

Department of Defence on the record

28 May 2012

Response of 25 May 2012 provided to Ian McPhedran, News Ltd, to questions asked about the Australian Defence Force Investigative Service (ADFIS)

The Australian Defence Force is fighting a war in a complex operating environment.

Australian forces are highly trained, and very professional.

However, in the chaos of operations, there may be instances where some conduct may be alleged to be unlawful, or inappropriate.

Defence takes such matters seriously. Administrative inquiries or disciplinary investigations may be conducted, to determine whether or not behaviour and procedures were proper and lawful, and whether lessons can be learnt from specific matters to improve our processes.

Lessons learnt are applied to our training, pre-deployment and during operations, to ensure that Australian soldiers maintain the highest standards of operational conduct.

Where specific matters are the subject of ongoing inquiry or investigation, Defence will not usually make specific comment until the inquiry or investigative process is concluded.

Defence makes every effort to be transparent in these matters.

The Minister for Defence makes regular statements to the Australian Parliament on Afghanistan, detainee management and associated issues.

We also work closely with independent authorities, such as the various human rights organisations.

1. How many ADFIS investigators deployed to the MEAO during 2011?

A total of 21 ADFIS investigators (not including the Officer in Charge) were deployed at various stages through 2011.

2. How many of these were qualified in crime scene investigation?

All ADFIS investigators who deploy to the MEAO are required to have completed recognised Scenes of Crime / Forensic investigation training.

That qualification is a prerequisite selection criterion for the MEAO deployment. The ADF Investigators Course covers aspects of crime scene management, advanced evidence handling procedures and techniques, as well as photographic techniques. All undertake training in relation to both the Defence Force Discipline Act 1982 and the Commonwealth Evidence Act 1995 provisions regarding the security, preservation and protection of evidence.

3. How many were trained in mortuary affairs?

Mortuary Affairs is used in the military context as a term that covers a range of activities associated with deaths on operations including coronial investigation, evidence collection and preservation of human remains, identification, transportation and escort, ceremonial, notification, family liaison, and logistics.

Mortuary Affairs are the subject of specific ADF policy. All ADFIS investigators deployed to the MEAO are aware of these procedures through pre-deployment training and in-theatre handover activities, and undertake training in the conduct of homicide or sudden death investigation techniques.

All State Coroners have been engaged regarding the ADFIS policy, procedures and preservation of human remains. The Head Australasian Coronial Society, whose membership consists of coroners from all Australian States and Territories and New Zealand has also reviewed ADFIS standard operating procedures (in August 2011) and has endorsed these processes and procedures.

4. Were any concerns raised by investigators about a lack of qualified personnel?

The Inspector General Australian Defence Force (IGADF) is conducting an inquiry into allegations raised by two former Australian Defence Force Investigative Service (ADFIS) investigators that ADFIS investigators in the Middle East Area of Operations were not appropriately qualified for some tasks.

The Head Australasian Coronial Society, whose membership consists of coroners from all Australian States and Territories and New Zealand has also reviewed ADFIS standard operating procedures (in August 2011) and has endorsed these processes and procedures.

5. Have any concerns ever been raised about tampering with human remains being repatriated from the MEAO?

The term 'tampering' in connection with human remains is ambiguous, highly emotive and potentially misleading.

Concerns have been raised that some ADF human remains were not repatriated in accordance with Defence policy, and the IGADF is conducting an inquiry into these allegations.

All investigations to date have shown that the bodies were handled with the utmost respect and dignity. What appears to have occurred was essentially a difference of professional opinion between medical staff and ADFIS investigators about coronial requirements for handling medical devices in the human remains. Medical staff thought devices should remain in-situ. Investigators thought they should be removed. This confusion has now been resolved by the issue of an ADFIS Technical Bulletin that confirmed medical devices should remain in place unless removal was necessary to identify the deceased. All devices are now to be photographed in-situ and are to be transported to the Coroner with the remains. The Technical Bulletin was issued shortly after the matter was first brought to attention.

However, given that concerns have been raised that some ADF human remains were not repatriated in accordance with Defence policy, IGADF is conducting an inquiry into these allegations.

6. If so by who and what was done about it?

Concerns about procedures for repatriation of human remains were raised. Consequently an ADFIS Technical Bulletin above was issued in June 2011. Subsequently the concerns have been raised with the IGADF. An IGADF Inquiry into these allegations is ongoing.

7. Was an ADFIS technical bulletin issued in response to these concerns?

The term 'tampering' in connection with human remains is ambiguous, highly emotive and potentially misleading. Concerns have been raised that some ADF human remains were not repatriated in accordance with Defence policy, and the IGADF is conducting an inquiry into these allegations.

A Technical Bulletin was not issued in relation to allegations of "tampering" with human remains. A Technical Bulletin was issued to clarify requirements for evidence handling with regard to identification, management and preservation of evidence, and removal of medical devices from human remains after concerns about the procedures for repatriation of human remains were first raised.

