

Hurley may have misled Senate on combat related death

Thom Cookes Sat 14 Dec 2013



The Chief of the Australian Defence Force appears to have misled the Senate regarding a handcuffed prisoner who was shot dead by an Australian special forces officer in Afghanistan. General David Hurley told an Estimates hearing that it was a "combat-related death", but a previously secret internal Defence report says the man was shot when the Australian officer was left alone in the room with the prisoner.

The report, which was released to the [ABC's 7.30](#) under Freedom of Information, says the officer claimed the prisoner had attacked him with a knife and so he had fired in self defence, but there were no eye-witnesses. In October 2010, a group of Australian special forces soldiers and their Afghan counterparts raided a village in Northern Kandahar, hunting for insurgents. They targeted a particular house in the village and rounded up 30 local men.

They used a local house to question them but by the end of the day, one of those Afghan men was dead. The incident was kept secret until May last year, when it leapt into the headlines of News Limited papers. It was just one of a series of allegations made by whistleblowers from the Australian Defence Force Investigative Service (ADFIS). They claimed an Australian special forces officer had shot dead a prisoner during questioning and there had been no ADFIS investigation. The same day, the incident was raised with General Hurley during Senate Estimates hearings.

General Hurley reassured the senators there was no substance to the newspaper stories. "These allegations come from former members who were involved in operations in Afghanistan at the time, so we do not take them lightly,"

He said. "As you would have seen in the paper today, there were allegations that [a Special Operations Task Group] special forces officer shot an insurgent during tactical questioning. That was examined at the time and found not to be so."

General Hurley denied the man had been killed while under questioning by the Australians. "In the matter that we are aware of, the insurgent killed was regarded as a combat-related death. Defence understands that the incident we are aware of did not occur during tactical questioning," he said. Secret report finds no witnesses to shooting

Defence ordered an investigation. The full report from ADFIS was finally completed in October this year and classified secret. But the ADFIS report is at odds with General Hurley's claim that it was a "combat-related death". It states that the "Afghan man was a detainee at the time that he was killed". It says that after the Afghan man was detained, an Australian officer was left alone in the room with the handcuffed prisoner.

His colleagues outside heard shouting, then a number of shots. When they rushed in, the Afghan man's plastic cuffs had become separated and he was dead on the floor.

He had been shot in the chest, the neck and between the eyes. The Australian officer claimed the prisoner had attacked him with a knife and so he had fired in self defence, but there were no eyewitnesses.

The report states that "... there is sufficient evidence to conclude that [the soldier's] actions were lawful in the circumstances". Investigation 'problematic from the outset' The ADFIS investigators stated "the investigation was problematic from the outset, due to the historic nature of the incident". Associate Professor at the ANU's Centre for Military and Security Law, David Letts, says it is not best practice for Defence to have started the investigation so long after the shooting took place.

"Collecting the information as quickly as possible... that's clearly preferable," he said. The investigators complained bitterly that they were "denied direct access to special forces records" and that "some records could not be located". They also said "that after exhausting all feasible lines of enquiries, ADFIS was unable to identify or confirm the location" of the unit's Afghan interpreter - the last independent witness to see the victim alive.

Professor Letts says General Hurley would have made his initial comments to Senate Estimates based on the information he had at the time. "That wasn't a result of adequate investigation or inquiry," he said. General Hurley was not available to be interviewed by 7.30 for this story, but Defence provided this response: "No investigation of the matter had occurred prior to 28 May 2012. The Chief of the Defence Force was advised on the basis of information available at the time that the insurgent was not shot during tactical questioning."

"Once the allegation was made in 2012, further inquiries and investigations were conducted. "Defence is satisfied that the allegation has been properly investigated." But Greens Leader Christine Milne has called for an independent investigation into the shooting. "Allegations aired tonight [Friday] regarding the handling of the death of an Afghan detainee in custody should prompt an independent, non-Defence Force investigation," she said.

"The report contradicts statements made by Major General Hurley to Senate estimates hearings at the time of the media inquiries." "The Australian public must be able to have confidence in the actions of Australian Defence Forces overseas. An external review of this incident and the handling of it by the ADF is warranted."

<http://www.abc.net.au/news/2013-12-13/hurley-may-have-misled-senate-on-27combat-related-death27-in-/5156524>

Response by Defence over death of Afghan man

Fri 13 Dec 2013

The Chief of Defence was not available for an interview with the ABC due to other commitments. However the following response to 7:30 has been provided:

On 22 May 2012, Defence became aware of an allegation that a Special Operations Task Group (SOTG) member shot a person in September 2010 during tactical questioning, following a media enquiry. In responding to the question, Defence identified an incident on 3 October 2010 involving an insurgent who was killed while threatening the life of an SOTG member. That incident did not appear to relate to tactical questioning.

No investigation of the matter had occurred prior to News Limited submitting its questions or prior to the Senate Estimates Hearing of 28 May 2012. The Chief of the Defence Force (CDF) was advised on the basis of information available at the time namely that in the incident Defence had identified, the insurgent was not shot during tactical questioning.

As CDF stated during the Senate Estimates Hearing on 28 May 2012, "As this process has gone on, the interaction between the journalist and the former ADF members [who spoke to the journalist] has thrown more issues up and we just need to check back how they fit next to incidents we were already aware of or whether they are new".

Following the media enquiry, Commander Joint Operations directed that a review be undertaken of the incident that occurred on 3 October 2010 in which an insurgent was killed while threatening an SOTG member. Defence is concerned that the allegation was made a significant period of time after the event and that this delayed subsequent investigation. It is noted that ADFIS reported that material reflected an incorrect grid reference, however, ADFIS was able to identify the location.

It is important to note that the ADFIS investigation concluded that there was sufficient evidence to indicate that the SOTG member acted lawfully. ADFIS did not recommend any disciplinary or administrative action as a result of their investigation. Defence notes that ADFIS reported a lack of cooperation from the unit involved, and is disappointed that they perceived this to be the case.

However it must be understood that ADFIS investigations are undertaken in accordance with the provisions of the Defence Force Discipline Act 1982, which similarly to civilian criminal law, does not require persons to answer questions. The unit was required to report operational incidents to the chain of command and in fact did so on this occasion. Nevertheless, following actions initiated after the News Limited questions, the content of the initial reporting of the incident was found to be deficient. Once the allegation was made in 2012, further inquiries and investigations were conducted in accordance with current processes, including notification to ADFIS. Accordingly, Defence is satisfied that the allegation has been properly investigated.

<http://www.abc.net.au/news/2013-12-13/defence-response-to-73a30-story/5156520>