

QUESTION TIME BRIEF 3.24

IRAQ: PRISONERS OF WAR AND  
DETAINÉES



27 May

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IAQ: PRISONERS OF WAR AND DETAINEES

3.24

**POSSIBLE QUESTION:** Did the Minister know that an ADF officer working in the US headquarters was aware of reports of Iraqi abuses as early as October 2003?

**TALKING POINTS**

- I have previously stated that the Government only learned of allegations of abuse to Iraqi detainees, through media reporting in late January 2004. Only after the publication of the photographs in April was the Government fully aware of the nature of the allegations.
- While working in the US-led coalition headquarters in a line position, Major O’Kane filed short weekly reports of his activities to the senior Australian officer in the coalition headquarters.
  - At no time did Major O’Kane report that he held any concerns over the conditions under which the detainees were being held at Abu Ghraib prison. This is supported by Major O’Kane’s superior officer, to whom he reported on a weekly basis.
  - Major O’Kane has advised that he told the Sydney Morning Herald journalist that none of these reports contained reference to abuse of Iraqi prisoners such as depicted in the photographs that have recently appeared in the media.
- The first that Major O’Kane was aware of reports of alleged serious abuses and the existence of photographs of the alleged abuses was about the same time as the public report of the US investigation in January 2004.
  - At the time, Major O’Kane was satisfied that reports of concerns regarding detainee management were being addressed through the US chain of command which is appropriate as the US is the responsible power for Abu Ghraib.
- I am advised that no ADF personnel, including Major O’Kane, were aware of the serious allegations of abuse before this time. No

Australian Defence personnel saw any photographs of abuses before they were published in late April 2004.

**IF ASKED:** About ADF officers' knowledge of the ICRC reports?

- ADF officers working in the coalition force headquarters and the Coalition Provisional Authority in Iraq were aware in October 2003 of ICRC reports on detainee treatment, but were not aware of the serious nature of these allegations before press reporting of the US investigation in January 2004.

- As part of his work in the coalition headquarters, Major O'Kane did work on a response to the first ICRC report prepared in October 2003 on detainee treatment.

- I am advised that the ICRC report of October 2003 covered general concerns about detainee conditions and treatment. I understand there was no mention in the ICRC report of October 2003 of any abuse as depicted in the recent serious abuse photographs. Major O'Kane subsequently contributed to the development of a reply to the ICRC and provided the response to the Baghdad ICRC representative.

- ADF officers working in the coalition headquarters provided short weekly reports on their work to the senior Australian Representative on the staff.

- I am advised that none of these reports contained reference to abuse of Iraqi prisoners such as depicted in the photographs that have recently appeared in the media.

- Those who were aware of issues related to the management of detainees, while not aware of the allegations of serious abuse, were satisfied that the issue was being addressed by US authorities who were in contact with the ICRC and that appropriate action would be taken by the responsible authorities.

IF ASKED: Did a photograph of Major O’Kane at the Abu Ghraib prison appear on a Defence website?

Yes. The photograph of Major O’Kane was published on a page in Defence’s intranet, and was distributed to a number of tri-service addressees via email. It was not published on the TDLS internet website. The story and photograph were withdrawn from the TDLS intranet. It was considered inappropriate for photographs from Abu Ghraib to be publicised in light of the allegations of abuse that had recently become public.

IF ASKED: What was Major O’Kane’s role in Iraq?

Major O’Kane was attached as a Legal Officer to the Office of the Staff Judge Advocate General in the coalition military headquarters in Iraq, CJTF-7, between July 2003 and February 2004.

During the officer’s deployment he visited Abu Ghraib on several occasions, in addition to another detainee centre. This was to provide legal advice to US military elements at the prison, assist in a detainee transfer operation, to facilitate the ICRC response, and coordinate the visit by the ICRC to the prison in January 2004.

The officer played a role in ensuring that the ICRC had access to the prison and to the detainees, thereby helping the ICRC to fulfil its role in protecting detainees and ensuring that the relevant Geneva Conventions are adhered to.

On no occasion did the officer witness any incidents that he assessed were inconsistent with the Geneva Conventions. Nor was he aware of the details of the detainee abuse allegations which have surfaced in recent weeks.

As I have stated already, he has also stated that he did not see the photographs which have recently appeared in media reporting.

IF ASKED: Was the Government aware of the contents of the February ICRC report?

On 10 February 2004, the head of the ICRC delegation in Iraq forwarded a report on the treatment of detained persons in Iraq to the head of the Coalition Provisional Authority, Ambassador Paul Bremer and the Commander of Combined Joint Task Force - 7, General Ricardo Sanchez.

- In keeping with the usual practice of the ICRC, the report was only made available to the Detaining Powers. The ICRC has stated that it "submitted its confidential reports to the authorities responsible on the basis of its mandate under the Geneva Conventions".

- As Australia is not managing any detention centres in Iraq (nor is it a Detaining Power), the ICRC did not provide the Australian Government with a copy of the report.

Australian officers in the Coalition Provisional Authority and the coalition's military headquarters in Iraq were involved in the issue to the extent of facilitating the ICRC's investigations and its contact with the coalition leadership in Iraq.

