



2011 Defence budget

At first glance, this year's federal budget looks favourable to the Department of Defence and the defence force. They will be funded to the tune of \$26.5bn for the 2011-12 financial year, representing around 1.8 per cent of GDP and a year-on-year real increase of 4.2 per cent. But as impressive as these figures appear, they mask deep troubles in the government's program to expand and modernise the ADF as set out in the 2009 Defence White Paper, *Force 2030*.

To start with, the 4.2 per cent real annual growth only arose because the 2010-11 allocation was effectively reduced when Defence handed back a massive \$1.5bn from this year's outlays. And it would have been closer to \$2bn if the government hadn't scrambled to buy an additional C-17 transport (but eventually fewer C-130Js) and the ex-RFA *Largs Bay* as the financial year drew to a close. Then there were the deferrals and cuts. A total of \$2.4bn of previously planned investment in new equipment and facilities over the next four years has been deferred to beyond 2014, and \$3.9bn of recurrent funding has been cut from across the forthcoming decade.

While it's tempting to conclude that the government is simply tightening the belt on Defence, to assure itself of an overall fiscal surplus in 2012-13, this is almost certainly not the case. Instead, Defence had money taken away because, at present, they do not need it or, more precisely, because they cannot spend it. The essential point is that the cuts and deferrals in this year's budget are symptoms of serious problems with Defence's capability planning, procurement planning and financial management. •

White paper crumples

It took only three years for the 2000 Defence White Paper to unravel, culminating in the 2003 Defence Capability Review (with the latter producing a much more practical force structure anyway). On current trends, the plans contained in *Force 2030* will be lucky to last even that long. There are two problems. First, the delivery of approved projects is proceeding more slowly than planned, mainly as a result of non-delivery and underperformance by industry. Recent examples include the air-warfare destroyer and air-to-air refueling tanker projects.

But just as seriously, the approval of new projects has been steadily slipping behind schedule since 2009. The extent of the problem is most apparent with progress in achieving first-pass approvals. Over the past 24 months a mere ten projects have been granted first-pass approval by the government, compared with a planned figure more than three times that much.

Highlights:

- 2011 budget emphasises extent of financial management problems in Defence
- 2009 Defence White Paper planning defunct
- Is Defence a new magic pudding for the government?
- Black Report into accountability in Defence
- Eventually finding a new CDF and Service Chiefs
- Minister prompts minor constitutional crisis over ADFA
- ADFA: Blowback from the inquiries?
- Lessons from Libya again
- Irony Corner: Defence's Secretary roughs it like a digger

As a result, to get back on schedule, 58 first pass approvals are required over the next two years. Given progress to date, current plans are nothing short of heroic optimism.

And the problems don't stop with the backlog in approvals. Back in 2009, when *Force 2030* was released, around \$8.5bn of medium-term defence investment was deferred to beyond 2015. Unlike the latest cuts and deferrals, this *was* a direct response to the fiscal pressures brought on by the Global Financial Crisis. In any case, the result is that defence investment is set (and meant) to fall until 2012-13 (when the government intends returning to a budgetary surplus) but increase rapidly thereafter. Trouble is, this rollercoaster in defence investment has mainly been accommodated by the major capital investment program. Consequently, capital investment is planned to increase by around 100 per cent over a four-year period beginning in 2013-14—which is manifestly unrealistic in light of recent trends.

To avoid further embarrassment, the government has no choice but to substantially revise its medium-term plans for the development of the defence force. Once again, the ADF will have to wait longer than planned for the new equipment it has been promised—and which it still needs to catch up and rebuild after all the marked under-investment of the 1980s and 1990s, and to handle the increasing fluidity of Australia's strategic situation and the resultant marked increases in the ADF's operational tempo and breadth of deployments since 1999. •

Defence to be re-named Albert

Separate from the deferral of investment funding is the question of cuts to recurrent spending. \$3.9bn of funding will be clawed back from Defence over the next decade, and is depicted as mostly the result of additional "efficiencies" (financial not operational). That is, further savings above and beyond those already being delivered by the decade-long \$20.6bn Strategic Reform Program (SRP). And it's not the whole story; over the past 24 months Defence has absorbed costs, handed back money and accumulated cash in its accounts to the tune of *further* \$3.7bn. At this rate, Defence is close to becoming a magic pudding and should be re-named Albert accordingly.

It defies common sense to believe that Defence can continue to deliver billions of dollars in new financial savings (but at some operational cost) year after year. A simpler explanation, and one which is consistent with the hand-back of close to \$500 million in recurrent funding last financial year, is that back in 2009 Defence asked for and received more money than was necessary at that time. Not because Defence was greedy, but because it had a poor understanding of costs and an equally poor capacity to manage its budget from one year to the next. It goes without saying that this casts serious doubts over the credibility of the claimed \$20.6bn in savings supposedly achievable under the SRP.

