

20 October 2021

Foreign Affairs, Defence and Trade Committee

Department of the Senate

PO Box 6100

Parliament House Canberra ACT 2600

RE: SENATE INQUIRY INTO AUSTRALIA'S ENGAGEMENT IN AFGHANISTAN

Purpose

The purpose of this submission is to provide information relating to the Terms of Reference (TOR) for the Senate Inquiry into Australia's Engagement in Afghanistan. Specifically, it has a focus on providing information relating to the Public Hearing on Monday 11 October 2021.

Overview

Locally Engaged Employee (LEE) Policy and process. The LEE visa policy was established in 2008 (*attachment 1*) to assist Iraq Interpreters who were deemed at risk for their assistance to Australian troops. It is a two-part process requiring the applicant to provide a total of 63 pages of personal information as well as supporting documentation (*attachments 2-6*). Assistance was provided to Iraq Interpreters to complete this complex process (*attachment 7*). In contrast, Afghan Interpreters have been required to navigate the same process themselves, often in remote areas with limited access and in dangerous conditions.

Applications/status. Forsaken Fighters Australia Inc. (FFsA) have a detailed list of LEEs and family members who remain in Afghanistan, correct as of 05 October 2021¹. The list consists of 198 LEE with valid Australian visas some XB201, most with 449 and over 450 who remain 'at risk' and have not received any form of visa. Many of those individuals have applied to the email and have not received a reply. Some have received a notice advising 'given your links with Australia, whilst you have not been certified as a Locally engaged Employee you will be given priority for one of the 3000 humanitarian positions' (*attachment 8*). They remain without a visa today. Many have fled their homes, navigated Taliban check points, endured arduous conditions at the Hamid Karzai International Airport (HKIA) and been unnecessarily exposed to additional threats, only to be left behind.

Wait times. The processing of LEE applications has been peppered with lengthy delays. Many applications have taken years to process. I am confident that there could be no logical reason or justification from Home Affairs or Immigration as to why they have taken years to process applications for vulnerable people, deemed 'at risk' because they helped Australians. That should have been an indicator that the LEE program was not functioning as intended and a review was desperately needed. Individuals who were/have been certified by the Defence Minister 'as at risk' should have been a priority for Government to process. Instead, many have been left to wait for years, in fear and at risk because they supported our troops (*attachment 9-10*).

Overview of contracts, conflicts and security vetting/screening

Contract Overview and Conflict. To understand this issue, we must look closely at where the support came from. Support for interpreters, in the most part for ADF personnel came from a contracted company. The initial contract (W911W4-07-D-0010), for Program Management, Translation & Interpretation was awarded on 06

¹ Confidential, copy provided to Home Affairs on 05 October 2021

September 2007 to Mission Essential Personnel (MEP) by US Army Intelligence and Security Command (INSCOM) for linguist support in Afghanistan. INSCOM is an Army command that conducts intelligence, security, and information operations and the contract was worth US \$1.46b².

INSCOM awarded two contracts to MEP: one contract to hire linguists and the other to conduct CI screening, resulting in an **Organisational Conflict of Interest (OCI)**. INSCOM determined that an OCI existed after awarding the contract. MEP developed a plan to mitigate the conflict, however, INSCOM did not implement the mitigation plan, resulting in no Government oversight and INSCOM having no assurance that CI screening was objective and thorough (*attachment 11*).

A report by the Inspector General United States Department of Defense³, (*attachment 12*) states: "the contractor (MEP) shall conduct a pre-screening of each linguist. Pre-screening activities shall be fully documented."

Security screening effectiveness. The contractual issues are separate from the plethora of concerns expressed regarding the employment and use of 'Counterintelligence' (CI) tools like the 'Preliminary Credibility Assessment and Screening System (PCASS)', in fragile states, such as Afghanistan. The PCASS uses a computer algorithm specifically designed to minimize false negative errors, (that is, deceptive interviewees resulting in green outcomes), which results in a greater number of truthful interviewees receiving red (negative) outcomes (*attachment 13*).