In February 2004 the Australian officers reported back to the Department of Defence in Canberra that they were working on issues related to an ICRC investigation of detention practices in Iraq in their role as CPA staff.

- The report was provided to the US and the UK as occupying powers. A copy was not provided to Australia.

- I was not advised by the Department of Defence of the reporting from the officers in Iraq on the ICRC report.

I am advised that the reporting focussed on the legal process issues rather than allegations of abuse about which the officers did not know the full extent.

It was also reported that the ICRC's concerns were being managed through the proper channels, between the ICRC and US and UK authorities.

Advice on the Australian officer's reporting of the matter was conveyed to me by the Department of Defence in early May 2004.

The Australian Government abhors any violation of international humanitarian law. We know that this abhorrence is shared by the US and UK Governments. The Australian Government welcomes the steps being taken to fully investigate the allegations, and take remedial action to ensure that abuse such as that alleged will not occur in future.

## BACKGROUND

On 27 May, The Sydney Morning Herald carried a report which claimed that an Australian military officer stationed in Baghdad was aware of allegations of prisoner abuse from October 2003. The report claimed that as Major George O'Kane was involved in the preparation of a response to an October 2003 ICRC report, this undercut Government assurances that they knew nothing of the abuses.

An article in the June 1 edition of The Bulletin magazine, quotes "diplomatic and military sources" as claiming that that "Australians were aware of the abuse allegations" prior to the official ICRC report that was provided to the CPA in February 2004 and that this would have been "reported to Canberra via cables".

This report also claimed that an Amnesty International report on detainee abuses would have been provided to the Government in July 2003.

Various media agencies have also reported on the announcement by President Bush on 25 May 2004 to demolish the Abu Ghraib prison.

On 13 May, the Sydney Morning Herald reported your comments from 12 May that the images of abuse of Iraqi detainees would be a setback in the war against terrorism. The Age claimed on 13 May that you had said the US was taking appropriate action over the abuses.

On 12 May, The Sydney Morning Herald, The Australian, The Advertiser (Adelaide), The Canberra Times and The Courier Mail all reported on statements in Parliament by you on your knowledge of abuse of detainees in Iraq. The articles quoted your statements in Question Time that the Government had been made aware of reports of abuse in press reports in January 2004, and that the Government was aware of the ICRC report several months ago but that it did not receive a copy of the report as it was not a Detaining Power. The Senate also passed a motion on 11 May condemning the abuse of prisoners.

Minister Downer also stated in Parliament on 11 May that there was no record of ADF or Australian involvement in these abuses. The Australian (25 May 2004) claims that senior US Politicians predict senior Military Commanders will face courts martial over the alleged abuse of Iraqi detainees.

Since 13 May, international media outlets have reported heavily on the allegations of abuse of Iraqi detainees by coalition forces.

In the Senate on 12 May, you were asked by Senator Bartlett about an agreement signed by Brigadier McNam to ensure that prisoners captured by our forces are treated in accordance with the Geneva convention. You responded that an agreement had been signed relating to the transfer of detained persons but that the agreement did not apply to instances where Australians were associated with the capture of individuals.

The Age, on 13 May, carried an article attributing to you comments that during the conflict in Iraq, Australian deployments in Iraq included a US soldier who would act as a detaining official during the capture of prisoners. The Age article also claimed that you stated that for the first three months of the conflict, Australia was an occupying power, with responsibilities for the protection of the Iraqi people.

On 12 May, the Courier Mail and The Australian reported comments by you that Australia was not a Detaining Power of Iraqi prisoners, and that there was no obligation to follow up on treatment to prisoners 'captured by Australian forces in Iraq'.

The Australian on 11 May 2004 claimed that Australia had a legal obligation to find out if any of the Iraqis taken prisoner by Australian forces had been mistreated. The author John Kerin claimed to have obtained a copy of an agreement signed by BRIG Maurie McNarn, the commander of Australia forces in the Middle East, which said that Australia had obligations to any prisoners captured by Australian forces.

In response to questioning on the ABC's 7:30 Report on 4 May as to whether Australian forces had been involved in any interrogation or incarceration of Iraqis, you stated that Australian forces hadn't ever been responsible for holding prisoners. You further commented that in the event that Australian personnel were responsible for holding prisoners that you would be very confident that they would behave appropriately

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FAQ: PRISONERS OF WAR AND DETAINEES

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POSSIBLE QUESTION: Did the Minister know that an ADF officer working in the US headquarters was aware of reports of Iraqi abuses as early as October 2003?

TALKING POINTS

- I have previously stated that the Government only learned of allegations of abuse to Iraqi detainees, through media reporting in late January 2004. Only after the publication of the photographs in April was the Government fully aware of the *extent* of the allegations.

- While working in the US-led coalition headquarters in a line position, Major O’Kane filed short weekly reports of his activities to the senior Australian officer in the coalition headquarters.

