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PARLIAMENTARY JOINT COMMITTEE ON INTELLIGENCE AND SECURITY

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Committee reports on war crimes offences and law enforcement integrity

Parliament's Intelligence and Security Committee has today presented its advisory reports on the Criminal Code Amendment (War Crimes) Bill 2016 and on item 28 of the Law Enforcement Legislation Amendment (State Bodies and Other Measures) Bill 2016.

Advisory Report on the Criminal Code Amendment (War Crimes) Bill 2016

The War Crimes Bill amends Division 268 of the Criminal Code to introduce the concept of 'organised armed groups' in non-international armed conflicts. Consistent with international humanitarian law, the amendments provide that members of an organised armed group are treated as distinct from civilians for the purpose of war crimes offences.

The Bill also introduces the principle of 'proportionality' in relation to attacks on military objectives in non-international armed conflicts.

The Bill is intended to provide legal certainty for the Australian Defence Force in operations that target members of organised armed groups with lethal force, such as in the current conflict against Daesh.

The Committee carefully scrutinised the key aspects of the Bill, including how membership of an 'organised armed group' would be defined. The Committee concluded that the amendments in the Bill would provide appropriate protection for civilians while maintaining the capacity to strike against legitimate military targets. The Bill would also harmonise Australian law with the interpretation of international humanitarian law applied by our key allies and coalition partners.

The Chair of the Committee, Mr Michael Sukkar MP, said that 'organised armed groups like Daesh operate as state-like entities, with military forces similar to state entities. In armed conflict, it is both sensible and crucially important that members of these groups do not benefit from the protections against attack that are afforded to civilians'.

Advisory Report on item 28 of the Law Enforcement Legislation Amendment (State Bodies and Other Measures) Bill 2016

Item 28 amends the list of 'criminal law-enforcement agencies' at subsection 110A(1) of the *Telecommunications (Interception and Access) Act 1979* (TIA Act) to replace the NSW Police Integrity Commission (PIC) with the Law Enforcement Conduct Commission (LECC).



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The LECC will bring together the functions of the former Police Integrity Commission, the Police Division of the NSW Ombudsman's Office and the Inspector of the Crime Commission to streamline police oversight in NSW.

Subject to the thresholds set out in the TIA Act, being listed as a criminal law enforcement agency will enable the LECC to apply for stored communications warrants, issue preservation notices and authorise the disclosure of telecommunications data when investigating serious misconduct or serious maladministration.

The Committee endorsed the proposed amendment following consideration of its rationale. In doing so, the Committee noted that the amendment would provide the LECC with powers comparable to those of other integrity bodies within Australia that are already listed as criminal law enforcement agencies.

Both reports can be accessed via the Committee's website at www.aph.gov.au/pjicis.

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