

**Senate Foreign Affairs, Defence and Trade Legislation Committee**

**Answers to written questions on notice  
DEPARTMENT OF DEFENCE**

**Additional estimates 2001—2002; 20–21 February 2002**

**Defence Signals Directorate**

**QUESTION W43**

- a) Why and when was the decision taken to make new rules regulating the communication and retention by DSD of intelligence information concerning Australians?
  - In particular, was the decision driven to any extent by concerns of the DSD or the then-Minister that DSD had undue restrictions on its ability to monitor and report intelligence when one of the parties is an Australian resident in Australia?
- b) Please confirm that no monitoring or reporting of any communication involving Australians beyond the “specially defined circumstances” listed in the Rules on Sigint and Australian Persons (‘the old Rules’) could ever be authorised.
- c) Please confirm that the new privacy Rules (enacted under section 15 of the Intelligence Services Act 2001) don’t require DSD to obtain approval either to monitor or to communicate information intelligence involving Australians in the circumstances it lists.
- d) How often was the Minister briefed by DSD on matters relating to the Tampa between its spotting on 25 August 2001 and the transfer of asylum-seekers on 4 September 2001?
- e) Under the old Rules, was the Minister required to give approval in general terms for intelligence collection of all conversations to or from the Tampa during this period? Alternatively, in order to deliberately collect intelligence that may have included conversations involving Australians, was specific authorisation (ministerial or otherwise) for this required under the old Rules?
- f) Please confirm that the old Rules only regulated collection and reporting of communications involving Australians when at least one of the parties was outside Australia (ie, it was a “foreign communication”).
- g) For the old Rules to apply, and thus for the requirement for approval to apply, did both parties have to be overseas? If yes, were there any restrictions upon DSD’s ability to monitor and report upon communications involving Australians when either of the parties were in Australia or in Australian waters?
- h) Under the old Rules, was approval for monitoring and reporting on intelligence involving Australians often obtained at the same time? If yes, does this mean in effect that if DSD obtained authority to monitor, it also got authority to report the information, regardless of whether it in fact turned out to be relevant to matters affecting national security (or any of the other criteria for its valid reporting on)?
- i) Who or what body do reports of communications involving Australians go to, under either the old or the new Rules? Do specific intelligence reports ever go to the Minister directly (ie, not as part of a wider brief on matters in general relevant to national security)?
- j) Please also confirm that there is no time limit on retention of this information under the new Rules.
- k) Has the Minister for Defence issued a written direction to the Director of DSD, requiring DSD to obtain Ministerial authorisation under section 9 of the Intelligence Services Act 2001 before it can undertake an activity specifically for the purpose of collecting intelligence on an Australian who is overseas? [see section 8 of the Act]
- l) What safeguards are there in place, other than the Intelligence Services Act itself and the privacy rules, to ensure that DSD cannot succumb to pressure to undertake an activity arguably “for the purpose of furthering the interests of an Australian political party...” (section 11(2A) of the Act)?

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**RESPONSE**

- a) The Minister for Defence was required to make new rules under section 15 of the *Intelligence Services Act 2001* (the IS Act). The IS Act was passed on 1 October 2001, after lengthy and detailed consideration by the Joint Select Committee on the Intelligence Services. The timing of the introduction of the new rules was dictated by the timing of the IS Act's enactment. The decision to include the Defence Signals Directorate under the IS Act was taken in 1999, and was not driven in any way by considerations relating to the monitoring or reporting of intelligence about Australians.
- b) This is correct. All deliberate interception of communications involving Australians required authorisation under the 1998 Rules, and continues to require authorisation under sections 8 and 9 of the IS Act. Such authorisation could only be given subject to specially defined circumstances and that continues to be the case.

Reporting of communications involving Australians, whether gained from deliberate interception or collected incidentally in the normal course of collection of foreign communications, did not require authorisation but was, and still is, constrained by specially defined circumstances. The Directorate's performance in this regard was, and is, closely monitored by the Inspector-General for Intelligence and Security and addressed in his annual reports to the Parliament.

- c) The new privacy rules do not regulate the DSD's 'monitoring' activities in respect of Australians. Such activities are regulated by sections 8 and 9 of the IS Act, which do require DSD to seek Ministerial authorisation, and which may be authorised only under specially defined circumstances.

The rules made under section 15 of the IS Act limit the circumstances under which DSD may communicate and retain intelligence information concerning Australians, be it collected under a section 9 authorisation or incidentally in the normal course of DSD's collection of foreign communications.

