, *Debates*, 18 March 2003, 12505.

²¹³ House of Representatives, *Debates*, 4 February 2003, 10651.

²¹⁴ House of Representatives, *Debates*, 20 March 2003, 1619.

²¹⁵ Simon Crean, 'Motion: Iraq', House of Representatives, *Debates*, 18 March 2003, 12517.

²¹⁶ Australia, House of Representatives, 'Iraq – Commitment to Coalition in the Gulf', *Votes and proceedings*, HVP 83, 20 March 2003.

²¹⁸ Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 580.

²¹⁹ Robert Hill (Minister for Defence), 'Forward Deployment of ADF Elements', media release, 22 January 2003.

²²⁰ Department of Defence, *The War in Iraq: ADF Operations in the Middle East in 2003*, (Canberra: Department of Defence, 2003), 11.

²²¹ John Howard (Prime Minister), 'Address to the National Press Club, Canberra', 13 March 2003.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
		and an independent senator supported the amended motion. ²¹⁷	<p>Australia's military participation. Journalists asked about the role of parliament in the decision to join the 'coalition of the willing'. In response, the prime minister said that 'I have no desire at all to deny Parliament the full opportunity of debating this'.²²²</p> <p>On 17 March 2003 US President George W. Bush set a 48-hour deadline for Iraqi President Saddam Hussein to leave Iraq with his sons or face war. Once the deadline had passed on 19 March 2003 the US-led Coalition of the Willing commenced offensive air strikes against key Iraqi leadership positions.²²³</p> <p>Prime Minister John Howard announced at a morning press conference that Australian military forces had 'commenced combat and combat support operations'.²²⁴ Australia's combat mission in Iraq, known as Operation Falconer, involved around 2,000 ADF personnel from all 3 services.²²⁵</p>
Iraq 2014 Syria 2015 to 2020	<p>On 1 September 2014 Prime Minister Tony Abbott delivered a ministerial statement to parliament on the situation in Iraq and Syria. The prime minister noted:</p> <p><i>So far, [Australia] have met requests for humanitarian relief and for logistical support. So far, there has been no request for military action itself. Should</i></p>	<p>The prime minister's statement on 1 September 2014 responded to the ALP's request for a statement to parliament. The Opposition supported the government's response to the situation in Iraq at that time.²²⁸ A motion was moved to allow further statements in response</p>	<p>Coalition Government in power under Prime Minister Tony Abbott.²³²</p> <p>On 8 August 2014, following a request from the Iraqi Government, US-led international coalition military</p>

²¹⁷ Senate, *Debates*, 20 March 2003, 9819–9820, 9886–9888.

²²² John Howard (Prime Minister), 'Press Conference, Parliament House: Iraq', transcript, 17 March 2010.

²²³ Steve Bowman, *Iraq: US Military Operations: Update*, report for Congress, (Washington: Congressional Research Service, 31 March 2003), i.

²²⁴ John Howard (Prime Minister), 'Press Conference, Parliament House: Commencement of the Disarmament of Iraq', transcript, 20 March 2010.

²²⁵ Department of Defence, *The War in Iraq: ADF Operations in the Middle East in 2003*, 16.

²²⁸ Bill Shorten, 'Ministerial Statements: Iraq and Syria', House of Representatives, *Debates*, 1 September 2014, 9148.

²³² Parliamentary Library, *46th Parliament: Parliamentary Handbook*, 581.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
	<p><i>such a request come from the Obama administration, and be supported by the government of Iraq, it would be considered against these criteria: Is there a clear and achievable overall objective? Is there a clear and proportionate role for Australian forces? Have all the risks been properly assessed? And is there an overall humanitarian objective in accordance with Australia's national interests?</i>²²⁶</p> <p>On 16 September 2015, the Minister for Defence, Kevin Andrews, delivered a ministerial statement updating the parliament on Australia's military operations in Iraq, Syria, Afghanistan, and broader operations in the Middle East.²²⁷</p>	<p>to the prime minister's statement.²²⁹ Further statements were made in the Federation Chamber on 3, 4 and 22 September 2014. Most statements supported the government's actions at that time, but some cautioned against Australia's involvement in any escalation of military action.²³⁰</p> <p>On the same day as the prime minister's 9 September 2015 press conference announcing the expansion of Australia's military operations into Syria, the Opposition Leader, Bill Shorten, proposed a discussion in parliament on Syria as a matter of public importance, which was supported.²³¹</p>	<p>operations commenced against Daesh in Iraq.²³³</p> <p>On 14 August 2014, the Coalition Government announced the commencement of Australian military operations in Iraq. Initially the mission delivered humanitarian aid to civilians.²³⁴</p> <p>By mid-September 2014, the RAAF's Air Task Group (ATG) had deployed to the Middle East 'awaiting government approval to commence air strikes against Daesh in Iraq'. In October 2014, at the request of the Iraqi Government, the ATG had commenced regular air strikes against Daesh targets in Iraq. Australia's contribution also involved a Special Operations Task Group. All elements of the mission were codenamed Operation Okra.²³⁵</p> <p>On 3 March 2015, Prime Minister Tony Abbott announced the ADF's contribution to the international Building Partner Capacity mission in Iraq. This involved around 300 ADF personnel training and advising Iraqi</p>

