

SENATE ESTIMATES BRIEF

Group Brief
DEPSEC Strategy pack

AUSTRALIA'S UNMANNED AERIAL SYSTEMS POLICY

Key Facts

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If asked about: Pine Gap's role in United States' "drone programs"?

- It is the established practice of successive Australian Governments not to comment on intelligence matters.

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If asked about: Armed UAS

- Defence intends to analyse the merit of additional future investment in UAS, to include the potential acquisition of armed UAS able to carry out interdiction and close air support.
- Any decision to acquire armed UAS will be subject to the mandated set of legal and policy considerations applied to other weapons systems.
- These issues will be further considered during the development of the next Defence White Paper. An important principle is the primacy of human decision-making in the employment of military force.
- Regardless of the type of capability deployed, ADF personnel use force in accordance with targeting direction and guidance that is compliant with the Laws of Armed Conflict.
- The Laws of Armed Conflict (also known as international humanitarian law) include the principles of military necessity, proportionality and distinction. They provide the framework for Australia's rules of engagement on operational deployments.

AUTHORISED BY:

Peter Baxter
Deputy Secretary Strategy

Date:

Angus
A/First Assistant Secretary Strategic
Policy
Date:

CONTACT OFFICER:

Matt Ramage
Acting Assistant Secretary Strategic
Policy
Date: 29 January 2014

CONSULTED WITH:

Air Force Headquarters
Defence Legal
Defence White paper
Capability Development Group

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1

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If asked about: Pine Gap's role in United States' "drone programs"?

- It is the established practice of successive Australian Governments not to comment on intelligence matters.

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- Defence intends to analyse the merit of additional future investment in UAS, to include the potential acquisition of armed UAS able to carry out interdiction and close air support. This will include the completion of a legal review (as required by Australia's international law obligations), to ensure that the weapon itself and its means of employment comply with Australia's obligations under the Laws of Armed Conflict.
- Any decision to acquire armed UAS ~~will~~would be subject to the mandated set of legal and policy considerations applied to other weapons systems.
- These issues will be further considered during the development of the next Defence White Paper. An important principle is the primacy of human decision-making in the employment of military force.

4

- Regardless of the type of capability deployed, ADF personnel use force in accordance with targeting direction and guidance that is compliant with the Laws of Armed Conflict.
- The Laws of Armed Conflict (also known as international humanitarian law) include the principles of military necessity, proportionality and distinction. Where Australia is involved in armed conflict, these principles provide the framework basis for Australia's rules of engagement on operational deployments.

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Peter Baxter
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Date:

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Date: 29 January 2014

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BACKGROUND

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Joint Facilities and Full Knowledge and Concurrence

Talking Points

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- The activities at our joint facilities, and indeed the activities at all Australian defence facilities to which the US has access, are managed to ensure they are consistent with Australia's national interests.

If asked: What is 'full knowledge and concurrence'?

- Full knowledge and concurrence is an expression of Australian sovereignty.
- It is a reflection of the Australian Government's fundamental right to know and approve or deny the activities that foreign governments propose to conduct in, through or from Australian territory or national assets.

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If asked: Is Joint Defence Facility Pine Gap's intelligence support for US and allied military operations subject to full knowledge and concurrence by the Australian Government?

- Yes, all activities undertaken at Joint Defence Facility Pine Gap are subject to the full knowledge and concurrence of the Australian Government.

If asked: about Pine Gap's role in United States' "drone programs"?

- Australia works with the intelligence agencies of our close ally and closest partners to protect our country from threats such as terrorism.
- All such activities are conducted in accordance with Australian law.
- Consistent with long standing practice, the Government does not comment on intelligence matters.

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Point of Contact

International Policy:

Mr Chris Birrer, A/FASIP, (w) 6265 2526 (m) s22

I&S:

Clive Lines, Deputy Director ASD (w) 6144 3459

Departmental information valid as at: 23 May 2014



Australian Government
Department of Defence

UNCLASSIFIED

Johnston: MC14-001483
Ref:

MINISTERIAL CORRESPONDENCE

Date for action by: Reason:

For Action: Minister for Defence

Through: Deputy S 19/6/14

Copies to: Sec, CDF, DepSec I&S, FASMECC



s47G

Australia's participation in US drone strikes

Purpose:

To provide you with a draft response to a letter from the s47G requesting information about the Joint Defence Facility Pine Gap in reaction to allegations in the media that the facility is used to target US drone strikes.

Key Points:

1. On 22 May 2014, s47G wrote to you, the Prime Minister and the Minister for Foreign Affairs requesting "greater transparency about Australian involvement in drone strikes." A copy of the letter is at Attachment B.
2. s47G letter includes a list of questions regarding US drone strikes and Pine Gap's legal and policy framework. The deaths of two Australian citizens in a drone strike in Yemen in November 2013 appear to have been the catalyst for the letter which also draws on media reporting from July 2013 claiming Pine Gap is involved in the US drone program.
3. Many of s47G questions relate to operational intelligence matters or US Government counter-terrorism operations therefore have not been answered, consistent with long-standing Australian Government practice. The Department of Defence has prepared a draft response for you providing unclassified information on the full knowledge and concurrence framework and confirming that activities conducted at Pine Gap comply with Australian and international legislation.
4. The draft response for you to reply on behalf of the Prime Minister and Minister for Foreign Affairs is at Attachment A. Defence has consulted with the Department of Prime Minister and Cabinet and the Department of Foreign Affairs and Trade in the preparation of this letter.
5. s47G has also written to the United Nations Special Rapporteur on Counter Terrorism requesting that the circumstances surrounding the deaths of the two Australians killed in Yemen be raised with the Australian and US Governments (see Attachment C).

UNCLASSIFIED

Johnston: MC14-001483
Ref:

Recommendations:


That you:

- i. Note that s47G [REDACTED] has written to you, the Prime Minister and the Minister for Foreign Affairs regarding Pine Gap's alleged involvement in the targeting of US drone strikes.

Noted / Please Discuss

- ii. Sign the attached letter to s47G [REDACTED]

Signed / Not Signed

Approved By Kavita Kewal Acting Assistant Secretary Major Powers 17 June 2014	s22 [REDACTED]
Contact Officer: Laura Jones, Acting Director Joint Facilities and Technical Programs	Phone: 02 6265 3165
<div style="text-align: center;"> 25/6/14</div> <p>David Johnston / /</p> <p>Comments / Supplementary tasking:</p>	

UNCLASSIFIED

Johnston: MC14-001483
Ref:

Resources:

6. N/A.

Consultation:

7. Acting Deputy Director Intelligence, Australian Signals Directorate, Mr Derek Dalton.

8. s22 Department of Foreign Affairs and Trade (DFAT) s22

s22
9. s22 Department of
Prime Minister and Cabinet, s22

Attachments:

A. Draft letter to s47G

B. Original Correspondence.

C. Letter to United Nations Special Rapporteur on Counter Terrorism (22 May 2014).



Senator the Hon David Johnston
Minister for Defence

MC14-001483

s47G

Dear s47G

Thank you for your letters of 22 May 2014 to the Prime Minister, the Minister for Foreign Affairs, the Hon Julie Bishop MP, and me regarding alleged Australian participation in United States drone strikes.

