

## Snapshots

This issue of *Defender* addresses topics across the spectrum of strategic policy, capability development and military operations. Rear Admiral Peter Briggs (Retd), in the first of two articles, puts the case for a next-generation underwater warfare capability. He then argues why planning for this needs to begin now in order for new submarines to be up and running by the time the Collins class boats wear out.

Peter Varghese takes a necessarily long-term view of Australia's strategic future. As he is generally looking further into the future than conventional Defence White Papers do, he confines his assessments to likely trends rather than detailed predictions.

Associate Professor Gregory Rose ventures where angels fear to tread. He discusses why international humanitarian law (IHL), and the sub-set of it known as the Laws of Armed Conflict, need to be updated so they can cope with regulating, modifying and limiting the mutating armed conflicts of the 21st Century. Various vested interests in the international community are resistant to such change but, as he notes, the outright resistance from the traditional institutional and academic champions of IHL is contradictory to their very *raison d'être*. If the example of David Hicks shows nothing else, it demonstrates that individuals caught up in the international campaign against Islamist terrorism can fall through gaps in existing international law and this must be fixed.

Longtime academic team-mates Associate Professor Ian Bickerton, an Australian, and Professor Kenneth Hagan, an American, summarise the theme of their recent book on the unintended consequences of wars fought by the United States. Many will not agree with much of their analysis, nor with all their conclusions, but they have tried to discuss the issue objectively and have not strayed into the polemics so common in this field.

In the *Sharp End*, Robert Marlow returns to the fray with another article discussing Australia's future air combat capability. He sets out the four options he sees as open to us and ably bails up some sacred cows. Just as importantly, he analyses some of the through-life aspects of maintaining the capability and avoids getting bogged down in the usual comparisons of specific aeronautical hardware.

In the second *Sharp End* article Dr Paul Monk brings his practised eye for argument mapping to the 2004 decision to update the Army's small tank force. He isolates and examines each element in the argument on both sides. His conclusion that the motivation of the objectors is essentially ideological, rather than factual, helps explain their puzzling vehemence about such a weak case. ♦

## New brooms but some cobwebs remain

The Rudd Government's appointment of two full-time ministers and two parliamentary secretaries to the Defence portfolio is a welcome sign of some fresh and deeper thinking in regard to improving ministerial oversight, curbing bureaucratic excess and making the department more efficient. It was therefore doubly disappointing to see that similar boldness was absent from the Minister of Defence's eventual allocation of responsibilities to his junior minister and his two parliamentary secretaries. This broke little new ground, conceptually or administratively.

The only exception is the major reform of Greg Combet assuming day-to-day oversight of the DMO as Parliamentary Secretary for Defence Procurement. The delegations to Warren Snowdon, as Minister for Defence Science and Personnel, are little different to those applying to his Coalition predecessor, although there is the logical change that responsibility for recruitment returns to the junior minister and is once again twinned with the responsibility for retention — the other side of the personnel numbers coin. Apart from his title, Parliamentary Secretary for Defence Support Mike Kelly's responsibilities are virtually the same as his Coalition predecessor.

But it is early days yet. The lessons that will be learnt from having a parliamentary secretary overseeing Defence procurement are likely to lead to this appointment taking up even more responsibilities connected with procurement — and eventually being upgraded to a second junior ministerial position in the Defence portfolio. Adding responsibility for DSTO to such a future junior minister also seems sensible, to strengthen oversight of the necessary links between technology, trials and experimentation on the one hand, and eventual procurement on the other.

Hopefully such a step would also lead to the existing junior minister's responsibilities expanding to include responsibilities for the ADF's day-to-day operational and training functions that are so inextricably connected to most personnel matters. Continuing to split them between the senior and junior minister makes little sense and the potential synergies and efficiencies are significant. The British Minister of State for the Armed Forces provides an excellent parliamentary, administrative and practical model.

As the ADA has noted before, the assistance of two junior ministers would greatly assist the Minister for Defence to concentrate on the big-picture aspects of the overall portfolio, particularly finance, corporate governance, defence strategy and capability delivery. With the ridiculous number of ministerial submissions now passing over his desk each year, every Minister for Defence should be freed from as much of the day-to-day minutia of the portfolio as is possible.

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 14<sup>th</sup> 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