²²⁶ Tony Abbott, 'Ministerial Statements: Iraq and Syria', House of Representatives, *Debates*, 1 September 2014, 9147.

²²⁷ Kevin Andrews, 'Ministerial Statements: Iraq, Syria, Afghanistan and Operations in the Middle East,' House of Representatives, *Debates*, 16 September 2015.

²²⁹ Christopher Pyne, 'Ministerial Statements: Iraq and Syria: Reference to Federation Chamber', House of Representatives, *Debates*, 1 September 2014, 9150.

²³⁰ House of Representatives, 'Federation Chamber: Statements: Iraq', *Debates*, 3 September 2014, 9672–9712; House of Representatives, 'Federation Chamber: Statements: Iraq', 4 September 2014, 9848–9880; House of Representatives, 'Federation Chamber: Ministerial Statements: Iraq', 22 September 2014, 10125–10134.

²³¹ House of Representatives, 'Matters of Public Importance: Syria', *Debates*, 9 September 2015, 9640–9653.

²³³ Renee Westra, 'Syria: Australian Military Operations', research paper series, 2017–18, (Canberra: Parliamentary Library, 20 September 2017), 3.

²³⁴ Tony Abbott (Prime Minister), 'Humanitarian Assistance to Iraq', media release, 14 August 2014.

²³⁵ Australian Government, *Defence Annual Report 2014–15*, (Canberra: Department of Defence, 2015), 4.

Conflict	Statement to parliament	Debate/vote	Other events and key dates
			<p>forces, and was known as Task Group Taji.²³⁶</p> <p>On 9 September 2015, the Abbott Government announced Australian air operations in Iraq would extend to Syria.²³⁷</p>

²³⁶ Tony Abbott (Prime Minister) and Kevin Andrews (Defence Minister), 'Building Partner Capacity in Iraq', media release, 3 March 2015

²³⁷ Tony Abbott (Prime Minister), Julie Bishop (Minister for Foreign Affairs), Kevin Andrews (Minister for Defence) and Mark Binskin (Chief of the Defence Force), 'The Syrian and Iraqi Humanitarian Crisis; Australia to Extend Air Operations Against Daesh into Syria', media release, 9 September 2015; Tony Abbott (Prime Minister), Julie Bishop (Minister for Foreign Affairs), Kevin Andrews (Minister for Defence) and Mark Binskin (Chief of the Defence Force), 'Joint Press Conference: Canberra, Syrian and Iraqi Humanitarian Crisis; Australia to Extend Air Operations Against Daesh into Syria', transcript, 9 September 2015.



Australian Greens Dissenting Report

The Australian Greens welcomed the opportunity for an inquiry into the systems and processes that Australia uses to deploy Australian Defence Force (ADF) personnel overseas. This is one of the most important decisions that a government has to make and the result of making an incorrect choice is catastrophic. We have seen the results of this poor decision-making play out repeatedly over the last quarter of a century.

In the last 25 years we have seen governments led by both major parties unilaterally wage war across the Middle East in Australia's name without the consultation of the parliament or the consent of the Australian people. There is deep irony in the fact that the instigating factor as to whether and where Australians have been deployed since 2001 has been a vote of elected American representatives, not our own.

A Vague and Unaccountable System

What we have seen play out because of recent decisions to deploy the ADF in Iraq and Afghanistan is nothing short of a humanitarian disaster. Nowhere is this more evident than in Iraq where in 2003 the government unilaterally decided to wage a war that has left 500,000 people dead¹, millions displaced, and a country torn asunder by tensions which we unleashed. Even today as I am writing this report, Australian troops remain deployed in the Middle East under Operation Okra and Accordion. The Howard Government started this chain of events without consulting parliament, against the will of the Australian public and even without consulting the Federal Executive Council or Governor-General.

