



LIMITED DISTRIBUTION Ministerial Brief for Noting

FOR: Acting Minister for Defence

Action Requested By: 2 April 2021

Reason for Urgency: Routine

Copies to: Associate Secretary, VCDF, CA, FASIP, FASMECC

LIMITED DISTRIBUTION IGADF Afghanistan Inquiry - US Leahy Law Implications

Key Issues:

On 12 March 2021, the United States formally notified Australia that US authorities must make a formal determination in relation to US support to Australian special forces due to 'credible information that gross violations of human rights were committed in Afghanistan' (Attachment A). The United States' 'Leahy Law' prohibits the responsible units receiving US military training, equipment, or other assistance, until the US determines acceptable remediation has been conducted. s33(a)(iii)

s33(a)(iii)

s33(a)(iii)

A fact sheet on our current understanding of the Leahy Law is at Attachment B. My response to the US Defense Attaché is at Attachment C.

Media Considerations: s33(a)(iii)

. Specific talking points in relation to this matter are at Attachment D. General talking points on the Afghanistan Inquiry and related matters are available at QB21-000142.

Noted by Minister:

Signature:

Marise Payne

...../...../2021

Minister comments

Cleared by: Mr Greg Moriarty, Secretary, Department of Defence
s47E(d) s22

Date cleared: 23 March 2021

Contact: Rear Admiral Brett Wolski, AM, RAN
Head Afghanistan Inquiry Response Task Force

Mob: s22

Cleared by: General Angus J Cam C, Chief of the
Defence Force s22
s47E(d)


Date cleared

Contact: Brigadier Jocelyn King, Director-General Afghanistan
Inquiry Response Task Force

Mob: s22

Sensitivity: Yes

- The Afghanistan Inquiry, and related matters, has attracted significant public interest. Defence anticipates an increase in domestic and international attention as announcements regarding the response to the Afghanistan Inquiry are made.

- s33(a)(iii)
- 

Financial Impacts: No.

Regulatory Implications: No.

Consultation: Yes.

- Mr Peter Tesch, Deputy Secretary Strategy, Policy and Industry.
- Mr Hugh Jeffrey, First Assistant Secretary International Policy
- Dr Robert McGregor, Assistant Secretary Major Powers, International Policy Division.
- Air Commodore Patrick Keane, Director-General Military Law Branch.
- Brigadier Jane Spalding, Director-General Sensitive Issues Management – Army.
- Brigadier David Kelly, Chief of Staff Army Headquarters.

Attachments:

- A: US Defense Attaché Letter to CDF, dated 12 March 21.
- B: US Leahy Law fact sheet (prepared by Defence Legal).
- C: CDF Letter to US Defense Attaché (EC21-000921).
- D: Talking Points – IGADF Afghanistan Inquiry – US Leahy laws implications.

Background

1. The 'Leahy Law' refers to two statutory provisions prohibiting the US Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights (GVHR). On 12 March 2021 the US Defense Attaché wrote to me [CDF] advising that the outcomes of the Afghanistan Inquiry constituted credible information that GVHR were committed in Afghanistan by the Australian Special Air Services Regiment (SASR) and the

s47E(c) s33(a)(iii)

s33(a)(iii)

s33(a)(iii)

