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To: [Committee, JSCFADT \(REPS\)](#)
Cc: [REDACTED]
Subject: war power: supplementary submission
Date: Wednesday, 1 March 2023 12:21:31 PM

In my submission (no 6 on the Joint Committee's web site) I raised what is the legal basis of any decision to go to war and is there a paper trail.

There is currently a technical difficulty in accessing the Joint Committee's web site but my recollection of the submission from the Attorney-General's Department is that the Department has to some extent clarified the legal basis of any decision to go to war

-s 8 of the Defence Act is not relied on

-Constitution s 61 is relied on.

May I suggest to the Committee that, in relation to s.61, further clarification should be sought. There is High Court authority that 'the royal prerogative as to war ... has to be exercised... by the Governor-General' (Joseph v Colonial Treasurer (NSW) (1918) 25 CLR 32, at 51, see also 46. See also Federal Commissioner of Taxation v Official Liquidator of EO Farley Ltd (1940) 63 CLR 278, 320.)

It is well understood that s 61 does not require the involvement of the Governor-General in the ordinary day to day business of government. Clearly the decision to go to war does not fall in to this category of routine day to day business. It is widely understood that the war prerogative is one of the highest of the royal prerogatives, now part of s.61.

I indicated in my earlier submission that it is understood that the Governor-General has not been involved in recent decisions to go to war.

So the outstanding question on which I suggest the Joint Committee seek further clarification is whether the war prerogative, now part of s.61, requires that the decision to go to war be taken by the Governor-General and, if the answer is no, who can take that decision.

The other relevant issue I raised is whether there is a paper trail-are there one or more documents authorising the decision to go to war in relation to, for example, Iraq and Afghanistan and can they be made available to the Joint Committee. I repeat my earlier submission that there should be publicly available documentation, a publicly available paper trail, in respect of such important decisions.

I am happy for this supplementary submission to be published on the Joint Committee's web site.

Kind regards

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