- d) These questions cannot be answered in detail as that would reflect on DSD's specific operations and capabilities. The more general issue of whether DSD acted appropriately during the Tampa incident, including the way it provided intelligence to the Government, is being addressed in a current inquiry by the Inspector-General for Intelligence and Security. His report is expected to be finalised shortly.
- e) The Defence Signals Directorate is bound by the provisions of the *Telecommunications (Interception) Act 1979*, which prohibits the interception of communications carried over the Australian telecommunications network, except under warrants issued by the Attorney-General. This explains why the 1998 Rules focused on the collection and reporting of the foreign communications of Australians.
- f) No. The Rules applied regardless of location.

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- g) Under the 1998 Rules, approval was needed before DSD could deliberately intercept the foreign communications of Australians. There was no requirement to seek approval to report information. Rather, the reporting was done on the basis of the criteria in the Rules, which limited the circumstances in which any reporting concerning Australians might be done. The Directorate's performance in this regard, and its adherence to all the provision in the Rules (and now the IS Act), was then, and is now, closely monitored by the Inspector-General for Intelligence and Security and addressed in his annual report to the Parliament.
- h) The distribution of DSD reports is strictly controlled in accordance with the 'need to know' principle and subject to the recipient having the appropriate security clearance. Subject to those caveats, the distribution of DSD's reports to appropriate Ministers and government agencies is decided case by case depending on the subject matter and sensitivity.
- i) The Directorate's reports are kept indefinitely. This has been the case both before and after the introduction of the IS Act.
- j) Yes.
- k) As highlighted by the question, such activity is expressly forbidden by law. Before the passage of the IS Act, such activity was clearly outside DSD's functions as determined by the Government and tabled in Parliament in 1986. The Directorate has always taken great care to ensure that its staff understand the fundamental importance of operating legally and in accordance with the highest ethical standards with respect to its functions. This is reinforced by extensive training and internal working instructions.
- l) To provide additional reassurance on these points, all of DSD's activities are subject to oversight by the Inspector-General for Intelligence and Security, who conducts regular and ad hoc inspections of DSD operations and reporting, with particular emphasis on the protection of the privacy of Australians. Under the Inspector-General of Intelligence and Security Act 1986, the Inspector-General for Intelligence and Security is charged with ensuring the propriety and legality of all of DSD's activities, and has free and unfettered access to the Directorate.

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**Memorandum of Understanding between Australia  
and Indonesia (signed February 2002)**

**QUESTION W44**

- a) Has the Department had any discussion with Indonesian officials about what activities the Indonesian military is envisaging might be implemented under the MOU?
- b) Has or will the Department consider capacity- and capability-building activities between the Indonesian and Australian military such as training, exchange of visits and joint operations, under the MOU?
- c) Has any thought been given as to which parts of the TNI or any Indonesian military arms the Department will seek to participate in activities with? If yes, which parts?
- d) Has there been a decision taken in Australia not to involve the Australian military in activities with any particular military units in the TNI or with Kopassus?
- e) Are any of the activities described in para 2 of the MOU either ruled out or regarded at this preliminary stage as undesirable by the Department, in terms of the ADF's engagement with:
  - the TNI (the Indonesian military) generally;
  - the TNI in particular provinces; and
  - with Kopassus or particular cells specifically?
- f) Has there been any discussion within Defence and/or with Indonesian military officials about how the MOU might be applied to anti-terrorist activities in these provinces?
- g) Has there been any discussion between Australian and East Timorese officials about the MOU? If so, what is the position in general terms of the East Timorese Government to the MOU?

**RESPONSE**

- a) Yes. The Acting Deputy Secretary Intelligence and Security, Department of Defence, met the Head of TNI Strategic Intelligence Agency in Canberra on 5 March 2002. These informal talks explored, among other issues, possible avenues for intelligence cooperation under the terms of the MOU on Combating International Terrorism. The MOU has also been discussed in general terms in Defence officials' contacts with Indonesian defence and TNIHQ officers.
- b) Yes, subject to approval by the Australian and Indonesian Governments.
- c) Defence's thinking on this issue is only in its initial stages and it would be inappropriate to discuss this publicly in advance of discussions and agreement with the Indonesian authorities.
- d) No new decisions have been taken in Australia regarding cooperation with any TNI military units.