The government's plans for *Force 2030* are in serious trouble. Its defence investment plans over the next several years are unachievable and financial planning and management in the department and the DMO is in disarray. What's most disappointing is that things have been this way for more than a decade, chiefly because the structure and consequent culture and processes of the department institutionalise major gaps in accountability rather than close them. If *Force 2030* is to become a reality, things (and structures) will need to change. •

Even the blackest night eventually dawns

It is therefore not surprising that the report on accountabilities in the Department of Defence commissioned from Professor Rufus Black was apparently marooned in the Minister's crowded in-tray for so long. Black's terms of reference have never been made public and few have even seen his report until quite recently. There is thus an element of anticipated magic pudding about the Black Report too.

There have been 13 odd major reviews of the Department of Defence, at approximately 2-3 year intervals, since the defence group of departments were merged in 1974. All have promised organisational nirvana; not one has solved the fundamental accountability flaws and other problems in the Tange model (and how it was implemented over succeeding decades). Largely because not one of the reviews was a first-principles analysis.

The better reviews, such as the one led by Elizabeth Proust in 2007 into departmental processes, were still hamstrung by rigged terms of reference that banned examination of the structure and its effect on business processes and accountability. Even where Proust recommended process reforms requiring refinement of the flawed structure, these were the only ones not accepted.

Black has apparently recommended reducing the number of "groups" (and deputy secretaries) and re-empowering the Service Chiefs in terms of their statutory, professional and moral responsibilities for capability development and logistic support. This obviously would also mean some rethinking of Mortimer-derived processes and some scaling back of the DMO empire.

One further reform worth considering, whether addressed by Black or not, is abolishing the nonsensical purported equivalent status of the Service Chiefs to departmental deputy secretaries. A more appropriate redesignation (see below why) would be as the equivalents of Associate Secretaries like the CEO of the DMO, the National Security Adviser and the Chief Operating Officer of the Customs and Border Protection Service. •

Eventually finding the new chiefs

The too long-delayed and eventual announcement of the new CDF, VCDF and Service Chiefs necessarily prompts some observations about the process, not least so it can be much better managed next time.

First, unlike the 1980s and 1990s, when the battles were merely bureaucratic and at worst only careers not lives were at stake, the ADF has been at war for over a decade. Life and death decisions in today's defence force are no longer principally theoretical or even precautionary. The additional professional responsibilities and pressures involved with being a senior ADF commander now are too often over-looked by those whose lives still revolve around peacetime attitudes, routines and priorities. Ministers supervising the ADF and some senior Defence officials are also affected by these greater responsibilities and pressures.

Second, the CDF, VCDF and the Service Chiefs are statutory officeholders, not bureaucratic appointments. In the case of the CDF and Service Chiefs this is so they can command the defence force, or their Service respectively, under the direction of the Minister for Defence in accordance with the constitutional principle of *civil control of the military*. This statutory basis is not a quaint Westminster tradition, nor merely a bureaucratic management process. This structure is fundamental to our constitutional and political systems, to Australia's adherence to international law and to the preservation of our sovereignty as a country. It is also fundamental to the longstanding constitutional and professional tradition that our defence force is and must be non-partisan in political terms (taking the gun out of politics), and to the reciprocal constitutional convention that its supervising Ministers not misuse the defence force or its personnel for party-political purposes or their own ambitions.

Third, the ADA has long argued that the relatively new practice of changing the CDF, VCDF and three Service Chiefs over on the same day every three years is unwise. It hinders institutional continuity and can reduce breadth and flexibility in the candidate panels. It also substantially increases the risk of the selections being subject to improper influences, such as party-political or personal favouritism through abuse of ministerial authority or ministerial whim respectively. The latter risks, of course, are why such appointments always need to be a considered Cabinet decision rather than just a ministerial one.

Fourth, there is also a most unfortunate perception problem, and a risk of corporate instability where, in a diarchic arrangement of supposed co-equal responsibilities and stature (and one with a long history of difficulties between the two positions), the Secretary is on a five-year contract and the CDF on only a three-year one. No convincing explanation has ever been provided for this anomaly and it should be fixed forthwith.

