

Humming an old treasury tune

This issue of *Defender* includes articles pursuing several themes raised in the Spring 2005 issue. In particular, three noted defence commentators tackle the arguments posed by Secretary to the Treasury, Dr Ken Henry.

Dr Henry's article in the last issue of *Defender* attracted considerable comment in the press. It has also been of great interest to the cognoscenti devoted to studying leadership rivalries in the Howard Government. Those of a more conspiratorial or cynical bent (which includes a fair slice of the parliamentary press gallery) have suggested that the articulation of the Treasury view in public by its Secretary was a stalking horse effort whereby the Treasurer was seeking to subtly differentiate himself from the Prime Minister.

The ADA, as a determinedly non-partisan body with a long-term public interest perspective, does not think this conspiratorial speculation is overly important. We believe Dr Henry's arguments should be debated on their merits rather than any perceived motivation. In particular, we do not agree with the notion that Defence has been particularly well-funded in comparison to other areas of expenditure over the last four decades. The current government has a better record in this regard than any other in this period, but this is largely due to two factors. First, Australia's strategic situation has simply not allowed them to ignore defence. Second, the previous longstanding neglect had reached the stage where its results and the associated risks could no longer be responsibly ignored by any government.

The ADA also does not believe that the future macroeconomic picture necessarily means that further real increases in defence spending are impossible, or that cuts in such spending are inevitable, desirable or justifiable. A major weakness in the position advanced by Dr Henry is that it largely ignores that the current three per cent per annum real increases in defence spending are mainly to cancel out an extended period of under-investment, especially to assist in tackling the block obsolescence problem with so much ADF equipment that has steadily worsened for many years. This has worsened because governments kept postponing or cancelling capability replacement or improvement projects, rather than sustainably planning and funding them (which would have been cheaper as well as more efficient in the long run).

While the Department of Defence may not have always spent its allocations as wisely as it should have (a separate problem the ADA often addresses), the percentage of the federal budget allocated to defence has remained relatively steady at around eight per cent for decades. Over the same period spending on social security, health and education has simply rocketed from just under one-half to nearly 70 per cent of overall federal spending. And this is before we count spending by the states and territories in these latter three categories – remembering that, of these, only defence is wholly funded federally.

Finally, the ADA contends that the national resources allocated to defence should be driven by robust assessment of the strategic challenges we face, and careful considerations of the national strategies we need to follow in order to preserve our sovereignty, well-being and national freedom of action

in all spheres. Our defence strategy and posture should not be primarily driven by the defence funding thought to be available at any one particular time, especially where such decisions are made by politicians (or bureaucrats) for reasons of short-term political gain rather than due attention to long-term national governance.

The sheer unpredictability and probable fluidity of our strategic environment out to 2045 (using Dr Henry's timeframe) means we should aim for maximum flexibility and versatility in our defence capabilities and posture. As we have learnt the hard way again recently, the major mistake Australia made throughout the late 1980s and 1990s was to believe we could predict the future with enough accuracy to dictate the ADF's size and force structure in detail for extended periods. Tempting though this myth is to politicians keen to divert defence spending elsewhere, it has meant the current ADF is in many ways unsuited, ill-equipped and simply too small to tackle the strategic and operational tasks we now need it to undertake. It is also insufficiently flexible and versatile to adapt quickly enough to changed circumstances.

Seeking truth

In early April this year, after the tragic crash of a Sea King helicopter in Nias, the ADA suggested that a key lesson of the tragedy was that the Sea King fleet should have been retired 5-10 years earlier as originally scheduled.

Most feedback was positive but we also took some flak. Virtually all the criticism stemmed from listeners responding to short media news 'grabs' and not bothering to ascertain the detail of our position before firing off an email. Virtually all interlocutors were also understandably unaware of the large effort the Association (and others) put in on the weekend of the crash, to convince the media not to cause further distress to the grieving families by speculating on its causes or by invading the privacy of the families in their grief. Subsequent feedback from the families of those lost has been universally positive on all counts.

The ADA position was, and has remained, that the age of the Sea King fleet was not the problem per se. Nor did we suggest that Navy safety standards were necessarily inadequate. The Association has always noted that we did not believe that the Navy would knowingly operate an unsafe platform.

However, if the Sea King fleet had been replaced on schedule with a more modern helicopter type, then this would have been 1-3 generations in technology ahead of the Sea King. Such a helicopter would have featured better critical-system redundancy and would have been much more crashworthy overall (structural integrity, modern seating, fire retardance and suppression, ease of emergency egress, etc). This would have meant that a crash caused by catastrophic mechanical failure would have been less likely to occur, and if it happened, there might have been more survivors – as there have been from similar low-altitude crashes by later-generation military helicopters both here and overseas.

