

SUBMISSION TO THE

Inquiry into international armed conflict decision making

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Executive Summary

I welcome the ability to offer this submission to the inquiry. I speak as a concerned citizen and hope the committee considers my opinion.

The decision to send Australia to war is extremely serious, and I strongly believe that it simply **must not**, and **should not** be able to be made by the Prime Minister alone, nor even a small advisory group, say made up of the Prime Minister and Cabinet or others. The law should be changed to rule this out.

Instead, a **full vote of both houses of Parliament** should be **absolutely required** to send Australia to war, unless Australia is directly attacked or other, extremely limited exceptions.

The process by which it is decided to send Australian forces to war **must** be transparent to the Australian people. The historic record shows that claims that these procedures need be kept secret have been, in my opinion, only made out of either simply an unnecessary paranoia, or worse, maliciously because the justification for war relies on falsehoods that might be exposed if they were known.

The **full text** of any defence pact or agreement that the Government signs **must be available in full** to the Australian people, and entering into any such agreement should be authorised **only with an act passed by Parliament**.

The Decision to send Australia to War

I believe Australia is fairly unique among what may be referred to as 'liberal democracies', 'free countries', 'advanced nations', etc. by not requiring any kind of Parliamentary approval to deploy the defence force. In the United States, Congress must resolve to commit forces to war under the War Powers Resolution of 1973. In the UK, it is resolved under constitutional convention that the Parliament should have the opportunity to debate entering a conflict before it is entered into, despite the fact that the Monarch having a royal prerogative power to enter into a war. Many European nations also require Parliamentary approval to enter a war, such as France, Germany, Sweden, Finland, etc.

Australia stands quite apart from these countries, and in my opinion, the way that we authorise the Australia Defence Force to enter a war is more one that I would expect to see from a dictatorship or similarly authoritarian nation. I believe this is unacceptable, and I know that my concern is shared by many others in the Australian public.

It has long been my strong belief that this is part of a wider 'institutional immaturity', and that it is something that we need to resolve. If we actually decide that we want the nation of Australia to be a flourishing, liberal democracy, we should actually start acting like it, and not have legal frameworks that are much more akin to those of repressive, totalitarian states.

Everyone has heard of 'American Exceptionalism', but It has long been my observation that we in Australia also have a kind of 'Australian exceptionalism' that manifests itself particularly in so-called 'national security' - where we seem to believe that we need disproportionately strong or significantly different laws to other similarly developed countries, even when our threats are potentially fairly significantly lesser. This can be seen by the Government passing much more comprehensive surveillance, data retention, anti-terror, etc. laws than the US, UK and Europe, despite the fact that those countries (given a whole range of factors, from political, to geographical, to even just the size of their populations) face much larger threats. A recent experience I had of this was that it felt positively ludicrous to have the whole plane go through enhanced screening to board a flight from Dubai into Brisbane last month, when I had strolled right on to the plane to Switzerland and basically waltzed through customs and immigration there! It seems that while we haven't shaken off the lack of self-confidence in the national character (the so-called 'cultural cringe'), we at the same time have an extreme paranoia that forces us to think we need to be stronger, stricter, and in the end, effectively more repressive than other democratic countries. (On an aside, perhaps the source of this is simply an arrogance of our leaders in thinking we're bigger than we are, so have bigger and worse threats than other countries. But it's an institutional immaturity that our system breeds such leaders and doesn't check their delusions).

This paranoia (whether from national immaturity or arrogance) is exactly what comes to mind when I read pearl-clutching, fear-mongering opinions, where people claim that Australia would be too dangerously constrained if we required Parliament to vote on entering a war. While in a vacuum, this might seem like a reasonable argument, when read in context of the processes other nations take to go to war, it is shown to be ridiculous. How can that be the case when even the United States and the United Kingdom have a parliamentary process to enter wars? What makes Australia different - do we have more serious, pressing threats than the UK or US that means we need the Prime Minister to be able to deploy the defence force on a whim? *Of course not.* It's simply ludicrous. It seems surprising that we should even need to have an inquiry to analyse this - **surely it's obvious that a full vote of Parliament should be required to send Australia to war, just as it is in many other nations.**

