

Flies in the ointment will of course probably occur. Given the normal run of events, especially for a new government with so many untried ministers, it could be that Greg Combet may not stay in the Defence portfolio very long before being promoted to a ministry elsewhere. If he is replaced by someone not as competent, or not as experienced in industry policy, the opportunity to mature the appointment of parliamentary secretary for defence procurement into a junior ministry may be postponed or even lost. This occurred in part when Mal Brough was the junior minister during the previous government. He was promoted quickly before his newly delegated responsibilities for implementing the Kinnaird reforms were bedded in to the junior minister's responsibilities.

Another possible difficulty is the greater scope for personality clashes arising among a larger ministerial oversight team. Such difficulties occurred at times in the previous government with only two ministers being involved, when factional differences caused tension or the senior minister had little confidence in the ability of the junior minister. The problem, and its flow-on effect for departmental administration and morale, was not helped by John Howard's unfortunate tendency at times to park less able junior ministers and some quite ordinary parliamentary secretaries in the Defence portfolio for party management reasons. This was not conducive to developing traditions of ministerial teamwork, effective burden-sharing and efficient administration of Government business in the Defence portfolio. Nor did it help the career development of potential future Defence Ministers.

Not continuing the recent practice of the Minister for Defence Science and Personnel also being the Minister for Veterans Affairs is mainly a good thing as the longer-term advantages cancel out some short-term disadvantages. There remains a clear need to improve and integrate the transition that many defence force personnel undergo if (with qualifying operational service) they subsequently become the responsibility of the Department of Veterans Affairs. This was well understood by the previous double-hatted minister, Bruce Billson, and is well understood by the new single-hatted one, Alan Griffin, so concentration on the reforms needed should not be unduly affected by there being separate ministers for defence personnel and veterans affairs.

One other minor difficulty that may emerge over time is that the minister, the junior minister and both parliamentary secretaries are members of the House of Representatives. This will work better than it should because Senator John Faulkner represents the Defence portfolio in the Senate, including estimates hearings. But his experience in Defence matters in particular and the Senate in general, and his responsibilities as Cabinet Secretary, are unique to him. Another advantage of eventually having three ministers in the Defence portfolio is to increase the opportunity for at least one in either house. ♦

Minding our prerogatives

Since the reign of Edward III in the mid 14th Century parliaments in the Westminster system, as it has evolved,

have had a right to be consulted about the treaties that end a war. The Glorious Revolution of 1688 confirmed that parliaments have the power to limit ongoing commitment to a war through control of the revenues needed to fight it. But in Westminster system parliamentary democracies the legislature does not have the power to decide on going to war in the first place.

The war-making power has long been vested solely in the executive (effectively the Cabinet formed by the elected government) as a Crown prerogative. In Australia, the modern heads of power for this (the express powers) are primarily based in Sections 2 and 61 of the Constitution, and several Westminster system conventions including the practical interpretation of Section 68 (regarding the Governor-General's role as commander-in-chief of the ADF being titular only).

Section 114 of the Constitution gives the federal government exclusive power to maintain defence forces unless it decides otherwise. Section 119 prescribes the Commonwealth's responsibility to protect every state from external invasion, and assist with suppressing violent civil disorder internally if the state asks for such help. Sections 51(vi), 51(xxix) and 51(xxxii) provide the heads of power (incidental powers) that authorise the Australian Parliament to legislate on defence matters. Several other sections of the Constitution give Parliament effective control of Commonwealth revenues and expenditure, including those needed to maintain the ADF, fight wars and mount other operations generally.

This system of constitutional, statutory and procedural checks and balances has evolved in the Westminster system over the last seven centuries for a range of legal, moral and practical reasons. Recent calls from minor parties in the Senate for parliament, not the Government, to decide the question of Australia going to war appear to have been made without due reference to these long-established checks and balances and the reasons for them. ♦

Dividing the war-making power

The Australian Democrats are proposing a private member's bill that would require both Houses of Parliament to agree, by resolution, before the ADF could be deployed outside Australia's territorial limits (with some provision for temporary deployments in emergencies without such sanction). Senator Brown of the Greens has also moved a resolution 'calling on the prime-minister and future prime-ministers to refrain from engaging Australia in war without first gaining the agreement of the Australian Parliament'.

Support for the general theme of parliament taking control of the constitutional war-making power has generally come from those ideologically opposed to Australian participation in US-led military actions, whether endorsed by the United Nations or not. Another significant source of support appears to be those agitating for major constitutional changes more widely. Any proposal to alter the checks and balances involved needs to be examined very carefully and debated objectively and openly. At the very least, any legislation

seeking to do so should not be considered without an exhaustive parliamentary committee inquiry.

