

INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE
INQUIRY REPORT CONCERNING COMPLAINTS BY

[REDACTED]

PART ONE

SUMMARY OF FINDINGS AND RECOMMENDATIONS

TOR 1 – You are to establish:

- a. if the repatriations of ADF HR from the MEAO during the period February – July 2011 were managed in accordance with Defence policy.
- b. if the repatriations of ADF HR from the MEAO in the period Feb – July 2011 were not managed in accordance with Defence policy, what were the circumstances surrounding the mismanagement?
- c. if there was mismanagement how was it contrary to applicable law, regulation, order, policy, procedure, code of conduct or doctrine?

FINDING 1.1: ADFIS investigators, in some cases assisted by medical personnel, removed medical devices from the remains of [REDACTED] in the course of their duties in the MEAO.

FINDING 1.2: Before 15 June 2011, there was no law, regulation, policy, instruction, doctrine, SOP, manual or technical bulletin that specified how ADFIS investigators were to manage medical devices in human remains.

FINDING 1.3: The disagreement between medical staff and ADFIS investigators about the management of medical devices in human remains was promptly resolved by normal staff consultation that resulted in revision of the JTF633 Standing Instruction for Mortuary Affairs Management, and a conforming direction in the Service Police Manual.

FINDING 1.4: Allegations that removal of medical devices from human remains by ADFIS investigators contravened State or Territory coronial Acts, criminal law, or should have been authorised by medical officers, or should have been carried out by medical officers, were baseless.

FINDING 1.5: The caskets of [REDACTED] were correctly oriented for the duration of their repatriations from the Tarin Kowt or Kandahar mortuaries to Australia.

FINDING 1.6: The casket of [REDACTED] was inverted, but his remains were supine, while in transit from the Tarin Kowt mortuary until after the departure ramp ceremony at AMAB. While in the aircraft the casket was corrected, and [REDACTED] before departure from AMAB.

FINDING 1.7: The casket of [REDACTED] was inverted, but his remains were supine, while in transit from the mortuary at Tarin Kowt to the mortuary at AMAB. The casket was corrected and [REDACTED] before the departure ramp ceremony at AMAB.

FINDING 1.8: ADFIS investigators in the Tarin Kowt mortuary used caskets in the incorrect orientation due to unfamiliarity with the casket. This was corrected as soon as the correct orientation was advised to them. The JTF633 SI for mortuary affairs was amended to provide photographs of a casket in the correct orientation.

[REDACTED]

[REDACTED]

FINDING 1.9: ADFP 1.1.1 Mortuary Affairs, had at least one historical photograph showing caskets being used inverted.

RECOMMENDATION 1.1: ADFP 1.1.1 should be amended by replacing photographs showing caskets being used inverted.

FINDING 1.10: During the period under inquiry ADFIS investigators at Tarin Kowt used [REDACTED] pouches to repatriate the remains of [REDACTED]. The [REDACTED] pouches comprised a light-coloured, permeable inner pouch and a dark coloured impermeable outer pouch. When the supply of [REDACTED] pouches was exhausted, investigators improvised inner pouches to protect remains from cold-blocks and ice, because the Australian human remains pouch only comprised a single, outer, impermeable bag. The absence of [REDACTED] inner pouches during two repatriations was incorrectly interpreted as an error on the part of investigators at Tarin Kowt.

FINDING 1.11: The human remains of [REDACTED] went from the Tarin Kowt mortuary to AMAB wrapped in a plastic sheet or shroud, which was then inside a purpose-made human remains pouch. These were placed in a second human remains pouch at AMAB for the journey to Australia.

FINDING 1.12: The human remains of [REDACTED] went from the Tarin Kowt mortuary to AMAB in an NBC casualty bag, which was inside a purpose-made human remains pouch. These were placed in a second human remains pouch at AMAB for the journey to Australia.

FINDING 1.13: The human remains of [REDACTED] were each in two purpose-made human remains pouches for the entire journey from the mortuary in Tarin Kowt or Kandahar to Australia.

FINDING 1.14: [REDACTED] assisted by [REDACTED] re-iced the remains of [REDACTED] about an hour before the flight landed [REDACTED] to comply with the recommendation of JTF633 SI Mortuary Affairs Management. [REDACTED] allegation that [REDACTED] remains were not cooled for the arrival ceremony at [REDACTED] is unsubstantiated.