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*IF ASKED: Does Defence have a copy of the October report ?*

- *As the Prime Minister stated yesterday, the Government has asked the ICRC for a copy of the October report. The ICRC refused, as Australia was not an addressee of the report. The Government has now asked the US and the UK Governments if they will provide a copy of any relevant report, and we are awaiting their response.*
- *I would note that the ICRC considers its report as confidential communications between itself as the responsible power, therefore we would not expect to be provided with a copy of the October report.*

*IF ASKED: Did a photograph of Major O’Kane at the Abu Ghraib prison appear on a Defence website?*

- *Yes. The photograph of Major O’Kane was published on a page in Defence’s intranet, and was distributed to a number of tri-service addressees via email. It was not published on the TDLS internet website. The story and photograph were withdrawn from the TDLS intranet. It was considered inappropriate for photographs from Abu Ghraib to be publicised in light of the allegations of abuse that had recently become public.*

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## BACKGROUND

*The Australian domestic media continued heavy coverage of the allegations regarding Major O'Kane over the weekend and in today's media (31 May 2004). The Age newspaper claimed that "Defence Minister Robert Hill is trying to stop the Australian military lawyer who dealt with claims of abuse of Iraqi prisoners from appearing before a parliamentary committee on Monday". The Sydney Morning Herald, the Australian, the Canberra Times and the Adelaide Advertiser all carry stories regarding the O'Kane claims and that "he is not expected to face parliamentary committees due to be held today".*

*The Adelaide Advertiser (31 May 2004) contends that "an Australian military lawyer stationed in Iraq has told the Federal Government he knew nothing of prisoner abuse claims before January, Defence Minister Robert Hill said yesterday".*

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aware of the serious allegations of abuse before this time. No Australian Defence personnel saw any photographs of abuses before they were published in late April 2004.

IF ASKED: About ADF officers' knowledge of the ICRC reports?

ADF officers working in the coalition force headquarters and the Coalition Provisional Authority in Iraq were aware in October 2003 of ICRC concerns regarding detainee treatment, but were not aware of the serious nature of these allegations before press reporting of the US investigation in January 2004.

As part of his work in the coalition headquarters, Major O'Kane did work on a response to the first ICRC report prepared in October 2003 on detainee treatment.

I am advised that the ICRC in October 2003 referred to general concerns about detainee conditions and treatment. I understand there was no mention in the ICRC report of October 2003 of any abuse as depicted in the recent serious abuse photographs. Major O'Kane subsequently contributed to the development of a reply to the ICRC and provided the response to the Baghdad ICRC representative.

ADF officers working in the coalition force headquarters provided short weekly reports on their work to the senior Australian Officer on the staff.

- I am advised that none of these reports contained reference to abuse of Iraqi prisoners such as depicted in the photographs that have recently appeared in the media.

- Those who were aware of issues related to the management of detainees, while not aware of the allegations of serious abuse, were satisfied that the issue was being addressed by US authorities who were in contact with the ICRC and that appropriate action would be taken by the responsible authorities.



IF ASKED: Does Defence have a copy of the October report ?

- As the Prime Minister stated yesterday, the Government has asked the ICRC for a copy of the October report. The ICRC refused, as Australia was not an addressee of the report. The Government has now asked the US and the UK Governments if they will provide a copy of any relevant report, and we are awaiting their response.
- I would note that the ICRC considers its report as confidential communications between itself as the responsible power, therefore we would not expect to be provided with a copy of the October report.

IF ASKED: Did a photograph of Major O'Kane at the Abu Ghraib prison appear on a Defence website?

- Yes. The photograph of Major O'Kane was published on a page in Defence's intranet, and was distributed to a number of tri-service addressees via email. It was not published on the TDLS internet website. The story and photograph were withdrawn from the TDLS intranet. It was considered inappropriate for photographs from Abu Ghraib to be publicised in light of the allegations of abuse that had recently become public.

IF ASKED: What was Major O'Kane's role in Iraq?

- Major O'Kane was attached as a Legal Officer to the Office of the Staff Judge Advocate General in the coalition military headquarters in Iraq, CJTF-7, between July 2003 and February 2004.
- During the officer's deployment he visited Abu Ghraib on several occasions, in addition to another detainee centre. This was to provide legal advice to US military elements at the prison, assist in a detainee transfer operation, to facilitate the ICRC response, and coordinate the visit by the ICRC to the prison in January 2004.

- The officer played a role in ensuring that the ICRC had access to the prison and to the detainees, thereby helping the ICRC to fulfil its role in protecting detainees and ensuring that the relevant Geneva Conventions are adhered to.

On no occasion did the officer witness any incidents that he assessed were inconsistent with the Geneva Conventions. Nor was he aware of the details of the detainee abuse allegations which have surfaced in recent weeks.

- As I have stated already, he has also stated that he did not see the photographs which have recently appeared in media reporting.

**IF ASKED:** Was the Government aware of the contents of the February ICRC report?

On 10 February 2004, the head of the ICRC delegation in Iraq forwarded a report on the treatment of detained persons in Iraq to the head of the Coalition Provisional Authority, Ambassador Paul Bremer and the Commander of Combined Joint Task Force – 7, General Ricardo Sanchez.

- In keeping with the usual practice of the ICRC, the report was only made available to the Detaining Powers. The ICRC has stated that it “submitted its confidential reports to the authorities responsible on the basis of its mandate under the Geneva Conventions”.

