



AUSTRALIANS FOR WAR POWERS REFORM

Including the CAMPAIGN FOR AN IRAQ WAR INQUIRY

Submission to the Minister for Foreign Affairs

Foreign Affairs and Trade White Paper

The members of Australians for War Powers Reform (AWPR) are Australian citizens with an interest in how, why, and with what results Australia goes to war. Our members have long experience in government, defence, higher education, law, and medicine, and the group has produced several publications in consultation with the public, provided them to MPs and Senators, and briefed them on the contents.

Originating as the Iraq War Inquiry Group in 2012, we became the Campaign for an Iraq War Inquiry in 2014, and have continued our work as AWPR from 2015. Our group has called on Federal politicians for a full, open and independent investigation (along the lines of the UK's Chilcot Inquiry) of how Australia entered the wars in Afghanistan, Iraq, and Syria, and their consequences. Two inquiries focussed on the performance of the intelligence agencies for the Afghanistan and Iraq deployments (Jull 2004 and Flood 2007) but they did not analyse or account for the legal, military, and political decisions that were made, nor inquire into the results. Australia lags behind our American, British, and Netherlands coalition partners in this regard.

No inquiry has been conducted in relation to the re-deployment of Australians to Iraq in 2014 and 2015, or to Syria in 2015 and 2016. Voters and taxpayers should be enabled fully to understand what is being done in their name, and why Australian service-people were sent on such missions and with what result. We agree with Prime Minister Turnbull's view (in a different context) that

the government is dealing with other people's money. The Australian people are entitled to see that we are spending it wisely, appropriately, and in a

manner that gets value for money. (*The Weekend Australian*, 14-15 January 2017: 1).

Such accountability is even more essential when a government sends forces into any form of armed international conflict. Fiduciary responsibility is required procedure in most modern democracies, yet Australia has never practiced it by holding inquiries into the cost, conduct, and consequences of wars. All our deployments since Vietnam (except East Timor and RAMSI) have been to undeclared wars at the behest of the United States, made not in response to a direct threat to Australia, or to a prior request from the government of the country concerned, or in accordance with a Resolution of the UN Security Council. Hence they were illegal.

In recent conflicts (Iraq Wars II 2003 and III 2014-) those legitimising conditions did not exist. Our group is particularly concerned that since Iraq War I (1990-1), it has evidently become the Government's practice to send troops to war using an administrative provision of the Defence Act (s.8), and bypassing the Governor-General, the only person with the power under our Constitution to authorise the deployment of the ADF into international armed conflict. To ensure that actions by the Government are consistent with the Constitution and international law, the Governor-General should be consulted in advance, individually and/or as the Governor-General in Council. The Governor-General is constitutionally obliged to receive legal certification from the Attorney-General, and must, as Commander-in-Chief, be assured that members of the ADF are legally deployed.

In Syria, Australia appears to be in breach of the very international law whose observance we commend to others. To justify bombing Syria on the grounds that our enemies (or those of the US) do not respect national boundaries is not legally acceptable. Unilaterally diluting the 'red card' provision that protects Australian aircrews from committing war crimes (as the Prime Minister reportedly did in July 2016) may have no bearing on our US ally which is not bound by the International Criminal Court: but for Australian troops, and potentially our top ADF commanders and Ministers, it is a significant consideration, and one that could lead to indictments

before the Court. Defence against such charges becomes extremely problematical if the ADF members or others cannot demonstrate that the relevant ADF elements were lawfully in the theatre, on the basis of authorisation by the Governor-General.

Australia is also responsible for the humanitarian harm caused by our recent wars. They are not only devastating for the civilians involved, including millions who are forced to flee their homes and seek refuge elsewhere, but they also intensify anti-Western sentiment, have life-long consequences, and undermine the very security we seek to defend. A rational rebalancing of Australia's priorities, regional with global, military and paramilitary with diplomacy and development, should be a core objective and outcome of the White Paper.

President Donald Trump's statements about US relations with other countries make it even more urgent that the Australian Government should develop a distinctive foreign policy that advances our own interests rather than unquestioningly complying with the demands of our ally. We offer two salient examples. First, a particularly alarming prospect is that President Trump will lower the threshold for using *nuclear weapons*. As Australia is a close accomplice in US policy – as evidenced by our strong opposition in the UNGA to a nuclear weapons ban treaty – it is now imperative that we subject any proposed military action with our ally to independent, intensely critical scrutiny. We should set limits on the activities the United States can conduct from Australian bases to which it has access, and which make Australia a target. Second, we should make clear our rejection of military solutions to disputes in the *South China Sea*. It is particularly important for Australia to demonstrate our attachment to the rule of law, which is fundamental to our cooperative security relations with Indonesia, Malaysia, Vietnam and others in our region. All countries bordering the South China Sea share our interest in resisting it becoming a conflict zone.

We consider that in advance of the dispatch of Australian troops to war, Parliament should be required to debate and vote on the Government's proposal, as is now the UK convention. Legislative changes to give effect to this are urgently needed. It is for

the Parliament to consider such changes in detail, including a possible provision for Government to make decisions quickly in response to an emergency. The historical record since 1942 gives us confidence that such a contingency is unlikely, and that in most cases there would be ample time for consideration and debate. We do not accept that the need for an immediate response would justify bypassing a standard and customary Parliamentary process.

We are familiar with the arguments that are raised against Parliamentary involvement in decisions to deploy the ADF into international armed conflict. We do not accept that Australia's mature and sophisticated polity is incapable of drafting legislation that would give effect to our proposals, which reflect practice that is the norm rather than the exception in modern democracies.

In order to ensure that future Australian troop deployments are made in conformity with the Constitution, international law, and Australia's national interests, and to guard against the repetition of disastrous invasions like that of Iraq in 2003, we *specifically recommend* that legislation be introduced to ensure that:

- The recent practice of dispatching Australian forces under a provision of the Defence Act should not continue;
- In advance of the deployment of Australian forces, the matter should be considered by a security-cleared Parliamentary Committee, and be debated and voted on by both houses of Parliament;
- The Government should set out clearly the political and strategic considerations involved in any deployment of troops, its legal basis, purpose, likely duration and estimated costs, including the likely humanitarian impacts, plans for addressing them and for post-war rehabilitation;
- If a proposal for armed deployment is carried, the Governor-General should be asked to consider it and have the opportunity to seek more information before the Government acts on it;

- The Government should be required to report to the Parliament at regular intervals on the progress of a conflict, including its human costs;
- At a specified time, a further debate and vote in the Parliament should determine whether the deployment should continue or not;
- After the conflict, an independent inquiry should present a full, public report, including recommendations to guide Governments in future deployments.

As a *general recommendation*, we urge the Minister for Foreign Affairs to review the ANZUS Treaty and ensure that its application does not extend beyond the obligation for the Parties to *consult* in the event of a threat to any of them *in the Pacific*, each *in accordance with their Constitutional processes*. The Treaty does not oblige the United States to defend Australia (or New Zealand), nor does it oblige Australia to defend the United States or its interests. No Australian minister should interpret it or represent it as doing so.

Signed:



(Paul Barratt)

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