

SENATE ESTIMATES BRIEF

Operations 7
Secretary's and CDF's pack

OPERATIONS 07: AFGHANISTAN: DETAINEE MANAGEMENT

Key Facts

<ul style="list-style-type: none">• On 16 May the Minister announced that in light of serious allegations of mistreatment, the ADF has suspended transferring detainees to the NDS detention facility in Tarin Kot.• Since 1 August 2010, the ADF has apprehended 1 899 detainees.	<ul style="list-style-type: none">• Since 1 August 2010, 198 allegations of detainee mistreatment have been made against Australian forces.<ul style="list-style-type: none">• 193 allegations have been investigated and there has been no evidence to substantiate these allegations of detainee mistreatment.• 5 allegations are still under investigation.
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Key Issues

- The ADF takes its responsibilities to treat detainees humanely very seriously.
- In developing the detainee management framework, Australia had two priorities in mind:
 - the critical need to remove insurgents from the battlefield, where they endanger Australian, International Security Assistance Force (ISAF) and Afghan lives; and
 - the need to ensure humane treatment of detainees, consistent with Australian values and our legal obligations.
- The detainee management framework draws on applicable international standards and guidance from international humanitarian organisations.
- Australia's detainee management framework is underpinned by our ethical responsibilities and is consistent with Australia's domestic and international legal obligations.
- Australia has bilateral detainee transfer arrangements with the US and Afghan Governments.

- These include assurances that detainees will be treated humanely and that Australian officials and international humanitarian organisations will have access to monitor detainees' welfare.

Suspension of Transfers to the NDS Detention Facility in Tarin Kot

- As the Minister for Defence advised Parliament on 16 May 2013, the ADF has temporarily suspended transferring detainees to the National Directorate of Security (NDS) detention facility in Tarin Kot.
 - No ADF-transferred detainees remain in the NDS detention facility in Tarin Kot.
- The suspension occurred on 15 March 2013, following a visit to the facility during which Australian officials were advised of serious allegations of detainee mistreatment involving Afghan National Security Force personnel in Tarin Kot.
 - The allegations did not involve detainees apprehended by the ADF.
- Australia has raised our concerns with the Afghan Government, ISAF and human rights organisations.
 - Australia has reiterated the importance of the proper treatment of detainees, and the need to investigate any allegations of detainee mistreatment in a robust and transparent manner.
- Afghan officials are taking the allegations seriously and have undertaken to conduct a thorough investigation.
- It is appropriate for Defence to await the outcome of the Afghan Government's investigation into this matter before considering a resumption of the transfer of ADF-apprehended detainees to Afghan authorities in Tarin Kot.
- Defence will continue to work closely with Afghan authorities, ISAF, the United Nations and international and local humanitarian and human rights organisations to promote the humane treatment of detainees in Tarin Kot while the allegations are being investigated by Afghan authorities.

Recent reporting that ADF-apprehended detainees have been 'humiliated' in Afghan or US custody

- Australia's Interagency Detainee Monitoring Team (the 'Monitoring Team') conducts regular monitoring visits to ADF-apprehended detainees at the Detention Facility in Parwan (now known as the Afghan National Detention Facility (Parwan)). These visits allow Australian officials to monitor the treatment, welfare and conditions of all ADF-transferred detainees.

- Australia uses the information obtained through its monitoring program to make an assessment whether there is a real risk that detainees that are to be transferred to another State would be subject to torture or other cruel, inhuman or degrading treatment or punishment.
- At no time has such an assessment been made about detainees transferred to the Detention Facility in Parwan (or Afghan National Detention Facility Parwan).
- As material recently released under the Freedom of Information (FOI) Act illustrates, in 2011 the Monitoring Team referred to US authorities a complaint raised by detainees about personal searches.
 - The Monitoring Team received assurances from US authorities that the searches were necessary and conducted in an appropriate manner.

Recent reporting there has been pressure for ADF members to mistreat detainees in the Australian Initial Screening Area (ISA)

- On 20 May 2013 the Sydney Morning Herald printed a correction to confirm that its headline on 18 May 2013, "Prisoners 'gagged, deprived' to make them pliable," was incorrect.
- ADF members do not use sleep deprivation as it is a prohibited practice. Detainees held in the ISA are allowed rest periods as mandated by current detention management policy.
- Detainees held in the ISA are allowed daily exercise, as mandated by current detention management policy, unless there is a reasonable excuse not to, such as for operational, security or medical reasons.
- The use of hoods or anything that restricts breathing or raises body temperature is also **not permitted**.
- There are operational and security issues that necessitate the use of goggles and ear muffs in certain circumstances.
 - Items such as goggles and ear muffs have been identified as an appropriate mechanism for addressing operational and security measures while still affording humane and dignified treatment.

Reporting of deaths in ADF custody

- **There have been no deaths of detainees in the ADF Initial Screening Area in Tarin Kot.**
- **Defence is investigating other matters. It is not appropriate to provide further comment while Defence investigations are continuing.**

- As reported in the Inspector General ADF inquiry report released on 16 May 2013, in October 2010, one detainee has died in the custody of the ADF in Afghanistan.
- This individual was a suspected insurgent and was wounded during a firefight between insurgent forces and ADF personnel.
- The individual received immediate medical care and was taken into ADF custody and transferred directly from the field to the ISAF medical facility at Tarin Kot.
- At no time was the individual in a detention facility, Australian or otherwise.
- The individual was treated for his wounds but subsequently died in the International Security Assistance Force medical facility.
- As is normal procedure for such a death, the matter was investigated.
- Defence is satisfied that the individual received appropriate treatment.

If asked: about the allegations of mistreatment of the above suspected insurgent's son

- Defence can confirm that the detainee's son sought to enter the Tarin Kot base to find his father.
- Upon arrival at MNB-TK, the son underwent the standard screening process by ISAF security.
 - This is a force protection measure for all local nationals seeking to gain access to the base, noting the risk of insurgent infiltration and Suicide-Borne Improvised Explosive Devices.
- The son, who was assessed during in medical in-process as 16 years old (juvenile), was detained for approximately two hours by the ADF before being released.
 - While in ADF custody the son was provided treatment appropriate to his age in accordance with Australia's Detainee Management Policy.
 - He was questioned by ADF personnel.
- At no time was the son mistreated or transferred to US custody.

If asked: has Defence completed its investigation into the alleged shooting of a detainee by an SOTG member in October 2008?

- On 28 May 2012, the media reported an allegation of failure to investigate the shooting of a detainee during questioning by a Special Forces officer.

- The allegation has been taken very seriously and continues to be subject to investigation.
- It is not be appropriate to make further comment while the investigation is continuing.

If asked: about claims about mistreatment of a body known as “Weekend at Bernie’s”

- I am aware of the allegations that have been made.
- I have been advised that they may relate to an Afghan insurgent who was killed during an engagement with Australian forces [*note: the incident occurred in August 2010*].
- The insurgent’s remains were transported by Australian forces to the International Security Assistance Force medical facility at Multi-National Base Tarin Kot and transferred to the custody of a coalition force partner.
 - I am advised that local transport from the Multi-National Base Tarin Kot to the civilian morgue was arranged in accordance with standard operating procedures of the coalition force partner.