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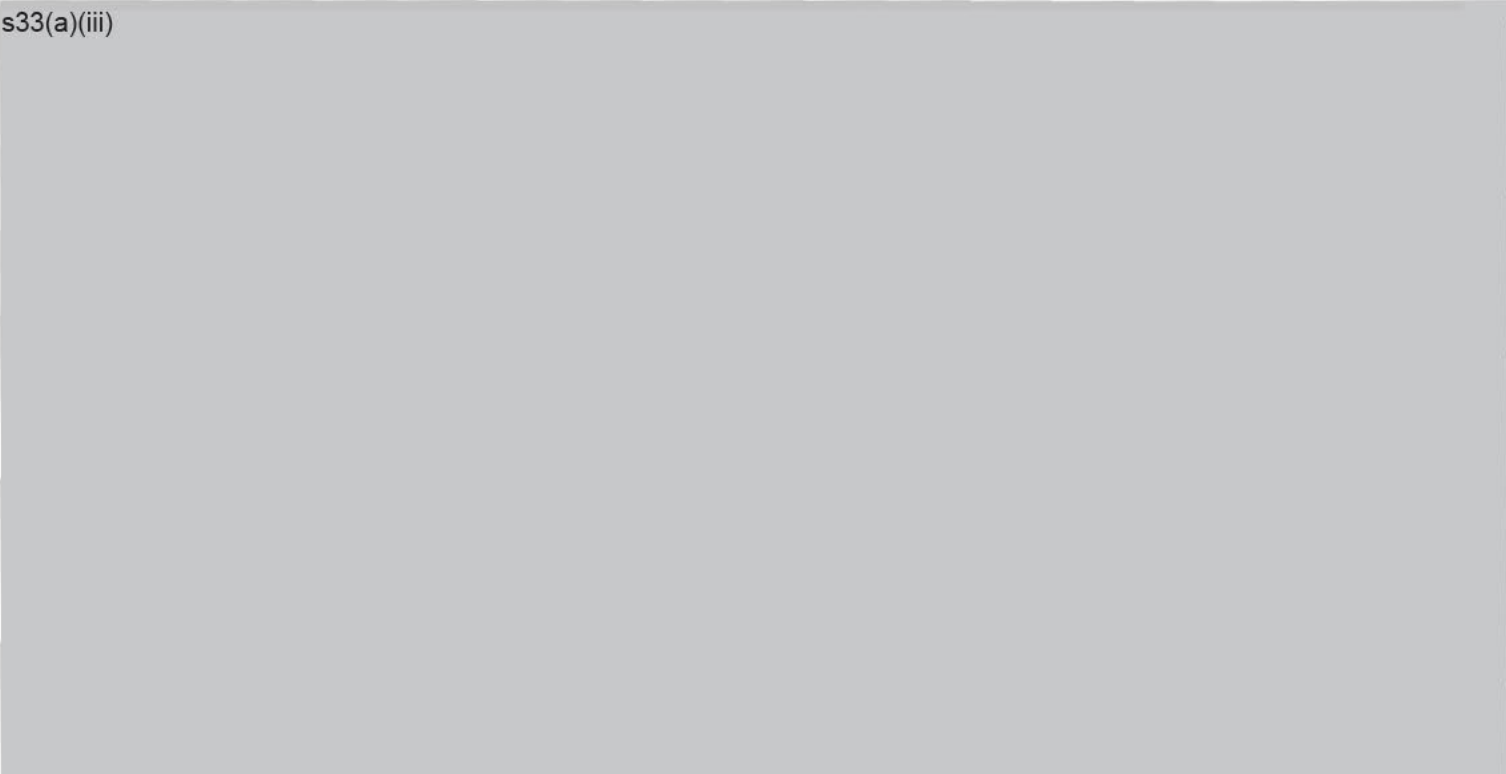
Background on the Leahy Law

4. One of the Leahy Law's statutory provision applies to Department of Defense (DoD) and the other applies to the US Department of State (State). The DoD and State Leahy Laws do not explicitly define what constitutes a GVHR however the US Government considers torture, extrajudicial killing, enforced disappearance and rape as GVHR. Both physical breaches of the law and breaches of responsibility to intervene or prevent GVHR are considered under these laws.

s33(a)(iii)

s33(a)(iii)


s33(a)(iii)



Reporting

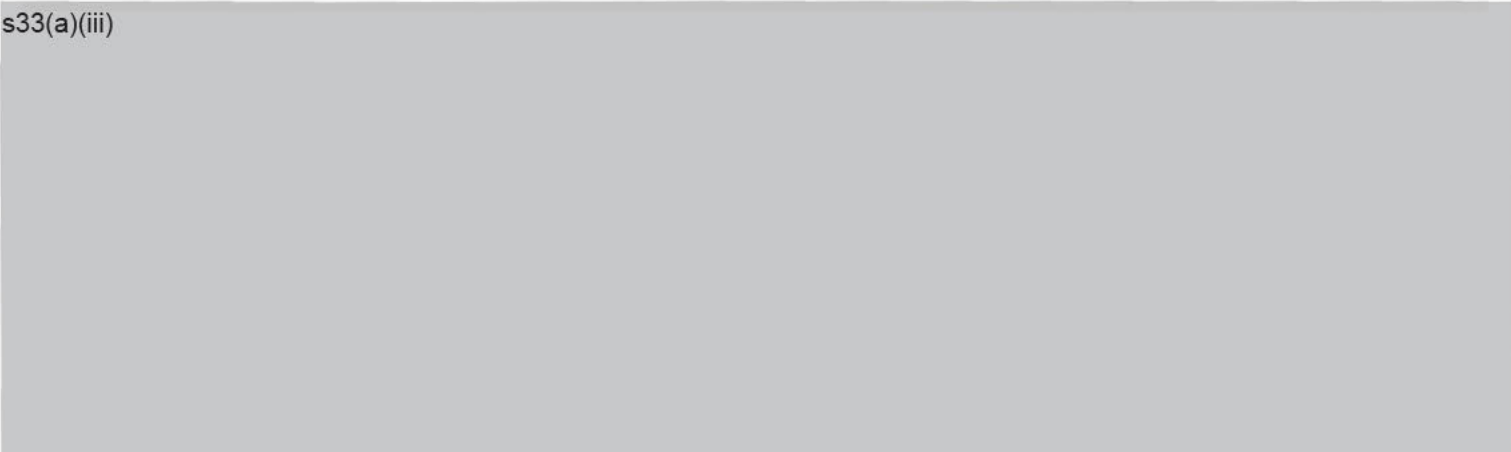
9. The State Leahy law includes for the Secretary of State to make publically available, to the maximum extent possible, the identity of those units who have been denied assistance under the Leahy law. This public reporting requirement is not replicated in the DoD Leahy Law, nor is there an obligation on DoD to inform a foreign government that assistance has been denied. In the absence of public reporting Defence cannot provide a list of countries subject to the DoD Leahy Law. Public reporting notes that units from the security forces of Belize, Bosnia and Herzegovina, Burkino Faso, Burundi, Jamaica, Iraq, Kyrgyz Republic, Mexico and Pakistan were denied assistance under the State Leahy Law in 2019.

