

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN FEDERAL POLICE

Question No. 174

Senator Rhiannon asked the following question at the hearing on 24 May 2012:

Habib Report

Background: The public version of the December 2011 Report into Habib's case, undertaken by the Inspector-General of Intelligence and Security was released in March this year. It contained recommendations relevant to the AFP.

Recommendation 4 is that the “*AFP should develop a formal policy on what AFP officers should do in the event that they become aware torture or cruel, inhumane or degrading treatment or punishment has been experienced by an interviewee who is being held in detention overseas. The policy should encompass the sending of questions or information to support the conduct of a custodial interview, as well as circumstances where an AFP officer is physically present at an interview*”

1. What is your assessment of this recommendation?
2. Has it been implemented?
3. If not, what is the timeline? (The IGIS has previously said that she would check in June? and was hoping they would be implemented by then)
4. Will it be made publicly available?
5. What processes will be put in place to ensure AFP officers are aware of this policy?
6. What checks will you put in place to ensure AFP officers follow this policy?

Recommendation 6 is that the “*AFP should review its **National guidelines on the disclosure of information** to include procedures for the communication of information about Australians to foreign authorities*”

1. What is your assessment of this recommendation?
2. Has it been implemented?
3. If not, what is the timeline?
4. Will it be made publicly available?
5. What processes will be put in place to ensure AFP officers are aware of this policy?
6. What checks will you put in place to ensure AFP officers follow this policy?

The answer to the honourable senator’s question is as follows:

Recommendation 4

The IGIS made two recommendations concerning the AFP (recommendations 4 and 6) which relate mostly to internal policy and guidance issues which applied at the time including:

- A lack of policies and procedures if the AFP becomes aware an interviewee being held in detention overseas has been, or is likely to be, the subject of torture or cruel, inhuman or degrading treatment; and

- AFP considerations for the release of information do not include procedures for communication of information about Australians to foreign authorities in these particular circumstances.

1. The AFP accepts recommendation 4.

2. In response to recommendation 4, the AFP has developed a National Guideline entitled, '*AFP National Guideline on offshore situations involving potential torture or cruel, inhuman or degrading treatment or punishment*' (the Guideline).

3. The Guideline was implemented on 31 July 2012.

4. This Guideline is classified 'Official Use Only' in accordance with the Australian Government Protective Security Policy Framework. This Guideline is publically available on the AFP external website under the Freedom of Information, Information Publication Scheme

5. The Guideline was distributed to all AFP staff by an All-Staff email communication on 31 July 2012 and following consultation with the IGIS a revised Guideline was distributed on 22 August 2012. Furthermore, the Guideline is accessible by all AFP staff on the AFP Governance Instrument Framework.

6. This instrument is part of the AFP's professional standards framework. The AFP Commissioner's Order on Professional Standards outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the *Australian Federal Police Act 1979* (Cth).

Recommendation 6

1. The AFP accepts recommendation 6.

2. Prior to the IGIS recommendations becoming available, the AFP had already commenced a review on the AFP National Guideline on the disclosure of information, primarily in relation to its relevance to the recently implemented Protective Security Policy Framework. On receipt of the IGIS report, the AFP decided to develop a new, separate guideline to implement the matters referred to in recommendation 6. (This is the National Guideline on offshore situations involving potential torture or cruel, inhuman or degrading treatment or punishment, as referred to above.)

Further, the AFP has strengthened the existing *AFP National Guideline on international police-to-police assistance in death penalty situations*. This Guideline provides AFP members with information relating to the basis for conducting enquiries both from foreign law enforcement agencies to the AFP and to foreign law enforcement agencies from the AFP where offences may attract the death penalty. The revised Guideline governing police to police assistance in death penalty situations was implemented and published in February 2012. Complementing this, the new Guideline on offshore situations involving potential torture or cruel, inhuman or degrading treatment or punishment also outlines a framework for dealing with foreign authorities, to include, disclosing information about Australians to foreign authorities where there is a substantial, real and not remote risk of torture or cruel, inhuman or degrading treatment or punishment.

3. N/A

4. The National Guideline on international police-to-police assistance in death penalty situations is 'Unclassified' pending reclassification in accordance with the Australian Government Protective Security Policy Framework. This Guideline is publically available on the AFP external website under the Freedom of Information, Information Publication Scheme.

5. To ensure understanding of the Guideline, the AFP has introduced an online training program to develop knowledge relating to the revised Guideline.

6. This instrument is part of the AFP's professional standards framework. The AFP Commissioner's Order on Professional Standards outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the *Australian Federal Police Act 1979* (Cth).