- As Australia is not managing any detention centres in Iraq (nor is it a Detaining Power), the ICRC did not provide the Australian Government with a copy of the report.

Australian officers in the Coalition Provisional Authority and the coalition’s military headquarters in Iraq were involved in the issue to the extent of facilitating the ICRC’s investigations and its contact with the coalition leadership in Iraq.

In February 2004 the Australian officer reported back to the Department of Defence in Canberra that he was working on issues related to an ICRC investigation of detention practices in Iraq in their role as CPA staff.

- The report was provided to the US and the UK as occupying powers. A copy was not provided to Australia.
- I was not advised by the Department of Defence of the reporting from the officers in Iraq on the ICRC report.

I am advised that the reporting focussed on the legal process issues rather than allegations of abuse about which the officers did not know the full extent.

It was also reported that the ICRC's concerns were being managed through the proper channels, between the ICRC and US and UK authorities.

Advice on the Australian officer's reporting of the matter was conveyed to me by the Department of Defence in early May 2004.

The Australian Government abhors any violation of international humanitarian law. We know that this abhorrence is shared by the US and UK Governments. The Australian Government welcomes the steps being taken to fully investigate the allegations, and take remedial action to ensure that abuse such as that alleged will not occur in future.

## BACKGROUND

The Australian domestic media continued heavy coverage of the allegations regarding Major O'Kane over the weekend and in today's media (31 May 2004). The Age newspaper claimed that "Defence Minister Robert Hill is trying to stop the Australian military lawyer who dealt with claims of abuse of Iraqi prisoners from appearing before a parliamentary committee on Monday". The Sydney Morning Herald, the Australian, the Canberra Times and the Adelaide Advertiser all carry stories regarding the O'Kane claims and that "he is not expected to face parliamentary committees due to be held today".

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On 27 May, The Sydney Morning Herald carried a report which claimed that an Australian military officer stationed in Baghdad was aware of allegations of prisoner abuse from October 2003. The report claimed that as Major George O'Kane was involved in the preparation of a response to an October 2003 ICRC report, this undercut Government assurances that they knew nothing of the abuses.

An article in the June 1 edition of The Bulletin magazine, quotes "diplomatic and military sources" as claiming that "Australians were aware of the abuse allegations" prior to the official ICRC report that was provided to the CPA in February 2004 and that this would have been "reported to Canberra via cables".

This report also claimed that an Amnesty International report on detainee abuses would have been provided to the Government in July 2003.

Various media agencies have also reported on the announcement by President Bush on 25 May 2004 to demolish the Abu Ghraib prison.

On 13 May, the Sydney Morning Herald reported your comments from 12 May that the images of abuse of Iraqi detainees would be a setback in the war against terrorism. The Age claimed on 13 May that you had said the US was taking appropriate action over the abuses.

On 12 May, The Sydney Morning Herald, The Australian, The Advertiser (Adelaide), The Canberra Times and The Courier Mail all reported on statements in Parliament by you on your knowledge of abuse of detainees in Iraq. The articles quoted your statements in Question Time that the Government had been made aware of reports of abuse in press reports in January 2004, and that the Government was aware of the ICRC report several months ago but that it did not receive a copy of the report as it was not a Detaining Power. The Senate also passed a motion on 11 May condemning the abuse of prisoners.

Minister Downer also stated in Parliament on 11 May that there was no record of ADF or Australian involvement in these abuses. The Australian (25 May 2004) claims that senior US Politicians predict senior Military Commanders will face courts martial over the alleged abuse of Iraqi detainees.

Since 13 May, international media outlets have reported heavily on the allegations of abuse of Iraqi detainees by coalition forces.

In the Senate on 12 May, you were asked by Senator Bartlett about an agreement signed by Brigadier McNarn to ensure that prisoners captured by our forces are treated in accordance with the Geneva convention. You responded that an agreement had been signed relating to the transfer of detained persons but that the agreement did not apply to instances where Australians were associated with the capture of individuals.

The Age, on 13 May, carried an article attributing to you comments that during the conflict in Iraq, Australian deployments in Iraq included a US soldier who would act as a detaining official during the capture of prisoners. The Age article also claimed that you stated that for the first three months of the conflict, Australia was an occupying power, with responsibilities for the protection of the Iraqi people.

On 12 May, the Courier Mail and The Australian reported comments by you that Australia was not a Detaining Power of Iraqi prisoners, and that there was no obligation to follow up on treatment to prisoners 'captured by Australian forces in Iraq'.

The Australian on 11 May 2004 claimed that Australia had a legal obligation to find out if any of the Iraqis taken prisoner by Australian forces had been mistreated. The author John Kerin claimed to have obtained a copy of an agreement signed by BRIG Maurie McNarn, the commander of Australia forces in the Middle East, which said that Australia had obligations to any prisoners captured by Australian forces.