If asked: about the future of the Initial Screening Area

- The ADF Initial Screening Area will be remediated in line with the broader redeployment and remediation process at Multi-National Base Tarin Kot.

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BACKGROUND

- **Media reporting that Afghan detainees have been ‘humiliated in jail’, ADF members have been pressured to mistreat Afghan detainees and the ADF is operating under ‘murky protocols’.** Over the period 16-18 May 2013, Fairfax media published several articles claiming detainees transferred by the ADF to the Detention Facility in Parwan had been subject to ‘humiliating’ personal searches, ADF members in the ISA had been pressured to mistreat Afghan detainees and that the ADF was operating under ‘murky protocols’. The articles followed the release of a number of documents on Australia’s Detainee Management Framework to the Public Interest Advocacy Centre under the Freedom of Information Act on 10 May 2013 and the Minister for Defence’s 16 May 2013 Statement to Parliament on Afghanistan, which included detainee management issues and reported on the status of several Defence inquiries. A number of the articles also draw on information from unnamed sources. Of note, on 20 May 2013, a correction was printed in *The Sydney Morning Herald* that its headline on 18 May 2013, "Prisoners ‘gagged, deprived’ to make them pliable" was incorrect.
- **Media reporting on Australia’s detainee numbers.** On 17 March 2013, Fairfax Media published an article in *The Sun Herald* and syndicated publications titled, ‘Troops duped into detaining Afghans’. Quoting the Uruzgan Provincial Chief of Police, Matiullah Khan, the article asserts that more than half the individuals detained by the ADF since August 2010 are not suspected insurgents but have been targeted by other Afghans seeking an advantage in tribal, business or personal disputes. In accordance with Australia’s Detainee Management Policy, the ADF detains individuals to remove suspected insurgents from the battlefield to protect ADF, ISAF and Afghan security forces personnel and to promote security and stability in Afghanistan. The ADF releases captured individuals from its custody as soon as possible if there is no longer grounds for their detention. Information that is received from local sources in the Afghan community is assessed against other information sources and may or may not result in detention.

ATTACHMENTS

- A. ADF Detainee Management Statistics
- B. Detainee Management Practices
- C. Interrogation
- D. Governance Measures
- E. Allegations of Mistreatment
- F. Transfer of the Detention Facility in Parwan to Afghan Control

ADF Detainee Management Statistics

Attachment A

Detainee Management Statistics (correct as at 29 May 2013)

Apprehensions

- Since 1 August 2010, the ADF has apprehended 1 899 detainees.

Transfers

- Since 1 August 2010, Australia has transferred a total of 158 detainees to Afghan authorities in Tarin Kot.
- Since 1 August 2010, Australia has transferred a total of 105 detainees to US authorities at the Afghan National Detention Facility (Parwan).

Interrogation

- Since the commencement of interrogation operations in February 2012, approximately 38 per cent of detainees have been approved for interrogation.

Detainee monitoring visits

- Since 1 August 2010, the Interagency Detainee Monitoring Team has conducted 142 monitoring visits. This includes:
 - 64 visits to the NDS facility in Tarin Kot,
 - 25 visits to the Tarin Kot Central Prison, and
 - 53 visits to the Afghan National Detention Facility (Parwan).

Allegations of Mistreatment against the ADF

- Since 1 August 2010, 198 allegations of detainee mistreatment have been made against Australian forces.
 - Of these 193 allegations have been investigated and there has been no evidence to substantiate these allegations of detainee mistreatment.
 - The remaining 5 allegations are still under investigation.
- Of the allegations received to date, 175 relate to the treatment of individuals and actions taken by the ADF to safely apprehend and restrain uncooperative detainees at the point of capture, often in a very hostile environment.

Allegations of Mistreatment against the ANSF

- Since 1 August 2010, Australia has been made aware of 61 allegations of detainee mistreatment that have been made against the Afghan National Security Forces.

Detainee Management Practices**Attachment B**

- Following apprehension, ADF-apprehended detainees are transferred to the Initial Screening Area (ISA) in Tarin Kot.
- The ISA is a purpose-built facility staffed by a dedicated team of ADF Military Police and is monitored 24 hours a day by a Closed Circuit Television (CCTV) system.
- Detainees may be held in Australian custody for up to 96 hours before they are released or transferred to US or Afghan authorities, for potential prosecution through the Afghan system.
 - During this time, detainees undergo a screening process, which involves asking questions to verify a detainee's identity and assess their involvement in the insurgency, completing a basic health screen, recording their biometric details and examining any physical items in their possession.
- In certain cases, where more time is needed for comprehensive screening, extensions beyond 96 hours may be authorised for an additional 72 hours, with a possible further extension of 72 hours (ten days in total).
 - Comprehensive screening determines whether an individual should be released or transferred, or questioned further to elicit information which could assist the ADF and our ISAF and Afghan partners.
 - This additional time period allows for the continuation of questioning, interrogation, exploitation, and the development of evidence packages to support potential prosecutions through the Afghan justice system.
 - While 96 hours is appropriate for basic screening, a longer period of time may be required for more comprehensive screening of detainees identified as being of interest.
 - This approach is consistent with our ISAF partners.
 - Only detainees who are assessed by intelligence professionals as potentially having information that would make a material difference to achieving the ADF's mission in Afghanistan are held beyond 96 hours for additional screening.
- Extension to the 96 hours can also be granted for medical or logistical purposes.
 - Medical extensions are used to ensure a detainee has received the necessary medical attention to allow them to be questioned at the ISA, transferred for prosecution or released.

- Logistics extensions are used to ensure the necessary preparations can be made for the safe release or transfer of a detainee.

Children and juveniles

- The ADF does not seek to detain children (defined as being under the age of 15).
 - In the event a child is detained, we seek to release them into the care of an appropriate adult, generally a family member, as quickly as possible.
 - Under the Australian detainee management framework, the ADF does not tactically question or interrogate children. Children are only asked questions to ascertain their age and identity to support their release.
- The detainee management framework does allow the ADF to detain juveniles (defined as persons aged 15-17 (inclusive)) who are suspected of insurgent activity and who pose a threat to our forces and the security of the local population.
 - If a detainee is identified as a juvenile during the screening process, they are afforded treatment appropriate to their juvenile status, including being placed in accommodation separate to adults or with family members.
 - Where the reason for detention no longer applies, juvenile detainees are released into the care of an appropriate adult, generally a family member.

Extended detention of two detainees

- As the Minister for Defence advised Parliament on 31 October 2012, since the introduction of interrogation in February 2012, the Minister for Defence authorised the extension of detention for one detainee for a further period of 20 days.
- The Minister also authorised the extension of detention for one other detainee for a period of one day and Government authorised the extension of detention for a further period of 19 days for this detainee.
- Both detainees were assessed as having valuable information that would directly assist the force protection of Australian, ISAF and Afghan personnel.
- The detainees were treated humanely and with dignity and respect at all times while in Australian custody.

- As part of the extraordinary extension regular reviews were conducted, and I [CDF] was advised of the outcomes of each review, including the detainee's fitness for further detention.
- ISAF and human rights organisations were advised of the detainee's continued detention through regular reporting processes.

