

## Portfolio overview and major corporate issues

### Question 4

**Senator Bishop**

**Hansard 31 May, p. 44**

**Budget Papers**

Please provide an explanation of Table 20 in Budget Paper No.1.

### RESPONSE

Table 20 in Budget Paper No.1 presents an estimate of net capital investment by function, on a Government Finance Statistics basis. The Government Finance Statistics reporting framework is a specialised accounting and financial reporting system designed to support economic analysis of the public sector and is consistent with international statistical standards.

The net capital investment by function measures the change in the Australian Government's stock of non-financial assets, by function, due to transactions. As such, it measures the net effect of purchases, sales and consumption (for example, depreciation of fixed assets and use of inventory) of non-financial assets during an accounting period.

Under the Government Finance Statistics framework, specialist military equipment is expensed on purchase and therefore not considered an asset for reporting purposes. Table 20 in Budget Paper No.1 therefore does not include any transactions relating to specialist military equipment, which represents the bulk of Defence's major assets.

The Defence figures in Table 20 are based on the Defence function, and therefore include the Department of Defence and the Defence Materiel Organisation.

Using the 2006-07 budget year as an example, the table below shows the make up of the minus \$10m in this year.

| <b>Defence</b>                                | <b>\$m</b> |
|---|------------|
| Purchase of Property, Plant and Equipment     | 585        |
| Depreciation on Property, Plant and Equipment | -650       |
| Sale of Property, Plant and Equipment         | -38        |
| Movements in Inventory balances               | 100        |
| <b>Sub-Total Defence</b>                      | <b>-3</b>  |
| <b>DMO</b>                                    |            |
| Purchase of Property, Plant and Equipment     | 100        |
| Depreciation on Property, Plant and Equipment | -73        |
| Sale of Property, Plant and Equipment         | -34        |
| <b>Sub-Total DMO</b>                          | <b>-7</b>  |
| <b>TOTAL</b>                                  | <b>-10</b> |

The minus \$10m is a reflection that depreciation and sale of assets is marginally higher than the purchase of new assets.

## **Question 17**

**Senators Evans & Faulkner**

**Hansard 1 June, pp. 59-60**

### **Defence Reviews**

How many reviews of Defence management processes were completed in 2003, 2004 and 2005, and for 2005-06 what was the cost of reviews (including staff resources) either commenced, ongoing or concluded during that period?

### **RESPONSE**

“Review” is a normal management function. Every manager, senior to junior, will spend some of their time identifying processes that can be improved, by collecting data, and identifying and evaluating improvement options. In addition, like all other public agencies, Defence has formal internal audit and review process, and undertakes regular reviews of its major contracts, in accordance with the terms and condition of those contracts, and best practice in government and the private sector.

It would not be practical to list the many internal defence activities over the last few years that could be characterised as being a review.

The following lists some of the more large-scale reviews of Defence management processes completed between calendar years 2003 and 2005. This list does not purport to be definitive, but it does present a number of high profile activities. It excludes scientific studies, internal audits, project and environment studies and the post-activity reports typically prepared after operations or exercises.

## **2003**

### **Government Initiated**

- Defence Procurement Review (Kinnaird Review)
- Defence Industry Market Review
- Defence Capability Review

### **Secretary/Chief of Defence Force Initiated**

- Strategic Workforce Planning Review
- Manpower Defence Force Recruiting Contract Review (Boston Consultancy Group Report)

### **Portfolio Evaluations**

- Doctrine Development Responsibilities in the Australian Defence Organisation
- Impact of Accrual Accounting on Management Practices

## **Other**

- Boston Consulting Group Report – review of management structure for IT functions.
- Review of DSTO's External Engagement & Contributions to Australia's Wealth.
- Statutory Review of the Part IIIAAA of the Defence Act.

## **2004**

### **Government Initiated**

- Review of ADF's Joint Redress of Grievance processes
- Flood Report – Inquiry into Australian Intelligence Organisation
- Clarke Review – Veterans' Entitlements
- Special Air Service (SAS) Health Review

### **Secretary/Chief of Defence Force Initiated**

- Review of the effectiveness of interoperability between armed forces of Australia and United States
- Review of Military Health services (Consultancy)

### **Portfolio Evaluations**

- Corporate Governance of the Defence Information Environment

## **Other**

- Intelligence and Security Process Review (Consultancy)
- Corporate Resourcing Review
- Logistics Management Review

## **2005**

### **Boards of Inquiry**

- Board of Inquiry into the Sea King accident – HMAS Kanimbla

### **Government Initiated**

- Review into Recruiting and Retention
- Podger Review – Review of culture in the ADF training
- Review of Defence Funding Guidance Beyond 2010-11
- Australian Defence Force Command and Control Structures

### **Secretary/Chief of Defence Force Initiated**

- Health Services Review

### **Evaluations**

- Defence Civilian Performance Schemes
- The Effectiveness of the Defence Customer Supplier Model

## **Other**

- Reserve Remuneration Review
- Joint Agency Records Review

## **2006**

### **Boards of Inquiry**

- Board of Inquiry into the death and repatriation of Private Jake Kovco
- Review of Australian Defence Force repatriation of processes and procedures
- Investigation into the loss of the draft report into the repatriation of PTE Kovco's body.

### **Other**

- Defence Material Organisation (DMO) procurement practices for clothing and personal equipment for members of the Australian Defence Force members.
- Navy's Seasprite helicopter program – Super Seasprite
- Industry Policy
- Foreign fisheries

Since many of the reviews undertaken in 2005-06 are a part normal management functions (including budget development processes), the costs (including staff resources) of the various reviews are not separated from other costs in the relevant work areas, unless raised under contract with an external provider.

The costs of all consultancy contracts over \$10, 000 are recorded in the Defence Annual Report for the relevant financial year.

## **Defence Materiel Organisation**

### **Outcome 1: Defence capabilities are supported through efficient and effective acquisition and through–life support of materiel**

#### **Question 9**

**Senator Bishop**

**Hansard 31 May, p. 94**

#### **Bolide missiles**

How many missiles have been delivered to date under the contract with SAAB, and what percentage is this of the total number?

#### **RESPONSE**

The number of delivered Bolide missiles is classified. Defence negotiated two contracts to procure Bolide Missiles from SAAB Bofors. Defence has accepted delivery of all missiles under the first contract and 30 per cent of missiles under the second contract. As at 17 July 2006, the combined percentage of missiles delivered to Defence represents 60 percent of the combined quantity under both contracts.

## **Question 10**

**Senator Bishop**

**Hansard 31 May, p. 97**

### **Strategic Agreement for Munitions Supply contract with ADI Limited 1999**

Please provide some background on the business case for the 1999 contract with ADI.

## **RESPONSE**

Until May 1989, the Commonwealth owned and operated a number of facilities involved in the manufacture of munitions as well as the Captain Cook Dockyard at Garden Island. These facilities were under the 'control' of the Office of Defence Production.

On 3 May 1989, Australian Defence Industries, now ADI Limited (ADI), was formed as a wholly owned Government Business Enterprise. Ammunition manufacturing facilities transferred from the Commonwealth to ADI included the sites at Lithgow, St Marys and Mulwala in New South Wales, and Footscray and Maribyrnong in Victoria.

In August 1990, the Managing Director of ADI wrote to the Chief of the Defence Force indicating that ADI considered that the munitions manufacturing business was not cost effective and therefore they should cease the manufacture of munitions for the ADF. ADI also indicated that if Defence wished to have a domestic manufacturing capability then the current aging ADI facilities should be closed and a modern appropriately sized facility be constructed. The Government considered the proposition and after two years of negotiation an agreement was signed in July 1993.

This agreement was known as the Long Term Ammunition Agreement and was signed on behalf on the Commonwealth by the then Minister Assisting the Minister for Defence for Industry, Mr Gary Punch. The then Deputy Secretary Acquisition and Logistics, Mr Andrew Podger witnessed the Minister's signature.

The Long Term Ammunition Agreement required ADI to invest \$148m (capped in 1992 dollars) to construct a new facility at Benalla from which the Commonwealth would procure munitions for a period of 20 years to 30 June 2015. It was also agreed that the Commonwealth would pay to ADI, as part of the cost of munitions, a return on ADI's investment. This effectively meant that ADI would recoup its investment by 30 June 2015.

In 1997, the Managing Director of ADI wrote to the Minister for Defence indicating that the company was now in a position where the Commonwealth could sell its shareholding in ADI. The 'sale' was managed by the then Office of Asset Sales and Information Technology Outsourcing, within the Department of Finance. Business Advisers to the Office of Asset Sales and Information Technology Outsourcing considered that the ammunition business of

ADI was valued at between 62 per cent and 70 per cent of the total value of ADI as a going concern.

The sale of ADI provided both parties the opportunity to examine the relationship that had been established under the 1993 Long Term Ammunition Agreement. Changes were required due to the fact that the Government ultimately owned both supplier and customer, and post sale ADI would be on a wholly commercial footing.

The key principles Defence sought to incorporate in a revised agreement were:

- Separating-out payment for munition production capability and the buying of munitions,
- managing tension between investor certainty and customer flexibility,
- managing trade off between the term of the agreement, rate of return, munition prices and value of the business,
- integrating local munition production capability.

The Strategic Agreement Munitions Supply was executed on 9 July 1998 and expires on 30 June 2015. The payment basis for Strategic Agreement Munitions Supply reflected the former Long Term Ammunitions Agreement structure.

In June 1998, the Minister for Finance announced the commencement of the ADI sale process. Tenders closed on 30 June 1999 and the Transfield Thompson-CSF Joint Venture, now Transfield Thales Joint Venture, was announced as the preferred bidder in August 1999. The sale was concluded on 29 November 1999 and was the subject of a Senate Foreign Affairs Defence and Trade References Committee review. The Committee took written submissions as well as evidence in Sydney, Melbourne and Canberra over October and November 1999 and tabled its report in February 2000.

Some amendments were made to Strategic Agreement Munitions Supply as part of the sale process and a revised Strategic Agreement Munitions Supply was executed with the new owners of ADI in late November 1999. This agreement runs until 2015 with a review to be conducted by 2008.



**Question 16**

**Senator Bishop**

**Hansard 1 June, pp. 53-54**

**Inquiry into Naval Shipbuilding**

Can the Minister for Defence confirm whether the Government endorses the views expressed in Defence's submission to the inquiry?

**RESPONSE**

The Government endorses the views expressed in Defence's submission to the inquiry into Naval Shipbuilding, including Defence's comprehensive response to Questions on Notice arising from the hearing held on 28 March 2006.

**Question 21**

**Senator Bishop**

**Hansard 1 June, p. 74**

**M113 Upgrade**

How much is the next milestone payment?

**RESPONSE**

As at 1 June 2006, the value of the next milestone payment was \$133,172.98. The M113 upgrade project has 2,577 milestone payments. Each milestone reflects a delivery to the Commonwealth in accordance with the contract. The next milestone payment is for materials for the production and assembly of one of the Initial Production Vehicles. The next critical milestone payment will occur at the completion of the Armoured Personnel Carrier (APC) Production Readiness Review. At this time, Tenix will be entitled to claim \$73.40m.

## **Question W5**

**Senator Bishop**

**MRH-90**

On 17 June 2005, in a media release from the Minister for Defence, Senator Hill said the new squadron will be delivered in 2007 with all 12 aircraft expected to be delivered by 2008.

- a) when were contract negotiations completed
- b) when was the contract signed
- c) what are the current timeframes for the delivery of the new squadron and
- d) when will all 12 aircraft now be delivered.

## **RESPONSE**

- a) Contract negotiations were completed on 1 June 2005 for the Contract (Acquisition). Negotiations on the Contract (Sustainment) and Program Agreement were completed on 28 July 2005.
- b) Contract (Acquisition) was signed on 2 June 2005. Contract (Sustainment) and Program Agreement were signed on 29 July 2005.
- c) The current timeframes for the delivery of the 12 MRH 90s are:
  - i) MRH 1 and 2: 19 October 2007 (to enable acceptance prior to In Service Date of 19 December 2007, noting that the Commonwealth acceptance process is planned to take two months after delivery).
  - ii) MRH 3: 30 March 2008
  - iii) MRH 4: 30 April 2008.
  - iv) MRH 5: 17 October 2008.
  - v) MRH 6: 17 December 2008.
  - vi) MRH 7: 31 January 2009.
  - vii) MRH 8: 28 February 2009.
  - viii) MRH 9: 1 May 2009.
  - ix) MRH 10: 18 June 2009 (first Instrumented MRH 90).
  - x) MRH 11: 15 August 2009 (second instrumented MRH 90).
  - xi) MRH 12: 1 October 2009.
- d) All 12 MRH 90s will now be delivered by 1 October 2009 with Commonwealth Acceptance of the 12th MRH 90 planned for December 2009.

## **Question W6**

### **Senator Bishop**

#### **Amphibious ships**

- a) What is the selection methodology that will be used for choosing the winning proposal for the amphibious ships project?
- b) What is the basis for the selection methodology and how was it devised.
- c) Will Australian Industry Involvement form part of the selection methodology and if not, why not.
- d) What aspects of Australian Industry Involvement will be taken into account when selecting the winning bid?
- e) Will Australian Industry Involvement be a discriminator in choosing the winning bid?
- f) What Australia Industry targets will need to be met by the successful bidder for the amphibious ship project?
- g) Can you confirm that DMO's RFT for the amphibious ship project does not ask the bidders to cost an Australian construction?
- h) Can you confirm that in the early stage of this program there were at least 3 or 4 Australian companies trying to partner with only 2 European builders? Would this give leverage to the Europeans in terms of their ability to force concessions from the Australian builders with regard to allocation of work share and, if not, why not.
- i) What safeguards were put in place to ensure Australian companies such as ADI, Austal and Tenix were not negotiating from a position of weakness when in search of a partner amongst the European shipbuilders selected by DMO for the LHD program?
- j) In negotiations with the European shipbuilders would Government-owned companies have greater leverage and, if not, why not.
- k) Following comments by senior officials in DMO that if Australia's shipbuilders cannot keep the price down, then DMO will procure the ships directly from Europe. What safeguards are in place to ensure the Europeans are unable to artificially drive up the cost of construction in Australia so they can get the whole job rather than only part of it?
- l) Was consideration given for DMO to run two competitions in parallel, such that in one competition the two European companies had to compete to provide the best design and in the second competition, the Australian shipyards had to compete to build the preferred design? If not, why did DMO send 3 or 4 comparatively small Australian companies out

to negotiate sole source partnerships with very large, Government-owned companies in Europe?

- m) Australia's shipbuilders are required to meet stringent standards for Occupational Health and Safety and also for protection of the Environment. Such compliance adds cost if the ships are built in Australia.
  - i) Can you confirm that the European companies conform to those same standards; and,
  - ii) if modules are to be constructed elsewhere in Europe or Asia, can you confirm that the same standards will be imposed.
  
- n) Is the cost of labour generally higher, lower or about the same in Spain and France compared to the cost of labour in Australia; and please quantify, and provide examples.
  
- o) Typically the cost of procuring materials and equipment accounts for about 50-60 percent of a ship's total budget;
  - i) is this cost generally higher, lower or about the same for shipbuilders in Spain and France compared to the cost for shipbuilders in Australia;
  - ii) please quantify, and provide examples.
  
- p) In terms of productivity and efficiency, are shipbuilders in Spain and France generally better, worse or about the same as shipbuilders in Australia;
  - i) please quantify, and provide examples.
  
- q) Has DMO benchmarked Australia's shipbuilders against those in Spain and France; if so, how do they compare;
  - i) please quantify, and provide examples.
  - ii) If not, why not.
  
- r) Can you confirm that the RFT requires Tenix and ADI to propose two baseline options, and although additional options are also required, only the two baseline options will be evaluation for source selection?
  - i) If so, what steps has DMO taken to ensure that those two baseline options involve substantial Australian content?
  
- s) Will DMO accept bids that propose nearly all work being done off-shore if the focus of the baseline options is generically described as "value for money"?

## **RESPONSE**

- a) Tenderers are required to submit proposals in accordance with the requirements of the Request for Tender ADAS 03/05, which is based on the DMO's standard contracting template. The Request for Tender requires Tenderers to submit Baseline bids which must be within budgetary guidance as specified in the Request for Tender. Tenderers must also respond to specified Commonwealth mandated options and may provide tenderer initiated options should they wish.

The DMO will submit a recommendation of the preferred tenderer to Government on the basis of its evaluation of the baseline bids submitted by tenderers. The tenders will be evaluated on the basis of best value for money in accordance with the evaluation criteria set out in the Request for Tender.

- b) The selection methodology is designed to ensure that the Commonwealth receives responses which are based on a fixed design and which to the maximum extent possible develop or sustain defence industry capability in Australia within the program budget. The fixed design approach minimizes technical and schedule risk and enables Australian primes to tender with confidence. The methodology specifically takes account of the need to provide maximum opportunity for competitive Australian industry solutions while meeting the required timeframe for delivery. This is in accordance with Government's stated preference for an Australian build, though not at any price. Evaluation of tenders will be based on best value for money, which is consistent with the practice applied across all the DMO's procurement projects.
- c) Yes, Australian Industry Involvement will form part of the selection methodology. One of the evaluation criteria notified to the tenderers in the Request for Tender is "the extent to which the tender satisfies the industry requirements and any Australian Industry Capability objectives of the Request for Tender."
- d) Tenderers must provide a draft Australian Industry Capability Plan which details the benefits to both Defence and industry as a result of adopting the proposal. Tenderers are requested to detail such benefits in terms of:
  - i) reduced acquisition and/or through life support costs;
  - ii) reduced turn-around times for repairs;
  - iii) reduced supply times;
  - iv) increased sustainability through Research & Development and exports;
  - v) skills and employment generated by this Contract; and
  - vi) other commercial benefits.

This approach is consistent with the need to ensure that Australian industry is able to support the ships, and that that capability is sustainable through life.

- e) A Tenderer's Australian Industry Capability proposal will be one of the factors taken into account by the DMO in assessing which proposal represents best value for money to the Commonwealth.
- f) The Request for Tender does not specify particular dollar targets for Australian Industry Involvement. The DMO now places more emphasis on Australian Industry Capability Outcomes, which seek to develop and sustain critical industry capabilities. Industry Capability Outcomes have been specified in the Request for Tender. The successful bidder will be required to achieve these Outcomes and maximize the amount of Australian industry activity where this represents value for money.

- g) The Request for Tender in no way excludes or discourages an Australian build. As part of its market research, the DMO obtained quotations from four Australian shipbuilders for an Australian construction of each design as part of an Australian build costing process conducted over the period January to March 2005. This exercise has provided Tenderers and DMO with valuable cost benchmarking data.

The Request for Tender takes account of Government's stated preference for an Australian build, though not at any price. Thus, although Tenderers are required to submit proposals which will provide two ships within stated budgetary guidance, the Request for Tender also provides for 'Tender Initiated Options', whereby Tenderers may provide a bid that exceeds budgetary guidance but which maximises Australian construction.

- h) The acquisition strategy provided the opportunity for any Australian shipbuilder to tender either or both of the two designs that were assessed as meeting Defence's capability requirements. This created a competitive environment both between the designers and between the Australian shipbuilders.

Four Australian shipbuilders were involved in earlier phases of the Project. Subsequently, ASC withdrew to concentrate on its role as builder of the Air Warfare Destroyer and Austal also notified Defence of its decision not to proceed.

The remaining shipbuilders will be able to negotiate work share arrangements with their respective designers in the context of the Request for Tender requirements, including budget. These arrangements will become apparent once tenders are received. These are commercial matters for the shipbuilders and the designers.

- i) The Landing Helicopter Dock program acquisition strategy established that Australian shipbuilders would have the opportunity to tender either or both designs as part of a Request for Tender response. This places the Australian shipbuilders in the position of prime contractor as designers are unable to tender either as prime or in their own right. It also creates a competitive environment between the two designers as the Australian shipbuilders were not necessarily restricted to tendering one design.
- j) The question has not arisen as the sole remaining Government-owned company (ASC) is not involved. The contending designers are owned ultimately by their home governments, however there is no evidence this has provided them with greater leverage in negotiations with the Australian companies.
- k) Defence is not aware of these specific comments. However, they appear to paraphrase part of the recommendations of the Defence Procurement Review (Kinnaird Report), that is, that a military off-the-shelf option be included in the business case for every acquisition proposal submitted to Government.

