

## SENATOR LAMBIE'S COMMUNICATION WITH THE INTERNATIONAL CRIMINAL COURT

### WHOLE-OF-GOVERNMENT TALKING POINTS

**Originating Department:** Afghanistan Inquiry Response Task Force, Defence  
**Version date:** 23/6/2023

#### Talking points

- I understand Senator Jacqui Lambie has provided information to the Prosecutor of the International Criminal Court (ICC), Mr Karim Khan KC, regarding alleged command responsibility of senior Australian Defence Force (ADF) members in respect of allegations of war crimes in Afghanistan.
- Any concerned individual or organisation can provide information to the ICC's Office of the Prosecutor.
- It is important to note that Australia is taking all appropriate steps to investigate allegations concerning the conduct of members of the ADF in Afghanistan, including by establishing the Office of the Special Investigator (OSI).
- The OSI is working with the Australian Federal Police (AFP) to investigate the commission of criminal offences under Australian law.

#### Afghanistan Inquiry

- The Afghanistan Inquiry was initiated by Defence in 2016 to determine whether there was any substance to rumours and allegations relating to possible breaches of the Law of Armed Conflict by members of Australia's Special Operations Task Group in Afghanistan over the period 2005 to 2016.
- The Afghanistan Inquiry found that there was credible information of 23 incidents involving the alleged unlawful killing of 39 individuals.
- The Inspector-General examined the period of 2005 to 2016 and found credible information of incidents of alleged unlawful killings that took place in 2009 and 2010 with the majority occurring in the latter years of 2012 and 2013.
- The Afghanistan Inquiry report found that commanders above patrol or section level did not know, and were not recklessly indifferent, to whether subordinates were allegedly committing war crimes, and did not fail to take reasonable steps to discover the behaviour.

## Article 15 of the Rome Statute of the International Criminal Court

- Article 15 of the Rome Statute provides an avenue by which any concerned individuals or organisations may furnish information to the Prosecutor.

## International Criminal Court investigation into the Situation in Afghanistan

- The ICC's Prosecutor [Karim Khan KC] is currently investigating the situation in Afghanistan
  - and decided [on 27 September 2021] his investigation would focus on crimes committed by the Taliban and IS-K [*Islamic State – Khorasan Province*].
- Australia welcomes this decision. The Taliban and other terrorist organisations committed, and claimed responsibility for, appalling crimes during the conflict in Afghanistan for which they have not been held to account.
- Australia has consistently demonstrated its commitment to accountability for serious international crimes.

## Senator Lambie referral

- As the Deputy Prime Minister has said, the referral by Senator Lambie is ultimately a decision for the ICC.
- National authorities bear the primary responsibility, in the first instance, to investigate and prosecute those most responsible for the commission of mass crimes.
  - The ICC will initiate prosecutions, in accordance with the legal criteria set by the Rome Statute, only when the national authorities have failed to uphold this primary responsibility and in the absence of genuine national proceedings.
- Australia is taking all appropriate steps to investigate allegations concerning the conduct of members of the ADF in Afghanistan, including by establishing the Office of the Special Investigator.
- Allegations regarding unlawful behaviour by the ADF in Afghanistan are currently the subject of ongoing criminal investigations, including by the Office of the Special Investigator and the Australian Federal Police.
- In 2021 the Government established the OSI to work with the Australian Federal Police to investigate the commission of criminal offences under Australian law arising from or related to any breaches of the Law of Armed Conflict by members of the Australian Defence Force in Afghanistan from 2005 to 2016.

- The OSI is not limited to investigating the findings of the IGADF Afghanistan Inquiry. The OSI can investigate any matter within its mandate, including those that relate to the issue of command responsibility.

### OSI Engagement with the International Criminal Court

- In a letter dated 18 June 2021, the Director-General of the OSI, Mr Chris Moraitis PSM, wrote to the Chief Prosecutor, Mr Karim Khan KC, providing him with information about the functions, composition and progress of the OSI.
- In 2022, the Special Investigator and OSI Director-General visited the ICC and had constructive discussions with Mr Khan.

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