The US DoD Instruction, dated 12 August 2010, states "PCASS examination results shall not be the sole means to validate information of intelligence value" (*attachment 14*). I suggest that there is evidence that the Australian Government is using the CI process (including PCASS results) to be the sole determining factor, outweighing other substantial information regarding an applicant, to determine if that applicant and their family are to be afforded protection or provided Humanitarian Assistance (*attachment 15-16*).

All 'Interpreters' that worked with coalition forces in Afghanistan were required to undergo 'Counterintelligence' (CI) security screening assessments. These assessments used the PCASS. The employment parameters for the use of the PCASS in Afghanistan were detailed by the US 'Undersecretary of Defence Intelligence' and included that 'consent must be voluntary' and 'examination reports must be kept for at least 20 years' (*attachment 14 and 17*).

This is just scratching the surface of the issues and disadvantages acting as barriers from systemic failings in both policy and contractual arrangements for Afghan Interpreters (LEEs). None of those LEEs would have believed that the 'voluntary' undertakings they undertook in the CI process would now be weaponised to deny them transparency and protection for themselves and their families today.

Related issues

Taliban no longer considered a terrorist organisation. As mentioned on the Australian Government website the "Taliban is no longer considered a terrorist organisation and is involved in political processes in Afghanistan" (*attachment 18*). Can a date that The United Nations Security Council and Australian Government made this assertion be given?

The interpreter 'Hassan' was found by the Minister to 'hold a legitimate fear for his safety and that of his young family' but failed the character test under Sect 501 of the Migration Act, as the Minister stated he had believed him to have an 'Alleged' association with the Taliban. The Minister in his decision also stated that he

² As well as the contract awarded to MEP (W911W4-07-D-0010), INSCOM awarded and managed two other contracts for counterintelligence (CI) and Force Protection (FP) screening. On 28 September 2009 INSCOM awarded contract W911W4-09-D-0103 to MEP for CI services to U.S. Forces-Afghanistan (USFOR-A), and on 24 September 2010, U.S. Army Contracting Command awarded contract W52P U-10-D-O I 07 to MEP for CI services in Afghanistan.

³ Report No. D-2010-079, dated 13 August 2010, titled "Security Provisions in a U.S. Army Intelligence and Security Command Contract for Linguist Support

acknowledged that Hassan holds a 'legitimate fear for his safety'. It is baffling at best to understand how one can have sympathies with the 'Taliban' and hold a 'legitimate fear for their life', and then be refused protection on character grounds because of an 'Alleged' association with a political group.

Military procedures. Is it Military procedures/process that you must remove your interpreters and their families prior to or in conjunction with the withdrawal of your troops if you are on the withdrawing (losing) side of the conflict?

Breach of Privacy. Before evacuation operations, there were reports confirming that sensitive 'Biometric' machines were captured, and sensitive data compromised. On the 18 August 2021, it was reported "Handheld Interagency Identity Detection Equipment (HIIDE), was taken from the U.S. military during the Taliban's advance into Kabul" (*attachment 19*). HIIDE devices contain biometric data including iris and fingerprint scans, as well as detailed biographical information. Biometric tools were employed to track down Afghan militants, but also collected data on Afghans who assisted coalition forces.

It is grossly negligent to allow this sensitive and extensive data on allies to have been compromised, and to know about this issue and act without urgency. There are credible reports now that biometric data obtained from these machines is actively being used against those who once assisted the coalition effort in Afghanistan, with reports last week that two former Government employees were identified and arrested by the Taliban (*attachment 20*).