Procedures for managing deceased local national human remains

- Following the pronouncement of the death, the remains are prepared for transportation and subsequent burial by the ISAF Role 2 medical facility.
- Afghan Government authorities have primary responsibility for the management and movement of local national human remains.
- ISAF seeks to transfer the remains to the care of Afghan Government authorities or the family of the deceased as soon as practicable to enable appropriate cultural practices to occur.
- The management and handling of local national human remains in Afghanistan, by Afghans, may not accord with Australian norms, but is appropriate for Afghanistan.
- An Inspector General ADF Inquiry has recommended a review of Defence policy on the management of human remains of non-ISAF personnel who die in Australian custody.

Reporting that transfers of detainees from the ISA to the NDS in Tarin Kot were not backed by evidence that the detainees were insurgents

- Under Australia's detainee management framework, where ADF personnel are of the view that sufficient evidence exists to support a potential prosecution under Afghan criminal law, the detainee may be transferred to Afghan custody at the NDS in Tarin Kot for further investigation by Afghan authorities and potential prosecution through the Afghan judicial system.
- Information that satisfied Afghan evidentiary standards is different to what would be required to support a prosecution in Australia. The ADF and relevant Afghan officials have worked together to ensure that requests for transfer of detainees and the supporting evidence is appropriate in the Afghan context.
- In line with this collaborative approach, where possible, Afghan prosecutors deploy on operations with the ADF and our partner forces to support the collection of evidence to support a potential prosecution under Afghan criminal law.

- Prosecution of Afghan nationals is an Afghan sovereign responsibility. Consistent with Afghan sovereignty, it is the Afghan prosecuting authority that determines whether to accept a detainee for potential prosecution.

Claims a young male detainee who was possibly deaf-mute and intellectually disabled was held in the ISA due to pressure from the SOTG

- Defence has no record of a detainee who was deaf-mute and possibly intellectually disabled being held in the ISA in late 2010.
- Defence has identified one detainee who is possibly the detainee being referred to.
 - This detainee was admitted to the ISA in January 2011.
- The detainee was not believed to be deaf but may have been speech-impaired.
- The detainee was in ADF custody for less than 24 hours and received medical attention and assessments throughout this period, in accordance with Australia's detainee management framework.
- Defence has found no reporting of SOTG views on the detainee, other than communication confirming SOTG's willingness to provide assistance to transport the detainee back to his home village when it was determined he was fit for release.

Claims a detainee with a gunshot wound to the stomach spent two months recuperating in the ISA in late 2010

- While the majority of detainees in Australian custody are held for up to 96 hours, there are some circumstances in which detainees may be held for longer periods, including for medical treatment.
- The ADF provides medical treatment and support for injuries outside the capability of local authorities.
 - This includes treatment of civilians and insurgents regardless of the suspected cause of the injury.
- Medical extensions are used to ensure a detainee has received the necessary medical attention to allow them to be questioned at the Initial Screening Area, transferred for prosecution or released.
- This claim likely refers to an insurgent detained by Australian forces in August 2010 who was shot and wounded during the course of operations.

- The detainee was transferred to an ISAF Role 2 medical facility, where he received medical treatment and remained for five days.
- The detainee was transferred to the ISA when he no longer required life-saving medical care.
- After approximately 49 days in ADF care and custody, the detainee was transferred to Afghan authorities for prosecution and was subsequently sentenced to seven years imprisonment.

Reporting of an investigation into an allegation of mistreatment by a detainee brought to the ISA with a bloody nose in October 2010

- Defence takes all allegations of mistreatment extremely seriously and investigates all reports thoroughly.
- A report completed by the Australian Defence Force Investigative Service (ADFIS) in January 2012 in relation to a detainee brought into the ISA in October 2010 was not a final completed investigation report.
- As a result of this report, a formal inquiry was initiated by the Chief of Joint Operations.
- As the inquiry process is continuing it is not appropriate for further comment to be provided at this time.

What happens to detainees taken on partnered operations?

- Detainees apprehended on ADF-partnered operations with Afghan National Security Forces (ANSF) in Uruzgan may be detained by either the ADF or ANSF.
- As operations in Uruzgan transition to an Afghan lead, this will inevitably see the ADF apprehending fewer detainees in partnered operations.
- The term 'ADF-apprehended detainees' refers to individuals who have been taken into ADF custody.
- As the apprehending force, Australia assumes obligations under international law to provide safe and humane treatment to detainees in ADF custody.
- As part of Australia's detainee management framework in Afghanistan, an Interagency Detainee Monitoring Team, comprised of officials from the Department of Foreign Affairs and Trade and the Department of Defence, also monitors the treatment, welfare and conditions of all detainees transferred from ADF custody to Afghan custody.

- Detainees apprehended by the ANSF in partnered operations are ‘Afghan-apprehended’ detainees and as the apprehending force, Afghanistan assumes obligations under international law to provide safe and humane treatment to detainees in Afghan custody.

Claims two detainees captured by the ANSF in a partnered operation with the ADF were mistakenly transferred to the ISA?

- Defence is looking into this matter.

Claims that Australian forces have been ‘duped’ into detaining individuals in Afghanistan?

- Individuals are detained in line with the critical need to remove suspected insurgents from the battlefield in order to protect ADF, ISAF and Afghan security forces personnel and to promote security and stability in Afghanistan.
- Our operations in Afghanistan are conducted based on multiple sources of information.
 - Information that is received from the local community is assessed against other information sources, including intelligence, and may or may not result in detention.
- The ADF releases captured individuals from its custody as soon as possible after it is determined there is no longer grounds for their detention.
- Only detainees who are assessed by intelligence professionals as potentially having information that would make a material difference to achieving the ADF’s mission in Afghanistan will be held beyond 96 hours for additional screening.
- After the initial 96 hours and any extensions, ADF-apprehended detainees are transferred to either Afghan or US custody, or released if there is insufficient evidence to assist with prosecution of the detainees through the Afghan justice system.
- This approach is consistent with other ISAF partners.

Interrogation**Attachment C**

- In February 2012, the Minister for Defence announced the deployment of trained ADF interrogators to Afghanistan.
 - Interrogation expands the ADF's ability to obtain information of operational and tactical value to help protect Australian personnel, ISAF, Afghan National Security Forces, and the local population.
 - The interrogation capability supports the requirements of our forces operating in Uruzgan.
- Interrogation is a comprehensive questioning process which is aimed at collecting intelligence on the insurgency.
 - It is conducted within strict legal guidelines to prevent physical and mental mistreatment.
 - It is strictly limited to approved techniques, which have been externally reviewed and assessed as in accordance with Australia's domestic and international legal obligations.
 - ADF interrogators are explicitly prohibited from the use of techniques such as sleep deprivation, physical mistreatment, sensory deprivation, hooding or stress positions; in accordance with Australia's legal obligations and best practice.
- Together with other intelligence collection capabilities, interrogation contributes to developing the intelligence picture that assists in protecting Australian, Afghan and ISAF forces and disrupting insurgent networks.
 - Interrogation is also used by key ISAF partners in Afghanistan. The questioning of suspected insurgents after capture enables ISAF to gather vital intelligence on the insurgency and evidence for prosecution.
- A detainee may be identified as a candidate for interrogation when preliminary screening indicates the detainee may have information of intelligence value that may contribute to our understanding of the insurgency and protect Australian and coalition personnel.

