



Well off the ball and far from the mark

In late March Professor Des Ball, a longstanding member of the Strategic and Defence Studies Centre at ANU, presented the university's annual Blake Dawson Waldron lecture on the subject *Rushing Headlong to Infirmity: Australian defence policy and force structure development*. Rather than, as the title would indicate, the lecture being a history of Australian strategic policy development throughout the last quarter of the 20th Century, it instead purported to cover current and future events.

The lecture regurgitated the well-known view of the Defence-of-Australia (DOA) lobby that all has gone to hell in a hand basket in the Department of Defence since the champions of this view swapped their well-appointed offices at Russell Offices for the faded academic comforts of the Coombs Building at ANU.

But amongst the usual repetitive and simplistic DOA nostrums listeners were still astounded by large segments of the lecture. To cite only one of several examples, every single technical and mobility characteristic cited as a "fact" in describing the ADF's new Abrams tanks was wrong. This was capped off by the claim that the first 18 tanks delivered to Puckapunyal "may never leave there", followed by the bizarre assertion that they were only bought because the "Army leadership" wanted to join American invasions "driving up the road to Damascus or Teheran".

Such specious arguments about the long overdue new tanks have been convincingly refuted in detail in numerous forums over recent years (including the Summer 2006/07 *Defender*). It was therefore disappointing for many to hear them resurrected bodily again without any hint of knowledge that strategic debates have well moved on in this regard. One observer noted wryly that at least it showed that Professor Ball is no fan of motor sports. An Abrams tank had travelled to Canberra without any difficulty in January for display at the annual Summernats exhibition almost within gun range of the professor's own front door.

Similarly odd or tired arguments followed concerning the C-17 heavy airlifters and the new amphibious ships, air warfare destroyers and fighters. The increased resourcing for defence over recent years was mentioned, but without reference to it being the overdue and necessary reversing of the sustained under-resourcing that sprang from decades of DOA dogmatism.

Finally, what especially depressed many listeners was there appeared to be little understanding of modern, integrated joint-Service goals, doctrine and processes (as opposed to old-fashioned, stove-piped, single-Service or bureaucratic views). Or indeed any acknowledgement of the many deficiencies in the 2000 Defence White Paper revealed by strategic events and operational experiences since it was written.

Any undergraduate at ANU proffering such ill-researched and polemical tosh to any self-respecting tutor would be swiftly told to resubmit it after appropriate academic effort. Blake Dawson Waldron should ask for their money back.●

Highlights:

- More tired polemics from the DOA lobby
- Super bungle causing major morale problem in the ADF
- Sentencing, releasing and controlling David Hicks
- How David Hicks could have been tried in Australia
- More unnecessary grief for the Kovco family

Super blunder mars retention initiatives

The Government's superannuation reforms may be generally popular throughout the country but not with former and serving ADF personnel. First, there was the quiet retreat from the initial declaration that superannuation payouts for all Australians would be tax-free at age 60. This was later rescinded to exclude members of Public Service and ADF superannuation schemes, on the questionable grounds that their payouts are funded from consolidated revenue rather than from taxed accumulation funds. A controversial 10 per cent tax offset has been offered instead.

But this pales into insignificance compared to the latest arbitrary and apparently discriminatory development affecting many serving ADF members. The new superannuation regulations being drafted by Treasury apparently threaten that from 01 July this year commuted lump-sum payouts from the Defence Force Retirement and Death Benefits Scheme (DFRDB) will be taxed at double the current 15 per cent rate.

The very sudden advice that those retiring after 12 June 2007, only two months away, stand to lose large amounts of their super in tax has not been good for morale to say the least – or indeed the current concerted campaign to improve problematic retention rates in an operationally stretched and understrength defence force. The personnel now most tempted to retire at short notice are those experienced senior NCOs and officers most needed but who have served long enough to still be DFRDB contributors (the scheme was closed to new entrants in 1992).

The profession of arms is a unique occupation with a higher than normal incidence of premature death, wounds or injury. Its remuneration, superannuation and compensation arrangements need to reflect this situation. The late notice of these regulations and the lack of consultation and explanation are no way to treat the members of the nation's defence force. The Minister for Defence needs to remind the Treasurer that Australia is currently fighting several wars with a defence force that is too small to sustain the current operational tempo, or to face future strategic uncertainty with confidence and due preparation. The whole episode smacks of serious left-hand-right-hand governmental complacency or mismanagement. The members of the ADF need to be reassured forthwith that the proposal has been quashed.●

Suspending belief or confirming it?

Public commentary on the seven-year but largely suspended sentence handed down to David Hicks has followed largely predictable lines. Those who look at the Hicks issue in only *criminal* terms continue to believe he either *committed no crime* or has *not been fairly tried*. Adherents of this viewpoint also tend to believe his plea of guilty was merely a subterfuge to escape further detention at Guantanamo Bay.

Those who primarily view the Hicks situation in terms of the *Laws of Armed Conflict* (LOAC), and other established practices of international relations, tend to concentrate on his capture during a war and consequent detention as a captured belligerent whether also a terrorist or not. They may be divided on the fairness of his separate trial and sentence for criminal offences, but they tend to note that his plea of guilty justifies rather than contradicts his separate detention as a captured belligerent to date.

Either school of thought is increasingly unlikely to shake the certainty of belief in the other. The Hicks issue has become part and parcel of the tribal feelings underlying domestic party politics. Facts and logical argument are now often swept aside by partisan passions and prejudices.