In response to questioning on the ABC's 7:30 Report on 4 May as to whether Australian forces had been involved in any interrogation or incarceration of Iraqis, you stated that Australian forces hadn't ever been responsible for holding prisoners. You further commented that in the event that Australian personnel were responsible for holding prisoners that you would be very confident that they would behave appropriately

**ORIGINAL AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:**

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1 June

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IRAQ: PRISONERS OF WAR AND DETAINEES

3.24

*POSSIBLE QUESTION: When was the Government aware of abuses of Iraqi detainees in US-led detention facilities?*

#### TALKING POINTS

- *Australian Defence lawyers working in the coalition force headquarters and in the Coalition Provisional Authority were involved in issues relating to Iraqi facilities, but were not involved in, or aware of, abuses of Iraqi detainees to the extent revealed in recent media reporting.*
- *Australian Defence lawyers were aware of ICRC concerns regarding the mistreatment of Iraqi detainees, but they were involved in facilitating and addressing the concerns raised by the ICRC, such as in the October working papers.*
- *And in reports on detainee issues which were sent to Canberra, these lawyers reported that these concerns were being properly addressed by the responsible powers, the US and the UK.*

*IF ASKED: When was the Government aware of the ICRC working papers from October 2003?*

- *The Government was not aware of the ICRC working papers from October 2003. The Australian Government was not an addressee on that report. I would emphasise that the ICRC considers its report as confidential communications between itself as the responsible power, therefore we would not expect to be provided with a copy of the October report.*
- *I understand that Major O'Kane used the ICRC working papers in the preparation of his response to the ICRC.*
- *I understand that these documents were brought back to Australia by Major O'Kane after his deployment to Iraq. These documents were provided to the officers in the Department of Defence in early May 2004.*

- *However as the significance of these documents was not raised at that time, they were not reviewed until late last week.*

IF ASKED: Was the Government aware of the contents of the February ICRC report?

- On 10 February 2004, the head of the ICRC delegation in Iraq forwarded a report on the treatment of detained persons in Iraq to the head of the Coalition Provisional Authority, Ambassador Paul Bremer and the Commander of Combined Joint Task Force – 7, General Ricardo Sanchez.
- In keeping with the usual practice of the ICRC, the report was only made available to the Detaining Powers. The ICRC has stated that it “submitted its confidential reports to the authorities responsible on the basis of its mandate under the Geneva Conventions”.
- As Australia is not managing any detention centres in Iraq (nor is it a Detaining Power), the ICRC did not provide the Australian Government with a copy of the report.
- Australian officers in the Coalition Provisional Authority and the coalition’s military headquarters in Iraq were involved in the issue to the extent of facilitating the ICRC’s investigations and its contact with the coalition leadership in Iraq.
- In February 2004 the Australian officer *in the CPA* reported back to the Department of Defence in Canberra that he was working on issues related to an ICRC investigation of detention practices in Iraq.
- The report was provided to the US and the UK as occupying powers. A copy was not provided to Australia.
- I was not advised by the Department of Defence of the reporting from the officers in Iraq on the ICRC report.

The Australian Government abhors any violation of international humanitarian law. We know that this abhorrence is shared by the US and UK Governments. The Australian Government welcomes the steps being taken to fully investigate the allegations, and take remedial action to ensure that abuse such as that alleged will not occur in future.

*IF ASKED: About the so-called 'O'Kane surprise report'?*

*Major O'Kane submitted a post-deployment report at the end of his deployment in the coalition force headquarters. The report is being reviewed, and I understand this issue will be addressed in the Estimates Committee today.*

While working in the US-led coalition headquarters in a line position, Major O'Kane filed short weekly reports of his activities to the senior Australian officer in the coalition headquarters.

*None of Major O'Kane's situation reports contained reference to abuse, or that he held concerns regarding abuse of Iraqi detainees. Major O'Kane's reports did refer to work he was undertaking in response to the ICRC, but not to concerns regarding abuses.*

*And Major O'Kane has advised that he told the Sydney Morning Herald journalist that none of these reports contained reference to abuse of Iraqi prisoners such as depicted in the photographs that have recently appeared in the media.*

*At the time, Major O'Kane was satisfied that reports of concerns regarding detainee management were being addressed through the US chain of command which is appropriate as the US is the responsible power for Abu Ghraib.*



IF ASKED: About ADF officers' knowledge of the ICRC reports?

- ADF officers working in the coalition force headquarters and the Coalition Provisional Authority in Iraq were aware in October 2003 of ICRC concerns regarding detainee treatment, but were not aware of the serious nature of these allegations before press reporting of the US investigation in January 2004.

IF ASKED: Did any ADF personnel witness abuses of Iraqi detainees at Abu Ghraib prison?

- No Australian Defence personnel reported concerns with the treatment of Iraqi detainees which were serious enough to necessitate advice to Government Ministers, prior to the release of the photographs.
- Nevertheless, the Defence Department considered it prudent to ensure that no Defence personnel had witnessed or been advised of detainee abuses. Therefore Defence undertook a survey of those whose duties might have involved contact with Iraqi detainees.
- These included personnel working in the Australian and coalition force headquarters, personnel working in the Iraq Survey Group, members of the security *detachment*, and *Defence personnel working in the CPA*.

IF ASKED: Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration of Iraqis?