On Transparency of the Process

Unfortunately in Australia, I observe (as part of what I think of our unfortunate immaturity as a nation) that we have an extremely unhealthy addiction to secrecy. We see this in all sorts of areas - for example, in Cabinet secrecy. Many nations, even New Zealand release transcripts of cabinet papers within weeks of the meeting, whereas ours are secret for 30 years. I recall an anecdote that described a public servant from New Zealand was asked by an Australian public servant "How can you give frank and fearless advice to Cabinet if it's going to be exposed in two weeks" - to which he replied, "well, I **have to** give good, accurate, frank and fearless advice, otherwise it'll be ripped to shreds by the papers in 30 days!" Somebody who only knows our system might be amazed, and wonder how it could possibly work to have

open, transparent governance. Whereas many people from democracies around the world can't believe how closed and opaque ours is. Many in leadership just seem to have an incredibly lack of curiosity to look around and see how systems work in other countries.

We need to be working to break down this unhealthy addiction to secrecy in every area of governance. I think the fears of those in charge that lead them to cling to secrecy are unfounded, and in general the main thing that it achieves is covering up poor, corrupt or duplicitous decision making, or embarrassing truths from being made public.

It should not need to be stated that obviously there is a need for secrecy around specific details of military deployments and operations, but there is truly little risk to having an honest, open debate about the general reasons, motivation, and decision-making to send Australia into conflict.

So in terms of sending Australian troops to war, the process should be transparent. Some have warned that Parliamentary approval would require too much classified and secret material to be made public. I do not think that history bears this out to be true, and instead I feel such a view is extremely, unnecessarily paranoid.

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 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.

On a wider principle, there are also consequences to an extreme secrecy that I think actually dangerous to our society as a whole, and potentially leads to a gradual erosion of our democracy. As 17th century philosopher Baruch Spinoza wrote, *'Better that right counsels be known to enemies than that the evil secrets of tyrants should be concealed from the citizens. They who can treat secretly of the affairs of a nation have it absolutely under their authority; and as they plot against the enemy in time of war, so do they against the citizens in time of peace'*.

The Government should make a public, transparent case for why they think war is needed, a debate should occur in Parliament, and only with a full vote of both houses should Australia be committed to war. This commitment to transparency should be legally enshrined as part of an Act regulating war powers.

On needing to act quickly

Obviously there must be some exceptions, such as if Australia is attacked directly, to allow the fast deployment of troops to counter such an attack.

I feel that it's absolutely possible to change the law to require a full vote of Parliament for almost every deployment, while offering enough exceptions that in those rare emergencies, the Government would have the flexibility it needs.

But I think we must carefully think through how truly exceptional and rare such cases have been, and are likely to be in the future.

On Defence Pacts or Agreements that could commit Australia to War

As an other related matter - there are potentially alliances, pacts, treaties and/or agreements that Australia is a signatory to that could commit Australia to joining conflicts. **I strongly believe this is wrong.** But for many of these agreements, we just don't know. The reason for this is that the text of many of these agreements is not able to be read by the Australian people. This honestly boggles the mind. How can Australia possibly claim to be a democracy when we are party to secret agreements with other countries?

It simply should not be legal for the Government to sign Australia up to a pact, alliance, or international agreement without that text being made public to the Australian people. This also, similar to the authorisation to send Australians to war, should require an Act to be passed by Parliament to authorise the acceptance of an agreement.

The Australian people need to know what is in the pacts and agreements that Australia is a party to, and it needs to be enshrined as a general principle that no agreement, treaty or pact should obligate Australia to enter into any other country's conflict.

Conclusion

This inquiry is very welcome. War powers is an area where Australia really needs a strong new law to require Parliamentary approval for war. This will bring Australia in line with other democratic, free nations. Enshrining the principles of a transparent, open debate will help restore public trust in a Government that has historically had an unhealthy addiction to secrecy.

There is absolutely no reason to fear such a process 'constraining' the ability of the executive to send Australia to war, and absolutely no reason why exceptions for emergency can't be included. These should only allow for extremely rare, emergency use, such as Australia being directly attacked by an aggressor.

Furthermore, the commitment full transparency should extend to cover any kind of defence pact, treaty or agreement. These should require the full text to be public and an Act to be passed to authorise Australia to sign them.

At the end of the day, it does seem almost ludicrous that the question needs to be asked whether it's appropriate for the Prime Minister or the Prime Minister and Cabinet to be able to send Australia to war on a whim. Of course not! I find it ridiculous also that we haven't fixed this already, but at the end of the day, I think it's clear that a vote of both houses of Parliament should be required to send Australia to war.