



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

BILLS

**Defence Amendment (Parliamentary Approval
of Overseas Service) Bill 2010 [No. 2]**

Second Reading

SPEECH

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BY AUTHORITY OF THE SENATE

SPEECH

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Questioner
Speaker Johnston, Sen David

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Senator JOHNSTON (Western Australia) (16:54): I commence my response to this legislation, the Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2010 [No. 2], by adopting and supporting the words of Senator Faulkner, who is very knowledgeable and wise on these matters and has had the heavy burden of responsibility upon him personally. I take what he said as a very good litmus test of the way to analyse this important responsibility. This is a very serious matter. The operation and mechanics of democratic principles in the deployment of troops beyond our borders is a matter of the utmost seriousness. It is at the very top of our responsibilities as parliamentarians. This bill is important and, to that extent and the seriousness surrounding it, I thank Senator Ludlam for bringing it before the chamber and the parliament because it is an opportunity to re-evaluate and re-examine our disposition with respect to this very important subject.

Having said that, and having adopted the disposition and sentiments of Senator Faulkner, the opposition's perspective on this matter is very clear. In reviewing what has gone before, I am taken to the Senate Foreign Affairs, Defence and Trade References Committee report back in 2005. History there has set out that in 1985 Senator Colin Mason introduced to the Senate a bill of a similar nature to the one that Senator Ludlam has put before the Senate. He explained:

The purpose of this Bill is to place the responsibility for the decision to send Australian troops overseas with both Houses of Federal Parliament subject to exceptions covering the movement of personnel in the normal course of their peacetime activities and the need to take swift action in an emergency.

The bill was adjourned or lapsed in 1986 and was not pursued. Senator Paul McLean of the Australian Democrats picked it up and introduced it again in 1988 and, indeed, it was in very similar terms to Senator Mason's bill.

On 27 March 2003, similar legislation—namely, the Defence Amendment (Parliamentary Approval for Australian Involvement in Overseas Conflicts) Bill 2003—was introduced by Senator Andrew Bartlett and Senator Natasha Stott Despoja of the Australian Democrats. It was restored to the *Notice Paper* on 17 November 2004 and debated in the Senate on 10 February 2005. The arguments in favour of and in opposition to the legislation built on those of 1986. A number of senators participated in the debate, which was then adjourned.

Finally, we come to the bill which was introduced by Senator Ludlam on 17 September 2008. I reiterate that it is a very healthy and useful process for us all to re-examine this very important piece of democratic practicality and principle in the way we deal with the deployment of Australian troops beyond our borders—overseas. Yes, there are a number of countries that do have strict parliamentary approval requirements. In the debates that have gone before, I note that Senator Hogg and Senator Marise Payne listed countries in 2005 where such approval was not necessary. They included Canada, Belgium, France, Poland, Portugal and the United Kingdom. The significance of mentioning those countries, particularly Canada and the United Kingdom, is that they have a particular relevance and I think we have a reasonable understanding of the synergies that exist between this parliament and their parliaments. In this regard, Senator Payne noted that different parliamentary systems, different parliamentary chambers, make different parliamentary arrangements. That is a very important point. The Senate report goes on to say of the committee:

For example, it noted that in some cases parliamentary approval may be needed to declare war but not to deploy troops and certain military service may not require approval.

So there is a huge definitional and threshold-defining requirement for us to tie down how the parliament will, in the first instance, deal with the proposition that Australian troops be deployed overseas to apply lethal force. The UK government has debated this matter on a number of occasions. As the report says:

... the UK Government recognised that the main challenge was to formulate a process that would be 'sufficiently adaptable to be able to respond quickly and flexibly to the variety of situations that could arise'.

I reiterate those words, 'to respond quickly and flexibly to the variety of situations that could arise'—situations which may not be within our understanding or contemplation, given past history. The report continued:

It pointed to difficult issues that needed to be resolved such as allowing for exceptional circumstances, the need for urgent deployment, potential dangers of a retrospective approval process, security implications from the release of information, the timing of the vote and definitional issues—

as I have mentioned—

such as 'armed conflict'.

These concepts are all very fluid and can be, and very much will be, the subject of lengthy discussions.