The major underlying problem is inadequate investment in defence capabilities over decades by governments of both political persuasions. This has meant many ADF platforms

have been maintained in service far longer than they should have been on any realistic assessment of operational, safety, general utility, logistic and maintenance considerations. And indeed on financial grounds when you factor in penny-wise, pound-foolish, business practices in the Department of Defence. The continual constrained funding has caused perennial maintenance and logistic support problems at every level. There are also the ongoing costs of replacing ADF members killed or injured unnecessarily, rehabilitating the injured, and in supporting their dependents in both cases.

Over the last three decades or longer governments have also exploited the 'can do' culture of the defence force to partly cover this insufficient investment in defence capabilities. Moreover, when the Services argue for more modern equipment, even before increased operational tempos and greater potential adversary capabilities are considered, they are often wrongly accused of 'gold-plating' their capability development requirements. Indeed this is a common smear used by academic and bureaucratic critics of the military, Treasury officials habitually seeking to reduce defence spending, and politicians keen to divert government revenues elsewhere for partisan-political purposes.

The evidence tendered so far to the Board of Inquiry into the Nias crash strongly indicates that inadequate funding over a long period is the root cause involved. It would also appear that the confidence of ADF personnel in the Sea King may have reached a tipping point – as it did before the Nomad aircraft were withdrawn from service in 1994 for essentially the same reason.

Given the current operational tempos being experienced by the ADF (and those likely in the future), and given that with six aircraft the Sea King fleet is now so small anyway, replacement of the fleet should be expedited. The opportunity should also be taken to reduce the number of different helicopter types in the ADF, perhaps by procuring the MRH-90, the maritime version of the NH-90 being introduced into Army service. Rationalisation of helicopter types over the longer term could be taken even further. If, for example, the MRH-90 also replaced the Seahawk and the NH-90 fully replaced the Black Hawk as well as the Iroquois, (and following the replacement of the Army's Kiowa Light Observation Helicopters with the Tiger Armed Reconnaissance Helicopter), the ADF could halve its number of helicopter types from ten to around five (counting the NH-90 and MRH-90 as essentially the same type).

What's in a name

Those arguing that reform of the sedition laws is unnecessary because no successful prosecutions have occurred for decades are missing the point. The law may be archaic, and prosecutions may not have been attempted because of this but the crime itself has certainly continued to occur.

Call it treason, sedition or whatever, but when Australian citizens actively and intentionally undertake actions designed to undermine the operational security or effectiveness of the defence force – and imperil its personnel – and/or aid the enemy that the defence force is fighting, they have clearly committed a disloyal act well beyond the acceptable bounds of legitimate peaceful dissent.

During the Korean War, for example, the communist journalist Wilfred Burchett actively assisted the North Koreans and Chinese, not least in their interrogation and subversion of Australian prisoners of war. During

the Vietnam War, some Australians intentionally and/or recklessly sabotaged ADF equipment. Others deliberately collected money for the North Vietnamese front group in South Vietnam, the National Liberation Front, not caring that it was or might be spent on ammunition to kill Australian soldiers. None of these obviously despicable acts were prosecuted because the laws were outdated.

Our veterans of those wars have never forgotten this. This is not a theoretical or arcane issue of law for those veterans – or for serving members of the defence force. It should not be as well for their fellow Australians that they protect. A strong reciprocal obligation exists here.

Irrespective of the political controversy surrounding other provisions of the new sedition law, it is clearly unfair to commit the defence force to operations and then tolerate its active betrayal by fellow Australians. If the new sedition laws are repealed in general, such betrayals of the defence force would still need to be covered elsewhere, probably in the Commonwealth Crimes Act or the Defence Act.

Who owns the defence force?

In a speech marking the 30th anniversary of the 1975 dismissal of the Whitlam Government by the Governor-General, former Prime Minister Paul Keating remarked that if he had been in Gough Whitlam's shoes he would have refused to be dismissed and placed the Governor-General under 'house arrest'. Presumably this would have been in order to advise the Queen to dismiss the Governor-General, so as to remain in office for the subsequent general election



AUSTRALIAN SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Naval shipbuilding in Australia

The committee is inquiring into the future of Australia's naval shipbuilding and repair industry, its capacity to construct naval vessels over the long term, its economic viability and comparative economic productivity with other shipbuilding nations, and the broader economic implications stemming from the construction of large naval vessels in Australia.

