

## SENATE ESTIMATES BRIEF

International Relations 2  
Secretary's and CDF's pack

### INTERNATIONAL RELATIONS 2: AUSTRALIA - UNITED STATES DEFENCE RELATIONSHIP (INCLUDING US FORCE POSTURE INITIATIVES IN AUSTRALIA)

#### Key Facts

<ul style="list-style-type: none"><li>• The 2015 rotation of US Marines involved around 1,150 Marines and associated equipment.</li><li>• Enhanced cooperation with the US Air Force is expected to develop over a number of years.</li></ul>	<ul style="list-style-type: none"><li>• The US Force Posture Agreement is now in force, following the exchange of diplomatic notes on 31 March 2015.</li></ul>
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#### Key Issues

- Australia's alliance with the United States remains central to Australia's security and defence arrangements.
- Australia remains strongly supportive of the United States' rebalance to our near region, and we consistently work together closely in support of our common regional interests.
  - The force posture initiatives are consistent with Australia's long-standing strategic interests in supporting sustained and robust US engagement in our region.
- We continue to cooperate closely in operational theatres to support global security, including in Iraq, Syria, and Afghanistan.
- We recently signed a joint statement (at AUSMIN 2015) underpinning defence cooperation between our two countries.

## **Policy Context of the US Force Posture Initiatives**

- The initiatives are an extension of our existing defence cooperation arrangements, and are consistent with Australia's long-standing strategic interests in supporting US engagement in our region in a manner that promotes peace and stability.
  - They also provide tangible benefits to Australia through enhanced Australian Defence Force training opportunities and improved interoperability with US forces.
- These initiatives are about improving cooperation between Australia, the United States and other countries in the region.
- The Force Posture Initiatives are not directed at any specific countries in our region.
  - We see no inconsistency between our long-standing Alliance with the United States and our growing relationships with the region.
  - Australia maintains positive bilateral relationships with both the United States and China.

## **2015 US Marine Corps Rotation**

- The 2015 rotation of US Marine forces commenced in April and concluded in October.
  - The rotation involved around 1,150 US Marines, four helicopters and a range of vehicles and equipment.
  - The majority of personnel were from 1st Battalion, 4th Marines Regiment and a detachment from Combat Logistics Battalion 1, both of which are headquartered at Camp Pendleton, California.
  - Marine Heavy Helicopter Squadron 463, from Marine Corps Air Station Kaneohe Bay in Hawaii contributed a detachment of four CH-53E helicopters.
- The command, ground combat and ground logistics elements of the Marine Rotational Force-Darwin were accommodated at Robertson Barracks while the air combat element was accommodated at RAAF Base Darwin.
- During the rotation, the Marines undertook a variety of training activities at Australian Defence Force training areas in the Northern Territory and in north Queensland.

- This included independent training, as well as bilateral training with the Australian Defence Force.
- Elements of the rotation participated in Exercise TALISMAN SABRE 2015; Exercise SOUTHERN JACKAROO (with Japan); and Exercise KOWARI (with China).

### **Future of the US Marine Corps initiative**

- In the coming years, we expect to see substantial progress towards rotations of a Marine Air Ground Task Force of around 2,500 Marines and equipment.
  - And anticipate the 2016 rotation of US Marines to grow to around 1225, and three additional helicopters.
- We are working towards full implementation of the Marine rotations by 2020 or as soon as possible thereafter.
  - This represents a goal, rather than a hard and fast deadline.
  - Australia's priority is to ensure the initiatives are fully implemented in a considered manner.

### **Enhanced Air Cooperation initiative**

- Enhanced Air Cooperation with the United States is expected to develop over a number of years.
  - It is expected to result in increased rotations of US aircraft through northern Australia, to enhance bilateral collaboration and offer greater opportunities for combined training and exercises.
- The details of the initiative are the subject of continuing discussion between the Australian Government and the US Administration.
  - No decisions have yet been made, including with respect to the nature, size, location or duration of any additional aircraft cooperation activities.
- A range of different US aircraft already visit Australia for exercises and training, and the increased cooperation will build on these activities.
  - A Statement of Principles governing the US strategic bomber training program in Australia was signed in 2005.
  - Under this program, US bomber aircraft have made regular training and exercise sorties to Australia.

- These activities primarily involve US B-52 aircraft, but on occasions have also included other bomber aircraft.