Australia acts in accordance with its legal obligations, including the United Nations Charter and, to the extent they are applicable, international humanitarian law and international human rights law.

As the Minister for Defence, I have been briefed on all of the activities undertaken at Pine Gap and I can assure you the facility is operated with the full knowledge and concurrence of the Australian Government. In addition to compliance with full knowledge and concurrence policy, all activities conducted at Pine Gap accord with the law.

Full knowledge and concurrence is a long-standing Government policy and is the underpinning principle for the operations at Pine Gap. It is an expression of Australian sovereignty, of Australia's fundamental right to know what activities foreign governments conduct in, through or from Australian territory.

It is the established practice of successive governments not to comment on intelligence activities.

I trust this information clarifies the matter for you.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'David Johnston'.

David Johnston

25 JUN 2014

s47G

The Hon Tony Abbott MP
Prime Minister
By fax: (02) 6273 4100

The Hon Julie Bishop MP
Minister for Foreign Affairs
By email: Julie.Bishop.MP@aph.gov.au

Senator the Hon David Johnston
Minister for Defence
By email: defence.minister@defence.gov.au



22 May 2014

Dear Ministers

Questions in relation to Australia's participation in United States (US) drone strikes

This letter is to express our grave concern about recent reports that two Australian citizens were killed by United States drone strikes in Yemen and to urgently request greater transparency about Australian involvement in drone strikes. We **attach** a list of questions in relation to Australia's possible involvement in civilian deaths caused by US drone strikes and the legal, policy and regulatory structure that governs that work.

On 21 July 2013, *The Age* newspaper reported allegations made by former Pine Gap personnel that the signals intelligence base has located and tracked al-Qaeda and Taliban leaders and has passed on location data (**locational intelligence**) to the US drone strike program and other military operations. On 2 December 2013, the Defence Minister told the Australian Parliament that the Pine Gap base operates with the 'full knowledge and concurrence' of the Australian government and all activities are conducted in compliance with Australian law. We **attach** a copy of the media report and the Minister's response to questions on notice.

If true, these allegations raise serious concerns about the complicity of Australian officials in civilian deaths caused by the US drone strikes. In particular, we are concerned that Australian officials may have facilitated targeted killing in violation of international humanitarian law and international human rights law, and may be implicated in war crimes.

Given the gravity of the allegations, and recent deaths of two Australians in drone strikes, we request information in relation to the legal, policy and regulatory framework that applies to any involvement by Australia in US drone strikes and otherwise that governs Australian defence personnel at Pine Gap in their sharing of locational intelligence.

s47G

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Questions for the Prime Minister, Foreign Minister and Defence Minister
May 2014

We would be grateful for a response to the attached questions. If you have any queries, please do not hesitate to contact me.

Yours sincerely

s47G



s47G

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Questions for the Prime Minister, Foreign Minister and Defence Minister
May 2014

Attachment: List of questions on Australian involvement in US drone strikes

Australia at war

- Does the Australian Government consider itself legally at war with any State or organized armed group?
- Is Australia involved in any way in US drone strikes conducted outside of Afghanistan? If so, what is the legal basis for that involvement?

Australian personnel

- How does the Australian military ensure that its military personnel at Pine Gap who are involved in downlinking, processing or analysing locational data that might be used to locate targets of US drone strikes are not complicit in or liable for any violations of humanitarian or human rights law committed by the US?
- Have Australian officers at Pine Gap been provided with legal advice as to their potential international criminal liability for their role in drone strikes as a result of sharing locational intelligence with the USA?
- Has the Australian government considered that if Australian officers at Pine Gap are involved in US drone strikes that they may be subject to prosecution at the International Criminal Court?

Pine Gap

- What is the legislative, regulatory and policy framework in which Pine Gap operates? What laws, regulations or policies govern Australian officials involved in the interception, downlinking, processing, analysis and sharing of information or intelligence at Pine Gap?
- The Defence Minister has declared that all activities at Pine Gap are conducted in compliance with Australian law. To what extent has the department made inquiries to satisfy itself that these activities are in compliance with Australian law? Are activities at Pine Gap also conducted in compliance with Australia's international law obligations, in particular international human rights law and international humanitarian law?
- Has the Australian government entered into any specific agreement with United States in relation to the sharing of locational intelligence downlinked, processed or analysed by Pine Gap that might be used in relation to drone strikes?

Australian knowledge at Pine Gap

- The Defence Minister says that Australia has "full knowledge and concurrence" of activities at Pine Gap. Does full knowledge and concurrence in relation to Pine Gap include full knowledge and concurrence in the purposes for which locational intelligence is shared?

- How could the use of force against Mr Havard and Mr bin John be considered strictly necessary and proportionate limitations on their right to life?
- Please provide information on any investigations including battle damage assessments carried out in relation to the drone strikes that killed the two men, including the independence and impartiality of those investigations.
- Have any efforts been made to provide compensation or other remedies to the families of the two men killed?

Information concerning the Pine Gap facility

It would also be useful to obtain information on the extent to which the joint Australian-American Pine Gap facility was involved in the US drone attack that killed the two Australian citizens.

- Was information that was downlinked, processed or analysed at the Pine Gap facility used in the drone strike that killed Mr Havard and Mr bin John?
- Have the Australian and US governments entered into any specific agreement in relation to the sharing of locational intelligence downlinked, processed or analysed by Pine Gap that might be used in relation to drone strikes?

Information to be requested specifically from the Australian government

- To what extent is Australia involved in US drone strikes in Yemen, including through the provision of location information sourced from the Pine Gap facility? What is the legal basis for Australia's participation in drone strikes in Yemen?
- Does the Australian Government consider itself legally at war with Yemen or with al-Qa'ida in the Arabian Peninsula?
- The Australian Defence Minister has declared that all activities at Pine Gap are conducted in compliance with Australian law. Are activities at Pine Gap also conducted in compliance with Australia's international law obligations, in particular international human rights law and international humanitarian law?

We thank you for your work on the civilian impact of drone strikes to date. We would be happy to provide your mandate with further assistance to the extent that it would be useful.

Yours sincerely

s47G



22/5/2014

Print Article: Pine Gap drives US drone kills

smh.com.au

The Sydney Morning Herald

 [Print this article](#) |  [Close this window](#)

Pine Gap drives US drone kills

Philip Dorling

Published: July 21, 2013 - 3:00AM

Central Australia's Pine Gap spy base has played a key role in the United States' controversial drone strikes involving the "targeted killing" of al-Qaeda and Taliban chiefs, Fairfax Media can reveal.

Former personnel at the Australian-American base have described the facility's success in locating and tracking al-Qaeda and Taliban leaders - and other insurgent activity in Afghanistan and Pakistan - as "outstanding".

A Fairfax Media investigation has confirmed that a primary function of the top-secret signals intelligence base near Alice Springs is to track the precise "geolocation" of radio signals, including hand-held radios and mobile phones, in the eastern hemisphere, from the Middle East across Asia to China, North Korea and the Russian far east.