FINDING 1.15: It is unlikely [REDACTED] incorrectly labelled [REDACTED] and [REDACTED] while at Kandahar. It is more likely the labels were subsequently removed from the equipment by [REDACTED] to facilitate photography and during the photographic process the label identifying [REDACTED] webbing was initially incorrectly photographed with [REDACTED]. Notwithstanding the incorrect photographs, the labels were correctly matched to the equipment before the evidence was despatched to the coroner.

FINDING 1.16: It is unclear why [REDACTED] only included in the paper version of his Photographic Supplement the incorrectly labelled photographs of [REDACTED].

RECOMMENDATION 1.2: PM-ADF should review the force preparation of investigators who might have to repatriate human remains to ensure evidence management requirements are clear.

FINDING 1.17: The repatriation of ADF HR from the MEAO during the period February – July 2011 was managed in accordance with Defence policy.

TOR 1d. – You are to establish: were ADFIS Investigators responsible for the management of HR repatriation at the time, appropriately trained for their repatriation tasks?

FINDING 1.18: [REDACTED] assertion that the Incident Scene Examiner (Forensic) course was a pre-requisite for investigators deploying to the MEAO in the period up to July 2011 was incorrect.

FINDING 1.19: [REDACTED] assertion that investigators who processed the human remains of deceased ADF members, principally [REDACTED] were not qualified for that task, was incorrect.

FINDING 1.20: Pre-deployment mortuary affairs training for investigators deployed to the MEAO in the period February – July 2011 was inadequate.

[REDACTED]

[REDACTED]

RECOMMENDATION 1.3: PM-ADF should review mortuary affairs training for ADFIS investigators deploying on operations, to ensure investigators are adequately prepared.

TOR 2 – You are to establish:

- a. if any allegations of HR mismanagement were raised to the attention of [REDACTED] and if they were what action, if any [REDACTED] took to deal with the allegations.
- b. were [REDACTED] actions appropriate under the circumstances?

FINDING 2.1: Allegations that human remains were mismanaged were brought to [REDACTED] attention; specifically concerning removal of medical devices, orientation of caskets and use of human remains pouches.

FINDING 2.2: In relation to removal of medical devices, [REDACTED] sought guidance from HQ ADFIS, and discussed the matter with HQ JTF633 staff being [REDACTED] told [REDACTED] not to remove devices from human remains unless it was necessary.

FINDING 2.3: In relation to caskets, [REDACTED] that caskets had been used incorrectly, after which caskets were used correctly for the rest of the repatriations under inquiry.

FINDING 2.4: In relation to human remains pouches, [REDACTED] of concerns about the number of human remains pouches being used, resulting in corrective action.

FINDING 2.5: [REDACTED] actions in relation to medical devices in human remains, caskets and human remains pouches were appropriate.

FINDING 2.6: [REDACTED] did not fail to act on concerns raised by [REDACTED] or [REDACTED] about the management of human remains, nor were the issues covered up.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RECOMMENDATION 2.2: *In light of the evidence contained within this report, VCDF consider if additional training is warranted at HQ ADFIS with regards to the prosecution of charges.*

TOR 3. What were the circumstances surrounding [REDACTED] allegations concerning ADF detainee handling, and [REDACTED] investigation into detainee management? In light of these circumstances, were the actions of the ADF and [REDACTED] appropriate?

FINDING 3.1: [REDACTED] visited the DFIP and other facilities, on and following 10 April 2011, to investigate the circumstances of the detention of an Afghani detainee. During the visit, [REDACTED] became concerned [REDACTED] did not appear to him to be interested in collecting all the available evidence in the correct policing manner. [REDACTED] reported his concerns to [REDACTED]

FINDING 3.2: [REDACTED] was constrained by HQJTF633 to only interview the detainee, so it was reasonable that he did not take or exhibit other evidence under those circumstances [REDACTED] actions in this regard were appropriate.