The Request for Tender requires a high level of visibility of costing information in order to ensure that the designers do not artificially inflate costs of construction in Australia. In addition prior to Government First Pass approval, the DMO engaged in detailed costing exercises with Australian shipbuilders (The Australian Shipbuilding Advisory Group) and

designers in relation to construction costs for both Australian and overseas builds. The DMO also contracted with an independent Industry Sector cost estimator to develop costing estimates.

- l) The DMO considered a range of potential acquisition strategies for the Landing Helicopter Dock program, including parallel design and build processes. The strategy that it has implemented allows for maximum competition between the designers and for maximum participation in the process by the Australian shipbuilders. In addition, the process adopted by the DMO allows the shipbuilders and designers to align themselves commercially prior to submission of their response.
- m)
  - i) In accordance with standard Departmental practice, the JP2048 Phase 4A/B Contract will include provisions dealing with applicable law (Australia) and compliance with Australian manufacturing standards, Occupational Health & Safety requirements, and environment requirements, as well as provisions dealing with insurance, risk allocation and liability management.
  - ii) Those countries which are members of the European Union conform to standards for environmental protection and occupational health and safety which in general terms are comparable with those applying in Australia.
- n) Based on costing data obtained from Project activities undertaken before First Pass Approval, labour costs in Australia, France and Spain, when considered across a range of categories, fall within a relatively narrow range. However it should be noted that it is difficult to compare labour costs across the three regions given the sometimes differing methodologies that are applied to attributing non-labour elements within stated labour costs.



- o) i and ii) The percentage of the ship's budget that is attributable to the procurement of materials and equipment will differ significantly regardless of the country, depending on the size and type of ship being purchased, the acquisition strategy, the impact of non-recurring design costs, design licences, infrastructure, militarized requirements and testing requirements.

This extract from a table provided in the original Defence submission demonstrates that when examining just one of these variables, the class of ship, significant variations can be identified.

| <b>Project Element</b>               | <b>Combatant Ship Build %</b> | <b>Support Ship Build %</b> |
|--------------------------------------|-------------------------------|-----------------------------|
| Platform Design                      | 4                             | 7                           |
| Hull, Machinery and Equipment        | 28                            | 40                          |
| Logistics support including Training | 17                            | 25                          |
| Combat Systems                       | 42                            | 15                          |
| Project Management                   | 9                             | 13                          |
| Total                                | 100                           | 100                         |

**Table 1: Percentage of Total Project Cost (extract)**

While the above cost elements also include labour in each of the items, it serves to show that it is very difficult to quantify the cost of procuring the material and equipment as a percentage of Total Project Cost for a generic project.

One other major variable is the acquisition strategy (including the number of ships to be acquired and whether ships are newly designed or 2<sup>nd</sup> hand), which will affect the overall percentage of costs attributed to Design and Project Management.

There is no way of establishing adequate comparison between Australia, France and Spain until the Request for Tender is returned. At that stage the Project will be able to explore the detailed cost breakdown.

- p) It is extremely difficult to give an absolute comparative answer in terms of productivity and efficiency during a shipbuilding program, especially in circumstances where a program of the size and type of the Landing Helicopter Dock program has not been undertaken in Australia before. Numerous variables apply to negatively affect productivity and efficiency at the commencement of a new shipbuilding program. These may include:
- The respective roles of the designer and the builder, and aspects of their relationship;
  - The impact of non-recurring costs on the program;
  - Environmental factors such as adoption of new and unfamiliar technologies and processes.

Typically, the more ships in a program, the greater the scope for productivity and efficiency. Non-recurrent costs can be amortised over a longer production run and as the

project progresses experience increases and new efficiencies inform the consequent learning process. Generally, it can be expected that efficiency improvements and learning curve benefits are seen on fleet builds of 4 or more. The ANZAC Ship Project for ten surface combatants is a case in point.

- q) In a generic sense it is difficult to benchmark Australian shipbuilders against those in France and Spain as a program of this size for this type has not been undertaken in Australia before.

In relation to the Landing Helicopter Dock project, specifically, the DMO has sought (via a Request for Quotation process) data on costs and build strategies from each of the Australian shipbuilders for building each design in Australia. Each European designer was also asked (via a Request for Quotation) to provide similar information for building its design in Australia, based on the work that they had completed with the Australian shipbuilders through Risk Reduction and Design Studies. Each designer was also asked to quote the cost of building its design in the country of origin.

As an independent reference point, the DMO contracted the independent industry consultants BMT/Appledore to develop independent cost estimates of building each design in Australia. The information was provided to the project on a commercial-in-confidence basis and given the stage of the Landing Helicopter Dock tendering process this caveat still applies.

- r) The DMO confirms that the Request for Tender requires the provision of two baseline options and that these baseline options will be used as the basis of a source selection decision to be made by the Commonwealth.

The baseline options require tenderers to develop prices for both the platform and combat system elements of the Landing Helicopter Dock ship and provide the opportunity for tenderers to maximise the level of Australian content within the specified budget cap. See also a) and b) above.

- s) As advised to the tenderers, the DMO will evaluate tenders on the basis of best value for money, which takes into account, amongst other things, the affordability of the bid, the proposed Australian Industry Capability Plan and the proposed Ship build strategy. See also a) and b) above.

## **Question W10**

### **Senator Bishop**

#### **Equipment of infantry deploying to Iraq**

- a) Has the issued webbing equipment procured under project LAND125 been identified as inadequate or inappropriate for operations around ASLAVs? If so,
  - i) what steps have been taken to rectify this problem in light of the fact that soldiers deploying to Iraq are required to operate as such.
  
- b) Can you confirm that complaints have been received that the pouches on the side of the issued webbing equipment are obstructive or interfere with movement in confined ASLAV spaces;
  - i) Is it true that these pouches catch on items within ASLAVs:
  - ii) When were the first complaints received.
  - iii) What action has been taken to issue replacement equipment?
  
- c) Were recently deployed infantry troops required to procure non-issue “chest webbing” via local purchase prior to deploying to Iraq; and if so, was this local purchase at the individual soldier’s own expense; and
  - i) what arrangements been made to reimburse soldiers for expenses incurred in obtaining more appropriate equipment?
  
- d) Can you confirm a request was made at the Battalion level for approval and funding to procure more appropriate and functional webbing equipment via local purchase; and
  - i) were arrangements made at the Battalion level for the RSM to organise this local purchase of more suitable equipment
  
- e) Was the request for approval and funding to procure this equipment via local purchase denied; and. If so who made the decision to refuse this request; and
  - i) why was this request refused even after the problems had clearly been identified at the operational (Battalion) level.
  
- f) Was a demonstration of the inadequacy and lack of functionality of the issued equipment around ASLAVs provided to senior officers [ie soldier climbing into ASLAV cupola]; and, if so,
  - i) what was the result of this demonstration.
  
- g) How many complaints were received from the deploying unit about the inadequacy of the issued equipment and the refusal to approve local purchase of more functional webbing equipment? What was done/is being done to address these complaints?
  
- h) If problems with issued equipment were identified at the Battalion level, why was the support of procurement personnel and senior officers not forthcoming prior to these soldiers deploying to Iraq.

- i) What was the extent of the briefing/s provided to family members/next-of-kin of these deploying infantry soldiers;
  - i) Was the briefing limited to a two-page handout;
  - ii) is it the case that the local Townsville newspapers provided a more thorough briefing the following day and
  - iii) has this concern been raised with Defence.
  
- j) Were some of these deploying soldiers required to obtain extracts from birth certificates in a bid to obtain passports;
  - i) was this at their own expense;
  - ii) has a decision been taken to reimburse soldiers for this expense;
  - iii) if not, why not.

## **RESPONSE**

- a) No.
  - i) Not applicable.
  
- b) i) – iii) The primary method of identifying issues and concerns with Army equipment is through the Report on Defective and Unsatisfactory Materiel (RODUM) system. No RODUM submissions have been raised in relation to use of project LAND 125 equipment during operations with ASLAV.
  
- c) No.
  
- d) A request was initially made at the battalion-level to procure equipment using local purchase. This was not pursued after confirmation of the pending arrival of service equipment.
  
- e) The request for local purchase was not denied. It was no longer pursued as an option after a suitable in-service item was identified.
  
- f) Yes, a demonstration was provided to Headquarters 3<sup>rd</sup> Brigade personnel and a report was raised.
  - i) The result of this demonstration and report was an adjustment was made to Standard Operating Procedures for load carrying equipment, to ensure soldiers could move freely when operating with armoured vehicles.

- g) Six RODUM submissions have been received from the battalion deployed to Iraq on the project LAND 125 load carrying equipment. These submissions relate to:
- Velcro straps and clips that connect the rear and side panels of the webbing;
  - The length and fit of the comfort belt that attaches to the webbing;
  - Three submissions referred to the size and robustness of the magazine pouches, and
  - The provision of a compatible pouch to allow carriage of 'legacy' items such as the bayonet.

The response to the first three listed faults has been implementation of equipment change proposals to rectify the faults. The requirement for an additional pouch to carry 'legacy' items is being investigated with the intent to implement a suitable and integrated solution.

- h) All Army personnel receive full support from senior officers and Defence Materiel Organisation procurement staff for equipment issues particularly for operational deployment. The Army acknowledges that communication of the exact details of the issues can be problematic as is fulfilling the expectations of the user in an often unrealistic timeframe. The Army and the Defence Materiel Organisation are actively seeking to improve this level of communication.
- i) The National Welfare Coordination Centre Family Information Pack was sent to all nominated next-of-kin. (Note- this may, or may not, be the parents of the member).
- i) No. The National Welfare Coordination Centre Family Information Pack contained:
- a covering letter from National Welfare Coordination Centre Officer Commanding;
  - the Family Information Booklet - listing welfare agencies and contact numbers for National Welfare Coordination Centre and Defence Community Organisation;
  - Defence Community Organisation and National Welfare Coordination Centre brochures and a fridge magnet;
  - pay day calendar and children's activity booklet;
  - deployment support information;
  - a map of the area of operations and Operation Catalyst information handout, and
  - a Family Registration and Change of Details Form.
- ii) Defence is unable to comment on the materiel contained in the Townsville newspapers.
- iii) No.
- j) i) to iii) Passports are only required by soldiers intending to take their Relief Out of Country Leave outside Australia. As this is a personal decision, the soldier is responsible for all expenses incurred and these are not reimbursed. Where a soldier is required to travel for official business, they are issued with an Official Passport obtained at Commonwealth expense.

## **Question W25**

### **Senator Bishop**

#### **Combat clothing**

- a) When were tenders first called for the manufacture of combat jackets, who were the tenderers who responded, who was awarded the contract, for what price and for how many jackets?
- b) Was there one contract with the company or a number of contracts; if the latter, why, and what were the separate values of each contract?
- c) Was a prototype provided for trialling and if so what trialling was conducted, for how long, by whom, and how many jackets were tested?
- d) What changes were made to the design specification as the result of those trials?
- e) How many of those post trial changes were incorporated into the tender specifications?
- f) What specific tender specifications were changed after the contract was signed, and what was the price variation on each?
- g) How many jackets were subject to the contract and how many were supplied, and over what timeframe?
- h) How many jackets have been returned to the manufacturer for (a) repair and (b) refund?
- i) Of the faulty jackets, what were the faults, by number?
- j) What fabric was specified in the contract, what was delivered, how did it differ in performance, and what was the cost differential if any?
- k) What was the specified fabric for the cuffs of the jacket, and was that changed prior or during production?
- l) What was the result of fire testing of the jacket and cuff fabric, and can it be confirmed that it is flammable?
- m) How many RODUMS have now been received about the combat jacket, and what are the numbers of each complaint by type of fault?
- n) How many jackets have been issued to date and how many remain in store?
- o) Have these jackets been issued to troops in Iraq and Afghanistan, and if not why not?

- p) What alternative combat jackets have been purchased from other providers, and at what cost?
- q) Can it be confirmed that the major weaknesses of the jacket were flammability, lack of night vision protection, no camouflage print and overall quality control; if so, and given that this is not new technology, why weren't those requirements specified more clearly?
- r) What was the result of the disciplinary action taken against Defence (DMO) officers, what were the specific charges brought against each, and what were the outcomes?
- s) Have boots other than standard issue been purchased, to who have they been supplied, in what number and at what cost?

## **RESPONSE**

- a) The tender for the supply of Combat Fleece Jackets was released on 27 November 2002. The following companies tendered for the supply of the jacket:
  - i) Babylon Tailoring Company Pty Ltd;
  - ii) Elliot Australia Pty Ltd;
  - iii) Glanda International Pty Ltd;
  - iv) Gold Centre Pty Ltd;
  - v) Platypus Outdoors Group Pty Ltd;
  - vi) Reflective Images Pty Ltd;
  - vii) Robco Products Pty Ltd;
  - viii) Turning Point Imports Pty Ltd;
  - ix) Walkabout Leisurewear Pty Ltd;
  - x) Australian Defence Apparel Pty Ltd;
  - xi) Viva Sports Pty Ltd;
  - xii) Carrycode Pty Ltd;
  - xiii) Crossfire Australia Pty Ltd;
  - xiv) CTE Pty Ltd, and
  - xv) Wilderness Wear Australia Pty Ltd.

The contract was awarded to Walkabout Leisurewear Pty Ltd for the supply of 33,102 jackets at a cost of \$3,173,187.32 (GST inclusive).

- b) There were two contracts. The original contract value was \$3,173,187.32 (GST inclusive) for the supply of 33,102 jackets. This was later amended to \$3,640,993.18 (GST inclusive) to increase the quantity of jackets to be supplied to 37,066.

A second contract was later raised at a value of \$4,087,662.12 (GST inclusive) for the purchase of a further 42,642 combat jackets. This was to allow the introduction of the jacket to the wider Army and provide sufficient attrition stock.

- c) In early 2002, two prototypes of a fleece combat jacket were developed in support of another project. This project conducted a trial of the jackets during May and June 2002 at 4 Royal Australian Regiment. The trial was conducted on 100 jackets of each type.
- d) The outcomes of the trials conducted by 4 Royal Australian Regiment were used to develop the design specification.
- e) The outcomes of the trial conducted by 4 Royal Australian Regiment were used to develop the design specifications. The cotton/polyester elbow and shoulder patches were changed to a synthetic material; and the original disruptive pattern printing resulted in the jacket being 'stiff' and was therefore dropped from the final design.
- f) The tender specifications were not changed after the contract was signed. Instead, concessions were given that allowed variations to the specifications. Concessions were granted on a technical requirement for air permeability and moisture vapour permeability that meant that the jacket allows more air through and less moisture to escape. A concession was also granted to amend the cuff material. A refund of 75 cents on each of 28,302 jackets was received as a consequence of non-conformance of the fabric. There were no price variations associated with any other concessions.
- g) There were two contracts. The first contract (including the amendment) was for the supply of 37,066 jackets and the second contract was for the supply of 42,642 jackets. All jackets have been delivered. Deliveries commenced in November 2003, with final deliveries received in August 2004.
- h) There is no record of jackets being returned for repair or refund.
- i) The faults reported in RODUM system include:

| <b>Fault Reported</b>   | <b>Number of Reports</b> |
|---|--------------------------|
| Jacket wears prematurely and lacks durability   | 1                        |
| Manufacturing fault, such as missing rank slide and fraying                             | 2                        |
| Faulty slide fastener resulting in difficulty in doing up zip                           | 5                        |
| Jacket shrank after laundering in accordance with the manufacturer washing instructions | 1                        |
| Jacket has excessive pilling (balling on jacket)  | 2                        |

- j) The material was specified in Army (Aust) 6767 which set limits for the characteristics of mass, colour, washability, colour fastness, dimensional change, delamination resistance, pilling resistance, and air and moisture permeability.



The specification calls for the fabric to be a double-sided fleece with a wool content of between 80 and 100 per cent. The cloth may include a laminate or adhesive between the inner and outer ply to assist the fabric to meet the performance requirements.

The material specified for the main garment was essentially delivered with some variations in technical parameters for air permeability and moisture vapour permeability which meant that the jacket allows more air through and less moisture to escape. The material in the cuff varied from that originally specified which was for the cuff to be a meta-aramid rib knit fabric with a mass of  $375\pm 40\text{g/m}^2$  and a khaki colour to match the base cloth. The fabric used on the jacket cuffs in production was an 80/20 wool/nylon blend. A 75 cent refund on each of 28,302 jackets was received as a consequence of a non-conformance regarding the fabric material.

- k) See response to j.
- l) The Combat jacket is not considered flammable and is significantly safer than the standard required for children's nightwear (AS/NZS 1249:2003 "Children's nightwear and limited daywear having reduced fire hazard").

Flammability testing was conducted by an accredited test agency (Australian Wool Testing Authority Ltd). Tests were conducted against an Australian Standard (AS 2755.1-1985 "Determination of Ease of Ignition Of Vertically Oriented Specimens" and AS 2755.2-1985 "Measurement of Flame Spread Properties Of Vertically Oriented Specimens") and a British Standard (BS 4790:1987 "Method for the determination of the effects of a small source of ignition on textile floor coverings (hot metal nut method)").

The tests determine ease of ignition, flame spread and susceptibility to exposure to a hot object. The ease of ignition test determined that the jacket material ignites marginally quicker than the standard for children's nightwear. The ease of ignition test determined that the cuff fabric took longer to ignite than the standard for children's wear.

The flame spread test determined that a flame spreads through the jacket material at one fifth the rate of the standard for children's nightwear. The flame spread test determined that a flame does not spread through the cuff material. The cuff did not ignite or melt when exposed to hot metal (simulating a machine gun barrel).

The Combat jacket was considered by a Risk Assessment Board (comprising representatives of the Australian Wool Testing Authority, Commonwealth Scientific and Industrial Research Organisation and Defence Science and Technology Organisation) as being safe and with an overall assessment of low against exposure to typical flammability sources likely to be experienced under normal service use.

- m) Reports on defective and unsatisfactory material received on the combat jackets are as follows:

| <b>Report</b>   | <b>Number of Reports</b> |
|---|--------------------------|
| Complaints that item is bulky and difficult to fit in field pack                        | 5                        |
| Collects debris such as dirt and prickles   | 5                        |
| Is visible through night vision equipment   | 8                        |
| Claims that jacket is flammable, particularly elbow pads                                | 2                        |
| Complaints that jacket is not Disruptive Pattern  | 3                        |
| Jacket wears prematurely and lacks durability   | 1                        |
| Manufacturing fault, such as missing rank slide and fraying                             | 2                        |
| Faulty slide fastener resulting in difficulty in doing up zip                           | 5                        |
| Jacket shrank after laundering in accordance with the manufacturer washing instructions | 1                        |
| Jacket has excessive pilling (balling on jacket)  | 2                        |
| Not designed for female personnel   | 2                        |
| The cut of the tail of the jacket is too short. Jacket rides up at the back             | 1                        |
| The nylon flap over the slide fastener on the pocket snags in the slide fastener teeth  | 2                        |
| The jacket lacks a hanger loop to enable it to be hung from a coat hook                 | 1                        |

- n) To date, 65,021 jackets have been issued and 14,687 jackets remain in store.
- o) The combat jackets are not issued in support of Operations to the Middle East Area of Operations. This is because the colour of the combat jacket is not in keeping with the desert ensemble.
- p) One additional jacket has been procured in support of operational deployments as an alternative to the combat fleece jacket. This is referred to as the windstopper jacket and is a disruptive pattern desert style. Since February 2003, 8,968 windstopper jackets have been procured from Babylon at a cost of \$1,252,829.60 (GST inclusive).
- q) The jacket does not have major weaknesses. The jacket met the Army requirement of a priority for warmth. The jacket does not pose a flammability risk. The technology to provide night vision protection for garments was not available at the time of manufacture of these garments. The quality control of the combat jacket is typical of any garment.
- r) A Public Service member involved in the procurement of the combat fleece jacket was dismissed from the Public Service on 10 March 2006. The investigation into an ADF member also involved in the procurement has concluded and determined that there are insufficient grounds for further action. Separate administrative action has commenced against a further Army officer who supervised the Army and Public Service personnel who developed and procured the combat fleece jacket.