The Australian Democrats' Bill is loosely based on a recent British Green Paper, *The Governance of Britain*, which discussed the option of similar legislation limiting the power of British governments to deploy the armed forces. This was in turn based on parliamentary committee inquiries by the House of Commons and the House of Lords in 2003-04 and 2005-06 respectively. The UK situation is somewhat different, of course, because of the absence of a written constitution and the upper house of parliament not being elected.

The British Government has subsequently rejected the option of legislation (although not ruling it out entirely in the future). They have opted instead for a parliamentary resolution to, in effect, establish a constitutional convention. This change of mind was largely due to comprehensive debates in the House of Lords where, by tradition, many of the Life Peers are former armed forces commanders. These distinguished military experts argued forcefully that the national interest meant maximum flexibility on the issue needed to be preserved, especially as overseas military deployments in this day and age may change swiftly from humanitarian assistance to peacekeeping to warlike actions and back again. They also noted that many military deployments often occur in emergencies where consulting parliament beforehand is impractical, would involve an undue risk of communicating information or other comfort to the enemy, might imperil sensitive negotiations with allies, or invoke a combination of all these complications.

In consultations by proponents of the Australian bill, several former senior ADF officers of varying political inclinations have expressed similar professional concerns about its desirability or practicality. Further broad objections have been raised about the bill's narrow focus on 'the territorial limits of Australia' as the criterion for determining deployments that would need parliamentary approval.

- Many overseas deployments do not involve warfare, such as international exercises, ship visits, aircraft transits, disaster relief, peacekeeping or evacuations of Australian citizens from threatening situations.
- The ADF has always been used more often to defend or further our national interests than to defend our territory *per se*, including Australia's responsibilities under the UN Charter for collective security action and under various treaties for collective defence action.
- In Australia's enduring strategic circumstances of small forces, continental responsibilities and limited resources, the deterrent value of elements such as strike aircraft, submarines and Special Forces would be weakened or lost altogether if a potential enemy knew that they could not be used without the public fanfare of parliamentary debate.
- The requirement for both houses of parliament to approve action is likely to be problematic in practice. The Senate balance of power can be held by minor parties or independents. These tend to be motivated by ideologies towards an extreme of the political spectrum, and/or are

unduly subject to the vagaries and pull of the simplistic populism that tempts those who know they will never need to implement such policies in actual government.

Whether any Australian government of either political complexion would support such a blanket limitation on its freedom of action in situations of *extremis* is doubtful. There are also doubts about the constitutionality of the method involved. The Bill seeks to limit a government's ability to deploy the ADF overseas without authorisation from the parliament by amending the *Defence Act 1903*. Whether the entrenched and exclusive Crown prerogative in such an important matter could be restrained so totally in this manner is open to question. The issue would inevitably end up in the High Court the next time we have to fight a war that is not overwhelmingly supported politically.

Finally, there is also no small irony that the ideas represented in the bill might enjoy broader support, including in defence circles, but for the indifferent quality of contributions by minor party senators to debate about defence matters in general, and during initial and subsequent debates about ADF deployments to Iraq and Afghanistan in particular. ♦

Globalisation of subversion

The Internet and the degree of globalisation it has helped spawn has generally been a blessing to mankind. The consequent phenomenon of the 'blog' has also brought many benefits, not least a degree of terror to authoritarian and totalitarian regimes dependent on the strict control of information and public debate for their survival.

But the world-wide-web in general, and blogging in particular, also have a downside in that the extremist, the ignorant and the downright mad or bad can now easily contact each other to spread and reinforce their respective messages. All wars are ultimately contests of will and end when one side gives up. The heightened ability of extremists, conspiracy theorists, the crazy and the plain nasty to spread their beliefs, and advocate commensurate action, make it much harder for liberal democracies to fight wars effectively.

In Australia, the exercise of legitimate dissent in public debates on such wars is not subversion *per se*. It becomes so only with active support by the foreign enemy concerned and if this is known or recklessly ignored by the 'dissenter'.

The danger of modern subversion via the web is simply through the increased ease it provides our external enemies, or deliberate enemy sympathisers and conscious or unknowing defeatists within our own society, to spread subversion and propaganda in order to undermine our national will to prosecute a war. The web also simplifies enemy targeting, recruitment and manipulation of those Australians unusually susceptible to subversive approaches through polemical belief, gullibility, marked contrarian tendencies or a combination.

The reverse side of this coin is equally dangerous although not subversive directly. Comments on the web by a minority of Australians, whatever their motivation, can also provide comfort to our enemies by exaggerating the