This information has been used to identify the location of terrorist suspects, which then feeds into the United States drone strike program and other military operations. The drone program, which has involved more than 370 attacks in Pakistan since 2004, is reported to have killed between 2500 and 3500 al-Qaeda and Taliban militants, including many top commanders.

But hundreds of civilians have also been killed, causing anti-American protests in Pakistan, diplomatic tensions between Washington and Islamabad and accusations the "drone war" has amounted to a program of "targeted killing" outside of a battlefield. Earlier this year, the Obama administration acknowledged four American citizens had been killed by strikes in Pakistan and Yemen since 2009.

"The [Taliban] know we're listening, but they still have to use radios and phones to conduct their operations, they can't avoid that," one former Pine Gap operator told Fairfax Media. "We track them, we combine the signals intelligence with imagery, and once we've passed the geolocation intell[igence] on, our job is done. When drones do their job we don't need to track that target any more."

The Australian-American base's direct support for US military operations is much greater than admitted by Defence Minister Stephen Smith and previous Australian governments, new disclosures by former Pine Gap personnel and little-noticed public statements by US government officials have shown.

Australian Defence intelligence sources have confirmed that finding targets is critically dependent on intelligence gathered and processed through the Pine Gap facility, which has seen "a massive quantitative and qualitative transformation" over the past decade, and especially the past three years.

"The US will never fight another war in the eastern hemisphere without the direct involvement of Pine Gap," one official said.

Secret documents leaked by US intelligence whistleblower Edward Snowden indicate that Pine Gap also contributes to a broad US National Security Agency collection program code-named "X-Keyscore".

Pine Gap controls a set of geostationary satellites positioned above the Indian Ocean and Indonesia. These orbit the Earth at a fixed point above the equator and are able to locate the origin of radio signals to within as little as 10 metres. Pine Gap processes the data and can provide targeting information to US and allied military units within minutes.

Former US National Security Agency personnel who served at Pine Gap in the past two years have described their duties in unguarded career summaries and employment records as including "signals intelligence collection, geolocation ... and reporting of high-priority target signals" including "real-time tracking". US Army personnel working at Pine Gap use systems code-named "Wham!, SEXTANT, and other geolocation tools" to provide

22/5/2014

Print Article: Pine Gap drives US drone kills

targeting information, warnings about the location of radio-triggered improvised explosive devices, and for combat and non-combat search and rescue missions.

Pine Gap's operations often involve sifting through vast quantities of "noise" to find elusive and infrequent signals. One former US Army signals intelligence analyst at Pine Gap describes the "collection and geolocation of an extremely hard-to-find target" as a task that included "manually sifting through hundreds of hours of collection".

Last month, Defence Minister Smith assured the Australian Parliament that Pine Gap operated with the "full knowledge and concurrence" of the Australian government.

He provided no details other than to say that the facility "delivers information on intelligence priorities such as terrorism, the proliferation of weapons of mass destruction, and military and weapons developments" and that it "contributes to the verification of arms control and disarmament agreements".

Mr Smith told Parliament that "concurrence" means that the Australian government approves the presence of a capability or function in Australia but "does not mean that Australia approves every activity or tasking undertaken".

Following consultation with the US embassy in Canberra, the Defence Department provided Fairfax Media with some basic factual information about Pine Gap, including the number of personnel employed there - approximately 800. However, consistent with a long-standing policy of not commenting on operational intelligence matters, the department did not respond to questions about the facility's support for US military operations including drone strikes.

This story was found at: <http://www.smh.com.au/national/pine-gap-drives-us-drone-kills-20130720-2qbsa.html>

Questions on Pine Gap role in Drone Deaths

04 Mar 2014 | Scott Ludlam
Foreign Affairs & Defence

Senate Question on Notice No.27 – Defence Facility Pine Gap

Senator Ludlam asked the Minister for Defence on 2 December 2013:

With regard to the Joint Defence Facility Pine Gap (Pine Gap):

- (1) What role does Pine Gap play in providing intelligence used in the US armed drone program.
- (2) Is intelligence downlinked, processed or analysed at Pine Gap that is used to track targets before a drone strike or in post-strike assessments.
- (3) Has intelligence that is downlinked, processed or analysed at Pine Gap been used in drone strikes that have caused the death of civilians.
- (4) What role do Australian officials play within the base in relation to downlinking, processing or analysis of intelligence or locational data used in targeting for the US armed drone program.
- (5) On what basis does Australia claim its involvement through the Pine Gap base is lawful under both domestic and international law.
- (6) Has the department received legal advice on this matter and, if so, from whom.
- (7) What policies apply to Australian officials at Pine Gap setting out the circumstances in which they can downlink, process, analyse or transfer intelligence or data to be used in the US drone program.

Response:

In answer to 1-7 (inclusive):

The Joint Defence Facility Pine Gap is an essential component of our national defence and our alliance with the US.

All activities undertaken at the Joint Defence Facility Pine Gap are subject to the full knowledge and concurrence of the Australian Government.

All activities are conducted in accordance with Australian law.

Consistent with long standing practice, the Government does not comment on Intelligence matters.

Authorised by Scott Ludlam, Parliament House, Canberra, ACT 2600

s47G



Ben Emmerson
United Nations Special Rapporteur on Counter-Terrorism
Office of the High Commissioner for Human Rights

By email: s22

Cc: s22
Special Rapporteur on Extrajudicial Killings
Office of the High Commissioner for Human Rights

By email: s22

22 May 2019

Dear Special Rapporteur

Request for allegation letters concerning two Australians killed by United States drone strikes

This letter is to inform you of recent reports in the Australian media that two Australian citizens have been killed by US drone strikes during counter terrorism operations in Yemen. Given your mandate's work on the civilian impact of drone strikes, we kindly request that the circumstances surrounding the two deaths be formally raised in letters to the Australian and the United States governments. If time still permits, the deaths might also be relevant to your inquiry into the civilian impact of drone strikes.

Public reporting of circumstances surrounding Australian deaths

On 16 April 2014 *The Australian* newspaper reported that two Australian men, Christopher Havard and Muslim bin John (a New Zealand dual citizen), were killed by a US Predator drone strike in Hadramout in eastern Yemen on 19 November 2013. We **attach** a copy of the article.

Australia's Department of Foreign Affairs and Trade (DFAT) stated that the two men were killed during counter terrorism operations and has refused to discuss the details of the deaths. Similarly, the US embassy refused to comment on the incident but asserted that it "uses all lawful means at its disposal and works closely with foreign partners and allies to mitigate the threats we face."

Undisclosed counter-terrorism sources within the Australian government told the media that the men were "foot soldiers" for al-Qa'ida in the Arabian Peninsula (AQAP). No official statement has been made or evidence otherwise provided to substantiate these claims. The undisclosed source stated that the two men were in a car in a convoy that was targeted and that they may have been collateral damage from the attack.