- s) Boots other than standard issue have been purchased. These boots are to cater for members with specialised requirements. If a member is not able to be fitted with one of the available sizes of boots, a made-to-measure boot is supplied that is of the same style. In the past 12 months, there have been approximately 60 made-to-measure variants of the standard issue boot manufactured. Since March 2005, the cost of made-to-measure boots has been \$34,430.00 (GST inclusive).

Specialist boots have also been supplied to the Special Forces, including 3,625 pairs of Altama boots. The cost has been \$555,453.00 (GST inclusive) since March 2002. Specialist boots for cold climates have been supplied to personnel deployed on overseas postings. Since September 2004, 296 pairs of Danner boots have been provided at a cost of \$95,091.00 (GST inclusive). Specialist boots have been supplied to the Special Air Services Regiment. Since August 2002, 1,100 pairs of Taipan boots have been provided at a cost of \$222,098.00 (GST inclusive). Specialist extreme cold weather boots have been supplied to members deployed on operations. Since May 2003, 2,020 pairs of Zamberlan boots have been provided at a cost of \$714,776.00 (GST inclusive).

## **Defence**

### **Outcome 1: Command of operations in defence of Australia and its interests**

#### **Question 1**

**Senator Bishop**

**Hansard 31 May, pp. 20-21**

#### **Headquarters Joint Operations Command**

- a) How many people in Canberra and Sydney at the Headquarters Joint Operational Command are involved in the planning and operations work for the East Timor operation?
- b) How many were there at the outset?
- c) How many have been supplemented from the staff college; and
- d) Are there plans for further supplementation?

#### **RESPONSE**

- a) and b) Since planning for Operation Astute began, up to 58 personnel at Headquarters Joint Operations Command have been involved in related planning and operations work. The changing demands of the operation account for the variation in the number of personnel required.
- c) As at 23 June 2006, personnel supplementation from Staff College at Headquarters Joint Operations Command, Military Strategic Affairs and the Defence Intelligence Organisation totals 17.
- d) There are no current plans for further supplementation from the Staff College.

## Question 19

Senator Nettle

Hansard 1 June, p. 65

### Environmental Impact Assessments

Are environmental impact assessments made of sites prior to and after a joint training exercise? If so, please provide details of how the process occurs, who carries out the process, and whether there is a public consultation component to the assessments.

### RESPONSE

Yes.

Wherever military training activities may have potential to damage the environment, an environmental impact assessment is conducted before the activity. Joint military training exercises are no exception. The complexity or degree of the environmental impact assessment is based on the level of perceived environmental risk. Any environmental issues identified are then managed to reduce the potential for negative outcomes.

Environmental impact assessments in Defence are undertaken by environmental managers and consultants employed, or engaged, by Defence. For a major joint military exercise like the Talisman Sabre series, public consultation is routinely undertaken through a Public Environment Report.

Where it is identified that an activity poses a risk of significant environmental impact, Defence requires that assessments are undertaken in accordance with the requirements of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Where it is unlikely that significant environmental impacts will arise, Defence still manages the effects of its activities on the environment through an internal protocol known as an Environmental Clearance Certificate. This protocol ensures there is a robust process for environmental management that minimises the potential for adverse environmental outcomes. The Australian National Audit Office, in its 2002 performance audit of the 'Referrals, Assessment and Approvals under the *Environment Protection and Biodiversity Conservation Act 1999*', identified this internal environmental clearance process as taking stewardship of the environment a stage further than that required under the *Environment Protection and Biodiversity Conservation Act 1999*.

**Question 20**

**Senator Faulkner**

**Hansard 1 June, p. 70**

**Act of Grace Payments**

Is Defence able to provide the committee with more details about the background to four Act of Grace payments relating to Operation Catalyst, in particular the payment of \$53,128 as a result of a fatality?

**RESPONSE**

Defence has made three Act of Grace payments to four individuals relating to Operation Catalyst. The amounts paid were:

- AUD \$6,618.13 to an individual for an incident in November 2004;
- AUD \$6,390 and AUD \$3,850 to two individuals for an incident in February 2005, and
- AUD\$53,128.85 to an individual for an incident in January 2005.

The amounts paid are commensurate with amounts paid by other Coalition Forces. It is Defence policy not to provide further details of these payments in order to ensure the security of the individuals and our deployed soldiers.

## Question W12

### Senator Nettle

#### Iraq

- a) There has been an additional \$310 million allocated for the Iraq deployment, what is now the total cost of the Iraq deployment since 2002–03?
- b) Can you outline what the deployment in Iraq is at the moment, how many troops, where are they deployed and what are their tasks?
- c) Can you give me a more specific outline of the role of the 90 or so staff allocated to the multinational command headquarters?
- d) Is there an Australian officer still working as deputy commander for operation and planning of operations?
- e) Are there Australians on exchange or placement within the British or American forces separate to those forces you have outlined? If so how many and what positions are they in?
- f) When did Defence become aware of the massacre by US troops in the western Iraqi city of Haditha on the 19th of November that has been reported in the papers this week? Has Defence confirmed that no Australian troops were involved in this operation?

#### RESPONSE

- a) Table 2.5 in the *Defence Portfolio Budget Statements 2006-07* (p. 29) provides a summary of the net additional funding provided by Government for operations in Iraq since 2002-03.
- b) Up to 1,400 personnel are authorised to be deployed as part of Task Force 633 on Operation Catalyst in the Middle East including:
  - a National Headquarters in Baghdad (around 66 personnel) who provide national command, and support, for all ADF personnel throughout the region including Afghanistan;
  - a security detachment in Baghdad (110 personnel) protecting the Australian Embassy, Embassy staff and visitors;
  - the tri-service Force Level Logistics Asset, Communications element and Movement Control Group (approximately 80 personnel), responsible for a range of logistic, training and communications activities;
  - the Al Muthanna Task Group (up to 470 personnel) providing a secure environment for the Japanese Iraq Reconstruction and Support Group and training Iraqi Army Units;

- a Navy frigate (up to 240 personnel, depending on the class of ship), providing security in the Gulf and protecting Iraq's oil exports;
- two AP-3C Orion maritime patrol aircraft, conducting intelligence, reconnaissance and surveillance missions in the Arabian Gulf, Gulf of Oman and over Iraq (around 180 personnel);
- two C-130 Hercules transport aircraft (approximately 150 personnel), and
- around 70 personnel are 'embedded' with other Coalition headquarters and units.

After the Japanese departure, the Government will redeploy the 470 soldiers from Al Muthanna to the Tallil airbase in Dhi Qar Province. They will provide support to Iraqi Security Forces in a crisis if requested by the Iraqi Government and the Multi-National Force – Iraq. ADF personnel will continue training Iraqi Security Forces at the Basic Training centre in Tallil. Four ADF personnel will also provide training at the Counterinsurgency Academy at Taji near Baghdad.

- c) The ADF contributes approximately 70 embedded personnel to the multinational headquarters, units and elements within the Middle East area of operations. Embedded ADF personnel are involved in a range of tasks that contribute directly to the stability, reconstruction and rehabilitation of Iraq. These roles include training, engineering, electoral support, logistics, intelligence support, provision of legal advice and other staff support. A small number of officers also work as liaison officers in various United States and coalition headquarters.
- d) No, the senior Australian officer in the Multinational Forces – Iraq Headquarters is the Director of Strategic Operations.
- e) Yes. On 21 June 2006 there were six ADF personnel serving with US forces and 19 ADF personnel serving with UK forces in Iraq. These personnel are in addition to those described in responses b) and c) above. The numbers of ADF personnel serving with United States and United Kingdom forces varies over time. Their appointments are a mixture of temporary duty assignments and long-term posted attachments to overseas forces. The ranks vary from Corporal through to Lieutenant Colonel and as such they are conducting a range of duties from section commanders to staff officers in major headquarters.
- f) Defence became aware of the alleged massacre on 14 February 2006. There was no Australian involvement in the operations in Haditha during November 2005.



## **Question W18**

### **Senator Nettle**

#### **Hercules cost**

In an answer to a QON from last Estimates regarding the cost of using a C130 Hercules to transport the 43 West Papuan asylum seekers from Weipa Qld to Christmas Island in the Indian Ocean, the ADF said the *net* additional cost to the Air Force for the mission was \$4,926. This is surprising given that we know DIMA have paid up to \$73,000 for flights between Perth and Christmas Island with smaller planes. It is hard to believe this answer given the trip from Weipa to Christmas Island is about 4,000km—so the round trip would be at least 8,000km.

- a) what would be the total cost to the Air Force?
- b) how much does a C-130 cost to operate per hour?
- c) Why didn't Defence provide the total cost in the original answer?

## **RESPONSE**

The answers to these questions involve an understanding of the costing methodology used by Defence.

a-c) Please refer to the answer given to Question number 343 (Hansard, 19 August 2002, p3207).

Further to the information provided in response to question W29, the timeframe between the transportation task and the Senator's original question was only 26 days, and in that period not all the accounts had been received for additional costs related to that task. Since that time, accounts for a further \$4,278 have been received. The total net additional cost for the task was, therefore, \$9,204. Net additional costs do not include embedded costs which are funded as part of Defence's annual appropriations such as capital costs, depreciation, salaries and accrued superannuation, that would be incurred regardless of whether the C-130 was deployed on this operation or not.

## **Question W19**

### **Senator Nettle**

#### **Operation Relex**

- a) I notice in the budget papers the line item for Operation Relex is now called "Operation Relex II". When did the original Operation Relex finish and when did number II begin? Why was Operation Relex II initiated?
- b) Last Estimates, in response to a QON you provided a figure of 17 boats intercepted by Operation Relex.
  - i) How many have been intercepted since this figure has been provided?
  - ii) Where have these 17 boats been turned around to?
  - iii) Does the Navy escort vessels back to Indonesian waters?
- c) What are the rules of engagement granted to the Navy when intercepting Suspected Illegal Entry Vessels?
  - i) Does the Navy ever fire its weapons in order to deter boats? If so, when?
  - ii) Does the Navy use 'non-lethal' weapons such as tasers to control people on the high seas?
- d) What assessment is conducted when the Navy intercepts a boat as to whether the people on board wish to seek asylum? Are they interviewed? Who conducts the interview? Navy personnel? DIMA officials? How does the Navy assess whether people have prima face claim to asylum? Who makes the decision as to whether to turn a boat around or to bring the boat to Australia? What level of official? Are these decisions made in consultation with Canberra? Who in Canberra is consulted or makes the decision? Defence? DIMA? Are Ministers involved?
- e) Regarding the interception of a boat on the Kimberley coast in November last year with a family of West Timorese aboard. What was the process involved in this case? When were DIMA involved?

## **RESPONSE**

- a) Operation Relex was finalised in March 2002. The change was necessary to enable relevant information to be made available to the Senate Inquiry into 'A Certain Maritime Incident'. All reporting after that date reflects Operation Relex II. On 17 July 2006 Defence's domestic maritime security activities, including Relex II, were consolidated into a single operation called Operation Resolute.
- b) i) As at 23 June 2006, no further Suspect Illegal Entry Vessels (SIEVs) have been intercepted under Operation Relex II since that figure was provided.

- ii) and iii) Of the 17 only five were turned around. They were escorted back to a position adjacent to the outer limits of the Indonesian Territorial Sea.
- c) Rules of engagement can not be disclosed for operational security reasons.
  - i) The Navy does not fire its weapons to deter boats, though it may fire shots across the bow of a vessel, in accordance with maritime conventions, to signal a boat to heave to.
  - ii) Naval vessels operating under Operation Relex II do not carry tasers.
- d) The experience with Operations Relex and Relex II is that when a Navy or Customs vessel intercepts a SIEV, the persons on board the SIEV usually make their intentions known and these intentions are communicated to Canberra. At this point, whole-of-government processes are engaged through the People Smuggling Task Force. Subsequent decisions, including whether a vessel will be returned in the direction from where it came from, are made by the Government and implemented through the People Smuggling Task Force. Once a determination is made, it is relayed to the ship or patrol boat for implementation.

Arrangements for interviews of passengers and crew are determined by circumstances around each vessel, and may involve the ADF, Customs, Australian Federal Police or the Department of Immigration and Multicultural Affairs. Regardless, results of interviews are forwarded to Canberra and if claims for protection are identified, authorised officers of the Department of Immigration and Multicultural Affairs decide if prima facie claims for Australia's protection are evident.

- e) The Department of Immigration and Multicultural Affairs was alerted when the vessel was first detected by Coastwatch, and participated in subsequent activities through involvement in the People Smuggling Task Force.

## **Question W20**

### **Senator Nettle**

#### **Intercepting West Papuan boats**

The Government recently announced that it intended the Navy to patrol the waters between Australia and West Papua in order to stop more boats of asylum seekers coming to Australia.

- a) What instructions has the government given the Navy regarding this new policy?
- b) What instructions have been issued to the boats patrolling the area?
- c) What assets have been allocated for use in this operation?
- d) Is the Navy aware of Indonesian naval operations in this area? Has Indonesian military activity been stepped up in the area since the arrival of 43 West Papuan asylum seekers in Australia? What is the Indonesian military presence in the area north of the Gulf of Carpentaria? How many ships?

The Defence Minister indicated that the Australian forces would operate with Indonesian forces to patrol the waters between West Papua and Australia.

- e) What instructions has the ADF received from the Minister regarding cooperation with Indonesian forces?
- f) What cooperation is the ADF involved with the Indonesians in regard to this operation?
- g) Does the ADF share intelligence with the Indonesians?
- h) Do Australian naval assets conduct joint patrols with Indonesian forces?
- i) If the Indonesian navy was pursuing a boat of West Papuan asylum seekers in international waters, and there were Australian assets nearby, what would the Australian Navy do? Would it intervene at all, and if it did, would it help the Indonesians or help the West Papuans?

## **RESPONSE**

- a) The Government has allocated two Huon Class Coastal Mine Hunters to provide additional surveillance and patrolling capability of Australia's high threat maritime approaches.
- b) ADF vessels deployed in support of Operation Relex II and the Civil Maritime Surveillance Program are issued with Standard Operating Procedures. As of 17 July 2006

Operation Relex II was consolidated into Operation Resolute with the rest of Defence's domestic maritime security activities.

- c) Detailed information about the operational deployment of Defence assets cannot be disclosed due to operational security. General details concerning the allocation of Defence assets are available in the Annual Report.
- d) It is not appropriate to comment on the operational activity of another nation.
- e) & f) The Government asked Defence to examine the feasibility of coordinated patrols with Indonesia in mid-2005. Coordinated patrols seek to enhance our maritime surveillance efforts with Indonesia through effective scheduling of patrols and exchange of surveillance information. Coordinated patrols are a more efficient and appropriate mechanism than joint patrols.

During the Australia - Indonesia Navy talks in August 2005, the Royal Australian Navy proposed coordinated naval patrols with the Indonesian Navy. Both parties agreed to examine the feasibility of such a proposal. Currently Australia's proposal for coordinated patrols is still being considered by the Indonesian Navy.

- g) It is not appropriate to provide comment in relation to intelligence matters in a public forum.
- h) Australia has not proposed joint patrols with Indonesia. Australia's proposal for coordinated patrols is being considered by Indonesia.
- i) Any actions that the Australian Navy takes in international waters are determined by the individual circumstances prevailing at the time and the international legal framework for those circumstances.

## Question W21

### Senator Nettle

#### Asylum seekers

At a Senate Inquiry into the new Migration laws last week, many of the witnesses, many from legal backgrounds expressed concern that the Navy would be breaching international conventions, particularly the Refugee convention, by turning boats around, particularly to West Papua, which is not a transit country, but a place of persecution.

- a) Has the Navy had any legal advice as to whether turning boats of asylum seekers around would breach the refugee convention, particularly the fundamental aspect of *non-refoulement*? What procedures has the Navy adopted to ensure that they do not *refouler* asylum seekers? Do you consider these procedures adequate? Can the Navy be confident that it is not returning someone to persecution?
- b) In the case of West Papuan asylum seekers, who will make the final decision to turn around or to let them be processed? Will it be made by the Captain? Will it be made in Canberra, by DIMA or by Defence?
- c) Does the Navy have personnel who speak Bahasa-Indonesian on board vessels operating in the area?
- d) Would each person intercepted be interviewed by a qualified person before a decision was made as to whether to turn the boat around or to take the people to Nauru or Australia?
- e) If a person intercepted asks for a legal representative, what does the Navy do?
- f) If a person asks to fill in an application form to make a protection visa claim, does the Navy have these available on its vessels?
- g) Will Indonesian officials have contact with any West Papuans arrested during Operation Relex II?
- h) Will the Navy take asylum seekers intercepted in the area directly to Nauru by ship or by aircraft, or will they be taken to mainland Australia to be handed over to Immigration?
- i) Does the Navy co-operate with PNG defence forces to repel asylum seekers from Australia? What is the extent of this cooperation?

## RESPONSE

- a) The ADF has sought legal advice on the circumstances, if any, in which turning Suspect Illegal Entry Vessels (SIEVs) back at sea towards their place of origin may, or may not

be, conducted. This includes situations involving the turning back of a SIEV towards the coast of nationality of persons on board the SIEV.

The Navy acts in accordance with Government direction in relation to the course of action to be adopted in respect of individual SIEV activity.

- b) The final decision is made by the Government as a result of advice received from all involved agencies, including Defence. This is coordinated through the People Smuggling Task Force.
- c) The Navy has personnel who speak Bahasa–Indonesian, but it cannot be guaranteed that they are on-board each vessel operating in a particular area.
- d) See answer to Question W19(d).
- e) Decisions on the action to be taken in relation to individuals in this situation are considered by whole-of-government processes engaged through the People Smuggling Task Force.
- f) No.
- g) This question should be directed to the Department of Immigration and Multicultural Affairs.
- h) The decision on activities in respect of asylum seekers is taken by the Government and coordinated through the People Smuggling Task Force.
- i) The ADF and Papua New Guinea Defence Force regularly conduct joint activities that are of mutual security benefit. This has included joint naval patrols. The Papua New Guinea Defence Force has not conducted any patrols to interdict potential illegal immigrants at Australia's request.

**Question W26**

**Senator Hurley**

**East Timor**

- a) How many ADF personnel served in East Timor under the UN Missions:
- UN Advance Mission in East Timor (UNAMET)
  - International Force in East Timor (INTERFET)
  - United Nations Transitional Administration in East Timor (UNTAET)
  - Any other missions to East Timor from 1995-2005
- b) How many ADF Personnel were in East Timor during these missions but not under the command of the UN?
- c) How many ADF personnel who served in East Timor during these missions received the AASM and how many did not?

**RESPONSE**

- a) UN Advance Mission in East Timor (UNAMET) = 23

International Force in East Timor (INTERFET) = 9,720

United Nations Transitional Administration in East Timor (UNTAET) = 10,516

Any other missions to East Timor from 1995-2005 = 5,787

- b) It is estimated that between 9,906 ADF personnel served in East Timor, not under command of the UN, during the period.
- c) Defence has issued 18,662 Australian Active Service Medal "East Timor". The remainder are either not eligible, ie did not complete the required time in theatre to qualify, or were non-force assigned visitors.



**Question W29**

**Senator Allison**

**Iraq - Fallujah**

Did Australia have a role in Fallujah?

**RESPONSE**

No ADF units were involved in combat operations in Fallujah in 2004.

## **Defence**

### **Outcome 2: Navy capability for the defence of Australia and its interests**

#### **Question W7**

#### **Senator Bishop**

#### **Patrol Boats—border protection**

#### **Armidale class**

- a) How many Armidale class vessels are commissioned and in service.
- b) If they are not all in service, on what dates are they expected to be in service.
- c) What are the annual running and maintenance costs of an Armidale class patrol-boat.
- d) Can you provide breakdown of those running costs of each patrol-boat.
- e) How many patrol hours is there per year per patrol boat.
- f) For any given boat how many hours each year are they
  - i) expected to be at sea?
  - ii) available at sea?; and
  - iii) in maintenance or refit.
- g) How many foreign illegal fishing vessels have been towed by patrol boats in the 2005 year?

#### **RESPONSE**

- a) As of 26 June 2006, six Armidale-class Vessels have been delivered. Of these, three have been commissioned, four have completed workup and are mission ready, a fifth is undergoing workup in preparation for operational service, and the sixth has been accepted by the Commonwealth and is preparing for workup. The fourth vessel was commissioned on the 15 July 2006 and the fifth vessel will be commissioned on 29 July 2006.
- b) The build, delivery, acceptance, and workup schedules for the twelve contracted vessels are on track to progressively enter operational service after workup by July 2007. A contract change proposal for build and delivery of two additional vessels under the auspices of the North-West Shelf Protection Policy is nearing completion.
- c) The annual maintenance cost is \$1.63m per boat. Running costs are detailed below.