Oversight

- ADF interrogation operations in Afghanistan are governed by a framework that meets Australia's domestic and international legal obligations.

- Interrogation is conducted by ADF personnel who are highly-trained and ethical professionals, and have received specialist training to be qualified as interrogators.
 - The ADF interrogators who conduct interrogation in the ISA range in rank from Private through to Captain (in the Army, or the equivalent ranks in the other Services).
- ADF interrogation shift commanders direct and supervise each interrogation session and can also monitor interrogation sessions via the CCTV system.
 - ADF interrogation shift commanders are qualified interrogators who range in rank from Sergeant to Captain (in the Army, or the equivalent ranks in the other Services).
- Each interrogation session in the ISA is monitored at all times by another qualified interrogator via the CCTV system. In addition, interrogation sessions can be monitored separately by ADF Military Police personnel via the CCTV system.
- The interrogation unit that operates in the ISA is commanded by a Major who is a qualified ADF interrogator. This officer oversees the conduct of interrogation and can monitor interrogation sessions, but does not conduct interrogation.
- The Assistant Commander – Afghanistan has direct command responsibility for the interrogation unit in the ISA, including responsibility for governance and oversight of interrogation operations.
 - The Assistant Commander – Afghanistan authorises the commencement of the interrogation process for each detainee.
- The Commander Joint Task Force 633, who is the commander of all Australian forces in the Middle East Area of Operations and the direct superior of the Assistant Commander – Afghanistan, also maintains command oversight of all interrogation operations in Afghanistan.

External validation/scrutiny of detainee interrogation training

- In 2004, the ADF Chiefs of Staff Committee directed the establishment of an external validation model for ADF interrogation training.
- However, increased ADF operational commitments resulted in a shift to other intelligence collection capabilities.
- Since this time, ADF interrogation doctrine has been externally reviewed and validated by the Department of Foreign Affairs and Trade and

Attorney General's Department on at least two occasions, with the most recent concluding in 2010.

- This external validation found all ADF interrogation techniques in accordance with Australia's domestic and international legal obligations.
 - This externally validated doctrine provides the basis for all interrogation activities undertaken by ADF interrogators, both in the training and operational environments.
- Australia's framework for detainee management in Afghanistan, which covers interrogation training and activities, is subject to various layers of oversight and governance including periodic technical audits.

Governance Measures**Attachment D**

- Defence is committed to ensuring ADF detainee handling is conducted in accordance with Australia's domestic and international obligations, and in line with Australian Government policy.
- Under Australia's detainee management framework, the ADF screens and questions detainees in a purpose-built facility in Tarin Kot, which is open to inspection by independent humanitarian organisations.
- The ISA is subject to regular internal audits to monitor compliance with mandated processes. These audits are conducted by Defence personnel external to the ISA and include reviewing the interrogation capability's compliance with Government policy.
- The facility is monitored 24 hours a day by two independent CCTV systems.
 - The CCTV systems in the ISA have been designed and purpose-built to support the operations of the ISA and the conduct of interrogation.
 - All interrogation sessions are recorded and monitored.
 - The recording and monitoring of interrogation sessions supports the ADF and Government's commitment to provide an auditable oversight of interrogation activities in Afghanistan, and provides a mechanism for assessing allegations of mistreatment made against Australian personnel.

Status of the ADF investigation into allegations of procedural misconduct

- In January 2011, the ADF Investigative Service initiated an investigation into allegations that previous members of the Detention Management Team within the ADF Initial Screening Area in Afghanistan may not have complied with procedures relating to the management and administrative processing of detainees.
- There is no allegation or evidence to suggest that any detainees were mistreated by the Detainee Management Team.
- Acting upon a brief compiled by military investigators, the Director of Military Prosecutions charged four members of the first Detention Management Team, including the former officer in command of the team.
 - The charges alleged that three members placed their own fingerprints on detainee release and transfer forms to conceal the failure by Detention Management Team personnel to obtain detainee fingerprints prior to their release or transfer.

- The former officer in command of the team was alleged to have written false entries into detainee log books.
- The first trial was held on 27 July 2012 and the member was convicted and received a severe reprimand for one count of prejudicial conduct.
- The second member was tried on 23 August 2012 and was convicted of two counts of falsifying a service document. He received a reprimand for each offence.
- The third member was tried on 21 November 2012 and was convicted of four counts of falsifying a service document and one count of prejudicial conduct. He was fined \$2000 for each of two offences and awarded a loss of seniority in rank for each of the other three offences.
- The trial of the former officer in command of the first Detention Management Team commenced on 19 March 2013 and concluded in 3 April 2013. The member pleaded not guilty to a range of charges, including suppressing a service document and making false entries in service documents.
 - He was convicted of two counts of making a false entry in a log book which provides a record of detainee processing. The prosecution alleged that the false entries were made to conceal the fact that a detainee was held for four and a half hours longer than is permitted under the Detainee Management Policy and to falsely represent that a subordinate member of the Detention Management Team had made the required entries in the log book. The former officer in command was reduced from the rank of major to the rank of captain for both offences.

Review of questioning techniques

- The ADF has conducted a review into aspects of the questioning techniques used during the initial screening of detainees in Afghanistan during 2010 and 2011.
- During 2010 and 2011, the ADF was limited to conducting the tactical questioning, intelligence interviewing and debriefing of detainees apprehended in Afghanistan.
- A review of records from this period found irregularities in a small number of written reports stemming from initial questioning of detainees. The irregularities relate to the use of inappropriate language during a small number of questioning sessions.

- The review found that no unauthorised questioning techniques were used in the conduct of questioning sessions during this period. As a result of the small number of instances, and the context in which they occurred, the review found that further action was not warranted.
- None of the issues suggest any alleged physical mistreatment of detainees in the ISA by ADF personnel.

Allegations of Mistreatment**Attachment E**

- Defence takes all allegations of detainee mistreatment very seriously and all allegations are immediately assessed.
 - This applies equally to detainees already transferred by the ADF and to complaints that may involve the ADF as well as our ISAF or Afghan partners.
 - Note the Minister for Defence provided an update to Parliament on detainee allegations on 16 May 2013.
- In Australia's detention operations, the term 'allegation of mistreatment' is used to describe any perceived or alleged incident involving an individual who is in Australian custody.
- When a detainee is brought into the ISA, each detainee is specifically asked if they have any complaints about their treatment.
 - Any complaint is treated as an allegation.
- This terminology does not imply any wrongdoing on the part of the ADF, simply that a person has made an allegation or complaint about the treatment they, or another individual, has received or witnessed during the course of their interaction with the ADF or Afghan National Security Forces.
- Australian personnel are required to report any instances or suspicion of detainee mistreatment immediately, and detainees are provided several opportunities to raise any issues regarding their treatment at the point of capture or while in Australian custody.
 - Australian officials also visit detainees transferred by the ADF into Afghan or US custody, to monitor the detainees' treatment.
- Once reported, allegations are promptly assessed or investigated.
- Investigations into allegations of mistreatment include witness statements, review of CCTV footage and medical evidence.
 - These allegations and the outcomes of the investigations are reported to ISAF and relevant human rights organisations.