FINDING 3.3: [REDACTED] investigation was briefed [REDACTED]

FINDING 3.4: *The circumstances surrounding the detention of the detainee in question were not covered up, as asserted [REDACTED]*

FINDING 3.5: *The actions of the ADF in dealing with concerns about the detention of the detainee in question were appropriate.*

TOR 4. What were the circumstances surrounding the loss of a voice recorder containing interviews related to the inquiry into [REDACTED] redress of grievance, and is there any evidence to suspect that the loss of the voice recorder was in any way linked, other than by coincidence, to the outcome of that inquiry?

FINDING 4.1: *The theft of the voice recorder from [REDACTED] residence was not linked [REDACTED]*

FINDING 4.2: *Apart from the voice recorder, no other Inquiry information was stolen from [REDACTED] residence by the thieves.*

FINDING 4.3: *The highest classification of information on the stolen recorder was most likely*

[REDACTED]

Restricted.

FINDING 4.4: *Although the recorder was not secured in accordance with the Australian Government Protective Security Manual requirement for Restricted information, under the circumstances [REDACTED] took reasonable precautions to secure the voice recorder.*

FINDING 4.5: *The Australian Government Protective Security Manual requirement for the storage of Restricted information cannot reasonably be met by Defence personnel working from home.*

RECOMMENDATION 4.1: *Defence should devise workable requirements for securing Restricted information by personnel authorised to work from home.*

TOR 5. You are to determine if the Inquiry by [REDACTED] into a complaint by [REDACTED] was undertaken in accordance with relevant policies, practices and procedures existing at the time. You are also to determine if the Inquiry findings were available on the evidence, and if the Inquiry recommendations flowed logically from the findings.

FINDING 5.1: [REDACTED] *Inquiry into [REDACTED] redress of grievance was undertaken in accordance with relevant policies, practices and procedures existing at the time; the findings were available on the evidence; and the recommendations flowed logically from the findings.*

TOR 6. You are to establish the circumstances surrounding [REDACTED] allegation that ADFIS investigators executed unlawful warrants in the MEAO, and recommend if further investigation of this allegation is warranted.

FINDING 6.1: *On 26 January 2011, [REDACTED] affirmed a DLM Form B4 'Information for search warrant' [REDACTED] who signed it as witness. The form B5 'Search warrant' based on the aforesaid Form B4 was signed by [REDACTED] on the same day.*

FINDING 6.2: *The search warrant was not illegal.*

FINDING 6.3: *There was no requirement for further investigation into the warrant in question.*

FINDING 6.4: *The range of opinions about the legality of the search warrant, among ADFIS investigators, indicated a requirement to establish the correct and consistent understanding among ADFIS investigators.*

RECOMMENDATION 6.1: *CO ADFIS implement a training program to establish among ADFIS investigators the correct and consistent understanding of requirements for raising search warrants.*

BROADER CONSIDERATIONS

FINDING: *The allegation that [REDACTED] had sent an email in an attempt to influence witness to an IGADF Inquiry is unsubstantiated.*

FINDING: *The allegation that [REDACTED] had threatened [REDACTED] is unsubstantiated.*

FINDING: *The allegation [REDACTED] initiated an inappropriate discussion with [REDACTED] meeting is unsubstantiated.*

FINDING: *Defence Inquiries are heavily dependant on the legislated structures in place for the collection and protection of evidence.*

FINDING: *Civilians (including members of the Reserve when not on duty) who publicly table untested claims against Defence members subject to an ongoing Defence Inquiry, without restriction or accountability, create the very real danger of unfairness to individuals and organisations, and of clouding objective decision making before the facts are known.*

[REDACTED]



RECOMMENDATION: The same legislated compellability for civilians (including members of the Reserve when not on duty), on the collection and protection of evidence, as currently exists for ADF members be sought for IGADF Inquiries.



[REDACTED]

INO/74/11 Part 2

INSPECTOR GENERAL AUSTRALIAN DEFENCE FORCE
INQUIRY REPORT CONCERNING COMPLAINTS BY

[REDACTED]

PART 2

FINDINGS AND RECOMMENDATIONS

TOR 1.

You are to determine if the identity of the alleged killer of [REDACTED] was forensically confirmed.

FINDING 1.1: ADFIS investigators forensically confirmed the identity of the alleged killer of [REDACTED] by matching fingerprints from evidence taken from the killer's room with fingerprints taken from the Afghan killed by Coalition Forces on 19 June 2011, and comparing a photograph of the killer taken before the murder with photographs of the Afghan killed on 19 June 2011.