Today, there are 45 Australian families whose loved ones will never return home as a result of a secretive and unaccountable decision with no proper oversight. These families will live with this reality forever. At a bare minimum, they should know exactly who supported the deployment of troops to Afghanistan and Iraq and why.

Australia is an international outlier on transparency

Australia is relatively unique among democratic countries in its lack of parliamentary authorisation or oversight on military deployments overseas. For example:

- The United States and France require congressional approval for use of military force, declarations of war and notification of any deployments
- Germany, Denmark, Ireland, Spain, Norway, and Sweden require parliamentary approval for troop deployments overseas

¹ [Study: Nearly 500,000 perished in Iraq war | UW News \(washington.edu\)](#)

Since our inception, the Australian Greens have pushed for more accountability and transparency in how Australia makes this important decision. We will continue to push for a system that requires both the consent of the people and consultation of parliament to determine how and when Australia goes to war.

Response to Recommendations

The Australian Greens emphatically reject the conclusions made in Recommendation 1:

- The Committee recommends that in implementing these recommendations the Government reaffirm that decisions regarding armed conflict including war or warlike operations are fundamentally a prerogative of the Executive, while acknowledging the key role of parliament in considering such decisions, and the value of improving the transparency and accountability of such decision-making and the conduct of operations

The Australian Greens agree with the following recommendations in principle, but believe that these are the bare minimum:

Recommendation 3

- The Committee recommends the Government include a new section in the Cabinet Handbook outlining expectations for practices to be followed in the event of a decision to engage in major international armed conflict including war or warlike operations

Recommendation 4

- The Committee recommends that the Government introduce Standing resolutions of both Houses of Parliament to establish Parliament's expectations in relation to accountability for decisions in relation to international armed conflict, providing for sensible exemptions to enable timely and flexible national security responses and requiring at a minimum that, when war or warlike operations are occurring:
 - A Statement to both Houses of Parliament be made at least annually from the Prime Minister and Government Senate Leader and debate facilitated
 - an update to both Houses of Parliament be provided at other times during the year (at least twice) from the Minister for Defence and Minister representing the Minister for Defence in the other Chamber and debate facilitated

These practices should be replicated in the Cabinet Handbook

Recommendation 5

- The Committee recommends the Government:
 - Revert to a traditional approach whereby Defence white papers and national security or strategy updates should be tabled in both Houses of Parliament within 30 days of their presentation to the Minister
 - Consider mechanisms to codify this practice, such as embedding them in the Cabinet Handbook or by Standing Resolutions of both Houses of Parliament

The Australian Greens agree in principle to Recommendations 2 & 6, but wish to provide the following comments

Recommendation 2

We have serious concerns about the government's interpretation of Section 8 of the Defence Act as an alternative to Section 68 of the Australian Constitution in regard to conflict decision making. Any and all advice that the government has supporting this interpretation should be released to the Australian community.

This is a matter that would benefit from formal consideration by the High Court. While the Australian Greens accept that the court will likely not entertain an advisory opinion, there is a strong public interest in the matter being authoritatively determined. A possible vehicle for that would be an application to consider the domestic legality of the Howard Government's decision to use section 8 of the Defence Act regarding the deployment of Australian Defence Force personnel as part of the 2003 United States led invasion in Iraq and determine the legality of that deployment.

The Australian Greens agree that as a bare minimum a written statement should be tabled outlining strategic goals, orders given, the legal basis of any operation and a humanitarian impact statement. Additionally, this statement should outline the support which will be provided to veterans on return from service.

Recommendation 6

The Australian Greens would support this recommendation if it included a legislated requirement for crossbench members from both houses of parliament to be members of the committee. Explicitly, this committee should in no way infringe upon the oversight role of the Senate committee or the Senate Estimates process.

Australian Greens Additional Recommendations

- Parliament should pass [Defence Amendment \(Parliamentary Approval of Overseas Service\) Bill 2020](#) requiring a joint sitting of parliament to approve Australian Defence Force deployments overseas
- The Defence Act of 1903 should be amended to explicitly limit Ministerial Power from unilaterally deciding on offensive troop deployments
- Legal Advice given to the Howard Government and Cabinet, the Governor-General and Federal Executive Council should be made publicly available so that Australians can determine for themselves what was understood about entering Iraq
- Any and all legal advice the government has or has sought on its interpretation of Section 8 of the Defence Act as an alternative to Section 68 of the Australian Constitution should be made publicly available

- Any statement tabled in Parliament regarding the strategic and legal basis of an operation should also include intended support for veterans and humanitarian impact

Senator Jordon Steele-John
31 March 2023