### **Future force posture initiatives**

- Our current focus is on effectively implementing the US Marine Corps and Enhanced Air Cooperation initiatives.
- In the coming years, we expect to see substantial progress towards rotations of a Marine Air Ground Task Force (MAGTF) of around 2,500 Marines and equipment.
- Australia's priority is to ensure the initiatives are fully implemented in a considered manner.
- AUSMIN 2015 saw agreement to enhance our bilateral naval cooperation which will focus on near term expanded exercising and training.
  - While this will continue to develop, it does not fall under the umbrella of force posture initiatives in Australia and builds on our already strong naval links.

### **Force Posture Agreement**

- The legally binding Force Posture Agreement (the Agreement) was signed at the 2014 Australia-United States Ministerial Consultations (AUSMIN) by the Minister for Foreign Affairs and the Minister for Defence, together with their US counterparts.
- Australia and the United States exchanged diplomatic notes on 31 March 2015, bringing the Agreement into force.
- The Agreement provides a robust legal, policy and financial framework to help facilitate the full implementation of the initiatives announced in 2011.
  - These agreed initiatives include the rotational US Marine Corps deployments already underway in Darwin, and enhanced cooperation with the US Air Force in Australia.
  - The Agreement will also cover additional force posture initiatives, should they be agreed by Australia and the US in the future.
- The Agreement is part of the natural evolution of our longstanding Alliance relationship with the United States.
  - It is aimed at supporting the long-term peace, stability and prosperity of the region.

- The Agreement complements our existing bilateral agreements and arrangements with the United States. The Agreement:
  - provides the certainty needed for both countries to maximise the benefits of the initiatives, while protecting their sovereign interests;
  - provides for the unique requirements of the force posture initiatives, such as cost-sharing and access arrangements to Australian defence facilities;
  - provides for the rotational presence of US forces in Australia under the force posture initiatives; and
  - ensures that the force posture initiatives will take place at Australian-owned facilities.
- The initial term of the Agreement is 25 years.

### **Implementing Arrangements**

- The Agreement is a high-level document that sets out an overarching framework to facilitate the full implementation of the force posture initiatives.
- Australia and the US are developing a range of Implementing Arrangements subordinate to the agreement that will set out the mechanisms for implementing the force posture initiatives in more detail.
  - We are working through the negotiations for implementing arrangements as expeditiously as possible.

## **ANZUS Treaty**

- Australia has a formal alliance with the United States known as the ANZUS Treaty, which was concluded in 1951.
- The ANZUS Treaty binds Australia and the United States to consult on mutual threats and, in accordance with our respective constitutional processes, to act to meet common dangers.
- It was invoked by Australia for the first time in response to the terrorist attacks of 11 September 2001.

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## BACKGROUND

### 2011

- On 16 November 2011, former Prime Minister Gillard and President Obama announced the US force posture initiatives involving US Marine Corps rotational deployments and increased aircraft cooperation in northern Australia.

### 2012

- The first rotation of approximately 200 US Marines commenced in Darwin on 3 April 2012 and concluded on 26 September 2012.
- At AUSMIN in November 2012, Australia and the US agreed to continue to implement the force posture initiatives in an incremental and considered manner.
- Also at AUSMIN, Australia and the US discussed potential opportunities for additional naval cooperation at a range of locations.

### 2013

- The second rotation of approximately 200 US Marines arrived in Darwin in April 2013 and departed on 26 September 2013.
  - During this time, the ADF and US Marines worked together in a number of small-scale exercises, including Exercise Koolendong at the Bradshaw Field Training Area in late August.
  - The Marines also participated in exercises in New Zealand and Tonga, and participated in an Australia-Indonesia humanitarian and disaster-relief tabletop exercise held in Darwin.
- At AUSMIN on 20 November 2013, principals reaffirmed both countries' commitment to the bilateral Alliance, the US rebalance, and to fully implementing the force posture initiatives.
- Principals also signed a joint Statement of Principles at AUSMIN that provided a common vision for advancing the US force posture initiatives in northern Australia and agreed to commence negotiations on a binding agreement to support future defence cooperation involving the US rotational presence in Australia.

