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## CHIEF OF NAVY

R1-4-C001, Russell Offices, CANBERRA ACT 2600



CN/OUT/2004/302

Minister for Defence  
For Action by: 8 May 2004

ENEMY PRISONERS OF WAR (EPW) ONBOARD HMAS KANIMBLA - 21  
MARCH 2003

### RECOMMENDATION

- That you note that video of EPWs onboard HMAS *Kanimbla* is in the public domain and may have been given to the media.
- That you note that legal opinion indicates that this imagery does not contravene international law.

### OVERVIEW

1. Ian McPhedran of News Limited (Daily Telegraph) has contacted DGMPA and indicated that the *Daily Telegraph* may run a story on Saturday 8 May pertaining to Australia's handling of EPWs during the Iraq War of 2003.
2. On 21 March 2003, during the Iraq War, *HMAS Kanimbla* received nine EPWs, who were onboard for approximately eight hours. During this period photographs and video imagery was taken of the EPWs. Another 45 were transported by *Kanimbla's* LCM8 but they did not come onboard *Kanimbla* and no imagery of them was taken. *Kanimbla's* ships company, MHQ staff and my own personal staff have reviewed the photographs and imagery, which shows clearly that the EPWs were treated in a humane and professional manner.
3. On *Kanimbla's* return to Australia, a DVD was produced as a record of the ship's activities during its deployment. Included in this DVD is approximately 45 seconds footage of EPWs. 650 copies of this DVD were produced for members of *Kanimbla's* ships company and other private use.
4. I have sought legal opinion on whether the existence of the images on a publicly released DVD contravenes international law. The following legal advice is provided:
  - a. Article 13 of the Third Geneva Convention (GC III) provides that EPWs must at all times be 'protected, particularly against acts of violence or intimidation and against insults and public curiosity.'
  - b. This article of GC III was drafted before the advent of television and at the time was directed particularly at many examples from the two World Wars where EPWs were paraded through the streets of local towns in order to

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subject them to acts of violence or intimidation. This has also occurred in more recent times during the Vietnam War where allied pilots were put on display in Hanoi. Also during the Second Gulf War, captured Allied pilots were publicly displayed in the streets of Baghdad.

- c. More recently, the 'public curiosity' prohibition has been interpreted to include television broadcasts of EPWs. Broadcasts by Iraqi television in which Allied pilots were coerced to denounce their own countries, and television broadcasts of interviews with Iraqi EPWs directly following their capture, were deemed violations of the "public curiosity" prohibition.
- d. Although the relevant pictures display clear images of Iraqi EPWs, thereby enabling identification of individuals, the depiction of such images on the DVD is not considered to be a breach of either the spirit or purpose of Australia's international law obligations pursuant to the GC III.
- e. There was no general broadcast to the public at large and as such the "public curiosity" prohibition is not applicable.
- f. The EPWs onboard HMAS *Kanimbla* were not humiliated or intimidated at any time or in any manner. The images show that the EPWs were treated in a humane way.

**Talking Points:** Talking points are attached.

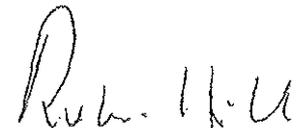
**Sensitivity.** High. Treatment of EPWs has generated a significant degree of interest and adverse international and domestic media comment.

**AUTHORISED:**

**NOTED**



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10/5/04

7 May 2004

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Copies: Office of the Minister for Defence, CDF, Secretary, DGMPA, MC

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TALKING POINTS

- The RAN has been involved in boarding operations in the Persian Gulf over many years and has strict protocols for dealing with personnel they encounter during these boardings.
- The ADF operates under Australian rules of engagement which comply with Australia's domestic and international legal obligations; including the Geneva Convention and other treaties to which Australia is a party.
- As briefed to the media on 22 March 2003, members of HMAS *Kanimbla's* ship's company assisted the coalition transport a number of EPWs who remained in United States' custody at all times.
- During the handling of the EPWs onboard *Kanimbla*, video footage was taken for military identification purposes.
- This imagery is not considered to contravene international law.

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