- d) Armidale-class Patrol Boats are in introductory phase for both operational requirements and the multi-crewing concept. The costs estimates are therefore based on trials, workup and limited operational use. They may incur some amendment with further validation and maturity of operational cycles. The cost includes:

|   | \$m per ship per annum |
|---|------------------------|
| Personnel:                              | 2.263                  |
| Rations:                                | 0.060                  |
| Stores (Suppliers Expense):             | 0.017                  |
| Travel/Incidentals (Suppliers Expense): | 0.015                  |
| Training (Suppliers Expense):           | 0.017                  |
| Fuel:                                   | <u>2.325</u>           |
| <b>Total:</b>                           | <b><u>4.697</u></b>    |

- e) The 12 vessels are contracted to provide a total of 3,000 availability days per annum (an average of 250 days per annum per vessel). This capacity is expected to increase proportionally for a 14 boat fleet to 3,500 availability days per annum. A surge capacity of 600 days per annum is also contracted. The exact number of patrol days per boat is difficult to determine due to the dynamic nature of patrol boat operations and the need for a portion of the 3,000 days to be allocated to crew training and other naval operational requirements.
- f) i) and ii) Of the 250 days available per boat, between 175 and 225 days can be spent at sea depending on operational requirements and the use of surge capacity. These figures allow for appropriate time in port for operational respite and crew handovers.
- iii) The contractor requires each boat for a minimum of four weeks per annum for routine maintenance plus an additional three weeks every two-and-a-half years for survey and major maintenance.
- g) 41.

## **Question W8**

### **Senator Bishop**

#### **Huon class**

- a) How many Huon class Minehunters does Defence have and does that figure include the two vessels going to patrol Northern waters.
- b) Have any Huon class vessels been taken from service, and, if so
  - i) what is involved in returning them to service and
  - ii) what is the cost.
- c) What task will the Huon Class boats undertake in illegal fishing?
- d) Is the Huon class suitable for boarding missions?
- e) In what sea state is the Huon class able to:
  - i) engage in general purpose patrol,
  - ii) intercept and board foreign illegal vessels,
  - iii) tow foreign vessels.
- f) Was the Huon class ever intended to be a tug-boat for foreign illegal vessels; if not, what was its intended purpose. What is the nautical-mile range of a Huon class vessel?
- g) How repair intensive are the Huon class and what are the costs involved in maintaining the Huon class.
- h) Where are the repairs to the Huon class carried out? Do all major repairs occur in Newcastle?
- i) In terms of maintenance is the Huon class more maintenance intensive than an Armidale class patrol boat and, if so, how much greater is the cost.
- j) Given that the Huon class is going to be used in foreign illegal vessel operations, what is the yearly patrol time of a Huon class vessel?
- k) The Navy website states that "the new (Armidale) boats will improve the Navy's capability to intercept and apprehend vessels in a greater range of sea conditions increasing surveillance, which will better protect Australia's coastline". If, so, why is the Government intending to use the Huon class vessels for intercepting and apprehending illegal foreign vessels.
- l) What feasibility studies (if any) found the Huon class to be a better vessel than the Armidale class for protecting Australia's coastline from illegal foreign vessels.

- m) Can you confirm that the Armidale vessel is capable of around 25 knots and the Huon class vessel is capable of around 14 knots?
- n) Aside from the crew on the Huon class vessels, will additional crew for boarding vessels being made available; if not, what extra training will the mine-hunter crew be given?
- o) On page 8 of the Department of Defence 2006–07 Budget Paper (online) it states of the Armidale class “These boats have state of the art radar and communications systems. They also have greater cabin comfort for crews—meaning they can perform at their optimum ability while at sea for up to 42 days, deterring illegal activity including people smuggling and illegal fishing”. Given that the Government has intended to use the Huon class in border protection, does it offer the same comfort to Australian navy personnel as the Armidale class?

## RESPONSE

- a) There are six Huon-class Minehunters, including the two vessels allocated to patrol northern waters.
- b) HMA Ships *Huon* and *Hawkesbury* were not taken out of service. HMAS *Huon* was deactivated on 27 January 2006, but remained commissioned. HMAS *Hawkesbury* was not deactivated, as the decision to return HMA Ships *Huon* and *Hawkesbury* to active service was made before HMAS *Hawkesbury* commenced the deactivation process.
  - i) Ship systems need to be reactivated from their preserved state. The level of work varies significantly between ship systems. For example, the ship needs to be dry-docked to remove blank/sealing arrangements from all hull inlets and selected equipments have to be refitted back onto the ship. All systems require a program of set to work and tests and trials to ensure their expected function and performance have been restored.
  - ii) Initial estimated costs to reactivate *Huon* are approximately \$2.6m.
- c) HMAS *Huon* was reactivated to provide Navy with an increased surface response capability to assist in countering the threat posed by increased rates of foreign fishing vessel incursions in the northern waters of Australia.
- d) The Huon-class has some operational limitations such as speed (maximum of 14 knots) but remain effective boarding platforms for boarding missions.
- e)
  - i) Sea State 5
  - ii) Sea State 3 to 4
  - iii) Sea State 3

- f) The Huon class is a purpose-designed minehunter, however, it is designed to tow other vessels. The nautical mile range of the Huon class vessels is approximately 1,500 nautical miles.
- g) See part i).
- h) Planned maintenance is carried out almost exclusively in Sydney at HMAS Waterhen. Urgent breakdown maintenance is carried out in a location that suits the ship's position and operations. No maintenance is undertaken in Newcastle. This has been the case since completion of the build program and post build warranty period.
- i) The Huon-class primary role is mine countermeasures and they are specifically designed for that operational task with high shock resistance and low magnetic and acoustic signatures. They are fitted with a variable depth sonar, associated mine disposal weapons and a command and control system. These sophisticated systems require intensive maintenance and associated logistic support. The Huon-class also has secondary roles that include surface surveillance, interception, boarding operations, search and rescue and support to civilian authorities. Some of the minehunting systems are not required in these secondary roles. For patrol duties, three systems have been removed from HMA Ships *Huon* and *Hawkesbury* and two systems will not be set to work.

Armidale class patrol boats are designed for patrol duties only and their command and control systems are generally less maintenance intensive. The planned annual maintenance and logistic support cost of a Huon class ship in the primary minehunting role is \$11.1m. This cost will be reduced for ships on patrol duties but it has not yet been determined. The planned annual maintenance and logistic support cost of an Armidale class patrol boat is \$1.63m.

- j) One Huon class will be permanently on station with another Huon class at 14 days notice to move from Sydney.
- k) The *Huon* class will provide the Government with an increased surface response capability to assist in countering the threat posed by increased rates of foreign fishing vessel incursions in the northern waters of Australia.
- l) No feasibility studies have been conducted to compare the two platforms.
- m) Yes.
- n) There are no additional personnel deployed on the minehunters. The minehunter crews will only require a three day Mission Readiness Evaluation specifically for patrol duties.
- o) Yes.

**Question W8B**

**Senator Hogg**

**Minehunters**

- a) When taken out of service? What was the reason? (not just Government policy/decision)
- b) What were the projected savings on a year by year basis?
- c) What happened to the then crews?
- d) Where were the ships 'stored'?
- e) What annual servicing and up-keep was undertaken?
- f) What was the cost of maintenance of the vessels?
- g) Have the vessels been used at all since they were "laid up"? If so, for what purpose?
- h) Why was the decision (other than Government decision) taken to bring the ships back into service?
- i) What is required to bring the ships back into service by way of routine/other maintenance?
  - i) Where will this be done?
  - ii) When will the work commence?
  - iii) How long will the work take?
  - iv) What will be the cost of the work?
- j) Where will the crews be found from?
  - i) What training will these crews have to go through such that these vessels can be successfully used again?
  - ii) How long will this training take?
  - iii) What will be the cost of the training?
- k) What will the \$23m in the PBS be spent on in relation to this project?
- l) When will these ships be ready to be tasked?
- m) What effort is expected of these ships in 06–07?
- n) Where will the ships be based?

- o) Will their effort be reflected as minehunters or some other category in the PBS given that these ships are to be re-rolled?

## RESPONSE

- a) See response to W8A part b).
- b) The *Defence Capability Review 2003* identified yearly savings of approximately \$21m for two Huon-class, with one Huon-class reactivated and rotated with another, over 10 years.
- c) When deactivated, HMAS *Huon*'s crew was posted to vacant positions throughout the Navy. HMAS *Hawkesbury* was never deactivated and the crew has gradually been reduced from 39 to 26 personnel, the number now required for each ship to conduct patrol duties.
- d) HMAS *Huon*, as the only Huon-class deactivated, was 'stored' at HMAS Waterhen.
- e) No annual servicing or upkeep was required to be undertaken as the decision to reactivate HMAS *Huon* was given prior to the need to conduct any periodic deactivation-related maintenance.
- f) No annual maintenance cost was incurred.
- g) No.
- h) The decision to reactivate HMAS *Huon* and to not deactivate HMAS *Hawkesbury* was made by Government on 12 April 2006, in order to provide additional patrol assets to support fisheries and border protection in Northern Australia.
- i) See response to W8A part b) i).
- i) Alongside HMAS Waterhen, with the dry-dock component at Garden Island in Sydney.
- ii) Materiel production work on HMAS *Huon* commenced on 1 May 2006, with the aim of being ready for sea trials by 17 July 2006.
- iii) Thirteen weeks alongside with a one week period for sea trials.
- iv) See response to W8A part b) ii).
- j) The crews will be found from within the Navy.



- i) As HMAS *Hawkesbury* was never deactivated, her crew will only require a three day Mission Readiness Evaluation. HMAS *Huon* will be required to conduct a one week Mariner Skills Evaluation, followed by a one week work up period and then a three day Mission Readiness Evaluation.
- ii) As per response (j) (i) above.
- iii) There is no additional cost associated with training for HMAS *Hawkesbury*. Training for HMAS *Huon* will be absorbed within its normal ship's operating costs.
- k) The \$23m is the reinstatement of the *Defence Capability Review 2003* projected savings (with inflation escalation) from deactivation of two Huon-class. The funds will be expended on reactivating and supporting the two Huon-class.
- l) HMAS *Hawkesbury* will be available for tasking on or around 31 July 2006. HMAS *Huon* will be available for tasking on or around 15 September 2006.
- m) Units will be operated in accordance with their usage upkeep cycles of 18 weeks on task, three weeks assisted maintenance period and a one week self maintenance period.
- n) HMAS Waterhen is the planned base for the ships.
- o) The ships will be reflected as Mine Hunter Coastals in the Portfolio Budget Statements.

## **Defence**

### **Outcome 4: Air Force capability for the defence of Australia and its interests**

#### **Question 2**

**Senator O'Brien**

**Hansard 31 May, p. 36**

#### **Project Genesis – Air Traffic Control**

Please provide the committee with an update on Project GENESIS, including timelines.

#### **RESPONSE**

On 17 May 2005, Defence (Air Force) and Airservices Australia signed the Integrated Operating Concept partnership aimed at optimising air traffic management in Australia's national interest.

In December 2005, the Deputy Chief of Air Force and Chief Executive Officer of Airservices Australia established Project GENESIS to assess and manage initiatives that accord with the intent of the Integrated Operating Concept, which is focused on the development of:

- a sustainable national air traffic workforce that can support military and civil aviation requirements;
- a joint training program with common equipment, training and licensing;
- an efficient and cost effective arrangement for maintaining a national air traffic control system and associated equipment (removal of duplication where practicable);
- a single national air traffic control system that supports civil aviation and national security, and
- an integrated military and civil workforce.

The first initiative under Project GENESIS involved the relocation of military radar services from RAAF Base Pearce to the Airservices Australia facility in Perth. This activity was successfully completed on 12 June 2006. The official opening ceremony for the joint air traffic control unit in Perth was conducted on 19 June 2006.

Timelines for specific proposals under Project GENESIS will be developed over the next 12 months as each proposal is developed and considered.

The basis for future decisions about possible Project GENESIS initiatives will be the effectiveness and efficiency of a national air traffic control system which meets national security requirements.

**Defence**

**Outcome 5: Strategic policy for the defence of Australia and its interests**

**Question 18**

**Senator Nettle**

**Hansard 1 June, p. 64**

**Depleted Uranium**

Can Defence confirm whether depleted uranium is used in joint exercises with the United States that are carried out in Australia?

**RESPONSE**

Depleted Uranium is not used in joint exercises with the United States that are carried out in Australia.

**Question 22**

**Senator Nettle**

**Hansard 1 June, p. 27**

**East Timor**

Were DCP Personnel consulted on their views in regard to the sacking of the forces?

**RESPONSE**

No.

**Question 23**

**Senator Nettle**

**Hansard 1 June, p. 28**

**Defence awareness of potential conflict in East Timor**

Are you able to put a time frame on when you think Defence would have been aware of the situation reports that there was brewing conflict?

**RESPONSE**

Defence maintains a very close interest in developments in East Timor, and has done for many years. Defence became aware of the specific concerns of striking Falentil - Forca de Defesa de Timor-Leste personnel in February 2006.

**Question 24**

**Senator Nettle**

**Hansard 1 June, p. 29**

**Defence Cooperation Program contact with Renaido**

Would Major Reinado be classified as someone with whom ADF personnel were likely to have had daily communication?

**RESPONSE**

No.

### **Question W13**

#### **Senator Nettle**

#### **Iran**

- a) Is Defence in discussions with the United States regarding Iran's nuclear program?
- b) Have there been any assessments of the strategic and security impact of a military attack on Iran by the United States or Israel? If so, can you broadly summarise these assessments?
- c) Has Defence been tasked to prepare possible plans in case of a decision by the United States to bomb Iran?
- d) Has the Department examined the report prepared by the Oxford Research Group - the academic think-tank that accurately predicted the consequences of the Iraq invasion—in which there is an estimate that as many as 10,000 Iranians will die in the initial air attack?
- e) Has there been an assessment by the international law section of the Department of what the legal basis under international law could be for a military attack on Iran?
- f) Will the Joint Defence Facility Pine Gap be used for targeting in any attack on Iran by the United States?
- g) Could the government, if it chose to, prevent Pine Gap being used in an attack?
- h) Can the Department rule out support for a military attack on Iran?

#### **RESPONSE**

- a) Australian Government agencies, including Defence, are involved in frequent discussions with United States officials on a broad range of global and regional issues, including the Iran nuclear issue.
- b) Defence, along with other Australian Government agencies, is keeping all relevant aspects of the Iran nuclear issue under review.
- c) No.
- d) Defence is aware of the report *Iran: Consequences of a War* prepared by the Oxford Research Group.
- e) No.

- f) It is Government policy not to confirm or deny the details of specific intelligence sources and methods available to Australia or its allies.
  
- g) As stated, it is Government policy not to confirm or deny the details of specific intelligence sources and methods available to Australia or its allies. More generally, the Australian Government has long-standing arrangements with the United States that ensure all activities at Pine Gap occur with the full knowledge and concurrence of both parties.
  
- h) It is not the role of Defence to support or oppose military action in such circumstances. It is the role of Defence to provide advice to Government on relevant matters of interest.



## Question W14

### Senator Nettle

#### Indonesia

- a) There is \$4.8 million allocated to Defence Cooperation with East Timor last year and \$5.064 million this year, can you outline what that is for?
- b) How much did the joint training exercises conducted with Kopassus earlier this year cost? How many Indonesian and Australian personnel took part?
- c) What does Defence do to ensure such training is not used in human rights abuses in areas such as West Papua?
- d) On page 122 of the PBS there is a reference to a planned exercise with the Indonesian Army. Exercise Kartika Exchange 06 which seems due to occur next month. The description is "To broaden the experience and professional knowledge of selected personnel of the ADF and Indonesian armed forces through mutual exchange." Can you explain what this means?
- e) Did the recent diplomatic rift with Indonesia over West Papua affect defence cooperation?

#### RESPONSE

- a) The 2005-06 estimated actual expenditure for Defence Cooperation with East Timor is \$6.749m. The 2006-07 budget estimate expenditure for Defence Cooperation with East Timor is \$5.828m. Please refer to page 166 and 167 of the *Portfolio Budget Statements 2006-07* for further information.
- b) Approximately \$128,000. Thirty-one TNI personnel and 50 Australian Defence Force personnel participated.
- c) Australian Defence Force training with TNI promotes professionalism and emphasises adherence to strict rules of engagement based on the laws of armed conflict, and respect for human rights. Defence also limits such training, wherever possible, to exclude those people known to have links to violent groups or who have backgrounds of known human rights concerns.
- d) Exercise Kartika Exchange is an exchange of three personnel from each Army for a period of four weeks, to:
  - participate in a combined arms training exercise;
  - gain a working knowledge of operational, logistic and administrative procedures of the respective armies; and

- improve understanding of national culture and customs, and operations of the respective armies.
- e) Defence's regular training and education program with Indonesia was largely unaffected, but some activities were deferred at TNI's request. Our Post in Jakarta continues to enjoy regular dialogue with Indonesian defence interlocutors.

## **Question W15**

### **Senator Nettle**

#### **Timor**

- a) There was \$6.749 million allocated to the development of the East Timor Defence Force in 2005–06 and a further \$5.828 for next financial year (2006–07).
  - i) Can you give me a break down on how that money was spent over the last year and the previous two years? In other words what was done to develop the East Timor Defence Force over the last few years year?
  - ii) Did that include training police or paramilitary police?
  - iii) How many ADF personnel were based in Timor delivering the program?
  - iv) How many Timorese came to Australia to receive training?
  - v) How many of those who received training are part of the rebel groups in Timor?
- b) Can you give an outline of all training received by Major Reinado by Australia, including dates, where it was delivered and the nature of the training?
- c) When was the last time prior to the recent deployment Major Reinado had communication with ADF in Australia?
- d) Given recent events how successful do you believe Defence's training of the East Timor Defence Force has been?
- e) When was Defence first asked to deploy pre-positioned troops in case of the possibility of a deployment to Timor?

**RESPONSE**

- a) i) Efforts to develop the East Timor Defence Force have included the construction of a major training facility for the Falentil - Forca de Defesa de Timor-Leste English Language Training Centre at Metinaro; junior leadership training for Falentil - Forca de Defesa de Timor-Leste personnel in Australia and in Timor-Leste; the installation of a military HF/VHF/UHF communications network and associated training; and supporting the attendance of a number of senior officers at Defence leadership and management courses held in Australia.

A breakdown of expenditure for FY 2003/04 to FY 2005/06 is as follows:

| <b>FY Year</b> | <b>Activity</b>              | <b>Expenditure<br/>\$m</b> | <b>Total<br/>\$m</b> |
|----------------|------------------------------|----------------------------|----------------------|
| 2005/06        | Training by Australia        | 0.850                      | <b>6.749</b>         |
|                | Projects                     | 0.750                      |                      |
|                | Administration               | 1.1                        |                      |
|                | Personnel – civilian         | 0.250                      |                      |
|                | Personnel – military         | 3.029                      |                      |
|                | Capital – assets purchase    | 0.7                        |                      |
|                | Strategic Dialogue           | 0.030                      |                      |
|                | Exercises                    | 0.040                      |                      |
| 2004/05        | Training by Australia        | 0.508                      | <b>9.557</b>         |
|                | Projects                     | 4.402                      |                      |
|                | Administration               | 0.994                      |                      |
|                | Personnel – military         | 3.577                      |                      |
|                | Exercises                    | 0.039                      |                      |
|                | Strategic Dialogue           | 0.037                      |                      |
| 2003/04        | <i>Training by Australia</i> | <i>0.531</i>               | <b>7.076</b>         |
|                | <i>Projects</i>              | <i>2.609</i>               |                      |
|                | <i>Administration</i>        | <i>0.842</i>               |                      |
|                | <i>Personnel – military</i>  | <i>3.027</i>               |                      |
|                | <i>Exercises</i>             | <i>0.030</i>               |                      |
|                | <i>Strategic Dialogue</i>    | <i>0.037</i>               |                      |

- ii) No.