- While ADF personnel have travelled to Abu Ghraib prison, I'm advised no ADF personnel were involved in the interrogation of Iraqi prisoners.
- The Australian Iraq Survey Group contingent commander has confirmed that no Australian members of the ISG have been involved

in the conduct of interrogations of detainees in Iraq.

- Australian members of the ISG are only present at debriefings or meetings with sources who are offering to cooperate with the ISG.
- Australian ISG members do, however, contribute to the development of questions put to detainees as part of the search for Iraqi WMD.

**IF ASKED:** Did a photograph of Major O’Kane at the Abu Ghraib prison appear on a Defence website?

- Yes. The photograph of Major O’Kane was published on a page in Defence’s intranet, and was distributed to a number of tri-service addressees via email. It was not published on the TDLS internet website. The story and photograph were withdrawn from the TDLS intranet. It was considered inappropriate for photographs from Abu Ghraib to be publicised in light of the allegations of abuse that had recently become public.

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## BACKGROUND

*In Question Time (31 May 2004) in the House of Representatives the Prime Minister was asked why he had changed his view on the ICRC's October report. The Prime Minister replied that he had been informed on the report by the Department of Defence and that he had asked to see a copy of the report. The Prime Minister reinforced that he was not aware of the extent of abuse allegations until late April 2004. The Prime Minister was also asked why he did not advise Parliament of Major O'Kane's visits to Abu Ghraib prison, and on why Major O'Kane did not appear before the Senate Estimates Committee in person.*

### Media

*The Australian domestic print and electronic media have continued heavy reporting on the alleged abuse of Iraqi detainees and on alleged Australian prior knowledge of the alleged abuse.*

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This report also claimed that an Amnesty International report on detainee abuses would have been provided to the Government in July 2003.

#### **ADF Involvement**

During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division (SOD) that 301 personnel may have had some involvement with Iraqi Prisoners of War (PWs) by virtue of their official duties. Of these 301 personnel the Strategic Operations Division has managed to contact 286 with the remaining 15 unavailable due to discharge and overseas travel. SOD is endeavouring to contact the remaining 15 persons.

Those contacted have been and asked whether they had any involvement with Iraqi PWs or detainees and if so, whether they had seen or otherwise known, of any alleged abuse or mistreatment of those PWs or detainees. Each ADF member reported they were not aware of any allegations of mistreatment of Iraqi PWs or detainees.

58 respondents indicated they had some limited involvement with Iraqi PWs or detainees. Most of these respondents had visited Abu Ghraib prison, Camp Cropper or other US holding facilities, or had witnessed PWs being transported. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.

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( IRAQ: PRISONERS OF WAR AND DETAINEES

3.24

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#### **ADF Involvement**

During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division (SOD) that 301 personnel may have had some involvement with Iraqi Prisoners of War (PWs) by virtue of their official duties. Of these 301 personnel the Strategic Operations Division has managed to contact 286 with the remaining 15 unavailable due to discharge and overseas travel. SOD is endeavouring to contact the remaining 15 persons.

Those contacted have been asked whether they had any involvement with Iraqi PWs or detainees and if so, whether they had seen or otherwise known, of any alleged abuse or mistreatment of those PWs or detainees. Each ADF member reported they were not aware of any allegations of mistreatment of Iraqi PWs or detainees.

58 respondents indicated they had some limited involvement with Iraqi PWs or detainees. Most of these respondents had visited Abu Ghraib prison, Camp Cropper or other US holding facilities, or had witnessed PWs being transported. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.

ORIGINAL AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:

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1 June 2004

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*were not aware of, abuses of Iraqi detainees to the extent revealed in recent media reporting.*

*The Prime Minister has asked me/the Minister for Defence to make a detailed statement to the Senate on this issue, when the Senate resumes sitting.*

**IF ASKED:** About *Major O'Kane's post-deployment report?*

Major O'Kane submitted a post-deployment report at the end of his deployment in the coalition force headquarters. The report *was reviewed yesterday by the Senate Estimates Committee.*

While working in the US-led coalition headquarters in a line position, Major O'Kane filed short weekly reports of his activities to the senior Australian officer in the coalition headquarters.

- None of Major O'Kane's situation reports contained reference to abuse, or that he held concerns regarding abuse of Iraqi detainees. Major O'Kane's reports did refer to work he was undertaking in response to the ICRC, but not to concerns regarding abuses.

- And Major O'Kane has advised that he told the Sydney Morning Herald journalist that none of these reports contained reference to abuse of Iraqi prisoners such as depicted in the photographs that have recently appeared in the media.

- At the time, Major O'Kane was satisfied that reports of concerns regarding detainee management were being addressed through the US chain of command which is appropriate as the US is the responsible power for Abu Ghraib.

**IF ASKED:** About ADF officers' knowledge of the ICRC reports?

ADF officers working in the coalition force headquarters and the Coalition Provisional Authority in Iraq were aware in October 2003 of ICRC concerns regarding detainee treatment, but were not aware of the serious nature of these allegations before press reporting of the

US investigation in January 2004.

IF ASKED: Did any ADF personnel witness abuses of Iraqi detainees at Abu Ghraib prison?