Points of correction

Master List. Senator Kitching asked "*does the Commonwealth of Australia have a master list of all of those with whom we worked and who worked for us*"? Mr Geoff TOOTH, Afghanistan and Regional Branch, Department of Foreign Affairs and Trade: "*The short answer is no from DFAT*"! Ms Cheryl-anne MOY, Immigration and Settlement Services Group, Department of Home Affairs: "*We don't have a master list*". Mr Hugh JEFFREY, International Policy, Department of Defence: "*Defence does not have a master list, and we don't think creating one would be feasible*". Senator Kitching asked: "*whether the departments thought it would be possible to compile a list*"? Mr Jeffrey replied: "*I don't think it would be feasible for the department to compile that list*".

This dismissive response is indicative of the Governments lack of commitment to the Locally Engaged Employee (LEE) visa program. As the Inspector General US DoD⁴ Report dated 30 September 2011, mentions, "*printouts from the Contract Linguist Information Program databases*" were used to confirm that screening processes of contract linguists were being carried out (*attachment 23*). Additionally, an audit of the contractor was completed in 2016 where significant concerns were raised and disputed by both the auditor and the contractor regarding 'Government oversight and vetting of LEEs', (*attachment 24*).

The simple answer is yes, a list of 'Interpreters' (LEEs), could be obtained, given the DoD contract parameters including the collection of this information and the requirement for reports to be maintained for at least 20 years, obtaining such a report should not have been 'unachievable' by Defence or Home Affairs if Government were committed to the LEE program and proactively sought to assist those at risk. I would conclude that the fact that Defence or indeed Government have not attained such a report or sought to put together such a list highlights a blissful ignorance toward the LEE Visa program and is an absolute dereliction of duty to those who assisted our troops and remain at risk in Afghanistan today.

Reviews of those rejected. Mr Jeffrey stated: "*People we had assessed in 2015 were maybe people who worked for Defence but we could have judged then that they were not at risk. As the Taliban were making increasing gains, we reconsidered the cohort to say, 'We now assume that everyone is at risk.'* We reviewed those we had rejected on that basis, and then recertified some of those individuals".

⁴ Inspector General United States (US) Department of Defense (DoD), Report No. D-2011-112, dated 30 September 2011

I have had cases as late as July 2021, where people who had previously worked with ADF forces have been rejected. The reasons stated from the relevant Australian Government Agency is that they had *"submitted their application outside of the 6 months"* time frame (as stipulated in the Instrument IMMI 12/127), and that there were no *'exceptional'* circumstances existing at that time, **July 2021**. See case example (*attachment 21-22*).

All are out or have left. Mr Jeffrey stated: *"If I could add to that, the great majority of those who have clearly worked with us, who are known to the Australian Defence Force, have left the country under either our LEE program or a program of other contributing countries. So, when we got towards the latter end of this year, most of the candidates we were looking at were on the marginal side, with claims that were more difficult to verify"*.

Many were unable to flee, unable to obtain visas or unable to secure an evacuation flight. I contend that most of these individuals are known to Defence or should be known and have been abandoned in Afghanistan. If Defence were serious about helping those that helped our troops, they would have compiled a Master List; they would have consulted with other organisations; and they would have been proactive in this space. If we are to assist in developing policy into the future and assist those that we once relied on, we must be honest in our dealings and the information we provide. My list of over 600, with 198 of those who have valid visas and remain in Afghanistan would hardly constitute all assessed, all out of harm's way, tools down!

All LEE applications processed. Mr Jeffrey stated: *"Just quickly, on the sequence for Defence, by the end of last year we had processed all outstanding LEE applications that had been put to the government or put to Defence"*. To be honest, Mr Jeffrey cannot be serious about this statement! I have interpreters that are still patiently waiting for a reply from Defence, Afghan LEE. FFSA have been collecting data and documentation since 2018, on individuals who have claimed service with the Australian Defence Forces. This data has included, recommendation letters/certificates, employment certificates, photos, ID and passports as well as their LEE application forms with all personal and contact information. This information was offered to Ministers and Government on numerous occasions this year. ALL LEE applications have NOT been finalised.

