

**SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ADDITIONAL BUDGET ESTIMATES
14 FEBRUARY 2022**

**Home Affairs Portfolio
Office of the Special Investigator**

Program: Office of the Special Investigator

AE22-066 - Correspondence to the Prosecutor of the ICC

Senator Nick McKim asked:

Senator McKIM: Has the OSI had contact with the ICC's Office of the Prosecutor, which is carrying out an investigation into war crimes and other crimes committed in Afghanistan since 2002?

Mr Moraitis: Yes, we have. I wrote to the prosecutor of the ICC explaining the work, existence and establishment of the OSI, who is in it, what our roles are and what our terms of reference are. That was sent last year. That follows on from correspondence from government to do with the work of the Brereton inquiry. We're interested in ensuring that the ICC understands what's happening in Australia. We're a party to the Rome Statute, and I'd say we're a party in pretty good standing with the that statute.

Senator McKIM: Approximately when last year was that letter?

Mr Moraitis: It was after the appointment of the new prosecutor, I think. I can give you the date: I wrote to him in June last year.

Senator McKIM: Is there any issue with making that letter available to the committee?

Mr Moraitis: I don't think so. I'll take that on notice and I'll provide it if I can.

Answer:

Please refer to the enclosed letter to the Prosecutor of the International Criminal Court.



DIRECTOR-GENERAL
Mr Chris Moraitis PSM



Mr Chris Moraitis PSM is the Director-General for the Office of the Special Investigator, a position he has held since January 2021.

Before joining the Office, Mr Moraitis was the Secretary of the Attorney-General's Department (September 2014 to January 2021).

Before joining the Attorney-General's Department, Mr Moraitis was a Deputy Secretary in the Department of Foreign Affairs and Trade (April 2013 to September 2014).

He has held several executive positions in the Department of Foreign Affairs and Trade, including First Assistant Secretary, Corporate Management Division (2010-2013); First Assistant Secretary, International Organisations and Legal Division (2010); Senior Legal Adviser (2002-2006); Assistant Secretary, Staffing Branch (2001-2002). Mr Moraitis first joined the department as a Graduate Trainee in 1989.

Overseas, Mr Moraitis has served as High Commissioner to Papua New Guinea (2006-2009), Counsellor, Australian Embassy, Paris (1996-99), First Secretary, Australian Embassy, Madrid (1995) and Third Secretary, Australian Mission to the United Nations and Conference on Disarmament in Geneva (1990-1991).

Mr Moraitis was awarded the Public Service Medal in 2014 for outstanding public service to Australia's international affairs.

Mr Moraitis holds Bachelor of Arts and Bachelor of Laws degrees from the University of Melbourne and a Masters of International Law from the Australian National University. He was admitted to practice in Victoria as a Barrister and Solicitor in 1988.

SPECIAL INVESTIGATOR
The Hon Mark Weinberg AO QC



The Hon Mark Weinberg AO QC is the Special Investigator for the Office of the Special Investigator, a position in which he commenced in February 2021.

Before joining the Office of the Special Investigator, Mr Weinberg was appointed a Reserve Judge of the Victorian Court of Appeal from 8 May 2018, and continued to sit regularly, and on a full-time basis.

Mr Weinberg was appointed to the Court of Appeal, Supreme Court of Victoria in July 2008. Prior to that, Mr Weinberg was a judge of the Federal Court of Australia from 1998 to 2008 and previously held a series of additional judicial and other appointments.

Mr Weinberg was appointed an Officer of the Order of Australia in 2017. He was awarded the degree of LLD (Honoris Causa) by Monash University in October 2017.

Mr Weinberg was the Commonwealth Director of Public Prosecutions from 1988 to 1991.

Mr Weinberg was admitted to practice in New South Wales in 1974, and in Victoria in 1975. In 1975 he joined the academic staff of the University of Melbourne, where he held various positions in the Faculty of Law, culminating in Dean of the Faculty from 1984 to 1985.

DIRECTOR OF INVESTIGATIONS

Mr Ross Barnett APM



Mr Ross Barnett APM is the Director of Investigations for the Office of the Special Investigator, a position he has held since January 2021.

Before joining the Office, he was appointed as Queensland's first Racing Integrity Commissioner (a position he held between 1 May 2016 and December 2020).

Mr Barnett was a former Deputy Commissioner of the Queensland Police Service who worked for nearly 40 years' as one of the State's most distinguished officers. He served as Deputy Commissioner for Specialist Operations and was the Police Commander for the G20 Leaders' Summit in 2014.

Mr Barnett has experience working in major crime and drug squads and has served in a number of senior investigative roles at the National Crime Authority, the Australian Crime Commission and the Queensland Crime Commission.

He holds a Degree in Justice Administration, a Masters in Public Policy & Administration, and a Graduate Diploma in Executive Leadership. He is also a graduate of the Police Executive Leadership Program and has completed the National Academy and National Executive Institute programs run by the FBI in the United States.