Release of Information under the Freedom of Information (FOI) Act

Substantiated Allegations of Mistreatment – Released 10 September 2012

- Defence released a number of Daily Operational Summaries in response to a FOI request relating to substantiated allegations of detainee mistreatment.

[*Note: these cases do not refer to any substantiated allegations of detainee mistreatment against the ADF*].

Detainee monitoring and the 2011 UNAMA 2011 Report on the Treatment of Conflict-Related Detainees in Afghan-run Detention Facilities –Released 10 May 2013

- Defence supports the Government's commitment to transparency in relation to Australia's detainee management framework in Afghanistan and in other operational matters.
- On 10 May 2013, Defence released a number documents in response to a FOI request relating two categories:
 - documents relating to allegations of detainee mistreatment raised with the Interagency Detainee Monitoring Team (IDMT); and
 - documents regarding the United Nations Assistance Mission in Afghanistan's 2011 report on the treatment of conflict-related detainees in Afghan-run detention facilities, including in relation to decisions to suspend transfers of detainees to the NDS in July 2011 and to recommence transfers in November 2011.
- Some information was redacted due to its potential to adversely affect Australia's defence or international relations. Other content related to information provided by detainees, has been redacted.
 - This content has been redacted because the information was provided on a confidential basis and Australia has an obligation to the detainee not to disclose such communication.
 - It is important to remember that disclosing information that identifies detainees may also place these individuals at risk of possible retribution.

Treatment of detainees by the Afghan National Security Forces

- Australia is committed to holding our own personnel to the highest standards on detainee management, and as part of our mentoring role, Australian personnel seek to instil the same level of accountability among Afghan National Security Forces personnel working in Uruzgan province.
- Australia is confident in the growing capacity of our Afghan partner forces that have made significant progress.
 - It is important to remember they are a relatively new force.
- If ADF personnel become aware of allegations regarding the treatment of detainees by our ISAF or Afghan partners, it is treated with the utmost seriousness.
 - All issues of concern are required to be reported through the Australian Military Chain of Command.
 - This includes allegations regarding detainees that are not in Australian custody.
- The ADF works very closely with Afghan partners; where areas of concern are identified, Australia raises its concerns with Afghan authorities and seeks to support Afghan action.
- Any further information on these incidents is a matter for the Afghan Government.
- As part of the ADF's role in training and mentoring the ANSF, Australia provides human rights training to Afghan personnel and trains Afghan personnel in the correct procedures for handling detainees under applicable international law.
 - ANSF in Uruzgan also receive specific human rights training, which covers detention operations, from the Afghan Independent Human Rights Commission.
- The Minister for Defence has provided regular updates to Parliament on Afghanistan which have included detailed information on complaints and allegations of mistreatment the ADF has received against it and its partnered forces since August 2010.

Transfer of the Detention Facility in Parwan**Attachment F**

- On 25 March 2013 the US officially transferred the Detention Facility in Parwan to Afghan control.
 - The facility has been formally renamed as the Afghan National Detention Facility (Parwan).
- The transfer of this facility to Afghan control is a positive development for the Afghan Government, bringing it closer to achieving responsibility for security across Afghanistan.
- The Afghan Minister for Defence and the Commander of US Forces Afghanistan affirmed their mutual commitment to the lawful and humane treatment of detainees under a memorandum of understanding facilitating the transfer of the facility.
- Under Australia's current detainee management framework in Afghanistan, the ADF may transfer detainees to either US or Afghan custody at the facility.
 - Australia's detainee transfer arrangements with both the Afghan and US Governments include assurances on the humane treatment of detainees and free access by Australian officials and human rights organisations to monitor the welfare of detainees.

Australia's legal responsibilities with regard to the treatment of ADF-apprehended detainees transferred to US or Afghan custody.

- The State that has custody of a detainee has legal obligations with respect to humane treatment.
- Australia has a legal obligation not to transfer detainees to another State if there are substantial grounds for believing there is a real risk the detainee would be subject to torture inhuman or degrading treatment or punishment.
- Australia uses the information obtained through its monitoring program to make an assessment whether there is a real risk that detainees that are to be transferred to another State would be subject to torture or other cruel, inhuman or degrading treatment or punishment.
- Detention facilities in Afghanistan are also monitored by independent human rights organisations.

SENATE ESTIMATES BRIEF

Operations 6
Secretary's and CDF's pack

OPERATIONS 06: ADF COMBAT INCIDENTS RESULTING IN ALLEGATIONS OF DEATH OR INJURY TO AFGHAN CIVILIANS AND SUBJECT TO ADMINISTRATIVE INQUIRY AS AT 17 MAY 2013

Key Facts

<ul style="list-style-type: none">• Since 2008, 17 ADF combat incidents resulting in allegations of death or injury to Afghan civilians have been subject to 15 administrative inquiries.• Three inquiries covering five incidents remain open.• Inquiries into twelve incidents are complete.	<ul style="list-style-type: none">• Eight administrative inquiry outcomes have been released to the public.• Since 2009, as at the 30 April 2013 the total amount of all Tactical Payment Scheme (TPS) payments is AUD 178,267 comprising 2,648 individual payments.
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[See background notes for the status of these administrative inquiries.]

Key Issues

Civilian Casualty Reporting Parameters

- Civilian casualty reporting relates only to civilian casualty incidents that become subject to an administrative inquiry. It excludes allegations of death or injury to Afghan civilians that arise from locally sourced allegations that are later found to be unsubstantiated or do not merit an administrative inquiry.
- Defence has acknowledged the delay in the public release of reports of inquiries into civilian casualty incidents and has instituted improved governance arrangements for the management of such inquiries.

Process for Allegations Received From Local sources

- The ADF may receive allegations about adverse effects of operations by coalition forces from local sources such as non-government organisations or local tribal elders.

- Allegations brought to the attention of the ADF will be reviewed against operational reporting to determine if the allegation relates to ADF operations.
- Operational reporting and available information may contain sufficient information to support a conclusive decision and determine the allegation.
- If there is not sufficient information to confirm or refute the allegation, then an inquiry officer may be appointed to comprehensively examine the facts and circumstances of the operation.

Civilian Casualty Policy Considerations

- The Government and the ADF take the issue of civilian casualties very seriously and deeply regret any loss of innocent life.
 - The ADF takes all reasonable steps to ensure its operations do not put the lives of civilians or non-combatants in jeopardy.
 - Deployed ADF personnel operate under a strict set of Australian rules of engagement designed to minimise the risk of civilian casualties.
 - The ADF is committed to being as open and transparent as possible in reporting casualty incidents to the Australian Government and population as soon as is practicable .

International Security Assistance Force (ISAF) Strategy

- Protecting the Afghan population is a key part of the ISAF strategy to defeat the insurgency.
 - ISAF and the ADF take precautions to avoid harming civilians and property during operations. Our troops are deployed under strict rules of engagement designed to minimise harm to the civilian population.
 - The practice by insurgents of employing landmines, improvised explosive devices, suicide attacks and assassinations indiscriminately, continue to take a high toll on the civilian population.
 - Insurgent attacks on international forces from heavily populated civilian areas also continue to place innocent Afghan lives at risk.
- United Nations Assistance Mission in Afghanistan (UNAMA) reporting (July 2012) notes that 80 per cent of all civilian casualties in Afghanistan were caused by the Taliban and anti-government elements.