- No Australian Defence personnel reported concerns with the treatment of Iraqi detainees which were serious enough to necessitate advice to Government Ministers, prior to the release of the photographs.
- Nevertheless, the Defence Department considered it prudent to ensure that no Defence personnel had witnessed or been advised of detainee abuses. Therefore Defence undertook a survey of those whose duties might have involved contact with Iraqi detainees.
- These included personnel working in the Australian and coalition force headquarters, personnel working in the Iraq Survey Group, members of the security detachment, and Defence personnel working in the CPA.

IF ASKED: Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration of Iraqis?

- While ADF personnel have travelled to Abu Ghraib prison, I'm advised no ADF personnel were involved in the interrogation of Iraqi prisoners.
- The Australian Iraq Survey Group contingent commander has confirmed that no Australian members of the ISG have been involved in the conduct of interrogations of detainees in Iraq.
- Australian members of the ISG are only present at debriefings or meetings with sources who are offering to cooperate with the ISG.
- Australian ISG members do, however, contribute to the development of questions put to detainees as part of the search

for Iraqi WMD.

IF ASKED: Did a photograph of Major O'Kane at the Abu Ghraib prison appear on a Defence website?

Yes. The photograph of Major O'Kane was published on a page in Defence's intranet, and was distributed to a number of tri-service addressees via email. It was not published on the TDLS internet website. The story and photograph were withdrawn from the TDLS intranet. It was considered inappropriate for photographs from Abu Ghraib to be publicised in light of the allegations of abuse that had recently become public.

## BACKGROUND

*In a press conference on 1 June 2004, the Prime Minister stated that his statements abuse allegations which were made on 30 May were based on advice provided by the Department of Defence, and that this advice had subsequently been found to be wrong. The Prime Minister stated that he was very unhappy that he was misinformed by the Department. The Prime Minister reinforced that there was no implication that ADF personnel were involved in the abuse of Iraqi detainees.*

*In Question Time on 1 June 2004, the Prime Minister was asked when the Government first learned of allegations of abuse at Abu Ghraib prison. The Prime Minister replied that neither he nor the Minister for Defence knew of detainee abuse until April and that all the Prime Minister's advice was provided by the Department of Defence. The Prime Minister was asked about the Senate Estimates hearings and questions that were not answered by Defence officials relating to detainee abuse in Iraq and as on 31 May whether the Major O'Kane would appear before the Senate Committee. The Prime Minister replied that Major O'Kane would not appear.*

*The Prime Minister was also asked how it had taken only a day for two opposition Senators to find out in a day what 6 ADF lawyers knew of prisoner abuse allegations and also why Defence removed a photo of Major O'Kane in Abu Ghraib from its website. The Prime Minister responded that the matter had been dealt with at Senate Estimates and the photo is a matter in control of Defence. The Prime Minister was also asked if the 2004 February Red Cross report detailed violations of humanitarian law observed prior to November 2003 and if the Prime Minister had received the report. The Prime Minister replied that he would seek advice on the matter.*

*In Question Time (31 May 2004) in the House of Representatives the Prime Minister was asked why he had changed his view on the ICRC's October report. The Prime Minister replied that he had been informed on the report by the Department of Defence and that he had asked to see a copy of the report. The Prime Minister reinforced that he was not aware of the extent of abuse allegations until late April 2004. The Prime Minister was also asked why he did not advise Parliament of Major O'Kane's visits to Abu Ghraib prison, and on why Major O'Kane did not appear before the Senate Estimates Committee in person.*

## Media

*The Age (2 June 2004) has claimed that "it's Children Overboard all over again" and reported statements by the Prime Minister that he was unhappy at being misled by Defence. The Sydney Morning Herald (2 June 2004) claimed that "the Iraq prison torture and the boat people episodes have involved an alleged failure of defence authorities to alert higher-ups to facts unpalatable to the Government".*

*The Age (2 June 2004) has reported that the Prime Minister "announced the Defence Minister Robert Hill would make a statement to Parliament detailing all the information had received about Abu Ghraib".*

*The Herald Sun (2 June 2004) claimed that " The Howard Government was almost certainly aware of allegations of the torture of Iraqi prisoners almost a year ago, Amnesty International has claimed. The Daily Telegraph(2 June 2004) has claimed that "the Defence Department has left John Howard stranded again and that the again the issue is failed communication")*.

*The Australian Financial Review (2 June 2004) has claimed that " Mr Howard, Senator Hill, the CDF and Secretary Smith have all made incorrect public statements in recent days".*

The Sydney Morning Herald (SMH) 1 June 2004 reported on details of Major O'Kane's visits to the Abu Ghraib prison and focused on the 31 May 2004 Senate Estimates hearings. The article claimed "the Secretary, Ric Smith and General Peter Cosgrove were also shown to have made misleading statements". The SMH further claimed that "the trio at the apex of Australia's defence establishment brought discredit upon themselves and the armed services during the saga of what Australian's knew about allegations of prisoner abuse in Iraq".

The Courier Mail (1 June 2004) has claimed that "at least seven Australian military lawyers had visited the notorious Abu Ghraib prison in Baghdad and heard nothing, according to the military". The article further reported on the outcomes of the Senate Estimates hearing on 31 May 2004.

