



War crimes prosecutions

Brief No: SB23-000544

Current Issue

The Office of the Special Investigator (OSI) was established on 4 January 2021 in response to the Afghanistan Inquiry and the release of the report by Justice Brereton. The OSI will consider the matters raised by the Afghanistan Inquiry and will, where appropriate, investigate allegations of serious criminal wrongdoing with a view to referring briefs of evidence to the Commonwealth Director of Public Prosecutions (CDPP). To date one person, Oliver Schulz, has been charged following an OSI investigation.

Prosecution of Oliver Schulz

Current Status

Name of defendant	Oliver Schulz
Date arrested/charged	Arrested and charged – 20 March 2023. Bail granted on 28 March 2023.
Date committed for trial	Pre-committal
Date indictment filed	None yet filed
Court and NIC date	Next in Downing Centre Local Court for mention on 16 May 2023.
Non-publication orders	A non-publication order exists in respect of Schulz's "town and region where he ordinarily resides"

Current Charges

Section and Act	Max Penalty
1 x war crime of murder contrary to s268.70(1) of the Criminal Code	Life Imprisonment

- **s 42(1)**

Key Facts and Responses

- The allegation is that on or about 27 May 2012 in Afghanistan, by conduct which took place in the context of, and was associated with, an armed conflict that was not an international armed conflict, SCHULZ caused the death of one or more persons, namely Dad Mohammad, who was not taking an active part in the hostilities, and SCHULZ knew, or was reckless as to the factual circumstances establishing that the person was not taking an active part in the hostilities.
- The matter was in court on 16 May 2023 – the court adjourned the matter to 27 June 2023, by consent, and allowed an extension to file the brief to that date.
- ***If asked about the merits of the prosecution:*** This matter is currently before the court and it is not appropriate for CDPP to comment further.
- ***If asked about the investigation / basis for charges:*** CDPP is not an investigative agency; we rely on the referral of briefs for consideration. Questions about the investigation of SCHULZ are best directed to the investigative agency, the OSI.

2026FI00014

Released by the CDPP under FOI Act 1982

- ***If asked about the decision to prosecute / the Prosecution Policy:*** In all matters that are referred to us, we apply the prosecution policy of the Commonwealth. It's a two-stage test that is set out under the policy: we look to see whether there's sufficient evidence to establish a prima facie case and reasonable prospect of conviction, and after being satisfied of that component we consider whether the prosecution is in the public interest.
- ***If asked about the National Security Information Act (Criminal and Civil Proceedings) Act 2004:*** The CDPP invoked the NSI Act by the service of notice by the CDPP pursuant to s6 of the NSI Act on 11 May 2023.

War crimes prosecutions

Key Facts and Responses

Receipt of referrals from the Australian Federal Police (AFP) or the OSI

- The CDPP is unable to answer questions about the status of any war crimes referrals as there is a claim of public interest immunity. The basis for the claim is that disclosure of the information requested would prejudice an ongoing police investigation.

Role of the CDPP in war crimes matters

- The CDPP provides specialist legal services to support agencies investigating complex Federal criminal matters.
- The CDPP has been engaged to assist the AFP in a number of war crimes-related investigations and stands ready to assist and support the important work of the OSI as and when required.
- Given these matters are the subject of ongoing investigation by police or potentially by the OSI, it would not be appropriate for the CDPP to comment further.

Resourcing

- The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI.
- An Assistant Director and a Prosecution Team Leader have been appointed to oversight this work to liaise with and provide pre-brief advice to the OSI, assess future CDPP resourcing requirements and ensure CDPP lawyers are appropriately trained.
- Twenty-one prosecutors from the CDPP completed a preliminary specialised war crimes 2-day training program in March 2022 in preparation to undertake war crimes prosecutions. A further 2-day training program focusing on managing complex prosecutions took place in November 2022. Discrete training sessions have also been provided over 2022 and 2023. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
- The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate,

2026FI00014

Released by the CDPP under FOI Act 1982

prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in Afghanistan. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in the 2023-24 year, and \$3.4 million in the 2024-25 year, to support the work of the Office of the Special Investigator.

Additional Information

Office of the Special Investigator

- The Hon Mark Weinberg AO QC has been appointed to the role of Special Investigator and Chris Moraitis has been appointed Director-General.

Previous questions

- On 23 March 2021 Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:

'The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.

Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.'