One point worth briefly examining in terms of the sentence is the argument that the nine months remaining of the suspended sentence somehow indicates that David Hicks could not have been much of an Islamist terrorist. This belief ignores, somewhat ironically in many cases, previous criticism of US policy for the detention of captured belligerents who do not qualify for prisoner-of-war status. That the sentencing authority took the five years of detention into account – even though it was, strictly speaking, detention under LOAC and not time served on remand or in imprisonment for criminal matters, is to be applauded not ignored. It is in such small increments and by such precedents that international humanitarian law catches up with the challenges of continually evolving international practice. ●

Closing the Burchett-NLF-Hicks loophole

A major and fundamental lesson of the Hicks saga has also gone largely ignored by many on both sides – what happened to David Hicks fortunately cannot now happen again.

Until recent amendments to our treason, sedition and counter-terrorism laws, an Australian citizen or resident aiding the enemy in time of war could not be readily prosecuted under Australian law – unless the perpetrator also intended to overthrow Australia's system of government and was effectively guilty of treason. For nearly six decades the absence of such legislation constituted a profound moral and practical failure by successive Australian governments, not least in the duty of care they owed the members of the ADF they sent to fight on behalf of their fellow Australians.

In the late 1960s and early 1970s, for example, this loophole allowed extremists to collect funds openly for the so-called National Liberation Front fighting our forces in South Vietnam. Those involved professed no concern that such funds might or would be spent on procuring weapons and ammunition to be used against Australian troops. Other opponents of Australia's participation in South Vietnam undertook deliberate acts that went well beyond the bounds of legitimate dissent in a democratic society. This included sabotaging defence force equipment and facilities and viciously harassing the families of ADF members serving overseas. Even trade union boycotts of logistic support to our forces overseas were controversial enough for the ACTU Congress to resolve subsequently that such actions must never be allowed to occur again.

The defence force of a democracy must be a disciplined and professional force that remains apolitical and obeys and executes the lawful orders of the elected government. The reciprocal obligation of this loyalty and professionalism is that the Government, and the Australian people generally, must outlaw, prosecute and punish acts of betrayal that undermine or endanger the defence force when it is deployed on operations. That this did not occur during the Vietnam War in particular will never be forgotten by Vietnam veterans or forgiven by most of them. This failure by successive Australian governments to back up the defence force has also been burned into the professional psyche of the ADF generally.

The problem should have been fixed years earlier. The same loophole had allowed the communist journalist, Wilfred Burchett, to escape prosecution for his active assistance to the enemy in the Korean and Vietnam Wars. At the very least, Burchett should have been tried in Australia for his active assistance to the North Koreans and North Vietnamese in their interrogation and maltreatment of Australian and allied prisoners-of-war (PW).

With the end of the Cold War and the opening of Soviet bloc archives, Burchett's activities as a committed Stalinist and long-term agent for the Bulgarian and Soviet intelligence services are now beyond any dispute. If this evidence had been available earlier, even under the old legislation, a charge of treason could probably have been sustained.

But the Menzies and successor governments largely squibbed the issue. Burchett's original British subject passport was withdrawn and he was subsequently refused one of the new Australian ones (introduced from 1949). But because he was never called to account for his treachery many have wrongly excused his betrayals as somehow just "independent" journalism behind enemy lines. The Whitlam Government, ignoring the protests of former Australian PW from the Korean War, even issued Burchett an Australian passport and allowed him to return to Australia unmolested for a visit in 1974. A visit, incidentally, where the ABC interviewed Burchett but disgracefully acquiesced to his blanket refusal to debate the former PW he had betrayed.

If the sedition and treason laws had been updated and strengthened after the experiences of the Korean and Vietnam Wars, David Hicks would also not have fallen through the same loophole. The Howard Government could have easily negotiated his return for trial in Australia concerning his activities in Pakistan, Kashmir and Afghanistan.

Many of those who have been voluble in demanding the unconditional release of David Hicks, or in demanding that he be tried in Australia, have also been highly critical of the new treason, sedition and counter-terrorism legislation that finally outlaws the type of activities he undertook. This is an irony that should not be lost on anyone. ●

More unnecessary grief for Kovco family

A Recent scientific opinion commissioned by the NSW Police for the State Coroner has unfortunately reignited some public controversy about the death of Private Jake Kovco in Iraq on 21 April 2006.

Contrary to much of the media comment, the opinion does not dispute the fundamental findings of the relevant ADF Inquiry that the death was not suicide, not murder and was an accident (somehow) caused by Private Kovco's own hand. All the latest opinion really discusses or disputes are aspects of how the accident might have occurred.

The latest opinion may encourage the NSW State Coroner to convene a coronial inquiry into the death in order to maintain public confidence in the coronial inquiry system. Previously it was considered that this was unlikely. The bulk of the key evidence to the military inquiry came from the NSW Police Service and three independent forensic psychiatrists and there seemed little point in repeating the exercise.

Displaying more of the dignity and commonsense she has shown throughout, Shelley Kovco has noted her belief that a separate NSW coronial inquiry is unnecessary, although she would like the finding that her husband may have been skylarking struck from the military inquiry's report.

In mid 2004 the ADA made a submission to the Senate Inquiry into the effectiveness of Australia's military justice system. Among other things the Association recommended that the Commonwealth and the States reach an agreement on conducting joint inquiries into ADF deaths in Australia and overseas when a State Coroner wished to also investigate.

Such an agreement needs to be expedited, if only to minimise future anguish for the bereaved families of dead ADF members. No-one should have to undergo in future what the Kovco and Small families have suffered to date. ●

Defence Brief is published by the Australia Defence Association (ABN 16 083 007 390); PO Box 320 Erindale Centre, ACT, 2903 Australia; defbrf@ada.asn.au; (02) 6231-4444 or www.ada.asn.au