The report states that US authorities notified Australian officials about the possibility that Australian citizens might have been 'collateral damage' in a strike aimed at wiping out AQAP militants. The Australian government asserts that it had no prior knowledge of the strike.

Australia's involvement in providing location information used in targeting

Last year, we wrote to inform your mandate of allegations that the joint Australian-American Pine Gap facility in Australia provides the US with location information used to track targets of US drone strikes. Reports in the media stated that former personnel at Pine Gap reported that the signals intelligence base has located and tracked al-Qaeda and Taliban leaders and has passed on location data to the US drone strike program and other military operations. The Australian Defence Minister has told Australian Parliament that the Pine Gap base operates with the 'full knowledge and concurrence' of the Australian government and that all activities are consistent with Australian law. The statement is silent as to Australia's compliance with international humanitarian law or international human rights law. We **attach** a copy of the letter (co-written by **s47G**) and a copy of the statement by the Defence Minister.

Request for communication of the allegations

We note your mandate's work on the civilian and human rights impact of the use of drones, including your current inquiry. We also note that the Australian government states that the deaths occurred during a counter-terrorism operation. For these reasons, we believe that the deaths of the two Australian citizens fall within your mandate.

We are concerned about Australia's lack of transparency around its involvement in drone strikes and also the official silence around the deaths of Mr Havard and Mr bin John, which may have involved violations of international human rights law and international humanitarian law. In the absence of any official information provided by either the Australian or US governments it is nearly impossible to assess whether those violations occurred.

We kindly request that your mandate send allegation letters to the US and Australian governments requesting greater transparency surrounding the drone strike that killed Mr Havard and Mr bin John.

The following sets out specific information that you may wish to request of the Australian and US governments. Provision of this information would aid an assessment of whether the deaths involved violations of international human rights law and international humanitarian law.

Information concerning the lawfulness of the deaths

It would be useful to seek further information on the deaths of Mr Havard and Mr bin John, including the basis on which each country asserts that the men's deaths were lawful under international human rights law and international humanitarian law. In particular:

- Were Mr Havard and Mr bin John targets of the US drone strike? If so, on what basis were they considered to be lawful targets of a US drone strike?
- Were Mr Havard and Mr bin John considered to be combatants? If so, please provide evidence and state the legal basis on which they were considered to be combatants, including the war in which they were involved.
- If Mr Havard and Mr bin John were not directly targeted, on what basis were their deaths considered to be lawful?
- Were Mr Havard or Mr bin John involved in activities that presented an imminent threat to the United States or Australia? Please provide details.

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JOINT FACILITIES: INCLUDING ALLEGED PINE GAP INVOLVEMENT IN SUPPORT OF UAV OPERATIONS

Key Facts

s22	s22
<ul style="list-style-type: none">• The activities at Australia's joint defence facilities are conducted with the full knowledge and concurrence of the Australian Government. This is an expression of Australian sovereignty.	

Key Issues

Full knowledge and concurrence

- Full knowledge and concurrence is an expression of Australian sovereignty.
- It is a reflection of the Australian Government's fundamental right to know, and approve or deny, the activities that foreign governments propose to conduct in, through or from Australian territory or national assets.
- Concurrence means Australia approves the presence of a capability or function in Australia in support of mutually agreed goals.
- The joint nature of Pine Gap is underpinned by the integration of Australians in key positions and Australia's full access to the capabilities and communications of the facility.

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Joint Defence Facility Pine Gap's role in United States' UAV operations

- Consistent with longstanding practice, the Government does not comment on intelligence matters.

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- In **QON 27 Joint Defence Facility Pine Gap**, 2 December 2013, Senator Ludlam asked about the role of Joint Defence Facility Pine Gap, specifically in relation to the legality of Australian involvement and in relation to intelligence data gathering. Response lodged **25 February 2014**

AUTHORISED BY:

Peter Baxter
Deputy Secretary Strategy

Date: September 2015

CONTACT OFFICERS:

Mr Chris Birrer
Acting First Assistant Secretary
Strategic Policy Division
Date: 23 September 2015

Mr Clive Lines
Deputy Director
Australian Signals Directorate

CONSULTED WITH:

Mr Steve Meekin, Deputy Secretary
Intelligence and Security

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JOINT FACILITIES: INCLUDING ALLEGED PINE GAP INVOLVEMENT IN SUPPORT OF UAV OPERATIONS

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Key Issues

Full knowledge and concurrence

- Full knowledge and concurrence is long-standing Government policy and an expression of Australian sovereignty.
- It is a reflection of the Australian Government's fundamental right to know, and approve or deny, the activities that foreign governments propose to conduct in, through or from Australian territory or national assets.
- Concurrence means Australia approves the presence of a capability or function in Australia in support of mutually agreed goals.
- The joint nature of Pine Gap is underpinned by the integration of Australians in key positions and Australia's full access to the capabilities and communications of the facility.

s22



If asked: What is Joint Defence Facility Pine Gap's role in United States' UAV ('drone strike') operations?

- Consistent with longstanding practice, the Government does not comment on intelligence matters.

If asked: Do any intelligence transfers with the US or other activities at Pine Gap violate domestic or international law?

- All activities at Pine Gap are conducted in accordance with the law.
- All activities are also subject to the full knowledge and concurrence of the Australian Government

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Senate Question on Notice asked 2 December 2013

- In **QON 27 Joint Defence Facility Pine Gap**, 2 December 2013, Senator Ludlam asked about the role of Joint Defence Facility Pine Gap, specifically in relation to the legality of Australian involvement and in relation to intelligence data gathering. Response lodged **25 February 2014**

AUTHORISED BY:

Peter Baxter
Deputy Secretary Strategy

Date: 01 February 2016

CONTACT OFFICERS:

Mr Tom Hamilton
First Assistant Secretary
Strategic Policy Division
Date: 22 April 2016

Mr Derek Dalton
Acting Deputy Director
Australian Signals Directorate

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~~FOR OFFICIAL USE ONLY~~

Information valid as at: 07 March 2016

JOINT DEFENCE FACILITY PINE GAP

Issue

Activities at Joint Defence Facility Pine Gap are highly classified and are subject to public speculation and misinformation.

Headline Statement

- The activities at Pine Gap are managed to ensure they are consistent with Australia's national interests.
- Consistent with long standing practice, the Government does not comment on intelligence matters.

Key Points

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- The activities at Pine Gap, and indeed the activities at all Australian defence facilities to which the US has access, are managed to ensure they are consistent with Australia's national interests.
- All activities undertaken at Joint Defence Facility Pine Gap are subject to the full knowledge and concurrence of the Australian Government.

~~FOR OFFICIAL USE ONLY~~

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Information valid as at: 07 March 2016

Response to recent media reporting on the activities of Pine Gap

- I am aware of recent media reporting.
- Consistent with long standing practice, the Government does not comment on intelligence matters.

What is ‘full knowledge and concurrence’?

- Full knowledge and concurrence is an expression of Australian sovereignty.
- It is a reflection of the Australian Government’s fundamental right to know and approve or deny the activities that foreign governments propose to conduct in, through or from Australian territory or national assets.