- iii) The numbers of personnel delivering the Defence Cooperation Program (DCP) have changed over the years. In January 2006, there were 28 ADF and civilian personnel working in Timor-Leste in support of the Defence Cooperation Program, including three representational staff at the Australian Embassy in Dili.

- iv) Since the commencement of the DCP 19 East Timorese have received training in Australia on a variety of military and civilian sponsored courses. Some of these personnel have received training in Australia on more than one occasion.
- v) To the extent that the question relates to the 595 dissident Falentil - Forca de Defesa de Timor-Leste members, Australia has provided some training under the DCP to most members of the Falentil - Forca de Defesa de Timor-Leste over the past few years.
- e) LCDR Reinado (also known as Major Reinado because of his previous employment in the land component of the Falentil - Forca de Defesa de Timor-Leste) has participated in two seminars sponsored under the Defence Cooperation Program. These were the Defence Management Seminar (October 2003) and the Emergency Management Seminar (August 2004) both conducted in Canberra. LCDR Reinado also participated in the July to October 2005 Navy Module of the Australian Command and Staff College, Weston Creek, Canberra. In this course, he studied maritime-focused strategic planning, culminating in a ten day attachment with a Royal Australian Navy unit in Darwin.
- f) The last known official communication between LCDR Renaido and the Australian Defence Force in Australia was in October 2005.
- g) Being the world's newest nation, developing the conditions for stable economic and political development has been a particular challenge for Timor-Leste. As such, Timor-Leste has received special assistance from the international community to help it build its institutions of governance. Australia was one of a number of nations providing support to the Timor-Leste defence force. We believe that the Australian Defence Organisation has been successful in providing professional training for the Falentil - Forca de Defesa de Timor-Leste. This training has included the development of leadership skills, professional military skills, English language training and policy and budget training for the Ministry of Defence. Ultimately the responsibility for developing the Timor-Leste defence force rests with the Government of Timor-Leste. Unfortunately, incidents of recent months have demonstrated shortcomings in achieving this, which the Government of Timor-Leste has itself acknowledged.
- h) As the Prime Minister said on 12 May 2006, the Australian Defence Force employs its assets in such a way as to ensure the government is able to respond to contingencies as they arise. In this instance, the ADF pre-positioned forces following direction from the Chief of the Defence Force on 12 May.

## Defence

### Outcome 6: Intelligence for the defence of Australia and its interests

#### Question W16

#### Senator Nettle

#### Outcome 6: Intelligence

- a) You would be aware of the controversy surrounding the revelations about the United States' National Security Agency tapping the phones and collecting data on millions of Americans, seemingly in violation of laws made by Congress. Is Defence Signals Directorate specifically barred from carrying out a similar operation on Australian citizens? Is that a legislative ban or is a Ministerial directive?
- b) Can you give a guarantee that DSD is not involved in surveillance of Australian citizens?
- c) Does the DSD or DSD facilities such as Geraldton have a role in the NSA's surveillance of American citizens?

#### REPNSE

- a) Subsections 15(1) and 15(2) of the *Intelligence Services Act 2001* direct that the Minister for Defence must make written rules to ensure that the privacy of Australians is not improperly infringed by the Defence Signals Directorate's activities. The Defence Signals Directorate has no responsibility for domestic intelligence and treats its obligations to protect the privacy of Australians with the utmost seriousness.
- b) The Defence Signals Directorate's responsibilities are focused on foreign intelligence collection, and the Directorate operates at all times within the law. In very limited circumstances, the Minister may grant a Ministerial Authorisation in accordance with the *Intelligence Services Act 2001* to allow the production of intelligence on an Australian person. Section 9(1A) of the *Intelligence Services Act 2001* details the very specific activities an Australian person must be, or be likely to be engaged in, before the Minister can consider a Ministerial Authorisation.
- c) No. The Defence Signals Directorate and its facilities do not have a role in surveillance of American citizens.

## **Defence**

### **Business Processes**

#### **Question W2**

#### **Senator Bishop**

#### **Albany Port Harbour**

- a) When was the first approach made to the Commonwealth by Albany Port Authority seeking compensation for the cost of removing ordnance dropped in Princess Royal Harbour after World War II?
- b) Can you advise on the nature of the compensation sought by Albany Port Authority?
- c) What is the quantum of the Port's total compensation claim?
- d)
  - i) Can you advise on the process Defence has engaged in to negotiate a resolution and
  - ii) what were the outcomes in each instance?
- e)
  - i) Can you advise if the Commonwealth denied responsibility for the ordnance being on the seabed, if so
  - ii) what is the basis for rejection of responsibility?
- f) Minister MacTiernan has told the West Australian Parliament that not so long ago the Commonwealth was arguing that the bombs—dropped during loading of a Royal Australian Navy vessel—could have belonged to someone else and therefore weren't the Commonwealth's responsibility. What was the reasoning behind this argument?
- g) When did the formal mediation process between the Albany Port Authority and the Commonwealth begin?
- h) When did the Department send the Minister a transcript of Justice Templeman's direction hearing as required by the Justice on 12th May 2006?
- i) The Department consistently claims it is a "model litigant", but in light of comments made by Justice Templeman
  - i) does the Minister still believe that the Department is acting as a model litigant in this instance;
  - ii) If the Minister feels that the matter can't be solved through mediation, why has the Commonwealth not moved to seek a court date as soon as possible to resolve the issue and;
  - iii) despite the highly critical comments of the Supreme Court Judge in WA, does the Minister consider an appeal against the orders of the Judge will delay the action being progressed to trial;
  - iv) if not, why not.

- j) Can you advise on the possibility ordnance is also in King George Sound, an area the Albany Port Authority is now required to dredge;
- i) what is the nature of the information sought from the Albany Port Authority
  - ii) when was the information sought
  - iii) what advice has been given to the Albany Port Authority on areas on the possible location of ordnance in this area;
  - iv) if no information has been provided, why not.
- k) I understand that the Chairman of the Albany Port Authority has offered to meet with the Minister, but to date has received no response;
- i) will the Minister be available to meet with the Albany Port Authority
  - ii) if not, why not?
- l) i) What legal costs has Defence incurred in this matter so far;
- ii) What was the cost of the hearing before Justice Templeman;
  - iii) what was the cost for each of the mediation processes;
  - iv) what has been expended on legal advice/representation to date.
- m) i) How many experts' reports have been commissioned into this matter;
- ii) who were the authors of the reports;
  - iii) when were they commissioned;
  - iv) how many consultants have been involved in the each report;
  - v) who were they; and
  - vi) what were the total travel and other costs associated with each report.
- n) What is the total cost expended in each of the reports commissioned?
- o) What is the potential cost to the Commonwealth if it does not succeed in the case before Justice Templeman?
- p) What is the perceived benefit in the Department of Defence fighting a small state government authority and expending hundreds of thousands of dollars in legal manoeuvres which a senior judge of the Supreme Court has described as "an abuse of process"?

## **RESPONSE**

- a) 25 June 2001 by letter from Freehills, lawyers acting for the Authority.
- b) Freehills' letter outlined grounds on which a claim for compensation would be made but advised that an exact quantum of costs and losses could not be calculated as the project was not completed.



- c) In its proposed Re-amended Statement of Claim the Authority claims \$6,026,632 plus interest plus costs. This follows earlier assertions by Freehills of sums totalling in excess of \$15 million and media reports that the claim was up to \$15 million
- d) i) Defence followed up the Authority's initial claim with requests for information regarding the works. This was followed with mutual exchanges of information, exchanges of experts' reports and meetings between representatives of the parties. This process occurred from July 2001 until the commencement of litigation in August 2004.

Prior to the commencement of litigation by the Authority, Defence:

- proposed (but the Authority rejected) the involvement of an independent mediator,
- participated in a meeting of experts on 28 July 2003, and
- participated in a settlement conference on 2 September 2003.

Following the commencement of litigation by the Authority on 6 August 2004, Defence:

- participated in a conference of experts on 5 and 6 April 2005.
- proposed a further conference of experts as recommended by the Commonwealth's expert on 3 and 6 May 2005 (this proposal was rejected by the Authority).
- participated in two Court appointed mediations conducted by Registrar Johnson on 24 May and 18 October 2005.
- provided a further expert's report by way of a review of the primary expert's report on 30 September 2005, to validate primary expert's opinion.
- participated in a conference of Counsel on 8 June 2006 as ordered by the Court.

ii) These steps have not resulted in any substantive resolution of the claim by the Authority.

- e) i) The Commonwealth denies liability to the Authority for ordnance found by the Authority.
- ii) The Albany Port Authority's claim is specifically based on the alleged dropping of ordnance during the loading of a Navy ship. This ship made seven shipments from the port. The ordnance found by the Authority covers a diverse range of items, including spent items and items not of the kind loaded and items not found alongside the jetties at which the ship was loaded. Despite this, the Authority's claim treats the entire loading and findings as a single activity for which the Commonwealth is responsible. The Authority has not so far produced direct evidence that each of the respective items of ordnance found was present as the result of Commonwealth activity.
- f) The Albany Port Authority's claim is specifically based on the alleged dropping of ordnance during the loading of a Navy ship. The claim is not for the presence of ordnance generally. One aerial bomb was found in the harbour in an area unrelated to the jetty used by the Navy. The aerial bomb is not within the scope of the Authority's claim but the Authority seeks damages for the costs resulting from the discovery of the aerial bomb. The Authority has provided no evidence that the bomb was in the harbour as the result of the loading of the Navy ship. Defence has taken every proper step to remove any ordnance found from Port Albany and will continue to do so.

g) Please see d) i) above

- h) On 17 May 2006.
- i) i) Yes. Defence and its legal representatives conform to the Attorney General's Legal Services Directions made under the Judiciary Act 1903 (section 55ZF).
- ii) Attempts by the Commonwealth to mediate the claim were rejected by the Albany Port Authority. When the case came before the Court on 12 May 2006 for a directions hearing the Authority requested a trial date. The Commonwealth requested time to complete pre-trial steps. The judge allowed time for the pre trial steps and refused to set a trial date. The Authority has subsequently amended its claim for a second time and served further expert's reports. The Court in July 2006, with the consent of the parties, set the trial date for 11 June 2007.
- iii) The Commonwealth's appeal has been heard and upheld by the Court of Appeal.
- iv) See iii).
- j) The Commonwealth understands that ordnance may be present in King George Sound as the result of artillery firings in the Nineteenth and Twentieth centuries but has no knowledge that the Authority is required to conduct dredging in the Sound. On 12 May 2006, the Authority's representative informed the Court that the case is unrelated to and not affecting the Grange Resources Ltd's proposal being undertaken in another part of King George Sound.
- i) – iv) Defence has not sought information from the Authority and the Authority has not sought information from Defence.
- k) i) and ii) Any decision to meet with Mr Birchmore will be taken with regard to the meeting's potential impact on the ongoing proceedings initiated against the Commonwealth by the Authority, as well as with regard to legal advice.
- l) i) Legal costs so far are \$1,590,776.65 comprising \$1,075, 753.10 for professional fees, \$381,813.17 for disbursements (includes counsel and experts) and \$144,199.38 for GST.
- ii) Legal costs for the hearing before Justice Templeman were \$436.00 and preparatory costs of \$8,695.00. Disbursements were approximately \$670.00.
- iii) It is not possible to isolate the legal costs incurred in each mediation having regard to the complexity and inter-relationship of the issues addressed, and the inseparability of the costs of preparation and post mediation activity from those of the actual event. Defence's legal representative, Philips Fox, indicate \$40,792.54 was spent in direct costs for the mediation processes (not including indirect costs such as preparatory work).
- iv) Refer to part l) i).

- m) i) Seven reports from three experts have been commissioned by the Commonwealth.
- ii) Dr Richard Duczmal, Mr Ronald Hutchison and Mr Frans Hoogerwerf.
- iii) Dr Richard Duczmal – April to December 2003  
Mr Ronald Hutchison – May 2004, May 2005  
Mr Frans Hoogerwerf – May 2005
- iv) and v) Mr Kevin Green assisted Mr Hoogerwerf with the preparation of his report.  
Otherwise the reports have been prepared by their authors.
- v) Mr Frans Hoogerwerf – \$889.70  
Mr Ronald Hutchison – \$15,082.85  
Dr Richard Duczmal – \$1,431.75
- n) Dr Richard Duczmal – \$40,712.62  
Mr Ronald Hutchison – \$42,210.00  
Mr Frans Hoogerwerf – \$34,620.00
- o) It is not possible at this stage to identify the cost (including damages) that could be awarded by the Court if the Authority succeeds on its claim.
- p) The Commonwealth is defending an action for damages consistent with the requirements of the Financial Management and Accountability Act 1998 and the Attorney General's Legal Services Directions. The Commonwealth is not aware that the Western Australia Supreme Court has described the conduct of the Commonwealth in the terms quoted.

## **Question W11**

### **Senator Bishop**

#### **Joint Operations Command Headquarters (Bungendore)**

- a) What is the cost benefit of the PPP compared with a Defence financed construction?
- b) In response to question W2 (m), Additional Estimates 2006 it's said that 'mitigation strategies will be adopted to remain within budget' in the event that the selected tender price exceeds estimates
  - i) does the current chosen tender exceed the original estimate of \$339 million; if so,
  - ii) given that the project has already been reduced to stay within budget, what mitigation strategies are being considered, or already adopted.
- c) With reference to road construction response to question W2 (n) and the reassertion that the Commonwealth will not pay for road upgrades has NSW RTA now given an indicative cost for the new passing lanes and other traffic control measures on the King's Highway. If so, what is the cost for the new passing lanes?
- d) What further discussions have been held between Defence, the RTA and the ACT Government on road needs, and with what outcome?
- e) Given that much of the traffic of Defence staff from the new DHA housing estate in North Canberra will travel along the Macs Reef Road, does Defence consider the advice that no upgrading of that road is credible? If not, why not.
- f) Can Defence confirm workers' compensation law covering injury and death during journeys to work will apply to all travel along these roads, and if so, what responsibility does it believe it has for their staff welfare?

## **RESPONSE**

- a) The evaluation of the preferred tender against the Project's Cost Benchmark has indicated that the private financing solution will provide value-for-money over the 30-year contract term compared to a Defence financed construction contract and separate facilities management and garrison support contracts. The cost benefit of the private financing arrangements will be available after the preferred tenderer has reached financial closure in late July 2006.

- b) i) The amount of \$339m is the total capital cost of the project, including buildings, infrastructure, fit-out, land acquisition and the command, control, communications, computing and intelligence systems. The preferred tender does not exceed the capital cost for the buildings, infrastructure and fit-out components of the project.
- ii) Not applicable.
- c) The Roads and Traffic Authority (RTA) NSW has not yet confirmed the strategic cost estimate for suggested road improvements to the Kings Highway.
- d) There have been no further discussions between Defence, the RTA and the ACT Planning and Land Authority and RoadsACT staff since those undertaken in 2005. Discussions are planned for the second half of 2006.
- e) The housing being acquired by the Defence Housing Authority in north Canberra will be available to any entitled Australian Defence Force member located in, or moving to, the Canberra area. While some Headquarters staff may be located in north Canberra, and may travel along Macs Reef Road to the new facility, the number of staff who might choose to do so is uncertain at this stage. The RTA commissioned a study that examined the possible impact of the new Headquarters on traffic on the Kings Highway and Macs Reef Road. The study concluded that no upgrade work would be required on Macs Reef Road.
- f) Defence confirms that injuries sustained during a person's journey from their place of residence to their place of work are compensable in accordance with relevant workers compensation laws. For members of the Australian Defence Force the relevant law is section 27(e) of the *Military Rehabilitation and Compensation Act 2004* and for Australian Public Service employees the relevant law is section 6(b)(ii) of the *Safety Rehabilitation and Compensation Act 1988*. Defence acknowledges that the Department has a general duty to ensure that reasonable care for the safety of Defence personnel is taken.

### **Question W23**

**Senator Ludwig**

#### **Expenditure on Legal Services**

- a) What sum did the department or agency spend during 2005-2006 on external legal services (including private firms, the Australian Government Solicitor and others).
- b) What sum did the department or agency spend on internal legal services.
- c) What is the department or agency's projected expenditure on legal services for 2006 – 2007.

#### **RESPONSE**

- a) and b) The Department of Defence (including the Defence Materiel Organisation) spent \$32.8 million on external legal services and \$31.1 million on internal legal expenses during 2005-06, a total of \$63.9 million. The figures are exclusive of GST.

In its response to a question from Senator Ludwig arising from last year's budget estimates (W9, part e), Defence estimated its expenditure on legal services during 2005-06 to be \$63 million excluding expenditure of \$15 million by the DMO. DMO's expenditure was, in fact, included in the total of \$63 million. Defence regrets this error.

- c) The Department of Defence (including DMO) estimates that it will spend a total of \$ 63 million on legal services for 2006 –2007.

## **Defence People**

### **Question 3**

**Senators Hogg and Fierravanti-Wells**

**Hansard 31 May, pp. 41-42**

#### **Performance bonuses**

How many senior staff receive a performance bonus and at what level are performance bonuses paid?

- a) What amount has been set aside for performance bonuses in 2006-07?
- b) What are the conditions of the bonuses and do they include meeting contract milestones?

#### **RESPONSE**

##### **DMO**

There are 20 SES and EL2 employees eligible for a performance bonus.

- a) The estimated maximum amount that can be paid out for performance bonuses in DMO in 2006-07 is approximately \$300,000.
- b) The bonuses are awarded for meeting or exceeding stringent performance targets; for example, bringing projects in ahead of schedule and under budget; or superior performance in engineering.

##### **DEFENCE – OTHER**

There are five SES and EL2 employees eligible for a performance bonus.

- a) The estimated amount that can be paid out for performance bonuses in 2006-07 is approximately \$30,000.
- b) The bonuses are awarded for meeting or exceeding performance targets.

**Question 5**

**Senator Payne**

**Hansard 31 May, pp. 48-49**

**Defence Materiel Organisation business acumen courses**

Please provide a list of external providers for the DMO business acumen courses.

**RESPONSE**

The external provider for the DMO Business Acumen Program is DeakinPrime, the commercial arm of Deakin University.



**Question 6**

**Senator Faulkner**

**Hansard 31 May, p. 66**

**Post Separation Employment**

Please provide the committee with a copy of Defence Instruction (General) Personnel 25-4 '*Notification of Post Separation Employment*'.

**RESPONSE**

Please find attached copy of Defence Instruction (General) Personnel 25-4 '*Notification of Post Separation Employment*'.



# DEFENCE INSTRUCTIONS (GENERAL)

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Department of Defence  
CANBERRA ACT 2600

1 February 2000

Defence Instruction (General) PERS 25-4 is issued pursuant to section 9A of the *Defence Act 1903*.



ALLAN HAWKE  
Secretary



C.A. BARRIE  
Admiral, RAN  
Chief of the Defence Force

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## LIST B—ISSUE NO PERS B/2/2000

### New instruction

PERS 25-4      *Notification of Post Separation Employment*

### Single Service filing instructions

This instruction should be filed as:

1. NAVY PERS 16-11
2. ARMY PERS 49-3
3. AIR FORCE PERS 29-3

## NOTIFICATION OF POST SEPARATION EMPLOYMENT

### INTRODUCTION

1. There is no provision within the *Defence Act 1903*, the regulations or any other legislation which restricts the type of employment that may be undertaken by Australian Defence Force (ADF) members after they leave the ADF. Where members intend taking up employment with private or public sector organisations involved in the provision of, or anticipating or intending to provide material and services to the ADF or the Department of Defence (DoD), there is the potential for public disquiet because of perceived, or actual, conflicts of interest. To reduce the potential for embarrassment to the ADF, the member and the prospective employer, notification of post separation employment procedures have been instituted which aim to protect the reputations of those involved.

### AIM

2. The aim of this instruction is to state the notification of post separation employment procedures to be followed by members, taking up employment with organisations which have, or have the potential for, business associations with the ADF or the DoD.

### NOTIFICATION PROCEDURES

#### Application of notification procedures

3. While notification of post separation employment procedures apply to all members of the ADF whose post separation employment could give rise to a conflict of interest, they are most pertinent to members in relatively senior positions where actual or perceived conflict between their Service and proposed private duties could arise.