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- e) Paragraph 2 of the MOU refers to activities associated with the combating of international terrorism. Discussions concerning cooperation under the MOU will be conducted with representatives of the TNI and other central agencies of the Indonesian Government located in Jakarta.
- f) No.
- g) No Defence officials have briefed East Timorese officials on the MOU.

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**Eleanore Tibble**  
**QUESTION W45**

- a) Has the Department given information or cooperated in other ways with the Anti-Discrimination Commission regarding the circumstances surrounding the death of Eleanore Tibble, a 15 year-old cadet in Tasmania who suicided on 27 November 2000?
- b) Has the Department or the Australian Air Force Cadets had formal discussions with Susan Campbell (Eleanore's mother), the Anti-Discrimination Commission or the coroner investigating Eleanore's death, in an attempt to address any of Mrs Campbell's concerns? If so, when? Other than confidential matters that cannot be disclosed, what was determined?
- c) What actions have been taken to implement the internal or Stunden report (of 3/5/01) into Eleanore's death? Will there be any official response to the content or recommendations of this report?

**RESPONSE**

- a) The Air Force has received legal advice that the Anti-Discrimination Commission has no jurisdiction in respect of the death of Eleanore Tibble.
- b) Neither the Department of Defence nor the Australian Air Force Cadets has had formal discussions with the coroner or the Anti-Discrimination Commission. The Tasmanian Coroner's report was released to Defence on 6 March 2002. Mrs Campbell believes that there are unresolved issues surrounding her daughter's death in November 2000. The Chief of Air Force was requested to address the matter and senior Air Force staff have met with Mrs Campbell. As a result, Mrs Campbell has agreed to review the changes in policy and training already implemented to ensure that, from a parent's perspective, all that can be done has been done. The Air Force also is examining other ways of assisting Mrs Campbell and her family to cope with Eleanore's death.
- c) The Stunden Report was the *Inquiry Into The Administrative Processes And Procedures Surrounding The Suspension Of Cadet Sergeant Eleanore Tibble*. The terms of reference for Group Captain Stunden did not require him to address the events surrounding the death of Eleanore which were addressed by the Tasmanian Coroner, as required by law.

The recommendations flowing from the Stunden Report have been accepted and have resulted in:

- the strengthening of policy and administrative procedures to be followed when dealing with minors;
- the introduction of a training program in personnel management which will be completed by all Air Force Cadet staff; and
- an initial decision to formally counsel three Air Force Cadet staff members. The Defence Legal Service advised at the time that any other action should await the coroner's findings. Now that Defence has been advised of the coroner's findings, the Chief of Air Force has determined further action. Procedural fairness, natural justice and privacy provisions restrict the detail that can be provided.

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**Naval Reserves**

**QUESTION W46**

Has the Naval Director of Music, or any other person helping to organise events in Western Australia involving Navy musicians, flown in musicians from other Australian states to play at events in WA at which the Naval Reserves are involved?

**RESPONSE**

There have been seven occasions over the past three years when musicians, both permanent and reserve, have been flown into Western Australia to assist with major ceremonial and/or public relations activities. This is due to members of the Western Australian Reserve Band often being unavailable on weekends due to family commitments, and usually being unavailable on weekdays due to civilian employment and/or study commitments.

In December 2001, the Director of Music–Navy forwarded a proposal to Navy Headquarters for an element of the RAN Band to be permanently based in Perth. The resource implications of this proposal are currently under consideration.

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WRITTEN QUESTIONS FROM SENATOR LUDWIG

Major Plant and Equipment Forecast

QUESTION W47

Could you update the list of major plant and equipment forecast to be sold in 2001–02 detailed in the response to question 8 of budget estimates?

RESPONSE

The proceeds disclosed for 2001–02 in Defence's Additional Estimates Statements are now limited to proceeds from the commercial vehicle sales program (up to \$60m) and minor amounts from the sales of administrative assets.

The sale and leaseback of information technology assets is now not expected to proceed.

Estimates for Capital Budget Projects

QUESTION W48

In respect of question 10 at budget estimates, has there been any changes to that response? If so, could you detail those changes.

RESPONSE

Yes. The variations shown in Table 3.4: Capital Budget, at page 45 of the 2001–02 Portfolio Additional Estimates Statements, represent a mixture of price and foreign exchange adjustments, as well as adjustments resulting from Government decisions relating to capital spending.

