

Sending Australians to war

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3 MAPW War & Militarism series



- The decision to send Australian troops to war can be taken by Cabinet without parliamentary debate. This has resulted in misleading claims, lack of clarity, and questions on the legitimacy and legality of such decisions.
- Requiring the Government to submit a case for war to Parliament would improve the quality of Australian governance.
- The Australian Government should convene an inquiry into the Iraq War.

The royal prerogative

Sending the Australian Defence Force into war is one of the most important decisions that we as a nation can take. It might seem surprising, therefore, that this decision can be taken by Cabinet (thus effectively by a strong Prime Minister) without any debate in Parliament.

This situation has its roots in the pre-democratic notion that the power to make war is an attribute of the sovereign rather than that of the people. In any society founded on the belief that power flows from the people to the state rather than from the state to the people, it is both an anachronism and an anomaly.

The democratic deficit

Transparent and inclusive procedures for taking such decisions would bring several advantages. The circumstances of the decision to commit Australian troops to the invasion of Iraq show that the Prime Minister, with or without the advice and consent of colleagues and their departmental advisers, can in effect commit Australian forces to war or warlike operations in circumstances short of a direct attack on Australia's homeland. This can have a range of undesirable consequences. These include misleading, overstated or over-certain claims to the Australian Parliament and people; patently absurd claims of self defence against a real and imminent threat to Australia; a lack of clarity

as to what the mission is and what success would look like; and vexed questions of UN authority (a source of legitimacy with which Australians are comfortable) and of legality¹ in relation both to customary international law and to the provisions of the Charter of the United Nations.

Three of our major post-WWII deployments – to Vietnam, Afghanistan and Iraq – had one or more of these undesirable features, and consequently raised substantial domestic dissent.



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In each of these deployments the government of the day had in mind gaining some party political advantage through exploiting the claimed 'special relationship' with the United States and making appeals to patriotism.

There have been other deployments that did not raise such problems, but each of these would have benefited from being submitted for approval by the Parliament, to put beyond doubt that the deployment had the formal approval of the elected representatives of the Australian people.



All deployments of Australian forces into warlike situations would have more credibility and political force within the nation and within the alliance if they were subjected to a Parliamentary process rather than avoiding that process.

Good governance

A requirement to submit a case to Parliament would improve the quality of Australian governance in that it would require the Government to put on record a clear statement of what the purpose of the deployment is, on what premises it is based, what the nature of Australia's involvement will be, and how long it is expected to last.

The Iraq War dealt a serious blow to good governance. It appears that policy advice was *neither sought from nor offered by* the Government's senior civilian advisers. This governance deficit needs to be addressed in several ways. A more open system of decision-making would make a useful contribution.

“The Iraq War dealt a serious blow to good governance”

Transferring the prerogative to Parliament would also require each and every Member of Parliament to accept personal responsibility for their vote on this most grave of public decisions. At present the great majority of MPs can shelter behind the fact that Executive Government (Cabinet) made the decision without consulting them.

There are no insuperable obstacles

The principal arguments raised against transferring war-making powers from Executive Government to the Parliament are that it would complicate alliance relationships, that it could impede a timely response, and that a fully informed decision must be based upon sensitive information that cannot be disclosed to the Parliament.

April 2012 (1st ed). The MAPW War & Militarism series offers thought-provoking papers intended to spark public debate ahead of the 2015 Anzac centenary. MAPW warmly thanks contributing authors for their professional input to this series. Contributing authors do not necessarily endorse all of MAPW's views or objectives. Series editor: Michelle Fahy.

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In fact, it is not possible to conceive of a situation in which the demands of Australia's alliances would preclude Parliament from being consulted about a proposed deployment of the Australian Defence Force. The lead time to prepare the relevant force elements would normally be longer than that required by the Parliament, and it would not be difficult to draft provisions for emergencies into the legislation.

As for the communication of sensitive information, there is a long tradition in countries governed under the Westminster system of briefing the Opposition leadership at times of national peril. If the Prime Minister of the day were unable to convince the Leader of the Opposition of the merits of a proposed deployment, then the case would by definition be less than compelling.

A Chilcot Inquiry for Australia

In 2009 the United Kingdom set up *an inquiry led by Sir John Chilcot* to examine the decision-making process that led to the UK's commitment to the Iraq invasion and identify the lessons learned.

There is good reason to believe that the Australian Government of the day was less than frank with the Australian people about when and why it committed itself to the invasion. In any event there are important lessons to be learned from the Iraq experience. The Australian Government should convene an inquiry with similar terms of reference to the Chilcot Inquiry.

References and further reading

¹On questions of UN authority and legality, see [Melbourne Journal of International Law](#), Vol 4, May 2003, feature on Iraq [Detailed essay](#) on how and why Australia became involved in Iraq war: [Domestic legal](#) issues raised by Australia's action in Iraq. The Australian Greens introduced the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008 ([2010 version](#) reinstated after 2010 election). After a disappointing Senate Foreign Affairs Defence and Trade Committee report, the Bill was debated on 7 July 2011 but hasn't proceeded. [Parliamentary involvement](#) in declaring war and deploying forces overseas.

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