Mr Barnett has received two QPS Commissioner's Commendations and was awarded the National Crime Authority's highest individual honour – the Geoffrey Bowen Memorial Award – in 1997. He received an Australian Police Medal in the 2007 Australia Day Honours list and received the Commissioner's Award for Meritorious Service in 2012.



Australian Government
Office of the Special Investigator

Mr Karim Khan QC
Prosecutor
International Criminal Court
Oude Waalsdorperweg 10, 2597 AK
Den Haag, Netherlands

Dear Mr Khan

I refer to correspondence dated 13 November 2020 from Australia's Ambassador to The Hague in which the Ambassador informed your office of the Australian Government's announcement of the establishment of the Office of the Special Investigator. I have been appointed as the Director-General of the Office of the Special Investigator. In the spirit of cooperative engagement with the International Criminal Court (ICC), I am writing to provide you with further information about the functions, composition and progress of the Office of the Special Investigator to date.

The Office of the Special Investigator has been established to fulfil three key functions:

- i) to review the potential criminal matters raised by the Inspector-General of the Australian Defence Force (IGADF) Afghanistan Inquiry. I understand the Office of the Prosecutor has previously received correspondence from the IGADF, James Gaynor CSC (dated 11 November 2020 and 18 April 2018) and from Major General Paul Brereton AM RFD, who conducted the IGADF Afghanistan Inquiry (dated 9 April 2019 and 13 July 2018)
- ii) 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 laws of armed conflict by members of the Australian Defence Force (ADF) in Afghanistan from 2005 to 2016, and
- iii) to develop briefs of evidence in respect of any offences that are established for referral to the Commonwealth Director of Public Prosecutions for prosecution.

The Hon Mark Weinberg AO QC has been appointed as the Special investigator. Mr Weinberg is a former Commonwealth Director of Public Prosecutions and former judge of both the Court of Appeal of the Supreme Court of Victoria and the Federal Court of Australia. Mr Ross Barnett APM has been appointed as the Director of Investigations. Mr Barnett is a former Deputy Commissioner of the Queensland Police Service with considerable criminal investigative and major case experience. Enclosed with this letter are my biography, as well as those of Mr Weinberg and Mr Barnett.

The Office of the Special Investigator commenced its work on 4 January 2021 and will exist as long as is needed to fulfil its functions. To date the Office of the Special Investigator has been focussed on planning and operational matters, in particular the recruitment of experienced investigators from the Australian Federal Police and state and territory police forces, as well as legal and support staff.

As noted above, a key function of the Office of the Special Investigator is to review the potential criminal matters raised by the IGADF Afghanistan Inquiry. The IGADF Afghanistan Inquiry found credible information of criminal conduct, recommending 36 matters for criminal investigation.

During the course of the IGADF Afghanistan Inquiry, some information was obtained using statutory notice powers to compel individuals to provide information to the Inquiry. If an ADF member is to be charged with criminal offences, that compelled evidence – and any other evidence derived from it – will be inadmissible in the criminal proceedings against the individual who provided it. An accused person also has other fundamental rights within the Australian criminal justice system, such as the privilege against self-incrimination and the broader right to silence. Investigators and prosecutors must take care to respect these rights.

In order to manage IGADF Afghanistan Inquiry information in a way that protects these rights, I have established a dedicated Special Counsel function within the Australian Government Solicitor at arm's length from the Office of the Special Investigator. The Special Counsel will advise the Office of the Special Investigator on its access to and use and management of IGADF Afghanistan Inquiry information, and undertake a quarantined review of the information to ensure investigators only receive information which can lawfully be obtained and used for investigative purposes. As the work of the Special Counsel progresses, we will be able to commence investigations into specific allegations in the IGADF Afghanistan Inquiry Report with a view to supporting potential prosecutions. In the meantime, consistent with its functions, the Office of the Special Investigator is receiving and considering information relevant to allegations of criminal offences by ADF personnel in Afghanistan between 2005 and 2016 in addition to the 36 criminal matters recommended for investigation by the IGADF Afghanistan Inquiry.

The establishment and work of the Office of the Special Investigator demonstrates Australia's resolve to thoroughly and independently investigate, and, where appropriate, prosecute the allegations of criminal offences in Afghanistan from 2005 to 2016 by members of the Australian Defence Force. Australia's domestic law includes Division 268 of the *Criminal Code Act 1995* (Cth), through which Australia has domestically implemented the crimes in the Rome Statute in its criminal law. Division 268 contains offences for genocide, crimes against humanity, war crimes, and crimes against the administration of justice of the ICC, and provides for the imposition of criminal responsibility on the basis of command responsibility. Information and allegations relating to the conduct of Australian Defence Force members that do not fall within the remit of the Office of the Special Investigator will be appropriately addressed and considered by Australia's military or criminal justice mechanisms, depending on the nature of the conduct at issue.

I would welcome the opportunity to meet with you should you wish to discuss these matters further.

Yours sincerely

Chris Moraitis PSM
Director-General
Office of the Special Investigator

18 June 2021