Contact Officer: s 22(1)(a)(ii)

CLEARED BY: SES-2 s 22(1)(a)(ii)

Last updated: 17 May 2023



War crimes prosecutions

Brief No: SB23-000544

Current Issue

The Office of the Special Investigator (OSI) was established on 4 January 2021 in response to the Afghanistan Inquiry and the release of the report by Justice Brereton. The OSI will consider the matters raised by the Afghanistan Inquiry and will, where appropriate, investigate allegations of serious criminal wrongdoing with a view to referring briefs of evidence to the Commonwealth Director of Public Prosecutions (CDPP). To date one person, Oliver Schulz, has been charged following an OSI investigation.

Prosecution of Oliver Schulz

Current Status

Name of defendant	Oliver Schulz
Date arrested/charged	Arrested and charged on 20 March 2023. Bail granted on 28 March 2023.
Date committed for trial	Pre-committal
Date indictment filed	None yet filed
Court and NIC date	Next in Downing Centre Local Court for mention on 17 November 2023.
Non-publication orders	A non-publication order exists in respect of Mr Schulz's "town and region where he ordinarily resides"

Current Charges

Section and Act	Max Penalty
1 x war crime of murder contrary to s268.70(1) of the Criminal Code	Life imprisonment

- s 42(1)

Key Facts and Responses

- The allegation is that on or about 27 May 2012 in Afghanistan, by conduct which took place in the context of, and was associated with, an armed conflict that was not an international armed conflict, Mr Schulz caused the death of one or more persons, namely Dad Mohammad, who was not taking an active part in the hostilities, and Mr Schulz knew, or was reckless as to the factual circumstances establishing that the person was not taking an active part in the hostilities.
- The matter was most recently in court on 5 September 2023. A brief of evidence was served that day. The court adjourned the matter to 7 November 2023 and made orders for further brief service and filing of a charge certificate by that date.
- **If asked about the merits of the prosecution:** This matter is currently before the court and it is not appropriate for CDPP to comment further.
- **If asked about the investigation / basis for charges:** CDPP is not an investigative agency; we rely on the referral of briefs for consideration. Questions about the investigation of Mr Schulz are best directed to the investigative agency, the OSI.

2026FI00014

Released by the CDPP under FOI Act 1982

- ***If asked about the decision to prosecute / the Prosecution Policy:*** In all matters that are referred to us, we apply the prosecution policy of the Commonwealth. It's a two-stage test that is set out under the policy: we look to see whether there's sufficient evidence to establish a prima facie case and reasonable prospect of conviction, and after being satisfied of that component we consider whether the prosecution is in the public interest.
- ***If asked about the National Security Information Act (Criminal and Civil Proceedings) Act 2004:*** The CDPP invoked the NSI Act by the service of notice by the CDPP pursuant to s6 of the NSI Act on 11 May 2023.

War crimes prosecutions

Key Facts and Responses

Receipt of referrals from the Australian Federal Police (AFP) or the OSI

- The CDPP is unable to answer questions about the status of any war crimes referrals as there is a claim of public interest immunity. The basis for the claim is that disclosure of the information requested would prejudice an ongoing police investigation.

Role of the CDPP in war crimes matters

- The CDPP provides specialist legal services to support agencies investigating complex Federal criminal matters.
- The CDPP has been engaged to assist the AFP in a number of war crimes-related investigations and stands ready to assist and support the important work of the OSI as and when required.
- Given these matters are the subject of ongoing investigation by police or potentially by the OSI, it would not be appropriate for the CDPP to comment further.

Resourcing

- The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director, two Prosecution Team Leaders and two Senior Federal Prosecutors have been appointed to a dedicated war crimes branch of the CDPP. .
- Twenty-one prosecutors from the CDPP completed a preliminary specialised war crimes 2-day training program in March 2022 in preparation to undertake war crimes prosecutions. A further 2-day training program focusing on managing complex prosecutions took place in November 2022. Discrete training sessions have also been provided over 2022 and 2023. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
- The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in Afghanistan. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in

2026FI00014

Released by the CDPP under FOI Act 1982

the 2023-24 year, and \$3.4 million in the 2024-25 year, to support the work of the Office of the Special Investigator.

Additional Information

Office of the Special Investigator

- The Hon Mark Weinberg AO QC has been appointed to the role of Special Investigator and Chris Moraitis has been appointed Director-General.

Previous questions

- On 23 March 2021 Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:

'The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.

Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.'

Contact Officer: s 22(1)(a)(ii)

CLEARED BY: SES-2 s 22(1)(a)(iii)

Last reviewed: 9 October 2023



War crimes prosecutions

Brief No: SB24-000167

Current Issue

The Office of the Special Investigator (OSI) was established on 4 January 2021 in response to the Afghanistan Inquiry and the release of Justice Brereton’s report.