Release of Rules of Engagement

- For operational security reasons details of the rules of engagement cannot be discussed. To discuss the rules in public would give opposing forces an advantage in understanding the regulations on our tactics. The insurgents operate with no rules and with no regard for civilians.

Tactical Payments Scheme

- Defence can provide no-liability financial payments for collateral damage to property, injury, or loss of life that has occurred in the course of operations the TPS. The relative size of these payments continues to be the subject of Media speculation.
 - The TPS took effect on 01 July 2009 pursuant to an amendment to the Defence Act 1903.
 - TPS payments do not imply any wrong-doing by members of the ADF, nor are they an admission of guilt. The scheme provides a means for making no-liability condolence payments to people adversely affected during the conduct of ADF activities abroad.
 - The TPS was developed in response to lessons learned in ADF operations in Iraq, Afghanistan and East Timor.
 - The scheme is an acknowledgement that, in many areas in which the ADF operates, there is a common expectation in many local cultures that financial relief will be provided as an outward expression of sympathy where incidental damage to property injury, or loss of life occurs as a result of ADF operations even where there is no legal liability on the part of the ADF.
 - Respect for and recognition of such customs is vital for building relationships with these communities, which in turn improves the safety and security of our deployed ADF personnel.

Disclosure of payments under the TPS

- The disclosure of specific details of individual payments made under the TPS, such as category of loss, details of incident, date of incident, payment approval and payment made are not made public due to operational sensitivity and privacy requirements.
- Disclosure of TPS details could:
 - jeopardise mission accomplishment and compromise force protection, given the fragile social environment in Afghanistan and East Timor.

- have the propensity to create a local economy with false claims or contrived incidents and unrealistic expectations on maximum payments.
- inadvertently divulge information provided by coalition partners engaged in the determination of payment amounts.
- be dangerous to the safety of the recipients and prejudice the effectiveness of Australia's current operations in Afghanistan and East Timor.

Civilian casualty on Heavy Weapons Firing Range

- The incident involving the alleged fatality of a local Afghan national and the Multi National Base Tarin Kot is not considered to be combat-related.
 - The circumstances have been investigated by the Australian Defence Force Investigation Service (ADFIS) which found that there is no direct evidence to suggest the ADF contributed to the death of the civilian.
 - A TPS payment to the family has been approved and paid.

Way Ahead

- Australian soldiers will continue to exercise their right of self defence when attacked, in accordance with the rules of engagement.

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BACKGROUND

- **ISAF Policy.** The International Security Assistance Force (ISAF) and the ADF take every possible precaution to avoid harming civilians and their property during the course of operations. Our intent is to reduce civilian casualties and build support among local Afghan communities. Defence works closely with ISAF and the Afghan authorities in conducting any inquiries.
- **UN Reporting on Civilian Casualties.** The United Nations Mission in Afghanistan released its annual report on Protection of Civilians in Armed Conflict in July 2012, which indicated that 80 per cent of the 3099 civilian casualties in the first half of 2012 were attributed to Anti-Government elements (2,475), down 15 per cent from the same period in 2011 with Anti-Government elements responsible for 77 per cent (882) of the total number of civilian deaths for the period. The report also highlighted that 9 per cent of civilian casualties were attributed to Pro-Government Forces, including Afghan national security and international military forces (296), a reduction of 25 per cent from the same period in 2011. The decrease reflects measures taken by ISAF to reduce the risk posed by military operations on the civilian population.
- **Rules of Engagement.** Australian soldiers will continue to exercise their right of self defence when attacked, in accordance with our Rules of Engagement. Moreover, the Commander ISAF (COMISAF) Tactical Directives continue the long-standing ISAF focus on protecting civilians and operating in a manner that is respectful of Afghan culture. ADF force elements comply with the COMISAF Tactical Directives.
- **US/Afghan MOU 2012.** Defence is aware of a Memorandum of Understanding (MoU) signed on 08 April 2012 between the US and Afghanistan concerning the conduct of special operations on Afghan soil. The arrangement does not cover special operations carried out by non-US Special Forces. Instead, the ADF complies with ISAF's tactical directives which require amongst other things:
 - for operations to be partnered with, and led by, Afghan national security forces wherever possible; and
 - to ensure that the provincial governor, or his designated representative, is notified prior to the commencement of night search operations.
- **Defence Reporting of Civilian Casualty Events.** Defence provides public information as soon as is practicable whenever there are civilian casualties, or there is significant collateral damage during the conduct of our operations. All civilian casualty incidents are investigated and if there is not sufficient information to determine the allegation, then an inquiry officer may be appointed to comprehensively examine the facts and circumstances of the operation and the Australian public informed of the findings as soon as is practicable and the Australian public is informed of the findings.
- **Provision of Financial Relief.** Defence can provide financial relief as an outward expression of sympathy where incidental damage to property, injury, or loss of life has occurred as a result of ADF operations even where there is no legal liability on the part of the Australian Defence Force. This can occur through the Tactical Payments Scheme (TPS). The TPS was legislated on 01 July 2009, under Sections 123H and J of the Defence Act 1903. The scheme was introduced to provide a means for making expeditious no-liability payments. This scheme is important for maintaining local community support and thereby ensuring the safety of our troops overseas.
- **TPS Reporting and Disclosure Constraints.** The disclosure of payment caps and delegations under the TPS related to specific incidents would jeopardise mission accomplishment and compromise force protection, given the fraught social environment in Afghanistan. It would also have the propensity to create a local economy with false claims or contrived incidents and unrealistic expectations on maximum payments.

- **TPS Operating Principles.** The scheme operates in accordance with the principles in the *Financial Management and Accountability Act 1997* to ensure the payments are an efficient, effective and ethical use of public money.
 - Annual expenditures of this Scheme are listed in the Defence Annual Report. Specific details of individual payments made under the TPS are not made public due to operational sensitivity and privacy requirements. Disclosure could also be dangerous to the safety of the recipients.
 - These provisions provide for payments to be made in circumstances where the Government is not legally liable for the damage that occurs during the conduct of ADF activities abroad and where the Government wishes to recompense the individual affected by that damage.
 - Under the TPS, payment caps take into account a number of factors, including the prevailing culture and society within the operational theatre.
 - Under the legislation, delegation for TPS payments has been given to the CDF, the Secretary of Defence, an officer in command of a deployed force and/or a senior Defence civilian deployed to an overseas operation.
 - Currently, ADF delegates may only authorise these payments in Afghanistan.
 - The maximum payment that may be authorised under the legislation is currently set at \$250,000, and is the same as the limit on Act of Grace payments that do not require consideration by an advisory committee.
 - Limits have been placed on the maximum amounts that ADF delegates may make dependant on their rank, position and area of operations.
 - Defence has specific guidelines in place to administer the TPS.

ADF COMBAT INCIDENTS RESULTING IN ALLEGATIONS OF DEATH OR INJURY TO AFGHAN CIVILIANS AND SUBJECT TO ADMINISTRATIVE INQUIRY (2008-2013)

28 February 2013 (Inquiry remains open)

- On 28 February 2013, Special Operations Task Group was conducting a patrol in northwest Uruzgan. During the course of the patrol an incident occurred in which two young Afghan Civilians were killed.
 - A joint ISAF-Afghan investigation team are conducting an investigation.
 - There has been extensive media coverage on the matter, including speculation relating to the TPS and compensation amounts payable on death or serious injury.
- The Chief of Joint Operations directed that an inquiry be conducted into the matter to determine the circumstances surrounding the incident.