The Age newspaper (1 June 2004) reported on the senate estimates hearings on 31 May 2004, the article claimed that Major O'Kane was "barred from appearing before the estimates hearing by defence Minister Robert Hill". The Courier Mail (1 June 2004) Establishment slips in shifting sands over scandal, reported that " Major O'Kane has known about horrific events at Abu Ghraib since some time late last year, possibly as early as October".

The ABC Online 1 June 2004 reports that "the PM backs gag on soldiers Abu Ghraib evidence" and the ABC Online 31 May reported that " Major O'Kane barred from Senate Estimates" and further reported "Government accused of cover-up in barring O'Kane from hearings".

The Australian domestic media continued heavy coverage of the allegations regarding Major O'Kane over the weekend and in today's media (31 May 2004). The Age newspaper claimed that " Defence Minister Robert Hill is trying to stop the Australian military lawyer who dealt with claims of abuse of Iraqi prisoners from appearing before a parliamentary committee on Monday ". The Sydney Morning Herald, the Australian , the Canberra Times and the Adelaide Advertiser all carry stories regarding the O'Kane claims and that " he is not expected to face parliamentary committees due to be held today".

The Adelaide Advertiser (31 May 2004) contends that " an Australian military lawyer stationed in Iraq has told the Federal Government he knew nothing of prisoner abuse claims before January, Defence Minister Robert Hill said yesterday".

On 27 May, The Sydney Morning Herald carried a report which claimed that an Australian military officer stationed in Baghdad was aware of allegations of prisoner abuse from October 2003. The report claimed that as Major George O'Kane was involved in the preparation of a response to an October 2003 ICRC report, this undercut Government assurances that they knew nothing of the abuses.

An article in the June 1 edition of The Bulletin magazine, quotes "diplomatic and military sources" as claiming that that "Australians were aware of the abuse allegations" prior to the official ICRC report that was provided to the CPA in February 2004 and that this would have been "reported to Canberra via cables". This report also claimed that an Amnesty International report on detainee abuses would have been provided to the Government in July 2003.

#### **ADF Involvement**

During OPERATION CATALYST, over 3000 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division (SOD) that 302 personnel may have had some involvement with Iraqi Prisoners of War (PWs) by virtue of their official duties. Of these 301 personnel the Strategic Operations Division has managed to contact 299 with the remaining 3 unavailable due to discharge and overseas travel. SOD is endeavouring to contact the remaining 3 persons.

Those contacted have been and asked whether they had any involvement with Iraqi PWs or detainees and if so, whether they had seen or otherwise known, of any alleged abuse or mistreatment of those PWs or detainees. Each ADF member reported they were not aware of any allegations of mistreatment of Iraqi PWs or detainees.

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2 June 2004

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3 June

IRAQ: PRISONERS OF WAR AND DETAINEES

3.24

POSSIBLE QUESTION: When was the Government aware of abuses of Iraqi detainees in US-led detention facilities?

TALKING POINTS

- As the Secretary of the Department of Defence and the Chief of the Defence Force stated yesterday, the statement made on 28 May was made based on the best knowledge held at that time.
- The October working papers, which Major O’Kane used in the preparation of his response to the ICRC, were in the custody of Major O’Kane from his return to Australia in February 2004 until they were handed over to a Defence official in early May.
  - However, the significance of these working papers did not become fully clear to the Department of Defence until Sunday 30 May.
- I understand that the Australian Government did not receive a copy of the October working papers at any other time. I would emphasise that the ICRC considers its report as confidential communications between itself as the responsible power as confidential, therefore we would not expect to be provided with a copy of the October working papers.
- Australian Defence lawyers working in the coalition force headquarters and in the Coalition Provisional Authority were aware of ICRC concerns regarding the mistreatment of Iraqi detainees and conditions in US detention facilities. These officers were involved in facilitating and addressing the concerns raised by the ICRC, such as in the October working papers.
  - And in their situation reports which were sent to Canberra, these lawyers reported that concerns regarding detainee treatment were being properly addressed by the responsible powers, the US and the UK.

- But it is important to clarify that Australian Defence lawyers were not aware of, abuses of Iraqi detainees to the extent revealed in recent media reporting.

- The Prime Minister has asked me/the Minister for Defence to make a detailed statement to the Senate on this issue, when the Senate resumes sitting.

IF ASKED: About Major O’Kane’s post-deployment report?

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## 3.24

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### Media

*On 3 June 2004 all major Australian newspapers have reported head of the DFAT Iraq Task Force, John Quinn's, 2 June statement to Senate Estimates that both DFAT and the Attorney-General's Department were advised of allegations of mistreatment of prisoners in November 2003. It was reported that then Iraqi Human Rights Minister, Abdel Bassat Turki, raised concerns regarding lack of respect for detainees, overcrowding, limited access to lawyers and the accuracy of information used to detain people during an informal meeting with an Australian member of the CPA, LTCOL Paul Muggleton. It was reported that LTCOL Muggleton included the claims in a SITREP forwarded to Defence, DFAT and the Attorney-General's Department, noting that they lacked specificity.*