s33(a)(iii)



11. In addition to Leahy Law specific reporting requirements, the Department of State publishes annual 'Country Reports on Human Rights Practices.' Future country reports on Australia may reflect on the outcomes of the Afghanistan Inquiry and the Leahy Law implications.

s33(a)(iii)



~~OFFICIAL: SENSITIVE - LEGAL~~

BACKPOCKET BRIEF: U.S. LEAHY LAW (GROSS VIOLATIONS OF HUMAN RIGHTS AND U.S. FUNDED ASSISTANCE) – FACT SHEET

What is the U.S. Leahy Law?

- The U.S. ‘Leahy Law’ restricts the use of funds to provide training, equipment or other assistance to ‘any unit of the security forces of a foreign country’ where the Secretary of Defense has credible information that such unit has committed a gross violation of human rights (GVHR). ‘Leahy Vetting’ is a process applied to review and approve (or deny), initially, and on an ongoing basis, the eligibility of security force units for U.S. (Department of Defense (DoD) or Department of State (DoS)) funded assistance.
- Separate U.S. appropriations and funding authorisations to ‘train and equip’ partner forces may apply additional human rights related vetting, in addition to the Leahy Law (not further addressed).

To what activities/assistance does it apply?

- The law applies to limit the use of U.S. funds for ‘training’, ‘equipment’ or ‘other assistance’. This includes, for instance, joint combined exchange training, US provided/funded training, receipt of maintenance and technical support, or construction.
- The law applies to all U.S. DoD- or DoS-funded assistance to ‘security forces’, of all/any foreign countries.
- Security force are understood to include, in effect, all organisations or entities authorised by a State to use force. This includes members of the military.

Who/which Department administers law?

- There are two limbs of the Leahy Law – one applicable to the use of DoD funds, and one applicable to DoS funds. Where the Secretary of Defense and/or the Secretary of State has ‘credible information’ that a unit has been implicated in, or committed, a GVHR, the Leahy Law applies to prohibit the use of DoD or DoS funds.
 - Implementation generally occurs at the U.S. Embassy in the relevant country.
 - U.S. Combatant Commands also nominate POCs for implementation of the Leahy Law in relation to security cooperation and engagement programs in their AOR.

What activities/concern trigger the application of the law (and its prohibitions/exemptions)?

- The scope of what actions constitute GVHR is not defined in the Leahy law. However, the four most common forms of GVHR considered by the U.S. when undertaking ‘Leahy Vetting’ are:
 - Torture, Extra judicial killing, Enforced disappearance, Rape under the colour of law
 - Physical and breaches of responsibility to intervene/prevent such conduct are considered.
 - Military members in uniform, on deployment, using Government issued weapons, would be considered as acting under ‘the colour of law’.

How does it apply to Australia/Australian units?

- In cases where an entire unit is designated to receive relevant assistance (including training or equipment), a vetting process is applied to the unit and the unit’s commander. Where an individual member is nominated for U.S. assistance, vetting applies to that person as well as their unit. In effect, if a unit is implicated in GVHR, no individual in that unit may receive U.S. training, equipment or other assistance.

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- The restriction imposed by the Leahy Law is applied at the 'unit' level. It does not mean that the whole of a foreign government's military (or other security forces) is restricted from receiving assistance. The term 'unit' is intended to apply at the smallest operational group in the field that has been implicated in a reported GVHR – this may be at the battalion/regimental level.


If U.S. funded assistance is denied or withdrawn, can it be re-instated?

- Yes. There are exceptions under both DoD and DoS Leahy Laws that allow for the remediation of a Unit and the resumption of DoD- and/or DoS- funded assistance. In order to achieve remediation, the Secretary of Defense, in consultation with the Secretary of State, needs to determine that 'all necessary corrective steps' have been taken. Such action includes:
 - (1) a credible, impartial and thorough investigation;
 - (2) judicial or administrative adjudication, addressing all the GVHR; and
 - (3) sentencing or comparable administrative action.