### 2014

- The third rotation of approximately 1,150 Marines arrived in Darwin in March 2014 and departed in early October 2014.
  - The rotation also involved four helicopters and a range of vehicles and equipment.
- At AUSMIN on 12 August 2014, Australia and the United States signed the Force Posture Agreement, providing a legal, policy and financial framework to support the full implementation of the US force posture initiatives in Australia.
  - The Agreement covers matters such as access to Australian defence facilities, as well as administrative issues, including recognition of US drivers licenses, professional licenses and qualifications and visa requirements.
- On 26 August 2014, the Agreement was tabled in both houses of the Australian Parliament for consideration by the Joint Standing Committee on Treaties (JSCOT).
  - On 25 November 2014, JSCOT released its report supporting ratification and recommending that treaty action be taken.

## 2015

- On 31 March, at the Defence Policy Talks in Canberra, US Under Secretary of Defense for Policy, Christine Wormuth, and Deputy Secretary Strategy, Peter Baxter, exchanged diplomatic notes to bring the Force Posture Agreement into force.
- The fourth rotation of US Marines began to arrive in Darwin in early April and departed in October 2015.
  - The rotation involved around 1,150 Marines and associated equipment.
  - Elements of the US Marine rotational force also participated in Exercise Talisman Sabre, in Exercise Southern Jackaroo (trilateral with Japan) and in Exercise Kowari (trilateral with China).

### **AUSMIN 2015**

The 2015 AUSMIN was held on 13 October in Boston – US Secretary of State Kerry’s home town. This AUSMIN was the third for both Minister Bishop and Secretary Kerry, and the first for both Senator Payne and the US Secretary of Defense, Ash Carter. This year’s AUSMIN coincided with the 75<sup>th</sup> anniversary of diplomatic relations between Australia and the United States, 65 years into our Alliance, and a decade into our free trade agreement.

Discussions at the 2015 AUSMIN focused on: shared regional challenges, including opportunities to enhance trilateral security cooperation with key regional partners; continued implementation of the Australia-US force posture initiatives in Australia; our ongoing operational cooperation in the Middle East and Afghanistan; opportunities for enhanced training and exercising; avenues to increase interoperability through common platforms and capability; and our enduring intelligence cooperation. The Communiqué recommitted to the force posture initiatives end states.

### ***Northern Territory News Report of 24 September 2015***

On 24 September, the Northern Territory News reported that the future size and scope of the Marine rotations was uncertain. The article referenced an interview with Lieutenant General Toolan, Commanding General Marine Forces Pacific, in the US Marine Corps Times from 22 September, in which he stated the size and scope of future rotations was undecided and depended on bilateral agreement, including on cost sharing. The Northern Territory News article quoted John Blaxland, an academic at the Australian National University, who stated the Australian Government, under new leadership, would not be “looking to accelerate” the build up of Marine numbers in Darwin. The article also linked the Marine Corps rotations to ongoing tensions in the South China Sea and on the Korean Peninsula.

As previously confirmed in public statements, both the Australian and United States Governments are committed to the ongoing implementation of the Marine Corps rotations. The intent is to build to a Marine Air Ground Task Force involving around 2500 Marines by 2020; however this is not a hard and fast deadline, with ongoing negotiations over facilities requirements and cost sharing arrangements still to be resolved. The Australian Government’s priority is to ensure the implementation of the rotation is considered and sustainable.



## SENATE ESTIMATES BRIEF

Afghanistan 3  
Secretary's and CDF's pack

### AFGHANISTAN 3: RESETTLEMENT OF LOCALLY ENGAGED EMPLOYEES FROM AFGHANISTAN

#### Key Facts

<ul style="list-style-type: none"><li>• <b>On 13 December 2012, the then Government announced a visa policy to offer resettlement to Australia to eligible locally engaged Afghan employees who have supported Australia's mission in Afghanistan.</b></li></ul>	<ul style="list-style-type: none"><li>• <b>On 1 January 2013, the policy came into legislative effect through the publication of a Gazette Notice.</b></li><li>• <b>More than 600 Afghan nationals, including locally engaged employees and their families, have been settled in Australia under this policy.</b></li></ul>
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#### Key Issues

- Under this policy Australia will offer resettlement to eligible locally engaged Afghan employees at risk of harm due to their employment in support of Australia's mission in Afghanistan.
- The policy reflects Australia's view of its moral obligation to current and former employees who have provided valuable support to Australia's efforts in Afghanistan.