The OSI will consider the matters raised by the Afghanistan Inquiry and will, where appropriate, investigate allegations of serious criminal wrongdoing with a view to referring briefs of evidence to the Commonwealth Director of Public Prosecutions (CDPP). To date one person, Oliver Schulz, has been charged following an OSI investigation.

Prosecution of Oliver Schulz – current status

Name of defendant	Oliver Schulz	
Date arrested/charged	Arrested and charged on 20 March 2023. Bail granted on 28 March 2023.	
Date committed for trial	Pre-committal	
Date indictment filed	None yet filed	
Court and NIC date	Next in Downing Centre Local Court for mention on 17 November 2023.	
Non-publication orders	A non-publication order exists in respect of Mr Schulz’s “town and region where he ordinarily resides”	
Current charges		Max Penalty
1 x war crime of murder contrary to s268.70(1) of the Criminal Code		Life imprisonment

s 42(1)

Key Facts and Responses

- The allegation is that on or about 28 May 2012 in Afghanistan, by conduct which took place in the context of, and was associated with, an armed conflict that was not an international armed conflict, Mr Schulz caused the death of one or more persons, namely Dad Mohammad, who was not taking an active part in the hostilities, and that Mr Schulz knew, or was reckless as to the factual circumstances establishing that the person was not taking an active part in the hostilities.
- The matter was most recently in court on 16 January 2024. A further portion of the brief of evidence was served that day. The court adjourned the matter to 20 February 2024 and made orders for further brief service and granted an extension to file the charge certificate pursuant to ss 66 and 67 of the *Criminal Procedure Act 1986* (NSW).
- **If asked about the merits of the prosecution:** This matter is currently before the court and it is not appropriate for CDPP to comment further.
- **If asked about the investigation / basis for charges:** CDPP is not an investigative agency; we rely on the referral of briefs for consideration. Questions about the investigation of Mr Schulz are best directed to the investigative agency, the OSI.

- 2026FI00014 Released by the CDPP under FOI Act 1982
2026FI00014 Released by the CDPP under the FOI Act 1982
- ***If asked about the decision to prosecute / the Prosecution Policy:*** In all matters that are referred to us, we apply the Prosecution Policy of the Commonwealth. It's a two-stage test that is set out under the Policy: we look to see whether there's sufficient evidence to establish a prima facie case and reasonable prospect of conviction, and after being satisfied of that component we consider whether the prosecution is in the public interest.
 - ***If asked about the National Security Information Act (Criminal and Civil Proceedings) Act 2004:*** The CDPP invoked the NSI Act by the service of notice by the CDPP pursuant to s6 of the NSI Act on 11 May 2023. On 17 May 2023 the Attorney-General authorised the Minister for Finance to act on his behalf in the performance of all functions and duties and the exercise of all powers under the NSI Act insofar as they relate to the prosecution of Oliver Schulz.

Additional Information

War crimes prosecutions

Receipt of referrals from the Australian Federal Police (AFP) or the OSI

The CDPP is unable to answer questions about the status of any war crimes referrals as there is a claim of public interest immunity (PII) over these matters, on the basis that disclosure of the information requested would prejudice an ongoing police investigation.

Role of the CDPP in war crimes matters

- The CDPP provides specialist legal services to support agencies investigating complex federal criminal matters.
- The CDPP has been engaged to assist the AFP in a number of war crimes-related investigations and stands ready to assist and support the important work of the OSI as and when required.
- Given these matters are the subject of ongoing investigation by police or potentially by the OSI, it would not be appropriate for the CDPP to comment further.

Resourcing

- The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director, two Prosecution Team Leaders and two Senior Federal Prosecutors have been appointed to a dedicated war crimes branch of the CDPP.
- Twenty-one prosecutors from the CDPP completed a preliminary specialised war crimes 2-day training program in March 2022 in preparation to undertake war crimes prosecutions. A further 2-day training program focusing on managing complex prosecutions took place in November 2022. Discrete training sessions were provided over 2022 and 2023 and will continue into 2024. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
- The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in

2026FI00014
2026FI00014
Released by the CDPP under FOI Act 1982
Released by the CDPP under the FOI Act 1982

Afghanistan. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in the 2023–24 year, and \$3.4 million in the 2024–25 year, to support the work of the Office of the Special Investigator.

Office of the Special Investigator

The Hon Mark Weinberg AO QC has been appointed to the role of Special Investigator and Chris Moraitis has been appointed Director-General.