Are there reporting requirements applicable to procedures/decisions under the Leahy Law?

- Upon discovery or receipt of 'derogatory information' – i.e. credible information that a security force unit has committed a GVHR, internal reporting is uploaded within U.S. systems. The relevant Leahy vetting team at the US Embassy then commences their process.
- All Political Sections prepare annual reports on human rights practices of foreign countries/units to inform Leahy Law vetting and applications for assistance.
- Where the DoD applies an exception (after remediation) to permit U.S. funded assistance to a unit, the DoD is required to notify Congress not more than 15 days after the exception.
- Aside from Leahy Law-specific reporting, the DoS publishes Annual 'Country Reports on Human Rights Practices'; the 2019 Report on Australia is available online.

s33(a)(iii)



PREPARED BY:

s22
Wing Commander
Deputy DOIL

17 March 2021

CLEARED BY:

Pat Keane, AM CSC
Air Commodore
DG MLB

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LEAHY LAW

TALKING POINTS

- Australia fully supports the objectives of the Leahy Law.
- It is right that the Australian Defence Force is held to account for allegations of grave misconduct by some members of our Special Forces community on operations in Afghanistan.
- Australia's Alliance with the United States is founded in part on our shared commitment to liberal democratic values and the rule of law
 - it is a testament to the strength of our relationship that we can discuss issues of such deep concern openly and transparently with our closest partner.
- Defence is ensuring that the United States has access to all information necessary to support its consideration of the application of the Law and whether any exceptions should be made for the responsible units and individuals.
- s33(a)(iii)

If asked: When was Australia notified by the US it would be subject to the Leahy law?

- Defence was notified by the US Embassy on 12 March 2021.

If asked: How will this affect Australia's relationship with the US?

- The Australian Defence Force and US Armed forces have a deep history of close cooperation, including on Special Forces operations.
- As you would appreciate, Special Forces operations are sensitive, and I'm unable to comment further on the nature of this cooperation.
- However, I can assure you that our close military cooperation with the United States is longstanding and enduring.

If asked: What is the Leahy law?

- The 'Leahy law' refers to two statutory provisions prohibiting the United States (US) from using funds to assistance to units of foreign security forces where there

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is credible information implicating that unit in the commission of gross violations of human rights (GVHR).

- One statutory provision applies to the US State Department and the other applies to the US Department of Defense.
- The US government considers torture, extrajudicial killing and enforced disappearance as GVHRs when implementing the Leahy law.
- Under the Leahy law, US Department of Defense-appropriated funds may not be used for any training, equipment or other assistance for a foreign security force unit if the Secretary of Defense has credible information that such unit has committed a gross violation of human rights (GVHR).
- One of the two exceptions to the Leahy law is 'remediation', where it is determined that the government of the country whose security force unit is considered to have committed GVHR has taken all necessary corrective steps.
- To ensure statutory compliance, US authorities must make a formal determination that remediation has occurred within the specific units implicated.

- s33(a)(iii)

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Australian
Department of Defence

Submission
For information

PDMS Ref. Number MS21-900397
Date of Clearance: 16 April 2021

To Minister for Defence

Subject LIMITED DISTRIBUTION: IGADF Afghanistan Inquiry - US Leahy Law Implications

Timing 30 April 2021. To ensure timely advice on matters relevant to the US Alliance.

Recommendations

That you:

- 1. Note that the s33(a)(iii) [redacted] to Australian special forces as required by legislation (the 'Leahy Law') due to 'credible information' that gross violations of human rights were committed in Afghanistan. noted / please discuss
- 2. Note that the Chief of Defence Force has provided additional information s33(a)(iii) [redacted]. noted / please discuss
- 3. Note that the US' assessment of Australian special forces is likely to become public. noted / please discuss

Minister for Defence

s22 [redacted]
Signature [redacted]

Date: 09/05/2021



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Minister's Comments

Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:


Key Issues

- On 12 March 2021, the ^{s33(a)(iii)} [redacted] to Australian special forces due to 'credible information' that gross violations of human rights (GVHR) were committed in Afghanistan' (Attachment A). The US 'Leahy Law' prohibits the responsible units receiving US military training, equipment, or other assistance, until the US determines acceptable remediation has been conducted.
- ^{s33(a)(iii)} [redacted] The response to the US Defense Attaché is at Attachment B.
- ^{s33(a)(iii)} [redacted] Talking points on the Leahy Law implications of the Afghanistan Inquiry are at Attachment C. A fact sheet on our current understanding of the Leahy Law is at Attachment D.