31 August 2012 Incident (Inquiry complete – findings not yet released)

- On 31 August 2012, a partnered operation between Special Operations Task Group and Afghan forces sought to locate the rogue Afghan National Army soldier who killed three and wounded two Australian soldiers on 29 August 2012, or to locate insurgents suspected of assisting his escape.
 - During the course of the operation two individuals who have been confirmed as insurgents were killed.
 - Allegations have been raised in various forums about the status of these individuals, including in media reports on 11 September 2012.

- The Chief of Joint Operations has directed that an administrative inquiry be conducted into the circumstances surrounding this operation, including the circumstances surrounding the two deaths.

05 June 2012 (one of three incidents subsumed by one Inquiry. Inquiry remains open)

- Allegation reported to PRT-U members by tribal elders from the Garmab area of Uruzgan that on 05 June 2012, a local national was shot and killed whilst moving through the village to check on his son, who was in a nearby field.
- Chief of Joint Operations has directed that an administrative inquiry be conducted into the matter to determine the circumstances surrounding the incident.

27/28 May 2012 (one of three incidents subsumed by one Inquiry. Inquiry remains open)

- Allegation made by elders from Dorafshan to the PRT-U that Coalition Forces operating in the village of Dawjawaze Hasanzai on 27-28 May 2012, shot and stabbed a local national.
- Chief of Joint Operations has directed that an administrative inquiry be conducted into the matter to determine the circumstances surrounding the incident.

01 May 2012 (Inquiry remains open)

- On 01 May 2012 Australian Special Forces soldiers were undertaking a partnered security operation with elements of the Afghan National Security Forces in central Uruzgan when an Afghan boy was injured during an engagement with a group of suspected insurgents.
 - Special Forces personnel provided immediate first-aid to the injured boy at the scene and called for an immediate casualty evacuation.
 - The injured boy was evacuated to the Role 2 Medical Facility at Tarin Kowt, where he was stabilised before being transferred to the Role 3 facility in Kandahar for further treatment.
 - The partnered force identified the boy's father and arranged for him to be moved to his son.
 - The boy is believed to be 12 years old. He was transferred from the Role 3 Medical Facility at Kandahar to Mirwais Hospital on 06 May 2012. He has since been discharged into the care of his family.
- Chief of Joint Operations has directed that an administrative inquiry be conducted into the matter to determine the circumstances surrounding the incident.

14/15 March 2012 (one of three incidents subsumed by one Inquiry. Inquiry remains open)

- During a Special Operations Task Group operation on 14-15 March 2012 in Sarkum, a local national alleged that coalition forces shot and killed a local Afghan, injured six civilians and damaged property.
- Chief of Joint Operations has directed that an administrative inquiry be conducted into the matter to determine the circumstances surrounding the incident.

29 October 2011 (Inquiry complete)

- On 29 October 2011 Australian soldiers were securing a meeting site in Tarin Kowt for the Provincial Reconstruction Team when they engaged and killed an Afghan male who approached the site at speed on a motorcycle and failed to adhere to all directions to stop. Immediate medical assistance was provided to the motorcyclist after the engagement but he was unable to be saved.
- Defence completed an administrative inquiry into this incident and the findings were released on 23 November 2012:

- The incident occurred as Australian soldiers were providing security for a meeting in Tarin Kot town.
- The soldiers had received a specific threat warning regarding a motorcycle-borne attack.
- When a motorcyclist failed to heed to a number of visual and verbal warnings to stop and appeared to accelerate toward the security cordon, he was shot by several Australian soldiers who assessed their lives were at risk.
- The man's death was very unfortunate and extremely regrettable but the soldiers were forced to make a rapid decision to respond to what they saw as an escalating threat.
- The Inquiry Officer found that the soldiers applied every element of their training and acted lawfully and appropriately under Australian Rules of Engagement.
- While this incident occurred the same day as the insider attack at Sorkh Bed resulting in the deaths of three Australian soldiers, it is unrelated to the insider attacks.

27 March 2011 (Inquiry complete)

- On 27 March 2011 Afghan National Police Provincial Response Company – Uruzgan and Special Operations Task Group personnel were engaged by a group of insurgents near the village of Sah Zafar.
 - Following the engagement the partnered patrol found one suspected insurgent had been killed and one child had gunshot wounds to his upper body.
 - Immediate medical assistance was provided to the child before he was aero medically evacuated to a coalition medical facility in Tarin Kowt, with the child's father. The child's medical condition deteriorated and following consultation with medical staff, the child's family made the decision to cease life support.
- Defence completed an administrative inquiry into this incident and the findings were released on 16 May 2013:
 - The actions of the Australian personnel involved in the incident were lawful and in accordance with Rules of Engagement.
 - The child's fatal injuries and the death of the Afghan man were the result of the partnered force being engaged by insurgents.
 - The deceased man was originally reported by Defence to have been an insurgent based on the results of a test to ascertain exposure to potential explosive materials.
 - Based on all the evidence available, the deceased Afghan man was a relative of the deceased child and was not actively taking part in hostilities at the time of the incident. It was assessed he was not associated with the insurgents who engaged the partnered patrol on 27 March 2011.
 - The Report raises issues regarding the post-incident analysis in this matter that had initially determined the deceased male was an insurgent as a result of tests for explosive residue.

02 November 2010 (Inquiry complete)

- On 02 November 2011 a patrol comprising members of the Afghan National Army and soldiers from the Australian Mentoring Task Force was involved in a series of small arms fire exchanges with insurgents in the Baluchi Valley region. Following the engagements, locals approached Afghan and Australian soldiers carrying the body of a male, who they claimed was a civilian and had been killed by small arms fire.
- Defence completed an administrative inquiry into this incident and the findings were released on 21 September 2012.

- Afghan and Australian soldiers were fired on from a series of qualas (walled, mud-brick compounds) during the incident. At the conclusion of the engagements, one Afghan National Army soldier was superficially wounded, an Afghan teenage male was found to be deceased and a further two Afghan men were identified as injured.
- The inquiry was unable to make a definitive finding as to who shot the three Afghans.
- The inquiry was unable to determine whether insurgent fire or the Afghan National Army response during the incident caused the death and injuries.
- The inquiry found that on the balance of probabilities it was highly unlikely that the deceased teenage male and the two injured Afghan men were hit by Australian fire.
- The inquiry concluded that it was likely the deceased Afghan teenager and the two injured Afghan men were not directly participating in hostilities at the time they were shot and they could be reasonably classified as civilians

09 November 2009 (Inquiry complete)

- On 09 November 2009 there was an engagement between Afghan and Australian forces and insurgents where security forces were fired on by insurgents who were occupying higher ground in the vicinity of Shah Wali Kot.
 - Approximately 20 minutes after the contact, an Afghan man was found by Australian troops with a gunshot wound to his lower left leg. Australian forces provided immediate first aid before the man was aero-medically evacuated to the Dutch military hospital at Tarin Kowt, where he received surgery on the leg wound. The man was expected to make a full recovery.
 - Following an interview with the man, it was not possible to determine whether the injury was a result of insurgent or coalition gunfire.
 - The bullet that wounded the Afghan man passed through his leg and was not able to be recovered for forensic analysis.
- Defence completed an inquiry into this incident and the findings were released on 15 December 2009.
- The inquiry found that it was unlikely, but not impossible, that the wound was caused by Australian troops. The inquiry concluded that the terrain and manner of the engagement suggested it was more likely that the injury was the result of insurgent fire. Defence has closed this incident.