Previous questions

On 23 March 2021 Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:

'The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.

Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.'

Contact Officer: s 22(1)(a)(ii)

CLEARED BY:

s 22(1)(a)(ii), Deputy Director OCNS

Last reviewed: 31 January 2024

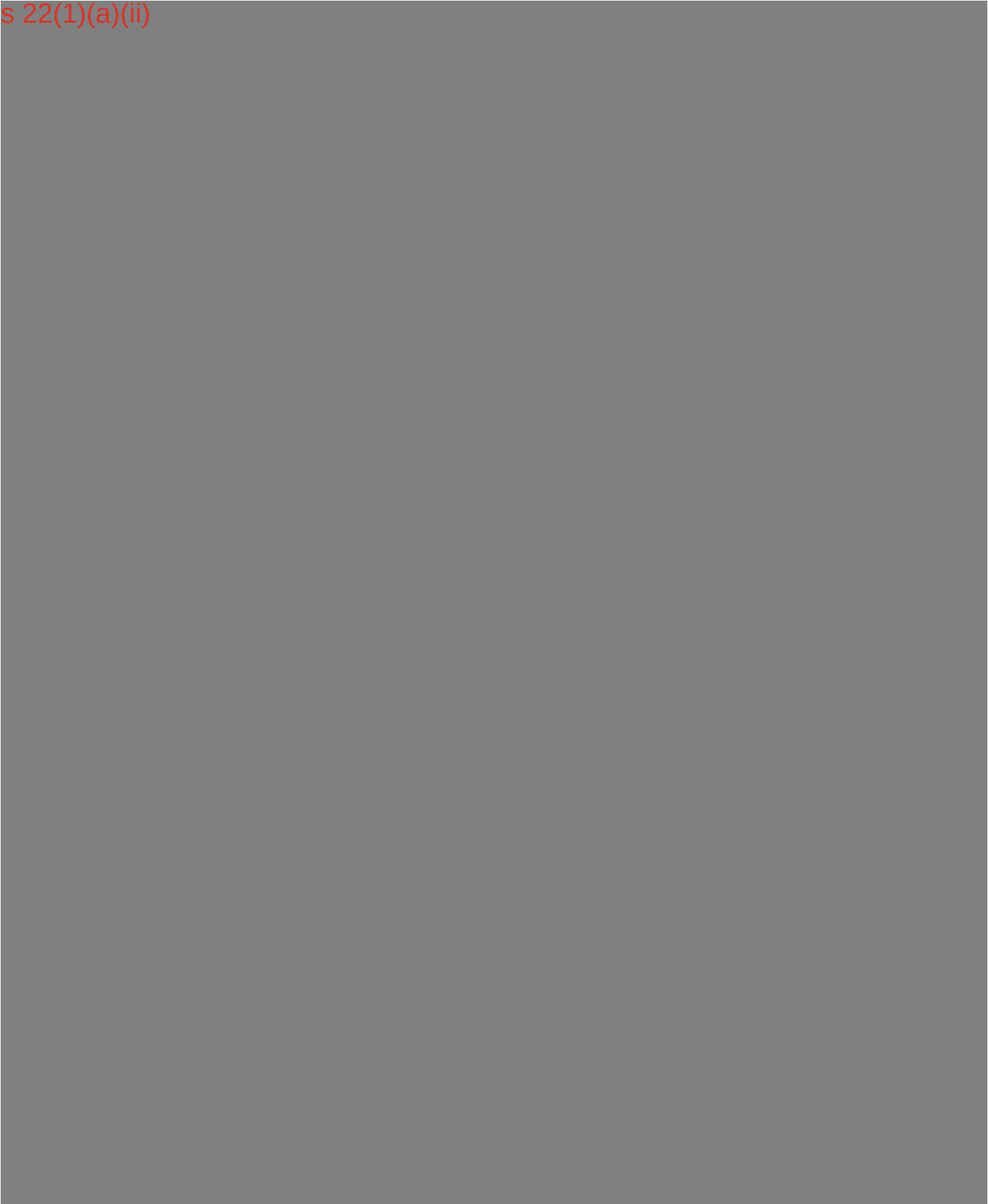
PORTFOLIO AGENCY INFORMATION BRIEF

2026 FI00014

Released by the CDPP under FOIA Act 1982

Commonwealth Director of Public Prosecutions

s 22(1)(a)(ii)



s 22(1)(a)(ii)



2026F10 ○ s 22(1)(a)(ii)

○ the first war crimes prosecution flowing from the Office of the Special Investigator

○ s 22(1)(a)(ii)

○

○

Cleared by:	s 22(1)(a)(ii)	(Commonwealth Solicitor for Public Prosecutions)	s 22(1)(a)(ii)
	s 22(1)(a)(ii)	(Chief Operating Officer)	s 22(1)(a)(ii)



War crimes prosecutions

Current Issue

1. There has been one person, Oliver Schulz, charged following an investigation by the Office of the Special Investigator (OSI).