Background

- The 'Leahy Law' refers to two statutory provisions prohibiting the US Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of GVHR. On 12 March 2021 the US Defense Attaché wrote to CDF advising that the outcomes of the Afghanistan Inquiry constituted credible information that GVHR were committed in Afghanistan by the Australian Special Air Services Regiment (SASR) and ^{s47E(c)} [redacted] Attachment A. ^{s33(a)(iii)} [redacted]

5. s33(a)(iii)



6. s33(a)(iii)




7. This matter was originally briefed to the then acting Minister for Defence, the Honourable Marise Payne, on 23 March 2021. In accordance with normal protocols the submission (MS21-000652) was returned to the Department for rebadging following the change to Prime Minister Morrison's ministry. The content has been updated to reflect developments that have occurred in the intervening time.

Background on the Leahy Law

8. One of the Leahy Law's statutory provisions applies to Department of Defense (DoD) and the other applies to the US Department of State (State). The DoD and State Leahy Laws do not explicitly define what constitutes a GVHR however the US Government considers torture, extrajudicial killing, enforced disappearance and rape as GVHR. Both physical breaches of the law and breaches of responsibility to intervene or prevent GVHR are considered under these laws.

9. s33(a)(iii)



Reporting

16. The State Leahy Law makes provision for the Secretary of State to make publically available, to the maximum extent possible, the identity of those units who have been denied assistance under the Leahy Law. This public reporting requirement is not replicated in the DoD Leahy Law. While there is a requirement for DoD to advise a foreign government about the outcome of a remediation request, there is no obligation on the DoD to inform a foreign government that assistance has been denied, for example where Leahy vetting was conducted and a remediation request was not made. In the absence of public reporting Defence cannot provide a list of countries subject to the DoD Leahy Law. Public reporting notes that units from the security forces of Belize, Bosnia and Herzegovina, Burkino Faso, Burundi, Jamaica, Iraq, Kyrgyz Republic, Mexico and Pakistan were denied assistance under the State Leahy Law in 2019.

17. s33(a)(iii)



18. s33(a)(iii)




19. In addition to Leahy Law specific reporting requirements, the Department of State publishes annual 'Country Reports on Human Rights Practices.' The 2020 Report was published on 31 March, and made a brief reference to the IGADF Afghanistan Inquiry, future reports may reflect on the Leahy Law implications.

s33(a)(iii)



20. s33(a)(ii)



21. s33(a)(ii)





22. s33(a)(ii)



23. s33(a)(ii)



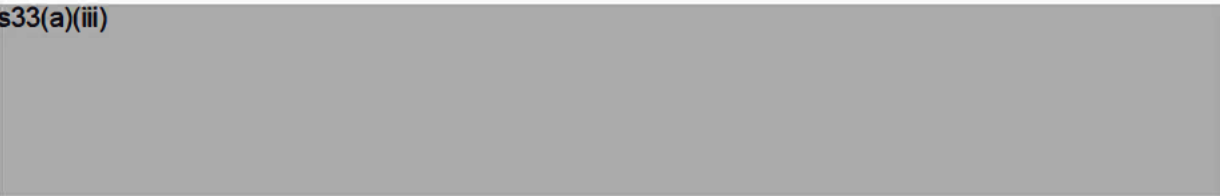
Consultation – internal/external

- 24. Mr Peter Tesch, Deputy Secretary Strategy, Policy and Industry.
- 25. Mr Hugh Jeffrey, First Assistant Secretary International Policy
- 26. Ms Sally Timbs, A/Assistant Secretary Major Powers, International Policy Division.
- 27. Air Commodore Patrick Keane, Director-General Military Law Branch.
- 28. s47E(d) Sensitive Issues Management – Army.
- 29. Brigadier David Kelly, Chief of Staff Army Headquarters.

Sensitivities

30. The Afghanistan Inquiry, and related matters, has attracted significant public interest. Defence anticipates an increase in domestic and international attention as announcements regarding the response to the Afghanistan Inquiry are made.

31. s33(a)(iii)



Financial/systems/legislation/deregulation/media implications

32. s33(a)(iii) [Redacted]

33. General talking points on the Afghanistan Inquiry and related matters are available at QB21-000142.

Attachments

Attachment A United States Defense Attaché Letter to CDF, dated 12 March 2021.

Attachment B CDF Letter to United States Defense Attaché, dated 30 March 2021.

Attachment C Talking Points – IGADF Afghanistan Inquiry – United States Leahy laws implications.

Attachment D United States Leahy Law fact sheet (prepared by Defence Legal).