The main question which was before the Senate committee, however, was not about the principle of parliamentary debate or approval but about whether the bill provided 'an effective or credible alternative to the current practice', and I think that is also a really important consideration for the Senate. Will the bill work in a way that imparts confidence and effectiveness in dealing with circumstances that require immediate attention? The committee was concerned, as I am, that this process will not fulfil those obligations or requirements.

There are also concerns about the level of information that the chamber may have. As Senator Faulkner quite rightly emphasised, this is the real world: our strategic position cannot be disclosed to the public; our surveillance and reconnaissance information, its sources and its veracity cannot be disclosed or debated. So, almost of necessity, the debate will have to be held with all of us with one or both of our hands tied behind our backs with regard to classified material. Hence the parliament will be in a worse position, a much worse position, than the executive in terms of knowledge and understanding of the circumstances surrounding a proposed deployment. Indeed, former senator Gareth Evans sympathised with the philosophy underlying parliamentary approval of such deployments, but he also said in 1986, when dealing with the original legislation:

... situations may develop where there is a need to determine measures to be taken without the publicity associated with debate in the Parliament; situations where public knowledge could limit our strategic options and indeed put our forces at risk.

They are very serious words. I think they very much determine where the government and the opposition sit on this particular question. Back in the debates of the 1980s, a very learned and talented former senator, Senator David MacGibbon, also identified a problem with the use of classified material. As the committee report states:

He argued that a decision to commit troops could be made 'only in the full knowledge of all the circumstances—
as I have indicated—

knowing the diplomatic circumstances that are involved, the strategic involvement and all the military and economic factors'. In his view, these must, 'be weighed up in the light of a careful assessment of all the options that are open to the government of the day. That simply cannot be done in open debate in any chamber of this parliament'.

Again, I think this is where this principle can lie with respect to the realities of and the necessity for information. Two decades later, senators opposing the 2003 version of the bill raised similar concerns—I also raised those concerns. As the committee report says:

Representing both major parties, they argued that the executive is the only body that has 'full and proper knowledge of military and strategic decisions and the one-on-one contact with Australian allies' to be able to make a considered and well informed decision. In their view, Parliament does not have access to all available intelligence and the complete range of advice from the Public Service.

Of necessity, a debate regarding the approval or otherwise of the deployment of Australian troops beyond our shores can never be a fully informed debate. Accordingly, the underlying problems with the mechanics of this legislation clearly mean that we cannot support it.

The senators of the day in 2003 and 2005 similarly rejected the alternative of providing parliament with all available intelligence to enable a fully informed debate. In their assessment, such an arrangement would be

both impractical and detrimental to security. In particular, they were concerned that the disclosure of classified material, such as specific details on a deployment or intelligence advice given to governments on a confidential basis, would compromise the safety and security of such an operation. I would like to quote former senator Linda Kirk, who made quite a contribution in her short time as a senator here. During the debate on this topic in 2005, she said:

There will often be cases where information simply cannot be made public. If it were to be made public it could very much undermine our strategic position when we are about to embark on a war. This could not even be overcome by holding a secret session of parliament, or something of the like, because that is contrary to our system of government and it would not be the proper manner in which to do this.

As the committee report states:

For the major parties, the problems were serious—the inability of Parliament to have access to all the information needed to make critical decisions—

and to hold an informed debate—

concerning the deployment of Australian ADF members or disclosing information that could jeopardise the safety and success of a military operation.

That is a fundamental principle that we need to adhere to in the context of a realistic approach to the circumstances of the day.

The committee identified a number of deficiencies in the legislation it was considering, which, as I said, was virtually identical to the bill before us today. As the committee's report said:

These deficiencies relate to the uncertainty and confusion about the use and application of terms such as war and non-warlike service and assumptions made about their application. The committee is also concerned about the nature of the resolution to be agreed to by both Houses of Parliament and about the extent to which it could impose conditions on deployment.

The debate on the matters in this bill has over the years been very thorough; these are important matters. That being the case, it is absolutely vital that, given our involvement in Iraq and Afghanistan, we revisit these matters on a regular basis. I think this debate has been a very healthy one, and I think that the issues have remained the same. In my submission, the detriment in this bill clearly outweighs the principle. No matter how positive are the underlying principles of this bill—and the bill is laudable—the impracticality of full disclosure to the parliament in a strategic sense and where intelligence, diplomacy and classified documents are concerned means that we must continue with the system as it now stands. After all, it has served us well.