The committee is seeking views from people interested in the future of Australia's naval shipbuilding and repair industry. The terms of reference are:

www.aph.gov.au/Senate/committee/fadt_ctte/ship_ping/tor.htm

The committee would appreciate receiving your contribution by mid-February 2006. Submissions should be sent to:

The Secretary
Suite SG.57
Parliament House
CANBERRA ACT 2600

Tel: (02) 6277 3535
Fax: (02) 6277 5818
Email: fadt.sen@aph.gov.au

Mr Keating conceded would probably be necessary to clear the air constitutionally and politically.

Excluding interpretations based on differing political views of the Dismissal, there are several aspects of this proposition worth examination. These centre on the interplay between the general national security responsibilities of any government and the constitutional responsibilities and obligations of the Governor-General and the Ministry respectively. They also involve the party-political rivalry which can complicate the first aspect frequently and the second one occasionally. The remarks by Mr Keating are also important because the remarks themselves, and much of their reporting in the media, did not appear to take account of some important constitutional safeguards and practical matters regarding the lawful exercise of executive authority.

Mr Keating's remark conjures up several interesting questions of law and practice. First, 'house arrest' is unknown to Commonwealth law so presumably some other form of arrest would have been necessary. Second, it is not certain under what charge an arrest could have been made or sustained. Third, assuming that a Prime Minister did order the arrest of the Governor-General in such circumstances, presumably such arrest and detention would have to have been by the Commonwealth Police (as the AFP were then constituted). It is somewhat difficult to see any experienced police officer complying with what they would have probably judged to be an unlawful order. Fourth, even if all these aspects could somehow have been circumvented (and in time), it is difficult in practice to see how the Governor-General, or his staff, could have been prevented from eventually communicating with the parliament, the bureaucracy, the country at large or the Queen in order to, at the very least, advise them of the Governor-General's detention.

Some commentators on the Keating proposal have even suggested that the ADF could have been used by the Prime-Minister to detain the Governor-General. This too seems an unlikely scenario. It ignores, for example, several longstanding conventions and legal prohibitions that prevent or limit use of the defence force for domestic law enforcement. It also ignores that such a step would have been quite alien to the entrenched apolitical professional culture of the defence force. The idea also poses considerable practical difficulties. The only formed body of troops available locally at short notice were the cadets from the Royal Military College, Duntroon, then deployed on their end-of-year field exercise at Majura Range on the outskirts of Canberra.

Even if, they could somehow be legally ordered to detain the Governor-General, and were able to do so initially, it is difficult to see how this could be maintained without recourse to the courts or, indeed, without risking a confrontation with the civil police.

Others, including then Prime Minister Gough Whitlam, have suggested that the Governor-General's constitutional position as the nominal Commander-in-Chief of the ADF (under Section 68 of the Constitution) meant he could have used the defence force to enforce the dismissal of the government – or, applying the Keating theory in reverse – ordered the detention of the Prime Minister by the military. What these hypotheses forget is that the Governor-General's position as Commander-in-Chief of the ADF is governed by longstanding constitutional conventions which, in effect, limit the command to effectively titular purposes. These conventions were so well known to those who drafted Section 68 before federation that they considered it unnecessary to spell them out.

Commentators discussing the Keating proposal have also not recognised the importance of subsequent comments by General Sir Frank Hassett (in his retirement) when answering a hypothetical question along these lines from a journalist. At the time of the 1975 constitutional crisis, Hassett was first the Chief of the General Staff (the commander of the Army) and then, on promotion to General, the Chairman of the Chiefs of Staff Committee, the then senior position in the ADF. When asked what he would have done if the Governor-General had attempted to use the ADF to enforce the dismissal of a Prime Minister who refused to accept the termination of his government's commission, General Hassett noted that in such a situation the ADF would have had to follow longstanding constitutional and legal practice and follow the lawful directions of the Minister for Defence (as specified in the Defence Act).

Any Governor-General with even a cursory knowledge of the constitution and Australian history understands this. They also know that there are plenty of easier legal remedies to resolve such a situation. Injunctions and the courts handle such matters in Australia. The notion that resolution could be achieved either way by 'house arrests', and perhaps tanks on the streets, is simply fanciful.



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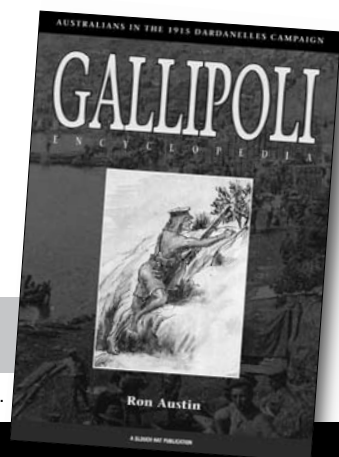
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Polling expertise

Expertise in national security issues is a relative beast, especially when the particular subject being examined is, well, particular. During public debate on the latest round of counter-terrorism measures the ABC daily current affairs program, *Lateline*, polled 25 people it chose as an expert panel on whether the new measures were proportionate to the terrorist threat and whether they will help deter and prevent terrorism inside Australia. The results broadcast stated that 15 of the 25 were broadly in the unjustified and sceptical camp.