Pine Gap’s role in the United States’ “drone programs”?

- Australia works with the intelligence agencies of our close ally and closest partners to protect our country from threats such as terrorism.
- All such activities are conducted in accordance with Australian law.
- Consistent with long standing practice, the Government does not comment on intelligence matters.

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~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

Information valid as at: 07 March 2016

s22



Point of Contact

Mr Chris Birrer, A/FASSP (w) 6265 1883 (m) s22

Departmental information valid as at: 07 March 2016.

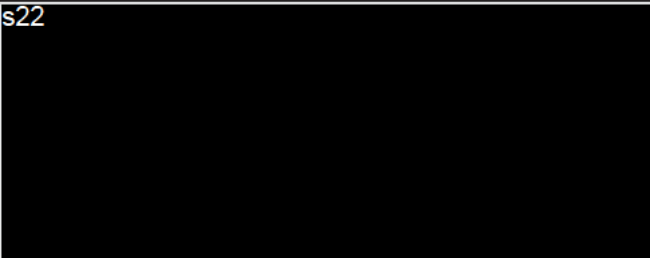

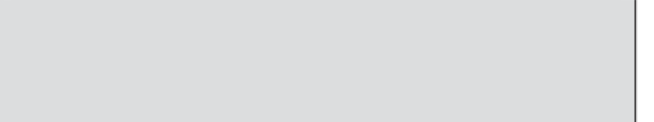
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JOINT FACILITIES: INCLUDING ALLEGED PINE GAP INVOLVEMENT IN SUPPORT OF UAV OPERATIONS

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Key Issues

Full knowledge and concurrence

- Full knowledge and concurrence is long-standing Government policy and an expression of Australian sovereignty.
- It is a reflection of the Australian Government's fundamental right to know, and approve or deny, the activities that foreign governments propose to conduct in, through or from Australian territory or national assets.
- Concurrence means Australia approves the presence of a capability or function in Australia in support of mutually agreed goals.
- The joint nature of Pine Gap is underpinned by the integration of Australians in key positions and Australia's full access to the capabilities and communications of the facility.

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***If Asked:* What is Joint Defence Facility Pine Gap's role in United States' UAV ('drone strike') operations?**

- Consistent with longstanding practice, the Government does not comment on intelligence matters.

If Asked: Do any intelligence transfers with the US or other activities at Pine Gap violate domestic or international law?

- All activities at Pine Gap are conducted in accordance with the law.
- All activities are also subject to the full knowledge and concurrence of the Australian Government.

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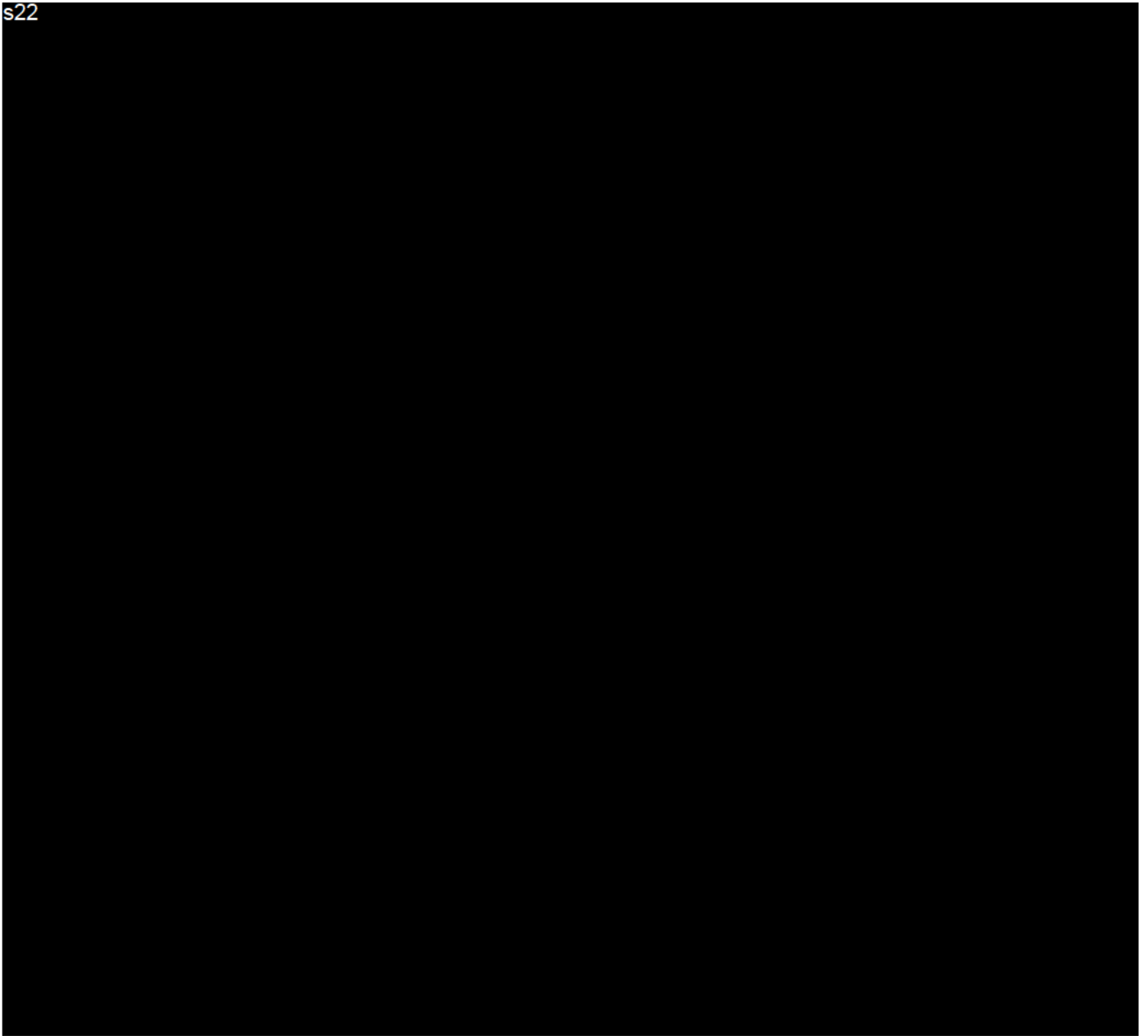


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- In **QON 27 Joint Defence Facility Pine Gap**, 2 December 2013, Senator Ludlam asked about the role of Joint Defence Facility Pine Gap, specifically in relation to the legality of Australian involvement and in relation to intelligence data gathering. Response lodged **25 February 2014**

AUTHORISED BY:

Peter Baxter
Deputy Secretary Strategy

Date:

CONTACT OFFICERS:

Mr Chris Birrer
Acting First Assistant Secretary
Strategic Policy Division

Date:

Mr Derek Dalton
Acting Deputy Director
Australian Signals Directorate

s22



s22



- On 26 June 2013, former Minister for Defence Stephen Smith updated the Parliament on the joint facilities and on the policy of full knowledge and concurrence which governs the operations of these facilities.

