



Australian Government

Memorandum on Government Conventions Relating to Overseas Armed Conflict Decision Making

Preamble

The defence of Australia, its people, and its national interests is the Australian Government's most important responsibility. The decision to engage in armed conflict is one of the most consequential options available to the Government in meeting this responsibility.

The decision to deploy the Australian Defence Force (ADF) into armed conflict is a prerogative of the Executive Government, which allows the government of the day to respond in a timely and effective manner to challenges to Australia's national interest and security. The Parliament plays a key role in giving voice to the views of the Australian people, and in holding the Executive to account for the decisions it has taken, on such matters of national significance. Maintaining an appropriate balance between these considerations serves to strengthen the openness and accountability that are fundamental to Australia's democratic systems and traditions.

This memorandum outlines the practices in the event of a decision by Government to deploy the ADF in a major military operation as a party to an armed conflict overseas, whether that armed conflict is with a state or a non-state actor, so that Parliament has the opportunity to be informed and appraised of the decision as well as exercise its important role as the voice of the Australian people.

The Prerogative of the Executive Government

The decision to deploy the ADF into armed conflict is a prerogative of the Executive Government. The authority to do so flows from section 61 of the Constitution. In practice, the National Security Committee of Cabinet exercises this power collectively to enable informed decision-making on matters of national significance.

Following a decision by the Executive Government to exercise its prerogative power under section 61 of the Constitution, a direction is given to the armed forces to enact the decision of the Executive consistent with the principles of responsible government outlined in chapters I and II of the Constitution.

Parliament to be informed of and debate armed conflict decisions

In the event of a decision by Government to deploy the ADF overseas in a major military operation as a party to an armed conflict the Government will make arrangements at the earliest opportunity, and not later than 30 days from the deployment, for the Prime Minister and Leader of the Government in the Senate to deliver a Ministerial Statement to Parliament with advice on the conflict and to facilitate debate.

As part of this process, the Government will provide and table an unclassified written statement in both Houses of Parliament outlining the objectives of the deployment in question, the orders made, and its legal basis.

If Parliament is not already scheduled to sit within this 30 day period then:

- i. the Prime Minister, in consultation with the Leader of the Opposition, will write to the Speaker of the House of Representatives, asking that a special meeting of the House be fixed at a particular date and time under Standing Order 30; and

- ii. the Leader of the Government in the Senate, in consultation with the Leader of the Opposition in the Senate and the concurrence of party leaders representing an absolute majority of the whole number of senators, will write to the President of the Senate asking that a special meeting of the Senate be fixed for the same date and time under Standing Order 55.

If Parliament is scheduled to sit within 30 days of the deployment then the first appropriate day of the scheduled sitting period shall be set aside for this purpose.

Consideration of the ministerial statement shall have precedence over all other business until concluded, and shall be the sole item of business if the Parliament meets on a day it was not otherwise scheduled to sit.

Notwithstanding these practices, and consistent with long-standing policy, the Australian Government reserves the right to determine the appropriateness of disclosures with respect to questions of international law and advice on questions of legality, as well as any considerations of national security or imminent threat to Australian territories or lives.

Regular updates to Parliament on deployments and military strategy

While any deployment of the ADF into a major military operation as a party to an armed conflict overseas is active:

- i. the Prime Minister and the Leader of the Government in the Senate will provide to each House of Parliament a statement, at least annually, on the Government's policy with respect to Australia's involvement in that armed conflict;
- ii. the Minister for Defence and their representative in the other Chamber will deliver statements to each House of Parliament at least two other times during a given year on the Government's policy with respect to Australia's involvement in that armed conflict and provide an update on ongoing operations where Australia is a party to armed conflict; and
- iii. the Government will facilitate appropriate briefings to the relevant Parliamentary Committee on the conduct of significant military operations.

The Government will allow sufficient time for the delivery of these statements and appropriate debate on them in the ordinary course of the Parliamentary sitting program.

Defence strategy documents tabled in Parliament

To inform the Parliament and allow for debate, the Government will table publicly released Defence strategy documents in each House of Parliament within 30 days of their publication. The Minister for Defence will make arrangements for the tabling of these documents consistent with the Tabling Guidelines.