Further analysis indicates that only about 10 of the 25 actually had any recent practical experience, specialist knowledge or nuanced understanding of modern terrorism and counter-terrorism. These ten real experts came from diverse backgrounds and, where their general political leanings were known, were broadly spread across the political spectrum. Of this more refined group, five judged the new laws were not an over-reaction and would probably help. One more gave qualified clearance only to the need for the new laws but thought they would do no harm. A further one (arguably one of the most experienced) was unclear on both counts. The rest were not sure the laws were necessary but thought they would do no harm. Interestingly, none of the ten agreed that the new measures were both unjustified and harmful and none of them answered no to both questions.

The contrast between the opinions of the whole 25 and the 10 with real expertise was marked. The obvious lesson is that picking panelists using subjective criteria to judge their apparent expertise means the results are unreliable. An obvious follow-on question is whether the subjectivity in panel selection was conscious or unconscious. Whether the result broadcast was because of subconscious subjectivity or not in how the panel was chosen is, however, not the most important matter involved. Surely, at a time of considerable community concern about the public issue concerned, the potential for skewed results to worsen rather than improve this situation should have been uppermost in those putting the program together.

Poetic justice

The recent Senate committee inquiry into the ADF justice system and the government's response to the committee report have addressed real and perceived deficiencies in the system and in how it has been administered by those in command. The ADA notes that some recent opinion polls indicate public confidence in the ADF is nominally at a highpoint. This is in part due to the particular questions asked by pollsters and due to popular respect for the force's operational performance over the last few years. When asked specifically about the military justice system and associated matters the level of public confidence drops markedly.

A high-level ADF team led by an experienced admiral has been charged with implementing reform of the military justice system. Perhaps one way of helping restore public confidence in the system would be to appoint to the team one of the senior ADF officers who has recently been a victim of systemic malfunctions. After all, these personnel have invaluable experience of both sides of the command dilemmas involved and have seen system deficiencies up close and personally. Air Vice Marshal Peter Criss, Retd, is one name that springs to mind but there are several other names to choose from. The number of those available, in fact, underlines the need for thorough reform. ♦

association update

Parliamentary Committee Inquiries

At the invitation of the relevant committees the Australia Defence Association is currently preparing submissions to the following Parliamentary Committee Inquiries:

- the ability of the ADF to maintain air superiority in our region to 2020;
- the scope and opportunities for naval shipbuilding in Australia; and
- recruitment and training in Australia's six intelligence and security agencies.

Those interested in contributing to or assisting with these submissions should contact the national office without delay, especially as the deadlines for the last two inquiries are in early February 2006. ♦

Vale Michael Thwaites

The doyen of the retired intelligence officers in the Australia Defence Association, Michael Rayner Thwaites, AO, died on 01 November 2005, aged 90. Michael was also a respected book reviewer for *Defender*, especially of poetry, and his wise counsel on a range of national security subjects will be greatly missed.

Michael entered Oxford as a Rhodes Scholar in 1937 to study English literature. In 1938 he won the Newdigate Prize for poetry and he is still the only Australian to have done so. In 1940 he was the first Australian to be awarded the King's Gold Medal for poetry, following on from distinguished winners such as W.H. Auden and Laurence Whistler. Throughout his life he continued to write poetry, being published in numerous journals, volumes and anthologies. His collected works were republished in 2004.

In World War II Michael served with the Royal Naval Volunteer Reserve as the Executive Officer of a submarine chaser, HMAS *Wastwater*, a converted deep-sea trawler. He later recounted his experiences during the Battle of the Atlantic in his well-received 1999 memoir *Atlantic Odyssey*. After the war he taught English at Melbourne University before being recruited to ASIO in 1950 because the new Director-General was seeking intellectual staff with imagination and developed analytical skills. He stayed with ASIO until 1971, helping supervise the defection and debriefing of the Petrovs in the mid 1950s, and rising to become Head of counter-espionage. After leaving ASIO he became the Assistant Commonwealth Parliamentary Librarian with special responsibility for research services

A devout Anglican and believer in moral rearmament, Michael's integrity was such that he deducted the cost of personal telephone calls at ASIO from his travel expense claims. His 1980 book, *Truth Will Out: ASIO and the Petrovs*, demolished many myths about the Petrov case and exemplified his intellectual and practical approaches to the intelligence profession. We will not see his like again. ♦