#### Proposed post separation employment—conflict potential

4. ADF members intending to take up post separation employment should be aware that conflicts of interest are most likely to arise as a result of their involvement with:

- a. ADF purchasing functions;
- b. preliminary stages of procurement involving identification and definition of an ADF requirement;
- c. contractual relationships between the ADF, or the Commonwealth, and business organisations;
- d. the exercise of discretionary power in conferring business advantage eg the issue of a licence or concession;
- e. confidential procedures and criteria used to adjudicate decisions; and
- f. forecasts of intentions which could confer direct pecuniary advantage on intending participants.

5. Post separation employment should not be detrimental to the interests of the ADF, or the Commonwealth, nor give the proposed employer an unfair competitive advantage. Any ADF member taking up an appointment with any business or body falling into any of the following categories should be aware that conflicts of interest could immediately arise as a result of their employment:

- a. those in, or anticipating, contractual relationships with the ADF/DoD;
- b. those in which the Commonwealth is a shareholder;
- c. those in receipt of ADF/DoD loans, guarantees or other forms of capital assistance;

- d. those with which the ADF/DoD is otherwise in a special relationship;
- e. those associations whose primary purpose is to lobby Ministers, Members of Parliament and Government Departments and Authorities on defence related matters; and
- f. those who wish to establish themselves in a consultancy service which derives its income, at least in part, from its dealings with the ADF/DoD.

### Legal restrictions

6. Commanding Officer's/Officer's Commanding or equivalent are to ensure that ADF members who wish to take up post separation employment are made aware of their obligations regarding disclosure of official, commercially valuable or in-confidence information gained in the course of employment in the ADF. Under sub-section 70(2) of the *Crimes Act 1914*:

*A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him), any fact or document which came to his knowledge, or into his possession, by virtue of his office, and which, at the time when he ceased to be a Commonwealth officer, it was his duty not to disclose, shall be guilty of an offence.'*

**Penalty:** Imprisonment for two years.

7. 'Commonwealth officer' is defined under section 3 of the Crimes Act as including a person permanently or temporarily employed in the ADF.

8. In common law there is a general rule that a person is not to be restrained from using skill, knowledge or experience gained in the course of employment. An exception to this rule is the doctrine of breach of confidence which protects information of a confidential nature imparted to an employee in circumstances where an obligation of confidence is imposed.

9. Under common law, any work performed by an employee for an employer is the property of the employer. Because the Commonwealth is the employer of ADF members, any work performed by the member for the ADF is, and remains, the intellectual property of the Commonwealth.

### Notification procedure

10. When a member receives an offer of employment from a business or body described in [paragraph 5](#), the member is encouraged to submit a letter of notification, through the chain of command, to the appropriate Service Deputy Chief. Letters of notification should be handled promptly to avoid any undue delay which could be perceived by the member separating from the Service, or the prospective employer, as a barrier to employment. The notification should state any relationship that exists between any of the member's official duties, over the preceding two years, and the nature of the proposed employment. In some cases, the member's Commanding Officer may consider some preliminary action to limit the potential for conflict such as a rearrangement of the member's duties.

11. Upon receipt of the letter of notification, the appropriate Service Deputy Chief will seek comment as to the possibility of the proposed employment giving rise to a conflict of interest situation from the:

- a. Head of Industry and Procurement Infrastructure;
- b. relevant functional areas in that Service; and
- c. appropriate Service Career Management Agency within the Defence Personnel Executive,

12. In considering notifications, the following factors need to be taken into account:

- a. the importance and sensitivity of the position most recently held and, if appropriate, other positions held during the preceding two years;
- b. the nature of the business appointment and its relationship to the member's former positions and areas of work;

- c. the relationship of the proposed employer with the Commonwealth, or ADF, for example if it is a regular supplier of services or equipment; and
- d. the period during which information gained or contacts made within the Service would continue to be of value to the ex-member and the new employer.

13. Where the Deputy Service Chief considers that no actual or potential conflict of interest is involved, the member is to be advised accordingly. In the case of an ADF member holding a rank of Colonel (E) or lower, and where an actual or potential conflict of interest is identified, the Commanding Officer/Officer Commanding or equivalent is to discuss with the member steps that may be taken to avoid any immediate conflicts of interest, such as re-allocating the members duties, arranging an attachment or posting, or arranging the taking of leave before the member resigns or retires.

14. Where an actual or potential conflict of interest is identified in the case of an ADF member holding a rank of Brigadier (E) or Major General (E), the Deputy Service Chief is to discuss with the member steps that may be taken to avoid any conflicts of interest. The Deputy Service Chief is to make recommendations to the Service Chief regarding appropriate courses of action to resolve the issue. The Service Chief is to advise the responsible Minister, Chief of the Defence Force (CDF) and the Secretary of the course of action taken to resolve the issue.

15. Where an actual or potential conflict of interest is identified in the case of an ADF member holding a rank of Lieutenant General (E) or higher, the Deputy Service Chief is to forward the letter of notification together with staff comments to the Vice Chief of the Defence Force (VCDF). VCDF will discuss with the member steps that may be taken to avoid any conflict of interest and make recommendations to CDF and the Secretary regarding appropriate courses of action to resolve the issue. Following their determination of an appropriate course of action, CDF and the Secretary are to advise the responsible Minister of action taken to resolve the issue.

#### **Advising outcome**

16. Members submitting letters of notification are to be advised in writing of the outcome of deliberations on their notifications.

**Sponsor:** DGCMP

**Question 7**

**Senator Faulkner**

**Hansard 31 May, pp. 72-73**

**Post separation employment – Major General Clifford**

In relation to the resignation of Major General Clifford, from whom did Army seek legal advice? Was it internal to Defence?

**RESPONSE**

Contrary to the initial advice at the hearing the Army did not seek specific legal advice before Major General Clifford resigned his Australian Regular Army appointment. A letter of correction has been provided to the Committee separately. The Army did review and process his application in accordance with the current Defence Instruction. The Army also consulted with the Defence Materiel Organisation on the procedures it had used for the separation of several senior officials. After the consultation the Army sought and obtained from Major General Clifford a statutory declaration to the effect that there was no conflict of interest between his intended position as the Chief Executive Officer of General Dynamics Australia and his previous Defence appointments. Finally, at the request of the Chief of the Defence Force, the Secretary reviewed the processes and advised the Chief of the Defence Force on the matter.

**Question 8**

**Senator Hogg**

**Hansard 31 May, p. 74**

**Post separation employment – Defence Materiel Organisation**

- a) Which senior people have left DMO in the last 12 months to take up private sector employment in defence-related industry?
- b) Have any senior people who have left DMO in the last 12 months subsequently taken up positions in defence-related industries? If so, have these people been approached about a possible conflict of interest, and has anyone declined such an approach?

**RESPONSE**

- a) and b) Two senior people have left DMO in the last 12 months to take up private sector employment in defence-related industry. These were Mr Norm Gray, former Deputy Chief Executive Officer and Mr Peter Croser, former Head Industry Division. As advised during the hearings the issue of a possible conflict of interest was addressed by DMO management for both officers.

**Question 11**

**Senator Bishop**

**Hansard 1 June, p. 17**

**Lieutenant Commander Fahy Mediation**

Please describe the mediation process. Does the mediator make a recommendation on settlement and what powers does the Minister have to overturn any decision?

**RESPONSE**

The mediation process commenced with the agreement of both parties to mediate the claim before a mutually agreed mediator. The mediator was the Hon Ron Merkel QC, a retired Federal Court Judge.

The mediation has now concluded to the agreement of both parties.

The mediator does not give legal advice, remains impartial and guides the process. As this was mediation, as opposed to arbitration, the mediator had no decision making role in the process.

Mediation is only achieved if both parties agree hence there is no 'decision' for the Minister to overturn.



**Question 12**

**Senator Hogg**

**Hansard 1 June, p. 36**

**Injuries at Kapooka**

What is the rate of injury over the last three years with trainees at Kapooka, and is the rate increasing or decreasing?

**RESPONSE**

The rate of serious injury for recruits is below:

|   | 2003 | 2004 | 2005 |
|---|------|------|------|
| Rate of serious injury of recruits (per cent) | 8.8  | 6.5  | 6.1  |

A serious injury is defined as an injury that requires six or more treatments or requires referral to hospital.

The rate of serious injury over the period 2003 to 2005 has decreased.

**Question 13**

**Senator Hogg**

**Hansard 1 June, p. 36**

**Separation Rates through Injury**

What is the rate of separation over the last three years as a result of people suffering injury?

**RESPONSE**

Defence is unable to isolate injury-specific data as it relates to separation. The numbers refer to members of the Permanent Forces who were discharged on medical grounds by reason of injury, illness or disease, regardless of whether the injury, illness or disease was service-related or otherwise. The numbers of members medically discharged from the permanent Navy, Army and Air Force for each of the last three (3) years, and the corresponding percentage rates as a proportion of members in each Service, are:

| <b>Year</b>               | <b>Navy</b> | <b>%</b> | <b>Army</b> | <b>%</b> | <b>Air Force</b> | <b>%</b> |
|---------------------------|-------------|----------|-------------|----------|------------------|----------|
| 2003-04                   | 90          | 0.68%    | 466         | 1.83%    | 67               | 0.49%    |
| 2004-05                   | 157         | 1.22%    | 477         | 1.90%    | 83               | 0.63%    |
| 2005-06 (to 26 June 2006) | 178         | 1.41%    | 531         | 2.13%    | 89               | 0.67%    |

Note 1: The apparent increase for Navy relates to resourcing of the Joint Health Support Agency to consider medical reviews since 2004 and consequent attention to a backlog of long term medical cases from preceding years.

**Question 14**

**Senator Bishop**

**Hansard 1 June, p. 40**

**Dr McKenzie**

How many times has a diagnosis by Dr McKenzie been used to remove a serving member of the Navy from their position or from the ADF on medical grounds?

**RESPONSE**

Under current arrangements the advice of a single doctor cannot result and has not resulted in the removal of an ADF member on medical grounds.

**Question 15**

**Senator Bishop**

**Hansard 1 June, pp. 43-44**

**Ex-gratia payments**

What is the current position with respect to the ex-gratia payments sought by the parents of suicide victims Hayward, Satatas, Shiels and Williams? Are they still under Ministerial consideration?

**RESPONSE**

The matter is currently being considered by the Government.

## **Question W1**

### **Senator Bishop**

#### **Military justice**

- a) In the last three years, on how many occasions have the AFP been involved in an investigation of offences or alleged offences and complaints against ADF personnel by other ADF personnel.
- b) In that same period, how many of those cases have resulted in
  - i) charges being laid,
  - ii) prosecutions conducted, and
  - iii) penalties being imposed.
- c) In each of the last six years how many referrals of ADF personnel have been made in West Australia by each of the ADF services for psychiatric or psychological assessment to
  - i) Dr Srna, or
  - ii) any other consulting psychiatrist or psychologist, and which ADF medical officer including Dr McKenzie, made the referrals by number.
- d) In responses to question c) - of those referrals, how many from each (i) and (ii) above, resulted in medical discharges in part or in whole.
- e) What are the same details in (a) to (d) above, in each other state with respect to all consulting psychiatrists and psychologists.
- f) In how many other cases in recent years have mediators been used to broker a settlement between Defence and ADF personnel?
- g) Who were the mediators in each case and in how many cases have their recommendations been accepted.
- h) In the cases of mediated settlements, or other settlements, are these paid under the provisions of defective Administration; if not, under what provisions are they paid.
- i) Can it be confirmed that the recommendation of the mediator in the case of AVM Criss, that the recommended settlement value was rejected and another sum substituted by the Minister or his delegate, and who, in that case, was the delegate.
- j)
  - i) In the event that any settlement is accepted, what undertakings are required of the claimant as to confidentiality and further action and
  - ii) was this the case in the matter brought by AVM Criss.
- k) In the event that a settlement is recommended and offered to Commander Fahy, will that require a withdrawal of her application before the Federal Court
- l) The public position put by a Defence spokesman for the offer of re-employment of Commander Fahy has been that she has been accepted as being physically fit for duty—referring to a

previous back injury incurred at sea, and which was used against her continued employment—in addition to the alleged psychological unsuitability. Yet specialist advice had been provided almost a year ago that the back injury was no longer considered a medical disability preventing her employment.

- m) So given that Commander Fahy had provided this advice so long ago, why did it take so long for her to be offered re-employment?
- n) Why has Defence never fully investigated Commander Fahy's allegations of assault, including those of a criminal nature whilst at ADFA?
- o) In response to question W 17, from Additional Estimates 2006, Defence stated that at present there are 406 cases for damages being defended by Legal Division and private law firms. Of those, 28 are said to be Military Justice cases. There are a further 74 cases of defective administration of which 12 are considered to be Military Justice cases being considered by the Directorate of Special financial Claims for defective administration.

Of all these cases, how many are for claimants for

- i) HMAS Melbourne,
  - ii) asbestos,
  - iii) FIII deseal,
  - iv) Military Justice, and
  - v) what are the rest for by category, including sexual harassment.
- p) Minister Nelson was reported in the Financial Review that he was appalled at the extent and cost of litigation between ADF personnel, past and present
    - i) can you confirm if the Minister has asked for a review, and if so,
    - ii) has the Minister been briefed on the detail and
    - iii) has he sought further advice—if so on what issues?
  - q) Over the past decade, how many cases of suicide have there been in the each of the ADF services.
  - r) i) In the event of suicide or an involuntary death in the each of the ADF services what disciplinary action has been taken and
    - ii) in what circumstances.
  - s) In the case of the heat stroke death of ADF personnel in the Northern Territory, can you advise on why no disciplinary action was taken by Defence despite the findings of the Northern Territory coroner?
  - t) In response to question W8 (e) from Additional Estimates 2006, why was disciplinary action not warranted in a situation of abuse of junior cadets in Queensland.
  - u) Of the 74 complaints of proven sexual harassment referred to in the answer to question W 9 from Additional Estimates 2006, what was the nature of the disciplinary action taken.

- v) In response to question W20, Additional Estimates 2006, confirmation was given that, to date \$646,967 has been expended by Defence in the case of Mr Russell Vance, and that further costs of \$5,295 are yet to be processed.
- i) What is the nature of the Vance claim and
  - ii) why has it cost so much.
- w) Of the prosecutions pursued by the DPP as referred to in response to question W27 from Additional Estimates 2006, how many of those were for Military Justice related issues.

## RESPONSE

- a) The figures below are for incidents where the whole matter was handed to the AFP for investigation. In order to determine the number of cases where the AFP provided support (including finger-printing, scene of crime examination, and criminal history checks) each investigator would be required to manually review all cases to identify where the AFP have been engaged.

|  | 2003-04 | 2004-05 | 2005-06 |
|--|---------|---------|---------|
| i) AFP investigation of offences                         | 4       | 2       | 11      |
| ii) AFP investigation of alleged offences and complaints | 0       | 0       | 0       |

- b)

|                            | 2003-04 | 2004-05 | 2005-06 |
|----------------------------|---------|---------|---------|
| i) Charges being laid      | 1       | 0       | 2       |
| ii) Prosecutions conducted | 1       | 0       | 1       |
| iii) Penalties imposed     | 1       | 0       | 0       |

c)

| <b>Area Health Service - WA</b>                                | <b>2000-01</b> | <b>2001-02</b> | <b>2002-03</b> | <b>2003-04</b> | <b>2004-05</b> | <b>2005-06</b> | <b>Total</b> |
|--|----------------|----------------|----------------|----------------|----------------|----------------|--------------|
| <b>i) Referrals to Dr Srna</b>                                 |                |                |                |                |                |                |              |
| Navy   | 28             | 19             | 11             | 13             | 19             | 7              | <b>97</b>    |
| Army   | 1              | 1              | 0              | 0              | 0              | 0              | <b>2</b>     |
| Air Force  | 0              | 0              | 1              | 0              | 0              | 0              | <b>1</b>     |
| <b>Total Referrals to Dr Srna</b>                              | <b>29</b>      | <b>20</b>      | <b>12</b>      | <b>13</b>      | <b>19</b>      | <b>7</b>       | <b>100</b>   |
| <b>ii) Referrals to other psych providers</b>                  |                |                |                |                |                |                |              |
| Navy   | 38             | 19             | 20             | 31             | 32             | 29             | 169          |
| Army   | 47             | 33             | 34             | 40             | 45             | 21             | 220          |
| Air Force  | 10             | 8              | 3              | 11             | 3              | 8              | 43           |
| <b>Total referrals to other psychiatrists or psychologists</b> | <b>95</b>      | <b>60</b>      | <b>57</b>      | <b>82</b>      | <b>80</b>      | <b>58</b>      | <b>432</b>   |
| <b>Total Psychiatric &amp; Psychological referrals</b>         | <b>124</b>     | <b>80</b>      | <b>69</b>      | <b>95</b>      | <b>99</b>      | <b>65</b>      | <b>532</b>   |

While the total number of referrals to psychiatrists or psychologists in Western Australia is known it is not possible using extant Defence health information management systems to determine which ADF Medical Officers made these referrals.

- d) Under current arrangements the advice of a single doctor cannot result and has not resulted in the removal of an ADF member on medical grounds.
- e) The data underpinning Defence's answer to question (c) has been manually collected and analysed by the Area Health Service – Western Australia, in response to previous investigations and ministerial submissions. However, the same data with respect to all consulting psychiatrists and psychologists in the other states is not readily available.
- f) See part g).
- g) Defence routinely uses mediation and other dispute resolution processes as a means of resolving workplace disputes and conflicts between Defence personnel. Some 37 dispute resolution processes have been centrally organised and completed in the last two years. Mediators do not make recommendations in respect of the disputes they mediate. Mediation is a process in which parties to a dispute, with the assistance of a neutral / impartial third person (mediator / dispute resolution practitioner), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determination role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted (based on the definition in *The Australian Standard, Guide to the Prevention, Handling and Resolution of Disputes* – AS 4608, 1999).



- h) It is not the mediator's role to broker settlements or make recommendations. It is the role of the mediator to use their expertise, experience and skill to assist parties to narrow their positions of difference to a point where resolution can be achieved.

Mediated settlements may include many outcomes in addition to or as an alternative to the payment of monetary compensation.

One means of satisfying a claim for compensation is under the Compensation for Detriment for Defective Administration (CDDA) scheme. The role of the mediator in this case would be to ensure that the claimant had every opportunity to put his/her claim. This would not be a settlement as such, as the decision rests with the CDDA delegate under the scheme.

- i) The Criss matter was a claim under the CDDA scheme. The purpose of the mediation was to assist the decision maker in making his decision on the quantum to be paid by ensuring that the claimant had every opportunity to put his claim. It was not a settlement.

It was not the role of the mediator to make recommendations on the amount or in any way to make decisions for a party or impose a solution on the parties. As reflected in the mediation agreement, the role of the mediator was to assist the parties to explore options.

Within Defence, only the Minister for Defence or a person authorised by the Minister for Defence can decide the amount of CDDA compensation to be awarded. Accordingly, all CDDA decisions in Defence are made under the authority of the Minister for Defence; it is not a delegation. In this case, Deputy Secretary Corporate Services was the authorised decision maker.

- j) i) The terms of the Deed of Release and Indemnity, which is a requirement of the CDDA guidelines issued by the Department of Finance and Administration, are that the claimant agrees not to pursue any legal action in respect of the matters for which a CDDA payment is made. Nevertheless, the guidelines recognise that a claimant may still raise their matter with the Commonwealth Ombudsman. This was reflected in the final CDDA decision in this case.

- ii) Defence did not seek any undertakings in the Deed of Release and Indemnity regarding confidentiality. That said, Defence hoped that it might be possible to agree the terms of a joint statement which might have been issued at the conclusion of the matter. As such a statement would have reflected the agreed position of the parties, Defence expected that its spirit would be honoured by both sides and it would not be the subject of alternative public statements by either Defence or AVM Criss. In the event, it was not possible to agree upon the terms of the public statement, and both Defence and AVM Criss issued separate statements.

- k) The matter has been settled through mediation. LCDR Fahy has acknowledged that the terms are a fair and reasonable resolution of her claim. The parties have agreed that there will be no further public comment in relation to the matter.

- l) See response to part m) below.

- m) On 31 October 2005, LCDR Fahy provided material in support of an appeal against termination of service on medical grounds. An extensive review was then conducted. Navy has advised on 09 February 2006 that LCDR Fahy was fit for deployment. Termination of LCDR Fahy's service on medical grounds was then discontinued. On 10 March 2006 LCDR Fahy was advised of this decision and arrangements were commenced for her to return to duty.