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QB16-000084

JOINT DEFENCE FACILITY PINE GAP

ISSUE:

Activities at Joint Defence Facility Pine Gap are highly classified and are subject to public speculation and misinformation. All activities are subject to the full knowledge and concurrence of the Australian Government.

KEY POINTS:

s22



- Activities at Pine Gap are managed to ensure they are consistent with Australia's national interests.
- All activities at Pine Gap are subject to the full knowledge and concurrence of the Australian Government.
 - This reflects Australia's fundamental right to know what activities foreign governments conduct in, through or from Australian territory or national assets.
 - All activities are conducted in accordance with Australian law.

s22



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Pine Gap's role in US drone programs

- Consistent with long standing practice, the Government does not comment on intelligence matters.

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QB16-000084

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QB16-000084

s22



Contact: Dr Michael Lankowski, Assistant
Director Joint Facilities & Technical
Programs, 6265 5745

Min ID: QB16-000084

Division: Strategic
Policy

Cleared by: Mr Tom Hamilton, First Assistant
Secretary Strategic Policy, 6265
1883

Created:

Updated: 4 October 2016
9:06 AM

SENATE ESTIMATES BRIEF

Group Brief
DEPSEC SP&I pack

JOINT FACILITIES: INCLUDING ALLEGED PINE GAP INVOLVEMENT IN SUPPORT OF UAV OPERATIONS

Key Facts

<ul style="list-style-type: none">• All activities supported by Pine Gap are subject to the Full Knowledge and Concurrence of the Australian Government.• As are all foreign government activities conducted in, through or from Australia.	<ul style="list-style-type: none">• The last ministerial statement on Full Knowledge and Concurrence was delivered to Parliament on 26 June 2013.
s22	s22

Key Issues

s22

s22



- All activities supported by Pine Gap are subject to the Full Knowledge and Concurrence of the Australian Government, to ensure they are consistent with Australia's national interests.
- The requirement for Full Knowledge and Concurrence is applied to all foreign government activities conducted in, through or from Australian territory or national assets.
 - This reflects Australia's fundamental right to know what activities foreign governments conduct in Australia and to approve or deny those activities.
- The most recent ministerial statement on Full Knowledge and Concurrence was delivered to Parliament on 26 June 2013.
- The joint nature of Pine Gap is underpinned by the integration of Australians in key positions and Australia's full access to the capabilities and communications of the facility.
- The Australian Government also receives regular briefs and reviews of activities as appropriate.
- All activities at Pine Gap are conducted in accordance with Australian law.

If asked: What is Pine Gap's role in US 'drone strike' operations?

- Consistent with longstanding practice, the Government does not comment on intelligence matters.

s22



s22



AUTHORISED BY:

Rebecca Skinner
Deputy Secretary Strategic Policy and
Intelligence
Date: 11 October 2016

CONTACT OFFICER:

Nick Post
Assistant Secretary Intelligence Policy
Date: 11 October 2016

Tom Hamilton
First Assistant Secretary Strategic
Policy
Date: 11 October 2016

CONSULTED WITH:

Mr Derek Dalton, Acting Deputy
Director Intelligence, ASD

s7



BACKGROUND

Pine Gap

s22

A large black rectangular redaction box covering the content of the Pine Gap section.

- All activities supported by Pine Gap are subject to the full knowledge and concurrence of the Australian Government, to ensure they are consistent with Australia's national interests.

s22

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SENATE QUESTION

QUESTION NUMBER: 226

Senator Lee Rhiannon asked the Attorney-General, upon notice, on 16 November 2016:

With reference to the United States' 'drone assassination program', which targets the nationals of countries with whom Australia is not at war and is facilitated through Pine Gap:

- (1) Is the 'drone assassination program' legal under international law, and can the legal references informing the response be provided.
- (2) Has the Australian Government considered or been provided with advice regarding whether the program is legal under international law; if so, can details of any consideration or advice be provided.
- (3) If the above 'drone assassination program' is illegal under international law, is the Government aware of any legal arguments that could support the notion that the Australian Government and the people of Australia could be complicit in illegal acts for hosting the Pine Gap Joint Defence Facility, and has the Government considered this question previously; if so, can details be provided.

Senator Brandis – The answer to the honourable senator's question is as follows:

~~The Government is confident that~~ Australia's security and defence cooperation with the United States enhances Australia's national security and occurs in a manner that is consistent with our obligations under international law. Consistent with longstanding practice, the Government does not comment on intelligence matters or on legal advice provided to the Government.

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QB16-000084

JOINT DEFENCE FACILITY PINE GAP

ISSUE:

Activities at Joint Defence Facility Pine Gap are highly classified and are subject to public speculation and misinformation. All activities are subject to the full knowledge and concurrence of the Australian Government.

KEY POINTS:

s22



- Activities at Pine Gap are managed to ensure they are consistent with Australia's national interests.
- All activities at Pine Gap are subject to the full knowledge and concurrence of the Australian Government.
 - This reflects Australia's fundamental right to know what activities foreign governments conduct in, through or from Australian territory or national assets.
 - All activities are conducted in accordance with Australian law.

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QB16-000084

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Pine Gap's role in US drone programs

- Consistent with long standing practice, the Government does not comment on intelligence matters.

s22



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QB16-000084

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Contact: Dr Michael Lankowski, Acting
Director Joint Facilities & Technical
Programs, 6265 5745

Min ID: QB16-000084

Division: Strategic
Policy

Cleared by: Mr Tom Hamilton, First Assistant
Secretary Strategic Policy, 02 6265
1883, M: s22

Created:

Updated: 16 August 2017
3:36 PM

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SENATE QUESTION

QUESTION NUMBER: 226

Senator Lee Rhiannon asked the Attorney-General, upon notice, on 16 November 2016:

With reference to the United States' 'drone assassination program', which targets the nationals of countries with whom Australia is not at war and is facilitated through Pine Gap:

- (1) Is the 'drone assassination program' legal under international law, and can the legal references informing the response be provided.
- (2) Has the Australian Government considered or been provided with advice regarding whether the program is legal under international law; if so, can details of any consideration or advice be provided.
- (3) If the above 'drone assassination program' is illegal under international law, is the Government aware of any legal arguments that could support the notion that the Australian Government and the people of Australia could be complicit in illegal acts for hosting the Pine Gap Joint Defence Facility, and has the Government considered this question previously; if so, can details be provided.

Senator Brandis – The answer to the honourable senator's question is as follows:

Australia's security and defence cooperation with the United States enhances Australia's national security and occurs in a manner that is consistent with our obligations under international law. Consistent with longstanding practice, the Government does not comment on intelligence matters or on legal advice provided to the Government.