Authorising Officer	
<p>Cleared by: [Redacted] s22</p> <p>Greg Moriarty Secretary Department of Defence</p> <p>Date: 16 April Ph: s47E(d) [Redacted]</p>	<p>s22 [Redacted]</p> <p>General Angus J Campbell Chief of the Defence Force</p> <p>Date: 16 April Ph: s47E(d) [Redacted]</p>

Contact Officer Rear Admiral Brett Wolski, AM, RAN, Head Afghanistan Inquiry Response Task Force,
Mob: s22 [Redacted]

CC Assoc Sec, VCDF, CA, CJOPS, FASIP, FASMECC

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Australian Government
Department of Defence

LIMITED DISTRIBUTION
Submission

For information

PDMS Ref. Number MS21-001599

Date of Clearance: 30 June 2021

To **Minister for Defence**

Subject **LIMITED DISTRIBUTION: US Leahy Law Response Update**

Timing 9 July 2021 – to facilitate the timely release of information to the US Defense Attaché for consideration s33(a)(iii) [REDACTED]

Recommendation

That you:

- note** that I (CDF) intend to update the previous advice to the United States Defense Attaché on Defence's response to the Inspector-General of the Australian Defence Force Afghanistan Inquiry. noted / please discuss

Minister for Defence

Signature.....

Date:...../...../2021

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

- On 16 April 2021, I wrote to your office advising of the implications of the United States Department of Defense (US DoD) Leahy Law on the Australian Defence Force (MS21-900397). In that brief I indicated that Defence had provided additional information, s33(a)(iii) [redacted] s33(a)(iii) [redacted] to provide an update to the US Embassy s33(a)(iii) [redacted] s33(a)(iii) [redacted] Attachment A).

Background

- The US DoD Leahy Law refers to two statutory provisions prohibiting the US Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights. The US DoD Leahy Law prohibits responsible units from receiving US military training, equipment, or other assistance, until the US determines acceptable remediation has been conducted.
- On 12 March 2021, the US Defense Attaché wrote to me advising that the outcomes of the Afghanistan Inquiry constituted credible information that gross violations of human rights were committed in Afghanistan by the Australian Special Air Services Regiment and the s47E(c) s33(a)(iii) [redacted] s33(a)(iii) [redacted] Attachment B).
- s33(a)(iii) [redacted]

Consultation – internal/external

- Mr Peter Tesch, Deputy Secretary Strategy, Policy, and Industry.
- Dr Rob McGregor, Assistant Secretary Major Powers, International Policy Division.

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7. Air Commodore Patrick Keane, Director General Military Legal Services.
8. Brigadier Jane Spalding, Director-General Sensitive Issues Management – Army.
9. Brigadier David Kelly, Chief of Staff Army Headquarters.

Consultation – Secretary/CDF

10. The Secretary has reviewed this brief.

Sensitivities

11. The Afghanistan Inquiry, and related matters, has attracted significant public interest. Defence anticipates an increase in domestic and international attention as announcements regarding the response to the Afghanistan Inquiry are made.

s33(a)(iii)

Financial/systems/legislation/deregulation/media implications

13. s33(a)(iii)

s33(a)(iii)

Specific talking points in relation to this matter

are at Attachment C.

14. General talking points on the Afghanistan Inquiry and related matters are available at QB21-000142.

Attachments

Attachment A Chief of Defence Force letter to US Defense Attaché - Additional Information regarding Defence's response to the Inspector-General of the Australian Defence Force Afghanistan Inquiry

Attachment B United States Defense Attaché letter to Chief of the Defence Force, dated 12 March 2021

Attachment C Talking Points – United States Department of Defense Leahy Law

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Authorising Officer

Cleared by:

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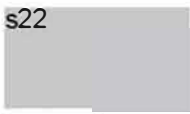
General Angus J Campbell, AO, DSC
Chief of the Defence Force

Date: 29 June 2021

Tel: s47E(d)

Contact Officer: Rear Admiral Brett Wolski, Head Afghanistan Inquiry Response Task Force, Mob: s22

s22



CC:

Secretary, Assoc Sec, VCDF, CA, FASIP, FASMECC, HAIRTF

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LEAHY LAW

TALKING POINTS

- Australia's Alliance with the United States is founded on our shared commitment to liberal democratic values and the rule of law.
- Australia has been engaging closely with the United States in relation to the findings of the IGADF Afghanistan Inquiry.
- The United States has legislative requirements under the 'Leahy Law' to ensure funding is not used for any training, equipment or other assistance for a foreign security force unit where there is credible information of gross violations of human rights.

• s33(a)(iii)

- It is right that the Australian Defence Force is held to account for allegations of grave misconduct by some members of our Special Forces community on operations in Afghanistan.
- It is a testament to the strength of our relationship with the United States that we can discuss issues of such deep concern openly and transparently.
- Defence is ensuring that the United States has access to the information necessary to support its consideration of the Leahy Law
 - Including whether any exceptions should be made for the responsible units or individuals where necessary corrective steps have been taken to address the allegations.

• s33(a)(iii)

If asked: When was Australia notified by the United States it would be subject to the Leahy Law?