Fifth, the CDF, VCDF and Service Chiefs are not merely titular roles or holders of bureaucratic positions or part-time statutory authority appointments. By law they lead principal institutions of the state and the country—and ones closely bound up with the history of Australia and the Australian people from before federation. Individually these are also men who have given 3-4 decades of professional service to Australia, often in difficult and dangerous circumstances—and at some personal cost to themselves and their families in terms of absences, geographic moves and career continuity for spouses. Those up for selection for such offices deserve to be treated with dignity. Delaying the announcement until only four weeks before the changeover did not treat these officers justly or courteously as individuals, as spouses and parents, or as career-sailors, soldiers and airmen.

Furthermore, this unnecessary and discourteous delay grossly inconvenienced around 80 Australian families because of the large number of subsequent postings across the defence force flowing on from the changes at the top. For all the interest in gender equity professed at ministerial level there was little proof of a genuine commitment to such values, for example, in the complete lack of consideration for the spouses involved and their right to know what was happening in their lives, and in their careers, and be able to plan ahead accordingly.

Those involved should have had at least three months warning of their postings and preferably 4-6 months notice in line with general ADF and Public Service personnel policy guidelines. There is no reason why the process for deciding the new CDF, VCDF and Service Chiefs could not have commenced much earlier and been completed, say, by February this year.

The reasons for the inordinate delay remain unexplained. The bungled ministerial reshuffle after last year's election certainly played a part. Intra-party politics won out over the responsibility for actual governance, resulting in a significant loss of continuity and reform momentum in the Department of Defence and the ADF. The decision to move both junior ministers and the parliamentary secretary out of the portfolio, taken without consulting the retiring Minister for Defence, was particularly silly.

Some attribute the delay to the Minister being so risk averse. All his decisions take a very long time but this does not explain why the process did not even begin until the end of March 2011.

A possible explanation widely believed in the defence force, in parliament on both sides of politics and in the department, is that the current Minister for Defence deliberately delayed the process just to demonstrate that he could, and/or because the retiring Chiefs resisted his apparent abuse of ministerial authority over the incident at ADFA in April (see below). The succession of stories in the media about who the Minister personally favoured for which position and why reinforced this belief, not least because several of the journalists involved are known to regularly receive leaks from "those close to the Minister".

Whatever the reasons for the delay, and for the other procedural hiccups that occurred, much better, timelier and more considerate management of the process next time would certainly help dispel all these concerns.

In the end, of course, Cabinet made a decision—and one that largely affirmed the succession planning carefully developed over the last half-decade under three Ministers (Nelson, Fitzgibbon and Faulkner), and based on recommendations by the CDF since 2005, at least two Secretaries of the Department of Defence and two Secretaries of the Department of the Prime Minister and Cabinet. Fortunately great and appropriate interest was also shown, particularly at critical junctures, by several members of Cabinet and the Labor caucus. Chiefly from those with considerable and mature experience of defence issues through previous ministerial office or longstanding membership of the Defence sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade and/or the Caucus Defence Committee. •

ADFA: What went wrong constitutionally and why

What exactly happened when a female cadet in her first year at ADFA was filmed without her apparent consent during consensual sex with a male classmate, and the picture then relayed electronically to six other first-year male cadets, will finally be determined in the ACT Magistrates Court and by the independent Kirkham Inquiry. What happened more widely, and why, should concern anyone with an intellectual, professional or legal interest in the proper constitutional and practical management of Australia's defence.

Inaccurate and often sensationalist media coverage of the original incident, and the public hysteria that then resulted, has tended to obscure key facts and consequences involved. Some tendentious editorialising then and since has added to this.

Essentially what went wrong over a week in mid April was not (as some in the media reported incorrectly) that the ADF's chiefs somehow resisted the principle of *civil control of the military*. What actually happened was that they had to insist on it being properly exercised by their Minister. Compounding the difficulties involved was that this unfortunate situation could and should have been avoided by the Minister.

Inaccurate or simplistic media coverage of defence issues is often to be expected. In this case, and unexpectedly, considerable public hysteria resulted from the inaccuracy. This was largely sparked by the untrue and sensationalist suggestion aired widely in the media that the separate minor disciplinary matters affecting the female victim of the filming incident were supposedly an attempt by the ADF to intimidate her into silence about it.

Now just as the Attorney-General is expected to defend the judiciary from unfair criticism, there is a traditional expectation throughout the defence force that their Ministers will swiftly and thoroughly refute seriously incorrect accusations made about the ADF. Particularly when the ADF is often not allowed to defend itself from incorrect criticism because of the tight ministerial control exercised over departmental public affairs mechanisms.