Security clearance and Force Protection. Senator Abetz stated: *"unfortunately three of our Australian soldiers, if I recall the number correctly, were killed by an Afghan soldier who was embedded with our Australian forces and had all the security clearances under the sun to have weapons and to be in the barracks. That's correct, isn't it?"* Mr Glenn KOLOMEITZ, Director, GAP Veteran & Legal Services: *"That is correct"*.

I believe Mr Kolomeitz may have misunderstood the question from Mr Abetz. I am unsure why Mr Abetz chose this line of questioning. It is important to note the distinction or difference between Force Protection measures and Security vetting or screening, specifically in this instance. Afghan National Army (ANA) personnel were not subjected to the security vetting, CI screening that the LEEs were subjected too.

Granting visas for Afghans in other countries. Mr David WILDEN, Refugee, Humanitarian and Settlement Division, Department of Home Affairs: *"It's important that we have that step that LEE is a process by which agencies refer people to the Department of Home Affairs. We had people being granted humanitarian visas during that period. We continued to grant them during that period, if they were LEE, when they were referred or if they weren't referred but they were part of the general humanitarian program during that period. The issue of location is always a challenge for the Department of Home Affairs if you are in a country in crisis, whether it is Afghanistan or somewhere else. We were drawing Afghan nationals from a range of countries in the first half of this year to grant visas for uplift to Australia"*.

I can offer you several separate cases where former Afghan Interpreters, who were certified by the Defence Minister as 'at risk' waited years for a decision on their visa. When the situation in Afghanistan was untenable for them to remain, they fled to the Netherlands, still waiting on a decision regarding their XB201 Visa to Australia. The Government wrote to them this year and stated: *"The applicants have declared residence in the Netherlands on their application forms. The primary applicant has also confirmed via email on 3 June 2021 that they are residing in the Netherlands. I note and place significant weight on the fact that the applicants have been residing in the Netherlands since 10 December 2019 and holding asylum visas. I am therefore, satisfied that a suitable country has provided a durable re-settlement solution to the applicants"*. Can the Government provide

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any examples of former ADF interpreters granted visas from other countries as a result of them fleeing the risk of persecution in their own? These individuals are living in refugee camps, out of their home country, at risk because they help us, and we deny them residence here in Australia because they are in a refugee camp elsewhere?

Ms Moy; *“Australia's response to the deterioration of security and order in Afghanistan earlier this year demanded a rapid and coordinated response across the Commonwealth government and international partners to ensure the safe return of: Australian citizens, permanent residents, visa holders, former LEEs and their families. The department's operational planning focused significantly on ensuring the safety of Afghan LEEs and their family members. Ahead of the withdrawal of Australian forces from Afghanistan, and followings the collapse of Afghanistan's military and the Taliban's takeover of Kabul, the Department offered expedited subclass 449 humanitarian stay temporary visas to the Afghan evacuee cohort on the basis that the permanent visa application process could occur once they were safely in Australia. The subclass 449 visa process was a time-critical and resource-intensive process that was undertaken due to the rapidly changing security circumstances and the limited window for people to depart Afghanistan. It allowed the Department to balance Australia's humanitarian obligations with the integrity of Australia's migration and border management priorities against the backdrop of a dynamic threat landscape”.*

Let me address this misinformation in two parts: Firstly, warnings were ignored. The Australian Government did not accept any information, advice or warnings to prioritise and evacuate LEEs, despite many attempts by FFsA and myself to engage with Ministers. I even attended Parliament in early June 2021, to openly discuss the unfolding and imminent concerns on the situation in Afghanistan and the number of LEEs remaining. The inaction from Government has resulted in many LEEs and their families being left behind, exposed to additional and increased risks of harm and has undoubtedly damaged Australia's reputation on how the world views 'how Australian's treat their mates'.