- Defence was notified by the United States Embassy on 12 March 2021.

If asked: How will this affect Australia's relationship with the United States?

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- The Australian Defence Force and United States Armed Forces have a deep history of close cooperation, including on Special Forces operations.
- Australia's military cooperation with the United States is longstanding and enduring.

If asked: What is the Leahy law?

- The 'Leahy Law' refers to two statutory provisions prohibiting the United States from using funds to assist units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights.
 - One statutory provision applies to the US Department of State and the other applies to the US Department of Defense.
- The United States Government considers torture, extrajudicial killing and enforced disappearance as gross violations of human rights when implementing the Leahy Law.
- Under the Leahy Law, US Government-appropriated funds may not be used for any training, equipment or other assistance for a foreign security force unit where there is credible information that such unit has committed a gross violation of human rights.
- One of the two exceptions to the Leahy Law is 'remediation', where it is determined that the government of the country whose security force unit is considered to have committed gross violations of human rights has taken all necessary corrective steps.
- To ensure statutory compliance, United States authorities must make a formal determination that remediation has occurred within the specific units implicated.

s33(a)(iii)

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Australian Government
Department of Defence

LIMITED DISTRIBUTION
Submission
For information

PDMS Ref. Number MS21-002222
Date of Clearance: 23 September 2021

To Minister for Defence
Subject LIMITED DISTRIBUTION: Leahy Law Response Update - September 2021
Timing 15 October 2021 – to inform you [MINDEF] of the s33(a)(iii) [redacted]
s33(a)(iii) [redacted]

Recommendation

That you:

- | | |
|---|---------------------|
| 1. note I [CDF] have provided a further update to the United States Defense Attaché on Defence's response to the Inspector-General of the Australian Defence Force Afghanistan Inquiry. | agreed / not agreed |
|---|---------------------|

Minister for Defence

Signature.....

Date:...../...../2021

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

- On 16 April 2021, I wrote to your office advising of the implications of the United States Department of Defense (US DoD) Leahy Law on the Australian Defence Force (MS21-900397 refers). In that brief I indicated that Defence had provided additional information, s33(a)(iii) s33(a)(iii)
- On 29 June 2021, I wrote to your office advising of my intent to provide an update to the US Embassy s33(a)(iii) (MS21-001599 refers). I now advise that I have provided a further update to the US Embassy in light of recent media reporting on the Defence response to the Inspector-General of the Australian Defence Force Afghanistan Inquiry (Attachment A).

Background

- The US DoD Leahy Law refers to two statutory provisions prohibiting the US Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights. The US DoD Leahy Law prohibits responsible units from receiving US military training, equipment, or other assistance, until the US determines acceptable remediation has been conducted.
- On 12 March 2021, the US Defense Attaché wrote to me advising that the outcomes of the Afghanistan Inquiry constituted credible information that gross violations of human rights were committed in Afghanistan by the Australian Special Air Services Regiment and the s47E(c) s33(a)(iii) s33(a)(iii)
- s33(a)(iii)

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Consultation – internal/external

- 6. Dr Peter Sawczak, Acting Deputy Secretary Strategy, Policy, and Industry.
- 7. Lieutenant General Rick Burr, Chief of Army

Consultation – Secretary/CDF

- 8. The Secretary has reviewed this brief.

Sensitivities

- 9. The Afghanistan Inquiry, alongside related matters, has attracted significant public interest. Defence anticipates an increase in domestic and international attention as announcements regarding the response to the Afghanistan Inquiry are made.

s33(a)(iii)



Financial/systems/legislation/deregulation/media implications

- 11. s33(a)(iii)
- specific talking points in relation to this matter are at Attachment C.

Attachments

- Attachment A** Chief of Defence Force letter to US Defense Attaché
- Attachment B** US Defense Attaché letter to CDF, dated 12 March 2021
- Attachment C** Talking Points – Leahy Law

<p>Authorising Officer</p> <p>Cleared by:</p> <p>s22</p>  <p>General Angus J Campbell, AO, DSC Chief of the Defence Force</p> <p>Date: 23 September 2021 Tel: s47E(d)</p>

Contact Officer: Rear Admiral Brett Wolski, Head Afghanistan Inquiry Response Task Force, Mob: s22



Assoc Sec, VCDF, DEPSEC SP&I, CA, FASIP, FASMECC, HAIRTF

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Australian Government
Department of Defence

LIMITED DISTRIBUTION
Submission
For information

PDMS Ref. Number MS22-000186
Date of Clearance: February 2022

To Minister for Defence

Subject LIMITED DISTRIBUTION: Leahy Law Response Update – Final – February 2022

Timing At your convenience.