#### Process for Certification and Visa Applications

- Current and former locally engaged Afghan employees who believe they may be eligible for a visa must indicate their interest to their employing Australian Government agency.
- Applicants must then be certified as eligible under the policy by the relevant Minister of their employing Australian Government agency as being at significant individual risk of harm due to their employment.
- The employing Australian Government agency will assess the applicant's claims against specific threat criteria and makes recommendations to the Minister, as well as administering the formal certification process.

- Eligible applicants may then lodge a Refugee and Humanitarian visa application with the Department of Immigration and Border Protection (DIBP).
- DIBP will then assess the applicant against standard visa criteria including health, character and security requirements.
  - Personnel from employing Australian Government agencies do not have the authority to grant visas.
- A Refugee and Humanitarian visa affords the employee, and their immediate family members, permanent resettlement in Australia.
- Employees who are granted a visa have access to the same settlement services offered to all Refugee and Humanitarian visa holders.

*If asked: What is Defence's view on a petition signed by more than 100 former locally engaged Afghan employees which seeks that the policy be extended to allow for the resettlement of extended family members?*

- Defence received a petition on 2 October 2015 requesting that the Australian Government consider allocating humanitarian visas to the extended family of locally engaged Afghan employees who are not otherwise eligible for resettlement under this policy.
- Eligible family members are identified for resettlement as part of the humanitarian visa process, which occurs after Defence certification of locally engaged Afghan employees.
- Defence does not have a role in the visa process. All questions on visas should be directed to the Department of Immigration and Border Protection.

*If asked: How many locally engaged Afghan employees do we expect to resettle in Australia under this policy?*

- More than 600 Afghan nationals, which includes locally engaged employees and their families, have now been granted visas to Australia under the policy.
- They have resettled in cities across Australia, including Sydney, Melbourne, Newcastle, Adelaide and Perth.
- As this is an ongoing policy it is very difficult to judge exactly how many people might eventually apply and be resettled, and obviously not all who apply will be eligible.

If asked: How many applications has Defence received under this policy; and have they all been found eligible?

- Defence does not provide details of the number and type of applications received under the policy to protect the privacy and security of current applicants.
  - Disclosure of numbers of current or former locally engaged Afghan employees who have worked with Australia, combined with details about applications, has the potential to reveal the size and character of the locally engaged Afghan employee workforce in Afghanistan.
  - This could provide a level of information to those who would seek to harm locally engaged Afghan employees.
- Some people have been found ineligible. Overall, however, more applicants have been found eligible than ineligible.

### **Review options of decisions**

- Defence may reconsider cases if there are relevant changes of circumstance.
  - Under this provision, Defence has reconsidered a small number of cases in light of new information regarding the employment or circumstances of the applicant being received.

### **Timeliness of the process**

- Defence has received a large number of enquiries and applications under this policy and it will take some time to finalise the applications for certification.
  - Defence must assess the level of support a locally engaged employee provided to Australia's mission in Afghanistan as well as the applicant's public profile, location and the period of employment.
    - Defence can prioritise cases based on threat [*threats are assessed based on advice from Defence personnel in theatre, including formal reporting, as well as accounts directly from applicants*];
  - Defence will then assess the applicant's claims and administer the formal certification process.

- Under this policy, visa applications are also given highest processing priority by DIBP, but all applicants must satisfy security, character and medical checks.

*If asked: What steps have been taken to expedite these processes?*

- Defence has implemented a number of steps to ensure that applications made under this policy are given the highest priority, including redirecting staff resources for surge periods.
- DIBP has also implemented a number of steps to expedite visa applications made by locally engaged Afghan employees who have been found eligible under this policy.
  - Questions on these steps should be directed to DIBP.

### **Reports of applicants being killed prior to certification or grant of a visa**

- Reports of the killing of any Afghan national who worked with the ADF are matters of deep concern.
- Defence is aware of such reports, although it remains difficult to establish their veracity.
- It is important to remember that Afghanistan presents a complex security environment, and the full circumstances around these reported incidents will likely be difficult to establish.
- Defence is unable to reveal further details about the specific cases, as such information could be used by those who would seek to harm these employees, and their families.