TOR 2.

You are to establish what direction, if any [REDACTED] gave to [REDACTED] on 23 June 2011 with regards to forensic identification of the alleged killer [REDACTED] and whether that direction was appropriate in all the circumstances.

FINDING 2.1: [REDACTED] signed for the [REDACTED] evidence at AMAB on [REDACTED] to maintain the chain of custody. After it was decided to treat the evidence at Tarin Kowt, [REDACTED] to take it with him from AMAB to Kandahar, where he was to assist the aircraft accident investigation, and transfer custody to [REDACTED] signed for the [REDACTED] at Kandahar and then took it to Tarin Kowt on [REDACTED]

FINDING 2.2: [REDACTED] superior officer. It was appropriate [REDACTED] to direct [REDACTED] to sign for the evidence and escort it to Kandahar, where he was required to assist the accident investigation team, and sign the evidence over to [REDACTED]

FINDING 2.3: On the balance of probability, [REDACTED] did not direct [REDACTED] to submit the evidence to the forensic facility at Kandahar and then tell him not to

FINDING 2.4: What direction, if any, [REDACTED] is inconclusive.

TOR 3:

You are to determine what involvement, if any, ADFIS investigators had with the body of an Afghan insurgent who died at the ISAF Role 2 Medical Facility at Tarin Kowt following an engagement with Australian forces in October 2010.

FINDING 3.1: The incident that came to be referred to as [REDACTED] involved a deceased Afghan insurgent who arrived at the Role 2 Medical facility at MNB-TK on [REDACTED]

[REDACTED]

[REDACTED]

FINDING 3.2: *The deceased Afghan recovered to the Role 2 Medical facility at MNB-TK [REDACTED] died before he was recovered by the MTF patrol and was not in custody when he died.*

FINDING 3.3: *ADFIS had no involvement with the body of the Afghan insurgent who arrived deceased at the ISAF Role 2 Medical Facility at Tarin Kowt following an engagement with Australian forces on [REDACTED]*

FINDING 3.4: *The death of the Afghan insurgent who arrived deceased at the ISAF Role 2 Medical Facility at Tarin Kowt following an engagement with Australian forces on [REDACTED] was not a death in custody, therefore there was no requirement for ADFIS to investigate the death.*

FINDING 3.5: *By accepting the body of the insurgent who died in contact on [REDACTED], the Role 2 Medical facility assumed responsibility for the remains. The remains were disposed of in accordance with [REDACTED] SOP and established local arrangements.*

FINDING 3.6: *On the balance of probability [REDACTED] staff, in accordance with their normal procedure, despatched the remains of the insurgent from MNB-TK to the Tarin Kowt civilian morgue [REDACTED] on or around [REDACTED]*

FINDING 3.7: *There was no Australian policy or directive in place, on [REDACTED] governing the disposal of non-ISAF human remains under Australian control. The [REDACTED] medical staff complied with the [REDACTED] SOP.*

FINDING 3.8: *It was likely, in his email to the Inquiry, a journalist and others, [REDACTED] incorrectly attributed the [REDACTED] to an incident in October 2010, rather than the incident on [REDACTED] covered under TOR 3.*

FINDING 3.9: *ADFIS involvement with handling the body of an Afghan insurgent who died at the ISAF Role 2 Medical Facility at Tarin Kowt on [REDACTED] following an engagement with Australian forces on [REDACTED] comprised an investigation, including a forensic examination, fingerprinting and photographing the body.*

FINDING 3.10: *[REDACTED] medical staff arranged for the remains of [REDACTED] to be handed over to the family, and he was buried on [REDACTED]*

FINDING 3.11: *Australian policy and direction for management of the human remains of non-ISAF persons who died in custody of Australian forces in Afghanistan was deficient in that it did not provide clarity on management of the human remains.*

FINDING 3.12: *There is a potential inconsistency between Health Directive No 298 and the JTF633-A directive on detainee management, being the Health Directive did not note the circumstances under which ADFIS might not investigate a death in detention, and used the term 'detention' rather than 'custody.'*