11 August 2009 (Inquiry complete)

- While conducting a Vehicle Check Point as part of general election security operations, members of the Australian Mentoring and Reconstruction Task Force were involved in a shooting incident involving two men travelling on a motorcycle.
 - The men were approaching the Check Point north of Tarin Kowt when they failed to heed to verbal and visual signals to stop and were shot by the Australian troops. One man on the motorcycle was killed. The other was wounded. The wounded man was medically evacuated to the Tarin Kowt military hospital for treatment.
 - The soldiers conducting the Vehicle Check Point were subsequently engaged by small arms fire by Afghan men. There were no injuries to Australian soldiers. Members of the Afghan National Police have since confirmed that the two men on the motorbike were ANP members.
- Defence completed an administrative inquiry into this incident and the findings were publically released on 28 June 2010. Defence has closed this incident.

28 April 2009

- An administrative inquiry was conducted into allegations that four people were killed and two wounded in an operation that targeted suspected insurgents laying improvised explosives.
- The inquiry's findings were publicly released on 18 December 2009. The inquiry found that on the balance of probabilities it was very likely that the people engaged were laying improvised explosives.
 - The inquiry noted that the group were observed for over three hours and the targets were engaged by close air support only after receiving approval.
 - The inquiry found that the Commanding Officer took all reasonable steps to confirm that he was targeting insurgents laying improvised explosives and he only authorised engagement after receiving positive identification on three separate occasions. Defence has closed this incident.

02 April 2009 (Inquiry complete)

- An administrative inquiry was conducted into allegations that three Afghans were killed during a compound clearance. The inquiry's findings were publicly released on 18 December 2009.
 - The inquiry found the Australian soldiers acted lawfully, in self-defence when a combined Afghan National Security Force and Special Operations Task Group element targeted a house and buildings that were believed to be occupied by an insurgent commander and Taliban supporters.
 - The inquiry found that while the final identities of the deceased are unlikely to ever be known with certainty, on the balance of probability they were likely to have been associates of the senior insurgent leader and acted in a manner consistent with taking a direct part in hostilities. Defence has closed this incident.

12 February 2009 (Inquiry complete)

- An inquiry was conducted into this incident as well as an ADF Investigative Service investigation.
- Disciplinary proceedings involving the three ADF members charged in connection with the 12 February 2009 civilian casualty incident concluded on 29 August 2011.
 - The court martial proceedings involving the two soldiers were dissolved on 22 June 2011 as a result of a ruling that the charges against them did not disclose a service offence.
 - Court martial proceedings against the officer concluded on 29 August 2011, with the withdrawal of charges by the Director of Military Prosecutions.
 - Adverse administrative action will not be pursued against any ADF members involved in the matter.
 - Findings of disciplinary action were publically released on 30 August 2011.
- The Director of Military Prosecutions did not seek to appeal against the ruling of the Court Martial proceedings.
- Defence was committed to ensuring a proper legal process was observed throughout this matter so that the individuals charged received a fair trial and that the integrity of the military discipline process was preserved. Defence has closed this incident.

05 January 2009 (Inquiry complete)

- Eight Afghans presented to coalition authorities and claimed to have been injured by Australian mortars and rockets. An administrative inquiry determined that this was not likely. Defence has closed this incident.

17 September 2008 (Inquiry complete)

- During a night patrol, Australian forces were engaged by small arms fire. In returning fire four Afghans were killed, including the Chora District Chief, Rozi Khan and three others were wounded. An administrative inquiry was conducted into the incident. This matter was discussed during Senate Estimates in October 2008. Defence has closed this incident.

05 July 2008 (Inquiry complete)

- Defence issued a media release on 05 July 2008 advising that an injured Afghan youth and his father had been transported to a military hospital in Tarin Kowt for specialist treatment to the young man's upper leg. It stated that the 16 year old alleged that his injury was the result of Australian military operations in the region and that the incident would be investigated.
 - During a security patrol on 05 July 2008 in the Baluchi District, members of the Reconstruction Task Force conducted operations against suspected Taliban locations.
 - Observed mortar fire and direct fire were used during the conduct of the operation. Following the mortar fire missions, allegations were raised of injuries to one male youth, the death of a local national and the destruction of livestock.
- Two inquiries were conducted into this incident (a primary and a supplemental). Both inquiries found that there were no breaches to the Australian Rules of Engagement or Laws of Armed Conflict.
 - The inquiries also found that mortar fire or direct fire in support of the Reconstruction Task Force mounted patrol likely resulted in the shrapnel injury to one local Afghan male youth; and a number of livestock were probably destroyed as a result of the engagement.
 - Following the supplementary inquiry, it was determined that it was highly unlikely that a local national was killed in this incident. Defence has closed this incident.

ADF Combat Incidents Resulting in Allegations of Deaths or Injury to Afghan Civilians and Subject to Administrative Inquiry

- There have been a total of 17 ADF combat incidents resulting in allegations of death or injury to civilians, covered by 15 administrative inquiries since 2008. Three inquiries covering five incidents remain open and 12 inquiries into 12 incidents have been completed.
- Of the 12 completed inquiries, eight outcomes have been released to the public and four have not yet been released.

Table 1. Civilian Casualty Allegations Subject to Administrative Inquiry by date of incident, status and public release

Serial	Date of incident	Status of Inquiry		Public Release		Defence Inquiry Process completed		Remarks
1	05 Jul 08		Complete	No			Yes	Not published according to policy at that time.
2	17 Sep 08		Complete	No			Yes	Discussed during Senate Estimates in October 2008.
3	05 Jan 09		Complete		28 May 09		Yes	
4	12 Feb 09		Complete	No			Yes	Disciplinary Action outcomes only. Not published.
5	02 Apr 09		Complete		18 Dec 09		Yes	
5	28 Apr 09		Complete		18 Dec 09		Yes	
7	11 Aug 09		Complete		28 Jun 10		Yes	
8	02 Nov 10		Complete		21 Sep 12		Yes	
9	09 Nov 09		Complete		15 Dec 09		Yes	
10	27 Mar 11		Complete		16 May 13		Yes	
11	29 Oct 11		Complete		23 Nov 12		Yes	
12	14/15 Mar 12 ⁽¹⁾	Open		No		No	No	
13	01 May 12	Open		No		No	No	
14	27/28 May 12 ⁽¹⁾	Open		No		No	No	
15	05 Jun 12 ⁽¹⁾	Open		No		No	No	
16	31 Aug 12		Complete	No		No	No	
17	28 Feb 13	Open		No		No	No	
	Sub Totals	5	12	9	8	6	11	
	Check Totals	17		17		17		

Note:

1. These three incidents have been subsumed under a single administrative inquiry.