*If asked: What is the value of Afghan interpreters' work to Australian Forces in Afghanistan?*

- Embedded interpreters provide important support to ADF elements in the conduct of their missions.
- They help break down language and cultural barriers, and contribute to the ADF's ability to operate in Afghanistan.

*If asked: How do we ensure their safety?*

- We take all precautionary measures possible to ensure the safety of our locally engaged Afghan employees in Afghanistan.
- We encourage them to not publicly discuss their employment or application for resettlement to Australia.

- Throughout our engagement with locally engaged Afghan employees we also encourage them to take all precautionary measures to ensure their safety, including that of their immediate family.

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### **locally engaged Afghan employee applications**

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### **Resettlement of Locally Engaged Afghan Employees**

- The Department of Social Services (DSS) is responsible for providing settlement services to locally engaged Afghan employees and their family members who have been granted a visa to Australia under this policy.
- These services are similar to that provided to any other humanitarian entrant, and include accommodation support, basic assistance to set up a household, English language courses, and help to access government, community and health services.
- Defence is working closely with DSS to ensure, where possible, the settlement process remains seamless.
- All questions regarding the services should be directed to DSS.

### **SSCFADT Questions on Notice Supplementary Budget Estimates Hearing 1-2 June 2015**

- In **QON 5 Locally Engaged Employees** Senator Conroy asked about the administration of the program, the numbers of applicants and deaths of applicants. Response lodged **13 July 2015**.
- In **QON 110 Locally Engaged Employees** Senator Conroy asked for details about the number of applicants, outstanding applicants and attacks or killing of applicants. Response lodged **15 July 2015**.

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## BACKGROUND

### Locally Engaged Employee Engagement

Defence receives a high number of applications seeking certification under the policy to resettle eligible Afghans at risk of harm due to their employment in support of Australia's mission in Afghanistan. In addition, Defence receives a significant number of enquiries from applicants, including seeking updates on their cases, providing further information on their situation, and questioning the outcome of their certification application. Defence responds to all correspondence in a timely manner. To accurately assess applications, Defence is often required to seek additional information from both the applicants and serving and retired ADF personnel. Defence undergoes extensive internal consultation, including with Task Group-Afghanistan, Joint Task Force 633 and Defence Legal, on each assessment. This process is prolonged but is essential to ensuring applicants receive accurate, fair and legally sound assessments.

There has also been an increased trend for locally engaged Afghan employees to reach out to parliamentarians and Australian nationals in support of their applications. Defence has assisted in responding to these solicitations on behalf of the Australian Government.

### Petition Seeking Resettlement of Extended Family Members

On 2 October 2015 Defence received a petition signed by more than 100 former Afghan locally engaged employees that have been resettled in Australia. The petition seeks consideration of visas for the siblings and parents of former Afghan interpreters due to the threat they continue to face in Afghanistan. It was copied to the Minister for Immigration and Border Protection, Peter Dutton MP. The petition was also sent to Senator Conroy, Senator Day, Senator Fierravanti-Wells, Senator Gallacher, Senator Heffernan and Senator Muir.

The determination of eligible family members to be resettled with Afghan locally engaged employees, once they have been certified by Defence, occurs as part of the humanitarian visa process in accordance with Migration regulations, which provides a definition of immediate family members. This process is managed by DIBP and all questions on the visa process should be directed to DIBP.

The petition also references the cases of two family members of former LEE allegedly killed by insurgents due to family linkages with Australian and coalition forces, although provides insufficient detail to independently verify these allegations.

### s47E(d) Locally Engaged Employee Applications

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Defence does not disclose exactly what stage applications are at within the certification process. Defence is working closely with DIBP to determine the most appropriate path to resolve these cases.

### **Reports of applicants under program being killed prior to certification or grant of a visa**

Defence is aware of media reports that Afghan nationals who have worked with the ADF have been killed, but does not discuss individual applications under the policy, or reveal details about the association of an individual in order to protect applicants and their families from harm. Most recently, on 14 March 2015 *The Weekend Australian* published an article claiming that a former contractor with the ADF in Afghanistan 'Mawla Daud' had been killed, after he had been refused an Australian visa under the policy. The article also notes that threats from local militants against the contractor had been reported to Australian employers.