Recommendation

That you:

1. **note** I [CDF] have provided a final update to the United States Defense Attaché on Defence’s response to the Inspector-General of the Australian Defence Force Afghanistan Inquiry, relevant to the Leahy Law. noted / please discuss

Minister for Defence

Signature.....

Date:...../...../2022

Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

- On 12 March 2021, the United States (US) formally notified Australia that as a consequence of the findings of the Inspector-General of the Australian Defence Force (IGADF) Afghanistan Inquiry, s33(a)(iii) [redacted]
- On 16 April 2021, I wrote to your office advising of the implications of the US DoD Leahy Law on the Australian Defence Force, and that I had provided information to the US Embassy s33(a) s33(a)(iii) [redacted]
- On 29 June and 23 September 2021, I wrote to your office advising that I had provided additional information/updates to the US Embassy s33(a)(iii) [redacted] (MS21-001599 and MS21-002222 refer).
- I am now writing to advise that I have provided a final update to the US Embassy on actions taken by Defence in response to the Inquiry, s33(a)(iii) [redacted] s33(a)(iii) [redacted] A copy of this correspondence is at Attachment A.
- s33(a)(iii) [redacted]

Background

- The US DoD Leahy Law refers to two statutory provisions prohibiting the US Government from using funds for assistance to units of foreign security forces where there is credible information implicating that unit in the commission of gross violations of human rights. The US DoD Leahy Law prohibits responsible units from receiving US military training, equipment, or other assistance, until the US determines acceptable remediation has been conducted.

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- 7. The US has advised that the outcomes of the Afghanistan Inquiry constitute credible information that gross violations of human rights were committed in Afghanistan by the Australian Special Forces. s33(a)(iii)

s33(a)(iii)

Consultation – internal/external

- 8. Lieutenant General Rick Burr, Chief of Army
- 9. Dr Peter Sawczak, Acting Deputy Secretary Strategy, Policy and Industry
- 10. Dr Rob McGregor, Assistant Secretary Major Powers, International Policy Division

Consultation – Secretary/CDF

- 11. The Secretary has reviewed this brief.

Sensitivities

- 12. s33(a)(iii)
- 13.

Financial/systems/legislation/deregulation/media implications

- 14. s33(a)(iii)
- s33(a)(iii) Specific talking points in relation to this matter are at Attachment B.

Attachments

Attachment A Chief of Defence Force letter to US Defense Attaché

Attachment B Talking Points – Leahy Law

<p>Authorising Officer</p> <p>Cleared by: s22</p> <p>General Angus J Campbell, AO, DSC Chief of the Defence Force</p> <p>Date: 26 February 2022 Tel: s47E(d)</p>

Contact Officer: Rear Admiral Brett Wolski, Head Afghanistan Inquiry Response Task Force, Mob: s22

CC: Assoc Sec, VCDF, CDF, DEPSEC SP&I, FASIP, HAIRTF, FASMECC

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Australian Government
Department of Defence

LIMITED DISTRIBUTION
Submission
For information

PDMS Ref. Number MS22-000653
Date of Clearance: April 2022

To Minister for Defence

Subject LIMITED DISTRIBUTION: US correspondence regarding Leahy Law
s33(a)(iii)

Timing At your convenience.

Recommendations

That you:

- 1. note s33(a)(iii) [redacted] under the Department of Defense Leahy Law has been finalised and the matter closed. noted / please discuss
- 2. s33(a)(iii) [redacted] noted / please discuss

Minister for Defence

Signature.....

Date:...../...../2022



Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

- On 1 March 2022, I advised you [MINDEF] that I had written to the United States (US) Defense Attaché to provide a final update on actions taken by Defence, s33(a)(iii)
- s33(a)(iii)
- s33(a)(iii)
-

Background

- Background on the US DoD Leahy Law, and s33(a)(iii) has been provided at MS21-900397, MS21-001599, MS21-002222 and MS22-00186.

Consultation – internal/external

- Lieutenant General Rick Burr, Chief of Army



7. Mr Hugh Jeffrey, First Assistant Secretary International Policy

Consultation – Secretary/CDF

8. The Secretary has reviewed this brief.

Sensitivities

9. s33(a)(iii)



10.

Financial/systems/legislation/deregulation/media implications

11. Updated talking points in relation to this matter are at Attachment B.

Attachments

Attachment A Letter to CDF from US Defense Attaché, dated 17 March 2022.

Attachment B Talking Points.

Authorising Officer
<p>Cleared by:</p> <p>s22</p>  <p>General Angus Campbell AO, DSC Chief of the Defence Force</p> <p>Date: 8 April 2022 Tel: s47E(d)</p>

Contact Officer: Rear Admiral Brett Wolski, Head Afghanistan Inquiry Response Task Force, Mob: s22

Through: s22

CC:
Assoc Sec, VCDF, CA, FASIP, HAIRTF, FASMECC