Australian Government

Department of Defence

UNCLASSIFIED
MINISTERIAL CORRESPONDENCE

Payne: MC16-003589

Ref: *FassP/out/2016/92*

Minister for Defence – For action

Minister for Defence Industry – For information

Copies to: Secretary, CDF, DEPSEC SP&I, DASD

ANDREW WILKIE MP: CONCERNS ABOUT US USE OF DRONES

Critical Date: **Reason:** Routine

Recommendation/s:

1. That you sign the attached letter to Mr Andrew Wilkie MP.

Signed / Not signed

Minister for Defence..... Date / /

Key Points:

1. Mr Andrew Wilkie MP wrote to you on 1 December 2016 on behalf of an unnamed constituent concerned about the legality of US drone strikes under international law and the role of Joint Defence Facility Pine Gap in supporting these activities. Mr Wilkie sought your assurance that all drone activities supported by the Australian Government and Joint Defence Facility Pine Gap are 'strictly and inarguably in accordance with international law'.
2. The attached letter to Mr Wilkie explains that Australia's defence cooperation with the United States occurs in a manner that is consistent with our obligations under international law. Activities at Joint Defence Facility Pine Gap are managed to ensure they are consistent with Australia's national interests and all activities are subject to the full knowledge and concurrence of the Australian Government.

s22



Name: Mr Tom Hamilton

Title: First Assistant Secretary Strategic Policy

Group: Strategic Policy and Intelligence

Telephone: (02) 6265 1883

Contact officer: Michael Lankowski

Contact officer phone: (02) 6265 5745

UNCLASSIFIED

Payne: MC16-003589
Ref:

Sensitivity:

Yes. Activities at Joint Defence Facility Pine Gap are highly classified and are subject to public speculation and misinformation. Consistent with longstanding practice, the Government does not comment on intelligence matters.

Financial Impacts:

There are no financial impacts.

Summary of Attachments:

A – Original correspondence from Mr Andrew Wilkie MP, dated 1 December 2016.

B – Draft letter to Mr Andrew Wilkie MP.

C – Senate Question 199 and Attorney-General's response.

Background:

3. Following media reports in May 2014 that US-led drone operations killed two Australian citizens, there has been an increase in public speculation regarding Joint Defence Facility Pine Gap's alleged involvement in supporting such operations. Drone operations were a major issue raised during anti-Pine Gap protests held outside the facility during September-October 2016.
4. Recently, Senator Scott Ludlam asked the Attorney-General upon notice on 2 November 2016, whether US drone strikes supported by Joint Defence Facility Pine Gap were legal under international law and, if not, if Australia was complicit in illegal acts. The Attorney-General's response was tabled on 24 November and is attached for your information.

Related Briefs:

The current question brief for Joint Defence Facility Pine Gap, QB16-000084, was last updated on 15 November 2016.^{s22}

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Consultation:

Yes. Strategic Policy Division has consulted with the Australian Signals Directorate^{s7}

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Andrew Wilkie MP
INDEPENDENT MEMBER FOR DENISON

1 DEC 2016

Senator the Hon Marise Payne
Minister for Defence
Parliament House
CANBERRA ACT 2600

1 DEC 2016

Dear Minister *Marise,*

A constituent has raised concerns with me about the US use of drones for high-value target assassinations, which I understand is supported by the Joint Defence Facility Pine Gap in central Australia.

The constituent is particularly concerned with the legality of these drone attacks under international law, and the extent of Australian involvement in the program.

I seek your assurance that all drone activities being supported by the Australian Government and the Joint Defence Facility Pine Gap are strictly and inarguably in accordance with international law.

Yours sincerely

Andrew Wilkie MP
Independent Member for Denison



COPY

POSTED
9/2/17

Senator the Hon Marise Payne
Minister for Defence

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7800

MC16-003589

Mr Andrew Wilkie MP
Member for Denison
GPO Box 32
HOBART TAS 7001

Dear Mr Wilkie

Andrew

Thank you for your representation of 1 December 2016 on behalf of your constituent about the Joint Defence Facility Pine Gap.

The Australian Government is confident that Australia's defence cooperation with the United States occurs in a manner that is consistent with our obligations under international law. Activities at Joint Defence Facility Pine Gap are managed to ensure they are consistent with Australia's national interests and all activities are subject to the full knowledge and concurrence of the Government.

I trust that this information clarifies the matter for you and your constituent.

Yours sincerely

A handwritten signature in cursive script that reads "Marise Payne".

MARISE PAYNE
07 FEB 2017

SENATE QUESTION

QUESTION NUMBER: 199

Senator Scott Ludlam asked the Attorney-General, upon notice, on 2 November 2016:

Is the United States drone assassination program, which targets the nationals of countries with whom Australia is not at war and which is facilitated through Pine Gap, legal under international law; if not, are the government and people of Australia complicit in illegal acts - as Pine Gap is situated on Australian soil and is described as a 'Joint Defence Facility'.

Senator Brandis – The answer to the honourable senator's question is as follows:

The Government is confident that Australia's defence cooperation with the United States occurs in a manner that is consistent with our obligations under international law. Consistent with longstanding practice, the Government does not comment on intelligence matters.

SENATE ESTIMATES BRIEF

Group Brief
DEPSEC SP&I pack

JOINT FACILITIES: INCLUDING ALLEGED PINE GAP INVOLVEMENT IN SUPPORT OF UAV OPERATIONS

Key Facts

<ul style="list-style-type: none">• All activities supported by Pine Gap are subject to the Full Knowledge and Concurrence of the Australian Government.• As are all foreign government activities conducted in, through or from Australia.	<ul style="list-style-type: none">• The last ministerial statement on Full Knowledge and Concurrence was delivered to Parliament on 26 June 2013.
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Key Issues

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- All activities supported by Pine Gap are subject to the Full Knowledge and Concurrence of the Australian Government, to ensure they are consistent with Australia's national interests.
- The requirement for Full Knowledge and Concurrence is applied to all foreign government activities conducted in, through or from Australian territory or national assets.
 - This reflects Australia's fundamental right to know what activities foreign governments conduct in Australia and to approve or deny those activities.
- The most recent ministerial statement on Full Knowledge and Concurrence was delivered to Parliament on 26 June 2013.
- The joint nature of Pine Gap is underpinned by the integration of Australians in key positions and Australia's full access to the capabilities and communications of the facility.
- The Australian Government also receives regular briefs and reviews of activities as appropriate from the US Government.
- All activities at Pine Gap are conducted in accordance with Australian law.

If asked: What is Pine Gap's role in US 'drone strike' operations?

- Consistent with longstanding practice, the Government does not comment on intelligence matters.

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AUTHORISED BY:

Tom Hamilton
First Assistant Secretary Strategic
Policy
Date: 11 October 2016

CONTACT OFFICER:

Nick Post
Assistant Secretary Intelligence Policy
Date: 13 January 2017

CONSULTED WITH:

Mr Derek Dalton, Acting Deputy
Director Intelligence, ASD

s7



BACKGROUND

Pine Gap

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- All activities supported by Pine Gap are subject to the full knowledge and concurrence of the Australian Government, to ensure they are consistent with Australia's national interests.

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QB16-000084

JOINT DEFENCE FACILITY PINE GAP

ISSUE:

Activities at Joint Defence Facility Pine Gap are highly classified and are subject to public speculation and misinformation. All activities are subject to the full knowledge and concurrence of the Australian Government.