### **Timelines for processing and granting of applications**

On 2 June 2014, Senator Conroy asked about timelines for the processing and granting of applications under the locally engaged employee policy (Hansard excerpt and Defence response is attached). Defence's response noted that specific details about the number and type of applications, including whether or not they were successful, could not be provided for security reasons. The response further noted that assessment times could vary significantly depending on the applicant's circumstances, but in instances of significant and immediate risks, efforts were made to expedite applications.



## SENATE ESTIMATES BRIEF

Afghanistan 2  
Secretary's and CDF's pack

### AFGHANISTAN 2: DEATH OR SERIOUS INJURY OF AFGHAN CIVILIANS WHERE ADF INVOLVEMENT IS ALLEGED AND SUBJECT TO ADMINISTRATIVE INQUIRY

#### Key Facts

<ul style="list-style-type: none"> <li>• Since 2008, 18 ADF combat incidents resulting in allegations of death or injury to Afghan civilians have been subject to 16 administrative inquiries.</li> <li>• All inquiries are complete.</li> </ul>	<ul style="list-style-type: none"> <li>• The Defence process in relation to public release is yet to be completed for three inquiries.</li> <li>• As at 14 September 2015, the total amount of all Tactical Payment Scheme payments was \$206,044 comprising 2,833 individual payments.</li> </ul>
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#### Key Issues

##### 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.

##### Strategy under the current North Atlantic Treaty Organisation (NATO) led Train, Advise and Assist Resolute Support Mission (RSM)

- Protecting the Afghan population remains a key element of the NATO mission strategy to defeat the insurgency through the continued development of the Afghan National Defence and Security Forces (ANDSF) capacity to secure the safety of the Afghan people.

- The NATO led coalition, which includes Australia, continues to observe precautions to avoid harming civilians and property during operations.
  - Violence conducted by insurgents on the Afghan people continues to take a high toll on the civilian population.
  - Insurgent attacks on international forces under RSM also continue to place innocent Afghan lives at risk.
  - The practice by insurgents of employing landmines, improvised explosive devices, suicide attacks and assassinations continues to take a high toll on the civilian population.
- The United Nations Assistance Mission in Afghanistan annual report for 2014 (released February 2015) notes that an overwhelming majority (72 per cent) of all civilian casualties in Afghanistan were caused by anti-government elements.
  - There have been no allegations of civilian casualties caused by the ADF since the start of RSM.

### **Strategy under the International Security Assistance Force (ISAF) mission**

- Protecting the Afghan population was a key part of the ISAF strategy to defeat the insurgency.
  - ISAF and the ADF took precautions to avoid harming civilians and property during operations.
- All of the 16 inquiries conducted by the ADF (since 2008) relate to allegations stemming from the ISAF mission.

### **Release of Rules of Engagement**

- For operational security reasons, details of the Rules of Engagement cannot be discussed. Public discussion would give opposing forces an advantage in understanding and therefore the ability to exploit our regulations. The insurgents operate with no rules and with no regard for civilians.

### **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 later found to be unsubstantiated or which do not merit an administrative inquiry.

## Process for Allegations Received From Local Sources

- The ADF may receive allegations about adverse effects of coalition activities on the local Afghan populace from local sources such as non-government organisations or local tribal elders.
  - Allegations brought to the attention of the ADF are reviewed against operational reporting to determine if the allegation relates to ADF activities.
  - 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 allegation.

## Way Ahead

- The ADF continues to take all reasonable steps to ensure its activities as part of RSM do not put the lives of civilians or non-combatants in jeopardy.

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

**27 September 2013 (AEST – 26 September local time) (Inquiry complete – findings not yet released)**

- On 26 September 2013, Special Operations Task Group (SOTG) conducted a partnered operation to locate and detain a known insurgent. During the operation, an Afghan adult male and child were killed.
- The Chief of Joint Operations (CJOPS) directed that an administrative inquiry be conducted into the circumstances surrounding this operation, including the circumstances surrounding the two deaths.

**28 February 2013 (Inquiry complete – findings not yet released)**

- On 28 February 2013, SOTG conducted a patrol in northwest Uruzgan. During the course of the patrol an incident occurred in which two young Afghan Civilians were killed.
- CJOPS directed that an inquiry be conducted into the matter to determine the circumstances surrounding the incident.