8. If so when and what did it say?

The term 'tampering' in connection with human remains is ambiguous, highly emotive and potentially misleading.

The Technical Bulletin was issued in Jun 2011 to provide guidance regarding the repatriation of deceased ADF members to ensure that all ADFIS Investigators fully understood their obligations and responsibilities in relation to this task.

9. Were any cases of tampering reported after the bulletin was issued?

The term 'tampering' in connection with human remains is ambiguous, highly emotive and potentially misleading.

Defence has not received any reports of "tampering". However, given that concerns have been raised that some ADF human remains were not repatriated in accordance with Defence policy, IGADF is conducting an inquiry into these allegations.

10. Have any concerns been raised about remains being placed incorrectly in caskets?

Allegations have been made about the management of the repatriation of the remains of some ADF personnel.

The issue of orientation of caskets is under active inquiry. However the following points are relevant to this matter:

- All investigations to date have shown that the bodies were treated with the utmost respect and dignity.
- The evidence to date indicates that the bodies were correctly oriented in the caskets at all times.
- Defence introduced the current model casket in 2008. Prior to this date a US model was used.
- At no time since 2008 has Defence received any advice from Australian Coronial authorities to indicate that the bodies of ADF members were transported incorrectly.
- For continuity purposes, Defence authorities conduct a physical check of the human remains at each point of transfer during the repatriation. This involves opening the casket to re-confirm identity.
- At no time during these procedures has a misalignment of the bodies been identified.
- This is supported by ADF medical officers who have attended the autopsies of all ADF members killed in Afghanistan since 2008.
- Defence photographic records from 2006 show that on three occasions the caskets themselves were used incorrectly. Importantly, the evidence to date indicates that the bodies were correctly oriented in the caskets at all times however in these instances the lid may have been mistaken for the base.
- Functionally the casket performs the same way regardless of its orientation.
- The incorrect orientation of the caskets was probably due a training deficiency that resulted in a lack of familiarity by some members with the unusual configuration of the caskets – that is that the lid is larger than the base.
- Clear guidance on the correct use of caskets has since been issued.

11. If so what was done about it?

An IGADF Inquiry into these allegations is ongoing.

12. Are ADFIS investigators regarded as "pre-Coroners"?

It is unclear to Defence what is meant by the term "pre-coroner".

ADFIS investigators conduct investigations and will collect material that may be provided to the relevant State or Territory coroners.

All State Coroners have been engaged regarding the ADFIS policy, procedures and preservation of human remains. The Head Australasian Coronial Society, whose membership consists of coroners from all Australian States and Territories and New Zealand has also reviewed ADFIS standard operating procedures (in August 2011) and has endorsed these processes and procedures.

13. If so under what legislation?

When ADFIS investigators undertake ADF mortuary affairs functions in the MEAO, they are acting on behalf of the ADF to fulfil its responsibilities in respect of ADF members who die while on operations. They are not exercising a statutory coronial function under Australian domestic law.

In the event that the death of an ADF member occurs in circumstances that give rise to a suspicion that a service offence has been committed, then ADFIS investigators can take action pursuant to the Defence Force Discipline Act 1982 to investigate the matter.

14. Did ADFIS order investigators in the MEAO during 2011 to refuse doctors and other medical staff access to human remains?

15. If so why?

All investigations to date have shown that the bodies were handled with the utmost respect and dignity. What appears to have occurred was essentially a difference of professional opinion between medical staff and ADFIS investigators about coronial requirements for handling medical devices in the human remains. Medical staff thought devices should remain in-situ. Investigators thought they should be removed. This confusion has now been resolved by the issue by ADFIS of a Technical Bulletin that confirmed medical devices should remain in place unless removal was necessary to identify the deceased. All devices are now to be photographed in-situ and are to be transported to the Coroner with the remains. The Technical Bulletin was issued shortly after the matter was first brought to attention.

However, given that concerns have been raised that some ADF human remains were not repatriated in accordance with Defence policy, IGADF is conducting an inquiry into these allegations.

16. Did any medical officer express concerns about the treatment of human remains by ADFIS investigators during 2011?

17. If so when, what were the concerns and what was done about them?

18. Has any investigation or inquiry been conducted into the treatment of human remains by ADFIS investigators?

19. If so when and what was the outcome?

All investigations to date have shown that the bodies were handled with the utmost respect and dignity. What appears to have occurred was essentially a difference of professional opinion between medical staff and ADFIS investigators about coronial requirements for handling medical devices in the human remains. Medical staff thought devices should remain in-situ. Investigators thought they should be removed. This confusion has now been resolved by the issue by ADFIS of a Technical Bulletin that confirmed medical devices should remain in place unless removal was necessary to identify the deceased. All devices are now to be photographed in-situ and are to be transported to the Coroner with the remains. The Technical Bulletin was issued shortly after the matter was first brought to attention.

However, given that concerns have been raised that some ADF human remains were not repatriated in accordance with Defence policy, IGADF is conducting an inquiry into these allegations.