- n) On becoming aware of allegations of serious criminal conduct in late 2000 and after some discussion with LCDR Fahy and her parents, Defence referred the matter to the AFP for investigation on 5 April 2001.
- o) The response to W17 actually said "As at 24 February 2006, there were 406 cases involving claims for damages being managed by the Directorate of Litigation, where a demand had been made or proceedings commenced. Of these, 28 involve current and past ADF members, or surviving relatives, in claims for damages other than for personal injuries which broadly involved an aspect of 'military justice'.

As at 24 February 2006 there were 74 matters active within the Claims for Detriment from Defective Administration (CDDA) Scheme. At most 12 of these could be considered to be "military justice" claims - taking a very broad view of that term.

### Current Litigation Matters

| <b>Active matters recorded on the Defence Legal Division Litigation databases as at 20 June 2006</b> |                    |
|--|--------------------|
| <b>MATTER CATEGORY</b>   | <b>TOTAL</b>       |
| Military Justice <sup>(1)</sup>  | 28                 |
| Melbourne – Voyager Cases  | 124 <sup>(2)</sup> |
| Melbourne – Evans  | 2                  |
| Voyager Dependant  | 10                 |
| Subpoena/Document Request <sup>(3)</sup>   | 64                 |
| Asbestos Litigation (active)   | 54                 |
| Personal Injury  | 43                 |
| F-111 (Personal Injury)  | 27                 |
| Debt Recovery  | 18                 |
| Other Tortious Claims  | 8                  |
| Contract Law   | 7                  |
| Administrative Law   | 4                  |
| Discrimination   | 4 <sup>(4)</sup>   |
| Property Damage  | 4                  |
| Employment Law   | 3                  |
| Defamation   | 2                  |
| Corporations Law   | 1                  |
| Subpoena Non Compliance  | 1                  |
| Negligent Advice   | 1                  |
| Compensation Other   | 1                  |
| <b>TOTAL</b>   | <b>406</b>         |

#### Notes:

- As outlined in the response to W17 from the February 2006 Senate Legislation Committee Hearing, 28 matters involve current and past ADF members, or surviving relatives, in claims for damages other than for personal injuries which broadly involved an aspect of 'military justice'. Six of these matters involve a claim of sexual harassment.
- This figure is as at 20 June 2006. Some cases have since been before the courts and the figure quoted will be different to other answers on this same topic where data has been extracted at a later date.
- The majority of subpoenas and document requests relate to the processing of applications for third parties in civil matters where the Commonwealth may not be a party eg. Requests for the employment records of former employees and service personnel where some form of legal proceedings are in contemplation or afoot.
- This figure indicates those active Discrimination matters which are not already counted under the 'Military Justice' category.

## Current Special Financial Claim Matters

Some claims handled by the Special Financial Claims area are complex and have multiple aspects to them. The following figures reflect the type of claim the desk officer considers best represents the claim. For example, a claim that is recorded as being a salary or allowance claim may also include previous service, re-categorisation or leave issues.

| <b>Active matters recorded on the Defence Legal Division Directorate of Special Financial Claims database as at 26 June 2006</b> |                  |                     |             |              |
|--|------------------|---------------------|-------------|--------------|
| <b>Type of claim</b>   | <b>Ex-gratia</b> | <b>Act of Grace</b> | <b>CDDA</b> | <b>Total</b> |
| Salary and allowances  | 0                | 5                   | 25          | <b>30</b>    |
| Retention Benefits   | 0                | 1                   | 8           | <b>9</b>     |
| Leave  | 0                | 0                   | 13          | <b>13</b>    |
| Injury or damage to civilians or property arising out of overseas operational duty   | 0                | 2                   | 0           | <b>2</b>     |
| Injury or damage to civilians or property but not involving overseas operational duty  | 0                | 2                   | 1           | <b>3</b>     |
| Previous Service   | 0                | 0                   | 1           | <b>1</b>     |
| Staff Selection and Promotion Process  | 0                | 0                   | 8           | <b>8</b>     |
| Military justice <sup>(1)</sup>  | 1 <sup>(2)</sup> | 1                   | 8           | <b>10</b>    |
| Bank Fees  | 0                | 0                   | 1           | <b>1</b>     |
| Defence Force Retirements and Death Benefits Scheme  | 0                | 0                   | 1           | <b>1</b>     |
| Re-Categorisation  | 0                | 0                   | 0           | <b>0</b>     |
| Medical  | 0                | 4                   | 4           | <b>9</b>     |
| Miscellaneous <sup>(3)</sup>   | 0                | 2                   | 9           | <b>11</b>    |
| <b>Sub Total</b>   | <b>1</b>         | <b>17</b>           | <b>79</b>   | <b>97</b>    |
| Debt Waiver Claims   |                  |                     |             | 55           |
| <b>TOTAL</b>   |                  |                     |             | <b>152</b>   |

### Notes:

1. Of the total number of compensation claims on hand, 10 could be considered to be military justice. These are as follows: one Ex Gratia claim, one Act of Grace claim, and eight Compensation for Detriment from Defective Administration (CDDA) claims. For the purposes of these statistics, military justice claims have been taken to include discipline action, claims of harassment, and adverse administrative action such as involuntary administrative discharge.
2. This is considered as one claim but includes more than one case.
3. These cover: housing and/or rental assistance; work related transport costs; costs incurred through the cancellation of a course; accommodation charges as a result of being ordered to attend a military police interview; fire damage; loss of personal effects; motor vehicle damage, posting and removal and some claims from APS members.

p) i) to iii) The Minister for Defence did not ask for a review. Rather, he has asked Defence to apply commonsense to its approach to litigation.

q)

| Year      | 1997        | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | Total |
|-----------|-------------|------|------|------|------|------|------|------|------|------|-------|
| Navy      | 1           | 1    | 3    | 2    | 6    | 3    | 3    | 2    | 1    | 1    | 23    |
| Army      | 8           | 7    | 5    | 5    | 6    | 6    | 4    | 5    | 2    | 1    | 49    |
| Air Force | unavailable | 1    | 0    | 0    | 2    | 1    | 0    | 2    | 1    | 0    | 7     |

Air Force has only been collecting records on the cause of deaths since early 1998.

r) **Navy:** No disciplinary action has been taken in respect of any suicide or involuntary death in the Royal Australian Navy over the past decade. The Board of Inquiry into the Sea King accident, which occurred on 2 April 2005, is ongoing and no disciplinary action has yet been determined.

**Army:** Since the institution of the Army Sudden Death Protocols in 2004, Army has investigated every suicide or death where a service nexus exists. No disciplinary action has been taken in response to these deaths. Prior to this, suicides or death where a service nexus exists were not subjected to any specific inquiry other than those by civil authorities or by Military Police. In September 2004, the Director General Personnel – Army ordered a desk top audit of those suicides that occurred between January 2000 and July 2004, and which had not been the subject of an inquiry under the Defence (Inquiry) Regulations. This report was submitted in February 2005. It recommended that further review of seven of the audited cases of suicide be conducted. It is anticipated that the Review will be completed by late July 2006. If disciplinary action is warranted as a result of this inquiry it will be taken. There is no record of any disciplinary action being taken in response to suicide or death where a service nexus exists for the period 1996-1999.

**Air Force:** Air Force does not hold records to enable this question to be answered. Other areas within Defence may be able to assist but will most likely require extensive resources to provide an accurate response.

s) At the completion of his Inquest into the death of Trooper Angus Lawrence on 31 Oct 2005 the Northern Territory Coroner, Mr Greg Cavanagh, made the following recommendation:

*I note and commend the pro-active measures taken by the Army in response to this death, and its fulsome apology to the family of the deceased. However, I do recommend that the Chief of Army review (once again) the position of some of those responsible for allowing the exercise to occur during which the deceased became ill. I accept the evidence of WO2 Wallace that he specifically warned higher command that exercises at the place, and at the time of year, during which the deceased became ill would lead to death. This warning was echoed to a significant extent by WO1 Lucas. I note that WO2 Wallace gave oral evidence about this warning at the Inquest, as well as in his statement which had been made quite some time before the Inquest. Nothing I heard or read suggests that this explicit warning was not given. I remain unsure that this warning was taken seriously enough or that the response was appropriate enough in the circumstances.*

As a consequence of this recommendation Army instigated a third investigation to ...inquire into and report upon statements made by Warrant Officer Wallace to the Northern Territory Coroner and to the Police following the death of Trooper Lawrence at Darwin on 10 November 2004.

The investigation was conducted by Colonel Mike Charles, the same officer who had conducted the initial and first follow-on investigation into the death of Trooper Lawrence.

In his report dated 24 January 2006, after having interviewed WO2 Wallace, WO1 Lucas and others regarding WO2 Wallace's comments to the Northern Territory Police and Coroner, Colonel Charles concluded that

*...while someone may have made the statement claimed by WO2 Wallace that somebody would be killed, it was not explicit or clear enough to have been noted by BRIG Anstey or the majority of other personnel present at the time it was supposedly made.” Further on he states “This enquiry has found no evidence that would cause me to change the findings and recommendations made in the earlier two reports that “no disciplinary or administrative action is warranted against any individual member of the ADF as a result of TPR Lawrence’s death.” Colonel Charles recommended that*

*...no further investigation be conducted under the Defence Force Discipline Act or Defence (Inquiry) Regulations into the cause of TPR Lawrence’s death.*

- t) A first inquiry into the incident, conducted by an Australia Air Force Cadet staff member, recommended that disciplinary action be taken against one member who was involved in the No 2 Wing Australia Air Force Cadet Promotion Camp. This recommendation was not made because of any finding of alleged abuse of cadets in his charge, but because the member in question had been uncooperative with the inquiry team in its conduct of the Inquiry. The member concerned subsequently made a complaint about the way the Inquiry had been conducted. This complaint was instrumental in causing a second Inquiry to be held. A second, formal inquiry was conducted by an ADF officer who found that breaches of natural justice had rendered the first Inquiry inconclusive and unsound. He also found that neither administrative nor disciplinary action was warranted against any person. Indeed, he found that everyone involved in the Promotion Camp had acted with the best of intentions albeit there had been some misplaced enthusiasm which had led to the complaints which had been made.

Australian Air Force Cadet members, whether cadets or staff, are not members of the Australian Defence Force and are, therefore, not subject to the *Defence Force Disciplinary Act*. They cannot be disciplined in a formal military sense. Under current regulations, they can only be counselled or dismissed. Revised Cadet Force Regulations, about to come into force as a consequence of Recommendations made by the Senate Inquiry into Military Justice, allow for a range of actions to be taken against Cadet Force staff members who have been found to have acted inappropriately or breached the provisions of a Code of Conduct. The range of sanctions are intended to include formal counselling, reprimands, official warnings, reduction in rank, reassignment of duties, suspension of duties and termination of services. This range of sanctions is not intended to be sequential.

- u) Of the 107 reported cases of sexual harassment the number of finalised reports has risen to 105 (as at 23 June 2006). Of these 88 were substantiated. There have been 118 actions taken in respect of these. The reason the number of actions is higher than the number of reported incidents is that some incidents have multiple respondents.

| <b>Informal Outcomes</b>  |           |
|---------------------------|-----------|
| Apology                   | 22        |
| Counselling               | 36        |
| Mediation                 | 2         |
| Self Resolution           | 9         |
| Supported Self Resolution | 12        |
| Individual Training       | 9         |
| Group/Unit Training       | 9         |
| <b>TOTAL</b>              | <b>99</b> |

| <b>Formal Outcomes</b> |           |
|------------------------|-----------|
| Administrative Censure | 1         |
| DFDA Action Fine       | 2         |
| DFDA Severe Reprimand  | 2         |
| DFDA Not Defined       | 5         |
| Formal Action Report   | 1         |
| Formal Warning         | 7         |
| Posting elsewhere      | 1         |
| <b>TOTAL</b>           | <b>19</b> |

- v) i) Mr Vance alleges malfeasance in public office by two former Chiefs of Air Force in connection with his discharge from the Air Force.
- ii) Costs in this matter principally relate to the conduct of interlocutory proceedings concerning a claim for legal professional privilege involved with an initial hearing by a single judge. These proceedings subsequently went before the ACT Court of Appeal, which upheld the Commonwealth's claim. The application of legal professional privilege to legal advice provided by Commonwealth legal officers, including Australian Defence Force legal officers, is a matter of significance on which the law was unclear.
- w) None, since the Director of Public Prosecutions only prosecutes criminal matters in the civil jurisdiction. Following a conviction in the civil courts, the ADF may pursue the offender through the military justice system for disciplinary offences under the Defence Force Discipline Act 1982, since conduct of this kind would amount to a breach of discipline.

**Question W3**

**Senator Bishop**

**Child Care**

- a) What is the total cost of Defence's contract with ABC Corporate Care Pty Ltd.
- b) What is the life span of the contract?
- c) A recent announcement said Defence has recently accepted 13 new child care sites from ABC;
  - i) Can you advise which of the new sites are existing ABC sites that will now provide places for Defence families?
  - ii) How many places does each site provide?
  - iii) How many places will be available for Defence families?
- d) Of those that are under construction, can you advise who provided the land for the facilities in each instance?
- e) Will Defence contribute to the construction costs of the new sites and if so, what is the estimated cost of each site?
- f)
  - i) How many places will be available at each of the new sites when construction is completed;
  - ii) How many childcare places will be available for Defence families?
  - iii) How many childcare places will be available to local community families?
- g)
  - i) Will ABC Corporate acquire existing Defence child care facilities located on Defence bases? if so
  - ii) what defence bases have sites under consideration
  - iii) what effect if any will this have on current service providers.
- h) What will be the cost to Defence families for child care under the terms of the contract between Defence and ABC Corporate for each year of the contract.

**RESPONSE**

- a) There is no cost.
- b) Five years commencing April 2005, with an option for a further five years.

- c) i) and ii) The following new Defence sites are existing ABC sites:
- ABC Hoxton Park (NSW) - 73 places,
  - ABC Wagga Wagga (NSW) - 75 places,
  - ABC Lower Plenty (VIC) - 120 places,
  - ABC West St (NTH SYDNEY) - 63 places,
  - ABC Warnbro (WA) - 47 places,
  - ABC Aranda (ACT) - 88 places,
  - ABC Cairns North (QLD) - 70 places,
  - ABC Stuart Park (NT) - 72 places,
  - ABC Rockingham North (WA) - 38 places.
- iii) All places detailed in c) i) and ii) are available to Defence families. Where existing non-Defence users are in place, they will not be displaced to accommodate Defence families. Defence families will take up places using priority of access only when places are vacated by existing users.
- d) ABC lease or own the land/facilities for the centres that are currently under construction.
- e) No.
- f) i) The following Defence places will be available when construction is completed:
- St Leonards (NSW) – 74 places,
  - Gungahlin (ACT) – 90 places,
  - Golden Grove (SA) – 20 places,
  - Medowie (NSW) – 76 places.
- ii) and iii) All places will be available to Defence families. If this supply exceeds the demand from Defence, places will be offered to non-Defence families.
- g) i) No.
- ii) Not applicable.
- iii) ABC Corporate Care is the only organisation under contract to operate Defence Childcare Centres.
- h) Childcare fees are commercial-in-confidence between the individuals and ABC Corporate Care. The contract allows Defence to benchmark fees against other child care centres in the local area. Any changes to the fee structure must be agreed jointly by Defence and ABC Corporate Care.



## **Question W4**

### **Senator Bishop**

#### **Honours and awards**

- a) Have some personnel who served in Iraq and Afghanistan been waiting for the award of campaign medals since 2001 and, if so, how many Defence personnel are awaiting medals?
- b) Can you advise on the reasons for the delay in awarding campaign medals for service in Iraq and/or Afghanistan?
- c) Have any additional staff been recruited into the Directorate of Honours and Awards to process applications and expedite the award of this medal; if not, why not.
- d) What timeframes are in place for eligible applicants to be awarded the campaign medals to which they are entitled?
- e) When the intention to establish a new medal recognising service in the ADF was announced in June 2004 the criteria included a requirement that service for the specified period was voluntary. Why the voluntary criterion was subsequently removed with the announcement of 30th March 2006.
- f) Which veteran's and ex-service organisations were consulted prior to removing the 'voluntary' criterion.
- g) Over what timeframe did such consultation take place?
- h) Within what timeframe can eligible applicants expect to be awarded the Australian Defence Medal?
- i) How many applications for the award of the Australian Defence Medal is the Directorate currently processing?
- j) What is the estimated number of former and serving members who are currently eligible for the award of the Australian Defence Medal?
- k) How many of these medals have been awarded to date.
- l) What criteria determines the order of awarding of these medals, i.e. is it in order of receipt of applications or some other criteria.
- m) What is the expected turnaround time between receipt of application and award of the medal?

- n) What is the expected timeframe between receipt of application and acknowledgment of receipt and
  - i) why is there such a delay in simply acknowledging receipt of applications.
  
- o) Have additional staff been recruited into the Directorate of Honours and Awards to process applications for the Australian Defence Medal in light of the quantum of eligible applicants and the extensive delays in processing and awarding the medal;
  - i) if not, why not.
  
- p) What is the total cost of each Australian Defence Medal?
  
- q) Can you confirm the case that a member who joined the ADF in the late 1970s and served for 6 months before being administratively discharged for being underage applied for and was subsequently awarded an ADM?
  
- r) Can you confirm the case that another member who joined in the late 1980s and served for 4 months before being administratively discharged for being underage applied for and was refused the ADM on the grounds that he did not satisfy the time in service requirement?
  
- s) Can you confirm the case that a member who joined in 1989/90, passed pre-enlistment medicals and was undergoing recruit training at which time an eye problem was identified resulting in medical discharge was refused the award of the ADM notwithstanding it was determined the eye problem was Defence-caused.
  
- t) Can you confirm the case that a member who joined in 1986 but elected administrative discharge at the end of recruit training when she found out she was pregnant applied for and was awarded the ADM.
  
- u) Can you confirm the case that a member who served between 1978 and 1980 and lost a foot during that service which resulted in medical discharge was initially denied the ADM on the ground that he had not served the minimum time but on complaining was awarded the medal
  - i) does this mean that decisions to refuse the award of the medal are reviewable at first instance.
  
- v) Why are members who are medically discharged with compensable conditions entitled to the ADM whilst members who are similarly discharged with non-compensable conditions denied the award?
  - (i) Will members who are discharged due to the non-medical use of drugs be entitled to the ADM and if not
  - (ii) what procedures are in place to ensure that their applications are rejected?

## RESPONSE

- a) No. While personnel have been in Afghanistan from 2001 and Iraq from 2003, the creation of the campaign medals for Afghanistan and Iraq was announced on 25 April 2004. Currently, approximately 500 personnel are yet to receive their Afghanistan Campaign medal, and approximately 5,500 personnel are yet to receive their Iraq Campaign medal.
- b) Following the announcement of the creation of the campaign medals in April 2004, the Letters Patent and Regulations establishing the medals were approved by Her Majesty the Queen in October 2004. A competitive tendering process for the manufacture, engraving and dispatch of the medals was undertaken, with a contract being signed in April 2005. Some quality difficulties were encountered with medals manufactured by the original contractor and the contract was terminated. Defence then entered into an arrangement with the Royal Australian Mint. Full production of the medals by the Mint commenced in February 2006.
- c) No. As the delay in providing the campaign medals to eligible Australian Defence Force (ADF) members is related to the manufacturing of the medal, the issue of additional staff to process applications has not been considered.
- d) The majority of the outstanding medals are expected to be issued by August 2006.
- e) The eligibility criteria for the Australian Defence Medal were broadened to include national servicemen due to the representations of the ex-Service organisations and further consideration by the Government.
- f) Significant consultation occurred with individuals, ex-Service organisations and the ADF. Those in the ex-Service community and others who lobbied the Government included, but were not limited to:
- the Returned and Services League;
  - the Ex-Service Women's Medal Group;
  - the New Medals Groups;
  - the National Servicemen's Association of Australia;
  - the Women's Royal Australian Naval Service Association;
  - the Totally and Permanently Incapacitated Association;
  - the Far East Strategic Reserve Association;
  - the Ex-Women's RAAF Reunion Group;
  - various Members of Parliament and Senators, and
  - numerous individuals.