**31 August 2012 (Inquiry complete)**

- On 31 August 2012, a partnered operation between SOTG and Afghan forces sought to locate the rogue Afghan National Army (ANA) soldier who killed three and wounded two Australian soldiers on 29 August 2012, or to locate insurgents suspected of assisting his escape.
- Defence has completed an inquiry into the circumstances surrounding this operation, including the circumstances surrounding the two deaths.
  - The Inquiry Officer found that the operation was appropriately authorised and that two Afghan nationals were engaged and killed within the Rules of Engagement.
  - During the operation an insurgent leader known to have been involved in improvised explosive device attacks in Uruzgan province was detained.
  - The insurgent leader was one of 12 persons of interest detained during the operation.
  - Eleven people were later released after initial questioning indicated there was insufficient evidence to support their continued detention.
  - The inquiry report has not been released in order to protect the safety of Australian and coalition personnel who remain in Afghanistan.
  - Allegations have been raised in various forums about the status of the two deceased individuals, including in media reports on 11 September 2012.

**05 June 2012 (one of three incidents subsumed by one Inquiry). (Inquiry complete – findings not yet released)**

- Allegation reported to Provincial Reconstruction Team – Uruzgan (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 thorough the village to check on his son, who was in a nearby field.
- CJOPS 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 complete – findings not yet released)**

- 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.
- CJOPS directed that an administrative inquiry be conducted into the matter to determine the circumstances surrounding the incident.

**01 May 2012 (Inquiry complete)**

- On 01 May 2012 SOTG soldiers were undertaking a partnered security operation with ANSF elements in central Uruzgan when an Afghan boy was injured during an engagement with a group of suspected insurgents.
- Defence completed an administrative inquiry into this incident and the findings were released on 11 April 2013:
  - The incident occurred when an SOTG member fired shots in the direction of two suspected insurgents who were moving through dense vegetation.
  - The inquiry found the SOTG member acted in accordance with the Rules of Engagement.
  - The young boy, who had been standing close by unobserved, was inadvertently struck by a bullet, 47F
  - SOTG 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 Kot, where he was stabilised before being transferred to the Role 3 facility in Kandahar for further treatment.
  - The ANSF 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.

**14-15 March 2012 (one of three incidents subsumed by one Inquiry). (Inquiry complete – findings not yet released)**

- During a SOTG 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.
- CJOPS 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 Kot for the PRT-U 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 ROE.
  - 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 (ANP) Provincial Response Company – Uruzgan and SOTG 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 Kot, 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 ROE.
  - 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.

#### **02 November 2010 (Inquiry complete)**

- On 02 November 2011 a patrol comprising members of the ANA and soldiers from the Australian Mentoring Task Force (MTF) 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 ANA 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 ANA 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 Kot, 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 checkpoint as part of general election security operations, members of the Australian MTF were involved in a shooting incident involving two men travelling on a motorcycle.
  - The men were approaching the checkpoint north of Tarin Kot 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 Kot military hospital for treatment.
  - The soldiers conducting the vehicle checkpoint were subsequently engaged by small arms fire by Afghan men. There were no injuries to Australian soldiers. Members of the ANP 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 (Inquiry complete)**

- An administrative inquiry was conducted into allegations that four people were killed and two wounded in an operation that targeted suspected insurgents laying IEDs.
- 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 IEDs.
  - 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 ANSF and SOTG 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. Findings not published)**

- An inquiry was conducted into this incident as well as an ADFIS 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. Findings not published)**

- 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. Findings not published)**

- 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 Kot 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 MTF 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 ROE or Laws of Armed Conflict.
  - The inquiries also found that mortar fire or direct fire in support of the MTF 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.

**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
				No				
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 <sup>(1)</sup>		Complete	No		No		Findings not yet released
13	01 May 12		Complete		11 Apr 14	Yes		
14	27/28 May 12 <sup>(1)</sup>		Complete	No		No		Findings not yet released
15	05 Jun 12 <sup>(1)</sup>		Complete	No		No		Findings not yet released
16	31 Aug 12		Complete		28 Feb 14	Yes		Media release only (copy of report not published in order to protect the safety of Australian and coalition personnel who remain in Afghanistan.)
17	28 Feb 13		Complete	No		No		Findings not yet released
18	27 Sep 13		Complete	No		No		Findings not yet released
	Sub Totals		18	8	10	5	13	
	Check Totals		<b>18</b>		<b>18</b>		<b>18</b>	

**Note:**

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