Departmental Statement of Cash Flows	Budget	Revised	Forward	Forward	Forward
	Estimate	Estimate	Estimate	Estimate	Estimate
	2001-02	2001-02	2002-03	2003-04	2004-05
	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Capital payments budget</b>					
Purchase of specialist military equipment	2,803,648	2,979,417	3,451,767	3,743,692	3,738,016
Purchase of property, plant and equipment	489,738	489,738	471,900	476,935	574,704
<b>Total capital payments budget</b>	<b>3,293,386</b>	<b>3,469,155</b>	<b>3,923,667</b>	<b>4,220,627</b>	<b>4,312,720</b>

A total of \$5.5 billion in new capital equipment projects was approved as part of the 2001–02 Budget, with expenditure from these new projects now estimated at \$455 million for 2001–02, \$793 million for 2002–03, \$1,123 million for 2003–04, and \$967 million for 2004–05. These revised estimates reflect a more achievable spend for those projects which made up the estimates provided in respect of question 10 at budget estimates. The spending pattern of these projects will be subject to further revision as they proceed.



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In the 2001–02 Budget, expenditure associated with new capital facilities projects was estimated at \$22.0m. Expenditure associated with these new projects is now estimated at \$22.5 million for the 2001–02 financial year, \$185.4 million for 2002–03, \$130.3 million for 2003–04 and \$68.6 million for 2004–05. The spending pattern of these projects will be subject to further revision as the projects progress.

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**Penalties for Failure to Meet Contractual Requirements**

**QUESTION W49**

In respect to question 28 of the 200–02 budget estimates, has the Department of Defence commenced any litigation in the last twelve months regarding contracts for the seeking of liquidated damages or seeking compensation? In addition, has the Department of Defence been subject to court action for the recovery of compensation or liquidated damages in respect of contracts?

**RESPONSE**

In the last twelve months, Defence has commenced litigation regarding contracts seeking compensation and has been subject to court action for the recovery of compensation in respect of contracts. Defence has not commenced any litigation for the seeking of liquidated damages nor been subject to court action for the recovery of liquidated damage in respect of contracts over the same period.

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**Defence Property Sales in 2000–01**

**QUESTION W50**

In respect to question 35 of the 2001–02 budget estimates, could you please provide an update of that question? In addition, have any properties been withdrawn from sale during that same period?

**RESPONSE**

See the response to the written question on notice W10 on the sale of Defence property in 2000–01. The Defence property at Amiens in Moorebank was withdrawn from sale during 2000–01 because of the need to excise land from the eastern boundary to accommodate the new M5/Moorebank grade separated intersection. Having now been resolved, Amiens will be marketed during 2002–03.

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**Military Justice Audit**

**QUESTION W51**

In respect to question 94 of the 2001–02 budget estimates, could you provide information about what, if any, specific actions have been taken on the recommendations of the review.

**RESPONSE**

On 16 August 2001, the Chief of the Defence Force announced that all 55 recommendations of the Burchett Audit would be accepted. The implementation of all recommendations will proceed over the next year or so.

A Defence project team has been established to oversee the implementation of the recommendations. Major reforms under way are shown below:

- A position of Inspector General for the Australian Defence Force has been created and advertised. Candidates for the position have been interviewed. It is expected that the position will be filled by the end of April.
- Models for a Director of Military Prosecutions are being examined and a proposal will be provided to the Chief of the Defence Force and the Service Chiefs for endorsement in June 2002.
- A Registrar of Courts Martial dealing with the case management of military justice trials has been created and filled and will assist in smooth case flow for military courts.
- An improved training program on military justice procedures is being developed for all Defence members and, in particular, for officials directly involved in the conduct and administration of proceedings under the *Defence Force Discipline Act*.
- A draft Defence Instruction dealing with whistleblowers is under development and will be implemented once final legal and resourcing issues have been resolved.

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**New Military Compensation Scheme**

**QUESTION W52**

In respect to question 111 of the 2001–02 budget estimates, could you provide an update on the Tanzer Review? Specifically, is the new scheme still under active consideration by the Government? When is it intended to release an exposure draft of the bill?

**RESPONSE**

The Government has agreed to the introduction of a new stand-alone, military-specific compensation scheme based on the proposals previously provided to the Opposition and ex-service organisations. The new military compensation scheme arrangements have been developed from the recommendations made in the Tanzer Review. The Departments of Defence and Veterans' Affairs, in consultation with key stakeholders, are developing the details of the new scheme. It is intended that an exposure draft of the Bill will be released later this year.