RECOMMENDATION 3.1: *Defence consider amplifying policy for Australian forces in Afghanistan concerning deaths in custody, to include management of the remains.*

RECOMMENDATION 3.2: *Defence consider amending Health Directive No 298 to note the circumstances under which ADFIS might not investigate a death in detention/custody; and to standardise the terms 'detention' and 'custody.'*

TOR 4:

You are to establish the circumstances surrounding the allegation that an Afghan minor whose father had been admitted to the Role 2 Medical Facility, entered the Multi-National Base *Tarin Kowt* around late September or early October 2010, including how the minor was processed or otherwise handled, and by whom; and whether the minor was treated in accordance with Australian policy, practice and procedures extant at the time.

[REDACTED]

[REDACTED]

FINDING 4.1: [REDACTED] was wounded in a contact with Coalition Forces in Afghanistan on [REDACTED] detained, and evacuated to the Role 2 Medical Facility at MNB-TK. At around [REDACTED] a person claiming to be [REDACTED] son, [REDACTED] arrived at the Camp [REDACTED] Entry Control Point (ECP) seeking to visit his father. [REDACTED] guards at the ECP reported [REDACTED] presence to the Multi-National Base – Tarin Kowt (MNB-TK) base command. [REDACTED] and a colleague on another task, so [REDACTED] to screen [REDACTED]

At around 1100, [REDACTED] decided [REDACTED] should be detained on the grounds [REDACTED] being the son of [REDACTED] wounded in contact with Coalition Forces, might have information important for force protection or achievement of the mission. On the authority of [REDACTED] at the ADF Initial Screening Area (ISA) to detain [REDACTED] because he believed [REDACTED] and was supported in this by [REDACTED] then asked either CST-24 or [REDACTED] to detain [REDACTED]. At around 1220, [REDACTED] met CST-24 personnel and agreed to detain [REDACTED] because if [REDACTED] had detained him, he could not have been transferred to the ISA. [REDACTED] discussed the transfer arrangements with [REDACTED] then tasked [REDACTED] to detain [REDACTED] and transfer him to the ISA.

At around 1240, [REDACTED] and [REDACTED] detained [REDACTED] at the Camp [REDACTED] ECP. They biometrically enrolled him, handcuffed, blind-goggled and ear-muffled him and drove him to the ISA where they arrived at about 1310. They were met at the ISA by [REDACTED]

[REDACTED] was processed into and out of the ISA in the routine manner. [REDACTED] was the Shift Commander. [REDACTED] blind-goggles and ear-muffs were removed. He received the standard briefing, probably from [REDACTED] noted by [REDACTED]. He was photographed, his belongings were inventoried by [REDACTED] and he was medically examined [REDACTED]. He was given food and drink by [REDACTED] then [REDACTED]. [REDACTED] ICRB [REDACTED]. He was medically examined again by [REDACTED] had his belongings returned to him, was given AFG 500 by [REDACTED] and released into the custody of [REDACTED] at around 1425.

[REDACTED] of the CTU [REDACTED] refused permission for [REDACTED] to visit his father, so he was taken to the MNB-TK ECP by [REDACTED] and released.

FINDING 4.2: [REDACTED] underwent routine force protection screening common to local national Afghans attempting to enter Camp [REDACTED] before he was detained by the ADF.

FINDING 4.3: [REDACTED] was not handed to a [REDACTED] element; he was not interrogated.

FINDING 4.4: [REDACTED] age was estimated at 16 years by the ISA medical officer, which placed him in the category of juvenile, not child, according to ISA SOPs.

FINDING 4.5: No evidence came to light to support a conclusion that [REDACTED] had been mistreated before he arrived at the ISA.

FINDING 4.6: Australian policy, practice and procedures were followed, except that the AD615 'Australian Defence Force Record of Search, Detention, Release and/or Transfer' was not finalised as required by ISA SOPs, in that Part F 'Physical condition report...' showed no entries and was not initialled. The Inquiry did not consider this significant, because the medical examination reports were available on the Internee/Detainee Examination Form.

FINDING 4.7: The Inquiry did not find anything incorrect in CDF's statement to the Australian Senate on 28 May 2012, in relation to the detention and release of [REDACTED]

[REDACTED]