I must say the expedited 449 visas as a vehicle to rapidly move people out from harms way seems like a logical process for anyone deemed at risk. I would ask then why the 449 visa vehicle was not used to assist Afghan Interpreters (LEEs) and their families once the Defence Minister had deemed them at significant risk of harm as a result of assisting the ADF in Afghanistan prior to evacuation operations. Can anyone explain why we did not use that 449 vehicle prior and why it was OK to leave those that once wore our uniform to wait, for years, living in fear and hiding?

Recommendations

- Defence and Immigration prioritise Afghan Interpreters and seek information from MEP to assist in compiling a list of people who worked with ADF in Afghanistan;
- 449 Visas for interpreters and their families issued in addition to the 3,000 cap;
- 3000 Humanitarian visa cap increased to 15,000 to acknowledge the crisis facing Afghan people, women & children;
- Afghan LEE applicants issued 449 visas, be given a pathway to attain XB201 visa class;
- 449 visas should be extended beyond the initial 3-month expiry period;
- Review of the LEE Visa policy is undertaken without delay;
- CI Screening should form one piece of a mosaic for visa approval/denial, not the whole picture;
- Defence Minister certification is the lever to issue or has power conferred to issue 449 visas to expedite people deemed at risk from danger;
- Greater communication between departments, where Defence have certified an applicant, but they have not applied for a visa within 30 days, Defence makes contacts again with applicant;
- Embed Immigration officials or teams to assist in the compiling of applications and liaising with external groups/organisations;
- Australia develops future policy on how to manage, register and track Local Nationals who provide assistance in areas of conflict and instability; and
- Greater transparency with applicants and veterans (establishing a POC within Immigration).

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Conclusion

The LEE visa program was designed to ensure that those individuals that assisted the Australian Government, in pursuit of our national interest at great personal risk, would be afforded protection from any reprisals as a result of their association with our Defence Forces. The failure of Government to review the policy and draw on feedback to address deficiencies to improve the program has unnecessarily placed vulnerable people at an increased risk and left many to fend for themselves in Afghanistan. From contractual failures, limited Government oversight and bungled vetting processes, awash with conflicts of interests, private companies and hundreds of millions of dollars, the people adversely affected are the people who facilitated missions and assisted coalition troops. With decisions seemingly lacking any logical reasoning, it appears that Government departments, operating in isolation, have failed to engage with all the relevant sources and information to make informed decisions and address deficiencies in policy. Australia has left interpreters behind in Afghanistan. If we really want to help those that helped us, we still can!

Yours Sincerely

Jason Scanes, MBus, GradCert Mgt, CMgr, FIML
Founder
FORSAKEN FIGHTERS AUSTRALIA INC.

Attachments

1. LEE Visa policy for at-risk Afghan employees
2. Explanatory statement, Migration Regulations 1994, Class of Person
3. Migration Regulations 1994, Class of Person
4. LEE Certification application
5. Form 80 – Personal Particulars
6. For 842 – Visa Application
7. News article – Assistance to Iraq Interpreters 2008
8. Email – Priority for one of 3000 Humanitarian Positions
9. News article – Ahmad Shah
10. News article – Bismillah Rahim
11. DODIG-2013-030 Dated 07 December 2012
12. D2010-079 – Dated 13 August 2010
13. The Preliminary Credibility Assessment System Embedded Algorithm Description and Validation Results
14. US DoD Instruction NUMBER 5210.91 August 12, 2010
15. Hassan Decision record - 1
16. Hassan Decision record - 2
17. News article PCASS – What is it? 2008
18. Australian Government website – Taliban no longer Terrorist Organisation
19. News article – Biometric and sensitive data compromised – August 2021
20. Afghan reporter Tweet – Biometric data used to arrest people
21. Certificate of employment with ADF, Interpreter
22. Rejection – Application not lodged within 6mths-No extenuating circumstances – July 2021
23. D2011-112 – Dated 30 September 2011
24. Special Inspector General for Afghanistan Reconstruction – Audit into MEP 2016
25. Case 1 – Netherlands
- 25a. Case 1 - Netherlands
26. Case 2 - Netherlands
- 26a. Case 2 - Netherlands

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