



Opening statement to the Legal and Constitutional Affairs Legislation Committee

2022-23 Budget Estimates – 8 November 2022

Director-General, Chris Moraitis PSM

Thank you Chair.

In addition to an update on progress, a short outline of the nature of the Office of the Special Investigator and its functions may assist new Committee members.

As many of you will be aware, the OSI was stood-up in January 2021 as one element of the response to the Inspector-General of the Defence Force's Afghanistan Inquiry report – the Brereton report.

It is now a little more than a year since our investigation teams were fully established, and they are steadily progressing their investigations using procedures carefully developed by us to manage a range of risks.

We're working closely with the AFP under a joint investigation framework to investigate allegations of war crimes by Australian Defence Force personnel in Afghanistan between 2005 and 2016. Importantly, our remit is not limited to allegations raised in the Brereton report. As you may recall, that report recommended the referral of 36 matters for criminal investigation.

The sensitive nature of our work, and its singular focus, necessarily limits what information I can provide publicly while our criminal investigations are ongoing. I **can** tell you that our investigators are working on a greater number of matters than those considered by Justice Brereton. These are complicated war crimes investigations – how far, and how quickly, they are advancing depends on a range of factors including complexity and available evidence. Where there is sufficient evidence to establish a war crimes offence, a brief will be provided to the Commonwealth Director of Public Prosecutions for consideration; where it becomes apparent there is insufficient evidence to substantiate a war crime, a matter will not be pursued unless further evidence comes to light.

We are working in a highly complex legal environment, but our commitment to conducting fair, thorough, impartial and independent investigations is well-served by our unique structure, processes and partnerships.

In particular, as the operational tempo has increased, the joint investigations have benefited greatly from legal advice and strategy provided by the Special Investigator, Mark Weinberg.

Our Special Counsel – established separately, in the Australian Government Solicitor – is also proving vital to protecting the integrity of the investigations and any potential prosecutions.

I have previously discussed the risk of derivative use information, which arises as a result of the nature of the Brereton Inquiry; it was not a criminal process, but rather an independent statutory inquiry under the military justice system and had powers of compulsion at its disposal. Legal protections afforded to Inquiry witnesses mean that information provided to the Inquiry – and other evidence derived from it – would be inadmissible in any criminal proceedings against the individual who provided it.

Clearly, we must ensure any potential suspects are afforded all the protections of the Australian criminal justice system, while safeguarding the integrity and robustness of our work. This is why we are stepping cautiously but resolutely through the challenges.

More than 50 investigators and analysts are continuing their work as expeditiously as possible, given the legal complexity and broader challenges, including the historical nature of the allegations and the situation in Afghanistan. They're supported by experienced legal, policy and corporate teams; all of us are acutely conscious of the potential impact on those affected by investigations and the importance of this work to the integrity of our defence forces and Australia's broader national interest.

As you're aware, recent Machinery of Government changes saw the OSI move to the Attorney-General's portfolio, along with other law enforcement functions and agencies, including the AFP. We are thankful for the services – including ICT and corporate systems and support – which the Attorney-General's Department is now providing to us under a shared services arrangement, and we appreciate earlier support from the Department of Home Affairs.

I can't tell you how long our task will take – we are navigating unique challenges, but progressing our work as swiftly as is reasonable and possible. I remain confident that our structure, people, processes, systems and budget, coupled with the support we have from partners like the AFP, CDPP and Defence, positions us well to undertake the task set for us.

I'd welcome any questions you might have.