When the Minister for Defence did not refute this and other outrageous and incorrect allegations (such as the filming incident was not being investigated until the victim went to the media)—and seemed instead to scapegoat the commandant of ADFA, gag him and then call for his suspension—two unfortunate results occurred. First, the public hysteria exploded and objective public discussion of the situation became almost impossible. Second, there was a loss of confidence by many defence force personnel in the Minister for Defence. Many of them already considered he had form in this regard, given his failure earlier in the year to defend the then Chief of Navy from inaccurate criticism and

blame about the maintenance of the amphibious fleet (largely the responsibility of the DMO, not the Navy, since 2006).

The Minister's subsequent pressure for the separate minor disciplinary proceedings to be quashed compounded the problem, because it contravened the principle of the separation of powers and the principles of administrative law.

Even if the ADF's statutory disciplinary code is not based in Chapter III of the Constitution it is still immune from executive fiat. Moreover, under the principles of administrative law, any Minister should avoid trespassing, or being seen to trespass, on the exercise of statutory quasi-judicial functions whether they be an ADF disciplinary tribunal or, say, the Social Security Appeals Tribunal.

There are also general limits as to what a Minister can direct a statutory officeholder (CDF, Service Chief) to do where Parliament has conferred some authority to exercise power independently of the Minister for good reason—such as to command the defence force (and to keep the defence force out of party politics). In terms of legal authority, the stream (Minister) cannot rise above the source (statute/Parliament).

Finally, with regard to the apparent standoff with the CDF and the Service Chiefs concerning the Minister's demands about the commandant of ADFA, much of the media and public discussion then and since have been based on incorrect understandings of the principle of civil control of the military. Many commentators incorrectly claim that just because the Minister for Defence is the Minister, and a civilian, the defence force must obey any instruction from the Minister. Many also incorrectly cite the principle as *civilian control of the military* (a favourite bureaucratic fib of old), forgetting that civil control of the military is a constitutional function limited to Ministers (representing parliament) alone, not one that can or should somehow be shared with public servants or civilians generally.

Our tried and tested Westminster constitutional model deliberately separates control and command. This has long removed the gun from our politics and the party politics from the institutional culture and operations of our military.

As per the Westminster tradition model, Section 8 of the Defence Act deliberately separates civil control (by the Minister) from command of the defence force (by the CDF). The Minister cannot legally give an order to anyone in the defence force, but he can direct the CDF to do so, as an order by the CDF down the chain of command, and as long as such a direction is lawful. One measure of lawfulness, of course, is that ministerial directions must comply with the principles of natural justice. This seems to have been a significant sticking point with regard to the Minister's arbitrary mistreatment of the commandant of ADFA.

The clash was definitely not anything to do with the ADF somehow resisting lawful ministerial authority or reform of the Department of Defence. It is worth noting that no previous Minister for Defence has publicly supported the current Minister's interpretations and actions—with the telling exception of Peter "Children Overboard" Reith, the last Minister to lose the confidence of the ADF (and the country) on a moral issue. •

ADFA: The aftermath

In the aftermath of the ADFA incident a slew of inquiries and studies were launched by the Minister for Defence, in part to divert attention from his role in exacerbating rather than calming the ensuing public hysteria. Most of these inquiries will help restore public confidence in the defence force, not least by refuting the sillier public allegations of recent weeks. Except for the expense (some have budgets in the millions) the overall results are likely to be harmless or even beneficial.

In at least two cases, however, this may not be the case. The first relates to the call for people with past allegations of suffering

workplace bullying or other abuse in the ADF to register a claim with a civilian law firm by 2100 hours Friday 17 June 2011. This process has been rushed and the terms of reference for considering claims were apparently not finalised until the evening of Wednesday 15 June. This process is likely to turn into a procedural nightmare for claimants and for those considering the claims. It may also be a bonanza for the lawyers but still end up disappointing many genuine claimants. It is still not clear what compensation is envisaged and the eventual costs could be substantial, especially if the standards of proof are set too low.

The second initiative was the Minister's announcement that the government was lifting its restrictions on employing female personnel in all or most direct combat employments in the ADF (mainly in the Army's combat manoeuvre units). This has led, yet again, to much inaccurate media coverage of this issue and may raise unrealistic community expectations that cannot, or will not, be met anytime soon or at all.

Most importantly it unfortunately pre-empts the study by the Defence Science and Technology Organisation (DSTO), launched in 2009, to test combat conditions empirically so the criteria for employment can be established on a sound scientific basis, rather than just on longstanding battlefield experiences.

The ADA has long supported the DSTO study so the perennial arguments about employing more females in direct (ground) combat can be based on the facts and not sloganeering. The ADA has also long supported females being employed in any role where they can meet the physical standards (as long as the standards are not lowered to enable female participation).