20. Has an investigation been launched into the case of Sapper Lazarus Louis?

Yes. There have been a number of Defence inquiries and investigations including two ADFIS investigations and an IGADF inquiry which is also now underway.

21. If so when and what was the outcome?

Brief of evidence were prepared and forwarded to the Director of Military Prosecutions for consideration. The IGADF Inquiry is ongoing.

As aspects of this case are subject to an ongoing IGADF inquiry it would be inappropriate for Defence to comment further at this time.

23. If so who and what charges?

As aspects of this case are subject to an ongoing IGADF inquiry it would be inappropriate for Defence to comment further at this time.

24. Is ADFIS aware of any witness statements in the Sapper Louis case being altered by a legal officer?

Both ADFIS and IGADF are aware of the allegations and these are subject to an ongoing IGADF Inquiry.

25. Is Defence aware of the case of a missing Afghan who died in Australian custody in September 2010 and was removed from the base by a local taxi and widely known as "Weekend at Bernie's"?

26. If so what was done about it and what happened to the remains?

Any reference to this incident as "weekend at Bernie's" is derogatory, ill informed, and does not accurately reflect the facts.

Defence understands that this matter may relate to an Afghan insurgent who was wounded in an engagement with Australian forces in October 2010.

This insurgent was immediately treated by Australian forces, and transferred under custody to the ISAF Role 2 medical facility at Tarin Kot.

The insurgent was treated for his wounds but subsequently died in hospital.

ISAF Role 2 mortuary staff prepared the body for movement.

ISAF Role 2 staff engaged Afghan staff at the Tarin Kot hospital, who advised they were unable to receive the remains due to a power outage.

Instead, the Afghan staff at the Tarin Kot hospital, as the appropriate local authorities, arranged for local transportation to transfer the remains back to the insurgent's home. ISAF Role 2 staff transported the remains by ambulance to the front gate of MNB-TK, and transferred the remains to the local transportation.

Defence understands that the local community held a funeral service for the insurgent.

Defence understands that the vehicle used may also have been used as a taxi, and arrangements for transportation of local national human remains had in the past included the use of taxis.

This incident was unusual as the Tarin Kot hospital was unable to accept the human remains into its facility.

While the practicalities for handling local national human remains in Afghanistan may not accord with Australian norms, the handling of the remains in this instance was in accordance with the ISAF Role 2 practice at the time.

Defence subsequently reviewed this matter and identified that the local procedures in place for handling local national human remains were not clear or co-ordinated.

Defence has since developed more specific guidance to the ADF on its responsibilities in the management of local national human remains, including for detainees.

27. Did ADFIS refuse to deal with the remains?

No. On the basis of an assessment of the procedures used by the ISAF Role 2 medical facility on this occasion for handling local national human remains conducted shortly after the death of the insurgent, Defence was satisfied that the insurgent's remains were managed appropriately by Australian, ISAF and Afghan authorities.

28. Is Defence aware of another Afghan body that was refused entry to the TK hospital morgue after being delivered by a Bushmaster?

29. If so what happened to the body?

Defence has no record that reflects the incident described however we take these matters seriously and allegations of this nature would be fully investigated if further information is provided.

30. Was the deceased's son handed to US authorities by a RAAF SECPOL?

Defence assumes this question relates to question 25 above.

No. ADF personnel did not transfer the deceased's son to US authorities.

The individual's son sought to enter the Tarin Kot base to find his father.

Upon arrival at the base, the son was interviewed by ISAF officials, as is standard practice for all local nationals seeking to gain access to the Multi-National Base in Tarin Kot. This is a force protection measure.

The ADF was advised that the suspected insurgent's son had arrived at the base.

The ADF subsequently determined that the son should be detained as a suspected insurgent, or associate of a suspected insurgent.

ADF personnel detained the individual and transferred him to the ADF Initial Screening Area.

The individual, who was identified as 16 years old, was detained for a short time to determine his identity and was questioned briefly about his father.

While in ADF custody, the individual was treated in accordance with Australia's domestic and international legal obligations. He was released from detention within two hours.

31. Is Defence aware of the shooting death of a suspect by a SOTG intelligence officer in September 2010 during a tactical questioning session?

32. If so what was done about it?

Defence is aware of an incident involving an insurgent who was killed while physically threatening the life of an SOTG member around this time but not in September. Defence understands that the incident we are aware of did not occur during tactical questioning but the Chief of Joint Operations has directed that the details of this incident be reviewed.

33. Is Defence aware of a detainee known as 272 who was found guilty and sentenced to a lengthy prison term in Bagram?

34. If so what has been done about allegations of insufficient evidence and/or false reporting in this case?

35. Were investigators ordered not to collect evidence in this case?

This may relate to detainee allegations currently being reviewed by Defence.

Accordingly, it would be inappropriate for Defence to comment further at this time however Defence takes such allegations very seriously.

36. Is Defence aware of any threats made against ADFIS investigators or their families?

Defence is aware of these allegations and is attempting to contact the individual to obtain particulars of this allegation.

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