KEY POINTS:

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- Activities at Pine Gap are managed to ensure they are consistent with Australia's national interests.
- All activities at Pine Gap are subject to the full knowledge and concurrence of the Australian Government.
 - This reflects Australia's fundamental right to know what activities foreign governments conduct in, through or from Australian territory or national assets.
 - All activities are conducted in accordance with Australian law.

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QB16-000084

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Pine Gap's role in US drone programs

- Consistent with long standing practice, the Government does not comment on intelligence matters.

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QB16-000084

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Contact: Mr Paul Main, Acting Assistant
Secretary Intelligence Policy,
6127 7219

Min ID: QB16-000084
Division: Strategic
Policy

Cleared by: Mr Tom Hamilton, First Assistant
Secretary Strategic Policy, 62651883

Created: 2016
Updated: 16 January 2017
1630

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SENATE ESTIMATES BRIEF

Group Brief
DEPSEC SP&I pack

JOINT FACILITIES: INCLUDING PINE GAP

Key Facts

- | | |
|---|---|
| <ul style="list-style-type: none">• All activities supported by Pine Gap are subject to the Full Knowledge and Concurrence of the Australian Government.• As are all foreign government activities conducted in, through or from Australia | <ul style="list-style-type: none">• The last ministerial statement on Full Knowledge and Concurrence was delivered to Parliament on 26 June 2013. |
|---|---|

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Key Issues

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Full Knowledge and Concurrence

- All activities supported by Pine Gap are subject to the Full Knowledge and Concurrence of the Australian Government, to ensure they are consistent with Australia's national interests.
- The requirement for Full Knowledge and Concurrence is applied to all foreign government activities conducted in, through or from Australian territory or national assets.
 - This reflects Australia's fundamental right to know what activities foreign governments conduct in Australia and to approve or deny those activities.
- The joint nature of Pine Gap is underpinned by the integration of Australians in key positions and Australia's full access to the capabilities and communications of the facility.
- The Australian Government also receives regular briefs and reviews of activities as appropriate from the US Government.
- All activities at Pine Gap are conducted in accordance with Australian law.

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What is Pine Gap's role in US 'drone strike' operations? Does it make Australia complicit in acts that are illegal under international law?

- Consistent with longstanding practice, the Government does not comment on intelligence matters.
- The Government is confident that Australia's defence cooperation with the United States occurs in a manner that is consistent with our obligations under international law.

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CERTIFIED AND AUTHORISED

BY: I certify that this brief is accurate,
current, unclassified and relevant.

Samantha Higgins

Acting/First Assistant Secretary

Strategic Policy

Date: 27 April 2017

CONTACT OFFICER:

Michael Lankowski

Director Joint Facilities and Technical
Programs

Date: 26 April 2017

CONSULTED WITH:

Mr Derek Dalton, Acting Deputy

Director Intelligence, ASD

s7

BACKGROUND

Pine Gap

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- All activities supported by Pine Gap are subject to the full knowledge and concurrence of the Australian Government, to ensure they are consistent with Australia's national interests.

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Allegations regarding Pine Gap's involvement with US drone strikes

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- On 26 June 2013, former Minister for Defence Stephen Smith updated the Parliament on the joint facilities and on the policy of full knowledge and concurrence which governs the operations of these facilities.

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QB16-000084

JOINT DEFENCE FACILITY PINE GAP

ISSUE:

Activities at Joint Defence Facility Pine Gap are highly classified and are subject to public speculation and misinformation. All activities are subject to the full knowledge and concurrence of the Australian Government.

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- Activities at Pine Gap are managed to ensure they are consistent with Australia's national interests.
- All activities at Pine Gap are subject to the full knowledge and concurrence of the Australian Government.
 - This reflects Australia's fundamental right to know what activities foreign governments conduct in, through or from Australian territory or national assets.
 - All activities are conducted in accordance with Australian law.

Pine Gap's role in US drone programs

- Consistent with long standing practice, the Government does not comment on intelligence matters.

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QB16-000084

s22



Contact: Dr Nick Post, Assistant Secretary
Intelligence Policy,
6265 1806

Min ID: QB16-000084
Division: Strategic
Policy

Cleared by: Ms Samantha Higgins, Acting First
Assistant Secretary Strategic Policy,
6265 1883

Created: 2016
Updated: 12 April 2017
0946

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QB16-000084

JOINT DEFENCE FACILITY PINE GAP

ISSUE:

Activities at Joint Defence Facility Pine Gap are highly classified and are subject to public speculation and misinformation. All activities are subject to the full knowledge and concurrence of the Australian Government.

KEY POINTS:

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- Activities at Pine Gap are managed to ensure they are consistent with Australia's national interests.
- All activities at Pine Gap are subject to the full knowledge and concurrence of the Australian Government.
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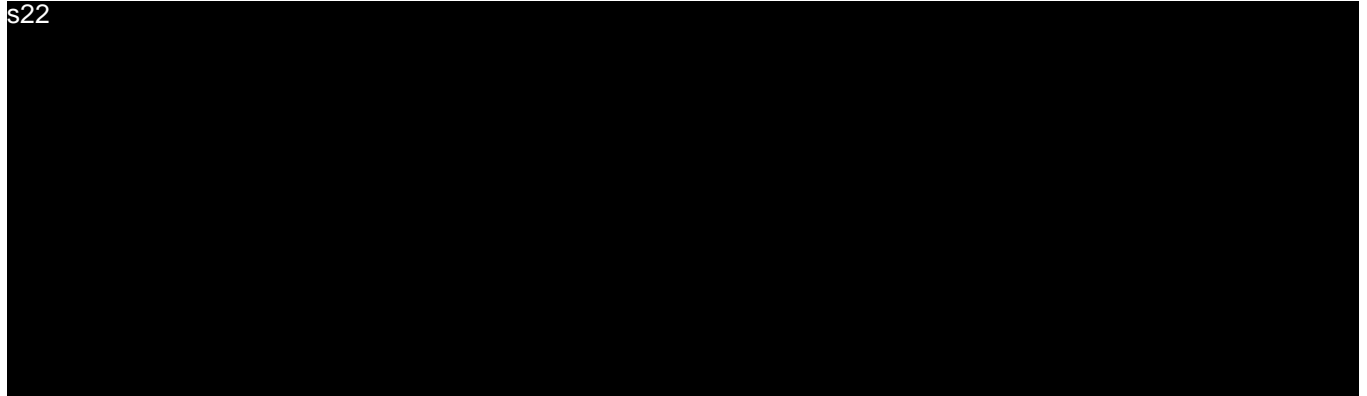
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QB16-000084

- All activities are conducted in accordance with Australian law.

Pine Gap's role in US drone programs

- Consistent with long-standing practice, the Government does not comment on intelligence matters.



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QB16-000084

s22



Contact: Dr Nick Post, Assistant Secretary
Intelligence Policy, 6265 1806

Min ID: QB16-000084
Division: Strategic
Policy

Cleared by: Mr Tom Hamilton, First Assistant
Secretary Strategic Policy,
6265 1883

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Updated: 26 July 2017,
0845

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