The problem remains, however, that some longstanding gender-based restrictions on employment (set by governments) are due to bio-mechanical differences between men and women, not the physicality of a combat task itself. And where technology or other means are, as yet, unable to render such roles wholly or predominately gender-neutral. This aspect has not been well covered in the media, or indeed in ministerial statements, which have tended to dwell, inaccurately, on physicality limits alone.

Operational capability must remain the prime determinant of employment policy in our defence force. Otherwise the lives of both male and female soldiers would be risked irresponsibly and immorally. The ADA's detailed 6500-word discussion paper on the complexities involved, including commonplace myths that often bedevil public discussion of the subject, can be found on the issues index page of the ADA website at <http://www.ada.asn.au/Comments/Women&Combat.htm>. ●

Pre-empting further public hysteria

Our defence force tends to neglect social science research but the recent furore over the ADFA incident, and the subsequent misinformation and media sensationalism that turned this furore into public hysteria, will hopefully provoke a solid rethink in this regard. The ADF has conducted extensive attitude and exit surveys of its personnel over the last 15 years, involving tens of thousands of responses. The various questionnaires have not asked specific questions about workplace bullying or sexual harassment, but they have invited respondents to add comments about Service life that they believe are pertinent and many survey responses include such additional comment.

It is worth noting that such additional comments rarely relate to bullying (either peer-group or quasi-"institutionalised") or harassment of either a sexual or non-sexual nature. Moreover, where there are such comments, they show no evidence that such practices are habitual or culturally engrained.

But the ADF now needs to overcome any reluctance to gather information that might contain "bad news". A good way for the ADF to get on the front foot is to move firmly into this particular area of modern social science research.

Use the attitude and exit questionnaires to ask direct questions about personal experience or observations of undesirable behaviour. Then be quite open about the findings and what the defence force intends to do about them. The ADF's current approach is in marked contrast to the US Army, which not only sponsors such research but is quite comfortable with having the results published in the academic literature. Such as a recent paper in the American journal *Armed Forces & Society* on the topic of sexual harassment in the US Army Reserve.

Just think how useful it would have been for the CDF to have been able to note when the incident at ADFA occurred that "the ADF has been conducting regular sexual harassment and misbehaviour audits over the last decade, and benchmarking ourselves against other Australian employment sectors, and they show that [insert fact here]". This would clearly demonstrate that the ADF was serious about keeping on top of the issue and swiftly disprove much community mythology about supposedly prevalent or institutionalised "bastardisation", etc, in the ADF.

This is the difference in value and utility between positive and negative information. Positive information gives specific statistics on the incidence of undesirable behaviour by asking direct questions. Negative information is less conclusive—little evidence a problem exists but that may be because at least some people are reluctant to bring it up. ●

To Benghazi – again

The current UN-endorsed, African Union-backed and NATO-led campaign to topple the Gaddafi regime in Libya by providing air support to Libyan rebels is now at the three-month mark. As in all civil wars, only the Libyans can ultimately decide their fate, whether by military force, a negotiated departure by Gaddafi or some combination.

It seems unlikely that the Gaddafi regime will survive, although the operational stalemate that currently re-divides Libya into its historic provinces of Tripolitania and Cyrenaica no doubt engenders nostalgia among surviving Western Desert veterans.

Two grand-strategic implications from the Libya campaign are worth noting. First, although it ostensibly began to protect civilians, particularly in eastern Libya, from a feared massacre by the Gaddafi regime, the toppling of that regime was always a "Western" strategic and moral objective. While the responsibility-to-protect doctrine has been strengthened by this international precedent, there seems little appetite for a similar intervention in Syria although the circumstances are undoubtedly much worse.

Second, the campaign in Libya has shown up many political, operational and logistic cracks in the NATO alliance. It has also brought some very blunt criticism of recalcitrant NATO members from retiring US Defense Secretary, Robert Gates.

There is a tendency for Australian politician and strategists to be somewhat complacent about professed US regard for our contributions to US-led operations. Particularly where we stress the promptness, longevity and quality of our contribution rather than pay due attention to its actual quantity when most needed. We let the US and the UK down in Iraq quite badly when they most needed help. While we have done better in Afghanistan, we would do well to appreciate that the US is thoroughly fed up with allies not pulling a real weight. ●

Irony Corner:

The Secretary of the Department of Defence, Dr Ian Watt, volunteered to spend a night sleeping rough on the street outside the National Museum, as part of the annual "CEO Sleep-out" run by St Vincent de Paul. Soldiers deployed in Afghanistan will be happy to learn that his only barriers to the overnight 02° Celsius temperature were a sheet of cardboard and an Army sleeping bag. Improved sleeping bags on the frontline may yet result from the Secretary's urban experiment. ●