While a number of these groups were not contacted directly by the Government or Defence, they made their views known through ministerial representations. The Government considered all their views and opinions, and agreed to revise the criteria for the award.

- g) Consultation took place from June 2004 to December 2005.

- h) The period between receipt of the application for the Australian Defence Medal and assessment will depend on the number of applications received, the individual circumstances of each applicant and the resources available. Once assessed as eligible, applicants can expect to be awarded the medal within three to four months.
- i) As at 30 June 2006, the Directorate of Honours and Awards is currently processing 39,000 applications.
- j) 1,200,000.
- k) As at 16 June 2006, 22,213 medals have been dispatched.
- l) Applications from ex-serving ADF members and Reservists are being assessed in order of receipt. Permanent ADF members are being assessed automatically with medals being issued to the most junior members first.
- m) See answer to h).
- n) Applications requiring further research are being acknowledged within a four to six week time frame. All other applications are being assessed on receipt and are not being acknowledged.
  - i) Due to the limited number of resources available, and to ensure the assessing function continues, it has been decided to only acknowledge those applications that will not be assessed on receipt.
- o) Yes, 16 additional staff have been recruited. Additional contract staff will also be provided.
- p) \$31.25.
- q) No, Defence is not aware of any such case. A person who is discharged for disciplinary reasons prior to meeting their initial enlistment period, or four years, whichever is the lesser, would not be entitled to the ADM.
- r) No, Defence is not aware of any such case. A person who is discharged for disciplinary reasons prior to meeting their initial enlistment period, or four years, whichever is the lesser, would not be entitled to the ADM.
- s) No, Defence is not aware of any such case. A person who is medically discharged due to an injury that is sustained as a result of service is likely to be compensated for that injury, unless there are other exigent reasons to refuse compensation. These same factors will be taken into account for the award of the ADM. Consequently, if the person was discharged and is eligible for compensation for a sustained injury, it is likely that they will be eligible for the ADM. A person who is discharged with a pre-existing medical condition is unlikely to be eligible for the ADM.

- t) No, Defence is not aware of any such case. Under the conditions relating to discriminatory practice, a female may only qualify for the medal if she served prior to 1974 and was required to discharge because of pregnancy.
- u) No, Defence is not aware of any such case. The same conditions would relate to this case as for s) above.
  - i) No. If an original application is incomplete and the circumstances of a medical discharge not made clear, the medal could only be awarded on appeal following the furnishing of further information by the applicant or further extensive research by Defence.
- v) Non-compensable conditions can relate to instances that include, but are not limited to, self-harm in order to attain discharge or self-neglect that may lead to obesity or other medical conditions that lead to discharge. Accordingly, conditions that might have been avoided due to self-neglect have been excluded from eligibility for the medal, unless the ex-member has met the basic qualifying criteria for the award which is serving their initial enlistment period, or four years, whichever is the lesser.
  - i) Depending on whether the basic conditions above are met for the award, a person who is administratively discharged for non-medical drug use is unlikely to be awarded the medal unless they have completed their initial enlistment period or four years service, whichever is the lesser.
  - ii) The Australian Defence Medal assessment team will be fully trained in the eligibility criteria for the medal. Assessments for eligibility are made in accordance with the regulations and the Australian Defence Medal assessment manual. Assessments will also be randomly audited. Complex assessments will be assessed by more experienced assessors.

**Question W9**

**Senator Bishop**

**HMAS Melbourne**

- a) How many claimants are involved in the case for damages in the matter of HMAS Melbourne?
- b) What is the cost of legal action taken by the Department of Defence to date?
- c) How much is budgeted for future conduct of the Melbourne Voyager litigation for the coming year.
- d) Is there a budget for ongoing litigation after 2006/2007, If so, what amount has been set aside and for how many years.
- e) Has the Department of Defence assessed cost savings that will flow from the introduction of a mediation scheme similar to that used for HMAS Voyager claimants as contrasted with the eventual budgeted costs of litigation if it continues to be handled on a trial by trial basis; If not, why not?
- f) What are the cost savings available under a mediation scheme?
- g) Recently the Supreme Court awarded a Melbourne Voyager claimant the sum of \$60,000 damages (Metcalf v- Commonwealth):
  - i) what are the total legal costs paid in this matter; and
  - ii) what is the expected legal costs to conduct an appeal against this decision.
- h) Can you advise if a review has been conducted into Melbourne Voyager litigation; if so
  - i) what was the outcome;
  - ii) if not, why not.
- i) What are the total costs on Melbourne Voyager litigation since 1983 to date and more particularly from June 2001 to date?

**RESPONSE**

- a) For the purposes of answering this question, we have interpreted it to relate to claims that are before the Courts where plaintiffs seek damages arising from the collision between HMAS *Melbourne* and HMAS *Voyager* in 1964. As at 28 June 2006 there are 124 such claims current.

- b) The information requested covers a period of 42 years and Defence is unable to invest the considerable time and resources to provide a response. In any case, data is not available to fully provide a response.
- c) At this stage, there is no amount set aside specifically for the conduct of litigation in connection with the HMAS *Melbourne* / HMAS *Voyager* collision for 2006-07. Litigation funds required are part of the 'Legal and Compensation' 2006-07 allocation to Defence. This allocation includes fees payable for advice and services provided by Defence's external legal services providers, judgement and settlement sums and any legal costs assessments made in favour of a plaintiff.
- d) No.
- e) No. Sufficient, relevant data that permits analyses of the cost-effectiveness of the previous settlement schemes for HMAS *Voyager* survivors in 1993 and 1995 is not available.
- f) Costs savings, if any, would depend on the scope and content of a 'settlement scheme'. Alternative Dispute Resolution is considered by Defence in all of the HMAS *Melbourne* / HMAS *Voyager* collision claims. Defence has participated in mediations with plaintiffs and representatives in cases prior to the commencement of formal hearings. In Victoria, mediation is required in all cases by virtue of a general order made by the Chief Justice of Victoria. In New South Wales, mediations have been variously initiated by the Supreme Court or the parties. Aside from formal mediations, Defence also considers various settlement possibilities in each case – allied negotiations and discussions are held on a 'without prejudice' basis.

It should be noted that the Commonwealth cannot unilaterally impose a 'settlement scheme' on current or future HMAS *Melbourne* claimants. Additionally the Commonwealth cannot deprive HMAS *Melbourne* crew of any subsisting legal rights that they may have to pursue common law remedies for injuries arising from the collision. (see the High Court of Australia decisions in *Georgiadis v Australian and Overseas Telecommunications Corporation* (1994) 179 CLR 297 (9 March 1994) and *Commonwealth of Australia v Mewett* (1997 HCA 29 (31 July 1997)).

- g) Both parties have appealed aspects of the decision of the Victorian Supreme Court in *Metcalfe v Commonwealth of Australia*.
  - i) The Commonwealth's legal costs (as 28 June 2006) are \$271,580.52.
  - ii) The Commonwealth's expected legal costs, if the appeals proceed, are \$55,000.00. The Commonwealth's appeal in the case of *Metcalfe* will be reconsidered in light of expected decisions by the High Court of Australia in *Stingel v Clark* (decision reserved) and *Commonwealth v Wright* (special leave to be heard). Final judgement in the case of *Metcalfe* was \$69,180.00 comprising \$60,000.00 in damages and \$9,180.00 interest. The original claim was for \$1.5 million and attempted mediation failed.
- h) There has been no specific departmental review.

- i) No.
  - ii) Litigation relating to the HMAS *Melbourne* / HMAS *Voyager* collision is supervised by the Supreme Courts in the relevant jurisdictions in which the claims are being pursued. A judge has been designated in each of the NSW and Victorian Supreme Courts as the list judge for these cases. In NSW, Defence and its legal advisers have met, on a number of occasions, with the Supreme Court list judge and solicitors representing *HMAS Melbourne* claimants to discuss and settle procedures for case preparation. In addition to this direct supervision, the Department's conduct of the litigation is subject to the Legal Services Directions issued by the Attorney General under section 55ZF of the *Judiciary Act 1903*. The Directions are administered by the Attorney General with assistance of the Office of Legal Services Coordination (OLSC) in the Attorney General's Department. The conduct of members of the legal profession is also subject to review, in appropriate cases, by relevant professional bodies. For example, the NSW Supreme Court recently referred the conduct of a plaintiff's legal services provider to the Victorian Law Institute.
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- i) Total costs on Melbourne Voyager litigation from 1983 to date are not available. For further information, please note the response given by the Attorney-General's Department to Question No. 9 of the Senate Legal and Constitutional Legislation Committee hearing on 14 February 2005.



**Question W17**

**Senator Nettle**

**Recruitment**

I note that page 87 of the PBS states that the ADF is currently 1,500 below authorised personnel targets. Is Iraq a factor in that? I ask that because I note that the BBC has reported that almost 1,000 UK soldiers have deserted the army since the invasion of Iraq in 2003. They said that, in 2005, 377 personnel deserted and are at present still missing, while this year a further 189 have absconded. How many ADF members have deserted since 2003?

**RESPONSE**

No. The ADF has had no recorded desertions since 2003.

## Question W22

Senator Hurley

### HMAS Melbourne/HMAS Voyager

- a. How many veterans have sought compensation from the Government from HMAS Voyager and HMAS Melbourne?
- b. How many claims for compensation has the Government paid to veterans of HMAS Voyager and HMAS Melbourne?
- c. When were these claims made and what were the amounts of those claims?
- d. How many veterans are currently seeking compensation from HMAS Voyager and HMAS Melbourne?
- e. What is the estimated number of remaining veterans who have not already made or are currently seeking compensation from the HMAS Voyager and HMAS Melbourne who could make claims against the Government in the future?
- f. How much has the Department spent annually in legal costs over the past 10 years in relation to the HMAS Voyager and HMAS Melbourne collision and related compensation claims?
- g. What is the Departments estimated legal costs in relation to the HMAS Voyager and HMAS Melbourne collision and related compensation claims for the financial years 2007-08, 2008-09, 2009-10, 2010-11?
- h. What is the Departments estimated compensation costs in relation to the HMAS Voyager and HMAS Melbourne collision for the financial years 2007-08, 2008-09, 2009-10, 2010-11?

### RESPONSE

a – e) The response to the questions can be provided by dividing the claims into the following categories:

#### 1. Early Claims

- (i) Sixty five claims for compensation made under the *Commonwealth Employees Compensation Act 1930* (claims by widows and dependants).
  - 62 resolved in 1964-65, and
  - three were late claims which were resolved.
- (ii) Forty common law claims by dependants (one claim rejected in total – no dependency).

(iii) Two common law claims by HMAS Voyager survivors.

All common law claims were resolved in 1966-67.

## **2. Compensation for loss of kit and personal effects**

By August 1964, the Commonwealth had received 232 claims by officers, sailors and dependants of HMAS Voyager deceased crew members for compensation for loss of kit and personal effects arising from the collision.

By March 1965, the Commonwealth Crown Solicitor had made offers to settle all existing claims of this kind (the number had increased to 240 by that date). Claims were settled over the ensuing months as arrangements were concluded with each party.

Each claim was settled without admission of liability by the Commonwealth. Each primary beneficiary executed a Deed of Release and Indemnity.

## **3. Claims by HMAS Voyager Survivors**

Writs with Statements of Claim seeking common law damages in the 1980s and 1990s, following the decisions of the High Court in 1982 in *Groves' Case*<sup>1</sup> and in 1990 in *Verwayen's Case*<sup>2</sup>, were mainly by survivors of HMAS Voyager and some Voyager dependants. A total of 68 claims were settled under a 1993 settlement scheme and 123 under a 1995 scheme. In addition, 17 claims were settled in the context of litigation in which HMAS Voyager survivors sought common law damages.

Approximately ten per cent of HMAS Voyager survivors (24 survivors) did not make a claim.

## **4. Claims by former HMAS Melbourne Crew**

208 Writs with Statements of Claim seeking common law damages have been issued, from 1995 to 30 August 2006, out of the Supreme Courts in New South Wales, Victoria and the Australian Capital Territory by crew on HMAS Melbourne. Of the 208 claims, 84 have been resolved.

There are 124 current claims before the Courts in New South Wales, Victoria and the Australian Capital Territory.

Approximately 79 per cent of HMAS Melbourne crew (762 former crew) have not issued Writs and Statements of Claim for common law damages to date.

## **5. New claims by Dependants of HMAS Voyager Crew**

Claims have been issued out of the New South Wales Supreme Court since October 2004 by dependants, most of whom received settlements from the

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<sup>1</sup> *Groves v the Commonwealth* (1982) 150 CLR 113

<sup>2</sup> *The Commonwealth v Verwayen* (1990) 170 CLR 394

Commonwealth in the 1960s. The most recent claim was issued in February 2006.

The claimants are seeking either to re-open the 1965-66 settlements (claiming damages under the *Compensation to Relatives Act 1875* (NSW)) or are seeking common law damages for personal injuries.

There are currently nine claims (covering 19 dependants).

- f) Provision of funds for ongoing litigation is covered by the “Legal and Compensation” allocation for the Department of Defence. This allocation includes fees payable for advice and services provided by the Department’s external legal services providers, judgement and settlement sums and legal costs assessments made in favour of a plaintiff.

In 2005-06, Defence’s estimated legal costs were \$4.1m for HMAS Melbourne and HMAS Voyager matters. In 2004-05 they were \$3.9m. These costs include professional fees and disbursements and are inclusive of GST. To provide the estimated costs for the eight years preceding 2004-05 would require significant effort as the data is not captured within the Department’s financial management system in a format that allows identification by matter.

- g) Defence’s estimate of likely legal costs in relation to claims arising from the collision between HMAS Melbourne and HMAS Voyager for 2007-08 to 2010-11 is in the order of \$3.5 to \$4 million per year. Actual expenditure will depend on external factors, such as court schedules, discovery, mediations and settlement negotiations.
- h) Defence is unable to accurately estimate the compensation costs in relation to ongoing common law claims arising from the collision between HMAS Melbourne and HMAS Voyager. The contingent liability for current claims against the Commonwealth is reported in the Defence Annual Report, but the final amount paid in compensation is determined by the courts or by mediation based on the particulars of each case.

## **Question W24**

**Senator Ludwig**

### **Executive coaching and leadership training**

The following questions relate to the purchase of executive coaching and/or other leadership training services by the department/agency, broken down for each of the last four financial years.

Where available, please provide:

- a) Total spending on these services.
- b) The number of employees offered these services and their salary level.
- c) The number of employees who have utilised these services and their salary level.
- d) The names of all service providers engaged.
- e) For each service purchased from a provider listed in the answer to the previous question, please provide:
  - (i) The name and nature of the service purchased.
  - (ii) Whether the service is one-on-one or group based.
  - (iii) The number of employees who received the service.
  - (iv) The total number of hours involved for all employees.
  - (v) The total amount spent on the service.
  - (vi) A description of the fees charged (e.g. per hour, complete package).
  - (vii) Where a service was provided at any location other than the department or agency's own premises, please provide: The location used, the number of employees who took part on each occasion, the total number of hours involved for all employees who took part.

## **RESPONSE**

Specific information on the purchase of executive coaching and/or other leadership training services by Defence is limited. Information systems for financial and Human Resource reporting are being progressively updated, so information of this type will be more readily available in the future. The response is based upon readily available information.

- a) This information is unavailable at the present time.
- b) This information is unavailable.
- c) Complete information is unavailable. See the *Defence Annual Report 2004-05* (Table 3.24, page 115) for the reporting of leadership and development training. This is the first time that participation on these courses has been specified in this manner. Salary for these participants is not available.
- d) Complete information is unavailable. For details specifically related to Leadership, see the *Defence Annual Report 2004-05*, (Table 3.24, page 115).
- e) Complete information is unavailable. For available information see Table 3.24, *Defence Annual Report 2004-05* and Table 1 attached.
  - i) and ii) From the information available the courses were for leadership development and were group based with the exception of Working in the Senate and Senior Women in Management;
  - iii) – vii) as with e).

**Table 1**

| <u>Leadership and Development Program</u>                          | <u>Provider</u>   | <u>Location other than Defence</u>   | <u>Cost Per Package</u>                                  |
|--|---|--|--|
| Capstone Senior Leadership Program                                 | Centre for Strategy Development   | Saville Suites, Canberra   | \$164 000  |
| Australian Defence College   | Defence<br>University of New South Wales<br>Deakin University<br>University of Canberra   | N/A  | Salary only  |
| Parliamentary Awareness Training                                   | Department of the Senate  | N/A  | \$7 800  |
| Career Development Assessment Centres                              | Australian Public Service Commission  | Australian Public Service Commission   | \$144 000  |
| Australia and New Zealand School of Government – Executive Masters | Australia and New Zealand School of Government  | Distance Part Time learning, Australia & New Zealand   | \$154 000  |
| Working in the Senate  | Department of the Senate  | Department of the Senate   | Salary only  |
| Senior Women in Management   | Australian Public Service Commission  | Secondment to differing Departments dependant upon participant and sponsors  | \$12 000   |
| <i>Group Leadership Programs</i>                                   |   |  |  |
| Chief Information Officer Group                                    | PALM Consulting   | Tuggeranong Homestead  | \$20 000   |
| Corporate Services and Infrastructure Group                        | Results Consulting  | N/A  | \$22 840   |
| Defence Materiel Organisation                                      | Strategic Team Leadership Pty Ltd (STL)   | Newport Mirage, Sydney<br>Lancemore Hill, Kilmore<br>Riverglenn, Brisbane<br>Ramada, Glenelg   | \$1.052m Approximately                                   |
| Defence Science and Technology Org                                 | Upton Martin &<br>Melbourne University School of Enterprise   | Whalers Inn, VIC<br>Lakes Resort, SA<br>Cape Williams, VIC<br>Federal Police College, ACT<br>Hemisphere Conference Centre, SA<br>University House, ACT | \$781 219  |
| Intelligence and Security Group                                    | Paul Jones & Associates<br>Kerry Juknaitis People and Strategy<br>Rob Brennan<br>Jon Baker and Associates<br>Results Consulting | Bowral   | Confirmed costs unavailable                              |
| Air Force  | Air Force Adaptive Culture Program  | Heritage Hotel for 3 programs  | \$111 114 for 75 students, remainder of cost unavailable |

**Question W27**

**Senator Hurley**

**Review of Recognition of Service in Korea**

- a) Has the review concluded?
- b) What were the findings?
- c) What was the final cost of the review and can a breakdown of those costs be provided?
- d) Can we be provided with a copy of the report?
- e) Can we be provided with copies of transcripts/statements of all meetings during the review?

**RESPONSE**

- a) Yes.
- b) The report is publicly available at:  
[www.defence.gov.au/dpe/dpe\\_site/honours\\_awards/Korea/Korea.htm](http://www.defence.gov.au/dpe/dpe_site/honours_awards/Korea/Korea.htm)
- c) The final cost of the review was \$302, 065.

| <b>Categories</b>                                       | <b>Cost (\$)</b> |
|---|------------------|
| Stationery/postage/audio                                | 19, 096          |
| Consultant fees   | 127, 929         |
| Travel and incidentals                                  | 55, 367          |
| Legal advice – Australian Government Solicitor & others | 41, 021          |
| Advertising   | 54, 143          |
| Computer hardware/training                              | 4, 509           |
| <b>Total</b>  | <b>302, 065</b>  |

- d) See answer to b, above.
- e) While the Department of Defence holds the transcripts and statements of all public meetings held during the review, Appendices 3 and 4 of the Report demonstrate the size of the task to copy and release them.



**Question W28**

**Senator Nettle**

**Vietnam MIA's**

- a) What funds were provided to the Operation Aussies Home groups to assist with research for Australian missing soldiers in Vietnam?
- b) Where did this funding come from?
- c) What other assistance has been provided to the group? Could (DVA's) guidelines on funding for the search of missing Australian ADF personnel be provided?

**RESPONSE**

- a) A grant of \$37,500 was approved by the Minister Assisting the Minister for Defence for 2006-07 to cover Operation Aussies Home's costs associated with its search of the former battle site in Vietnam. It was paid on 6 July 2006.
- b) Funding is provided from the Defence budget for 2006-07.
- c) Training in the use of metal detectors was provided by the School of Military Engineering for two members of the group prior to their departure for Vietnam. The military advisory staff of the Australian embassy in Vietnam has provided liaison support with Vietnamese authorities. Questions regarding DVA guidelines should be directed to DVA.