



Office of the Minister for Defence

Parliament House
CANBERRA ACT 2600

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MC16-003728

Mr Nick Deane
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Dear Mr Deane

Thank you for your email dated 1 December 2016 to the Prime Minister, the Hon Malcolm Turnbull MP, about a legislative proposal related to war powers.

As this matter falls within the portfolio responsibilities of the Minister for Defence, the Office of the Prime Minister provided the email to the Office of Senator the Hon Marise Payne on 7 December 2016. I am responding on the Defence Minister's behalf. I regret that you did not receive a response to the Marrickville Peace Group's correspondence in July 2016.

Under Australia's constitutional arrangements, the decision to deploy the Australian Defence Force to undertake combat operations, as well as a range of activities other than warfighting (such as peacekeeping operations and disaster relief), is an exercise of executive power under section 61 of the Australian Constitution. The Government needs the ability to act swiftly based on the best advice available. The existing arrangements allow the Government to act decisively and respond flexibly to contingencies when they arise.

Decisions made by the Executive are able to be tested on the floor of the Parliament. Thus, there are appropriate checks and balances on Executive power through the normal business of the Parliament.

In February 2010, the Senate Foreign Affairs, Defence and Trade Legislation Committee published a report on the *Defence Amendment (Parliamentary Approval of Overseas Service) Bill 2008*. The report recommended that this draft bill – proposing similar processes to those outlined in Mr Smith's proposal – not proceed due to concerns that Members of Parliament do not have access to classified material that would adequately inform decision-making in this area. The Committee found that without a full understanding and appreciation of the complex and interrelated security, strategic and diplomatic circumstances, Members of Parliament would lack the institutional ability to make important decisions on Australia's engagement in overseas conflicts.

At this stage a bill with processes similar to those proposed by Mr Smith's bill, the *Defence Legislation Amendment (Parliamentary Approval of Overseas Service) Bill 2015*, is currently awaiting Senate consideration.

I trust this information is of assistance to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'F. Varjavandi', written in a cursive style.

FAZ VARJAVANDI

06 FEB 2017