Prosecution of Oliver Schulz

Current Status – Case conference mention 2 July 2024

Name of defendant	Oliver Schulz
s 42(1)	
Date arrested and charged	Arrested and charged on 20 March 2023.
Bail	Bail granted on 28 March 2023.
Offence	1 x war crime of murder contrary to s268.70(1) of the <i>Criminal Code</i> (Life imprisonment)
Date committed for trial	14 May 2024
Date indictment filed	None yet filed
Court and NIC date	Next in Downing Centre Local Court for case conference mention on 2 July 2024.
Non-publication orders	A non-publication order exists in respect of Mr Schulz's "town and region where he ordinarily resides"

Key Facts and Responses

2. The allegation is that on or about 28 May 2012 in Deh Jawz-e Hasanzai in Uruzgan Province, Afghanistan, by conduct which took place in the context of, and was associated with, an armed conflict that was not an international armed conflict, Mr Schulz caused the death of a person known as Dad Mohammad, who was not taking an active part in the hostilities, and Mr Schulz knew, or was reckless as to the factual circumstances establishing that the person was not taking an active part in the hostilities.
3. The matter was most recently in court on 14 May 2024. On that date, the charge certificate was filed confirming the charge was certified on 8 May 2024.

If asked about the merits of the prosecution

4. This matter is currently before the court and it is not appropriate for CDPP to comment further.

If asked about the investigation / basis for charges

5. The CDPP is not an investigative agency; we rely on the referral of briefs for consideration. Questions about the investigation of Mr Schulz are best directed to the investigative agency, the OSI.

2026FI00014

Released by the CDPP under FOI Act 1982

If asked about the decision to prosecute / the Prosecution Policy

6. **s 42(1)**
7. In all matters that are referred to the CDPP, we apply the Prosecution Policy of the Commonwealth. The Policy contains a two-stage test: we look to see first whether there is sufficient evidence to establish a prima facie case and reasonable prospect of conviction, and after being satisfied of that component we consider whether the prosecution is in the public interest.

If asked about the National Security Information Act (Criminal and Civil Proceedings) Act 2004 (NSI Act)

8. The CDPP invoked the NSI Act by the service of notice by the CDPP pursuant to s6 of the NSI Act on 11 May 2023. On 17 May 2023 the Attorney-General authorised the Minister for Finance to act on his behalf in the performance of all functions and duties and the exercise of all powers under the NSI Act insofar as they relate to the prosecution of Oliver Schulz.

If asked about external costs:

9. The total external costs of the prosecution of Mr Schulz as of 10 May 2024 is \$96,277.
10. The CDPP does not record internal costs for matters which it prosecutes. In accordance with established office protocols, key legal decisions were made by more experienced legal managers as and when required.

War crimes prosecutions

Key Facts and Responses

Briefs of evidence from the Australian Federal Police (AFP) or the OSI

11. The CDPP has received 1 brief of evidence (re Oliver Schulz) which it has assessed in accordance with the prosecution policy of the Commonwealth.

Resourcing

12. The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in Afghanistan.
13. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP.
14. Currently, one Assistant Director, two Prosecution Team Leaders and two Senior Federal Prosecutors are assigned to a dedicated war crimes branch of the CDPP. The CDPP has also briefed external counsel.
15. In March 2022, twenty-one prosecutors completed a preliminary specialised war crimes 2-day training program in preparation to undertake war crimes prosecutions. A further 2-day training program focusing on managing complex prosecutions took place in November 2022. Discrete training sessions were provided over 2022 and 2023 and will continue into 2024.
16. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in the 2023-24 year, and \$3.4 million in the 2024-25 year, to support the work of the Office of the Special Investigator.

Additional Information

Office of the Special Investigator

17. The Hon Mark Weinberg AO KC is the Special Investigator and Chris Moraitis is the Director-General.

Previous questions

18. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:
19. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
20. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

Contact Officer: s 22(1)(a)(ii)

CLEARED BY: SES-2 s 22(1)(a)(ii)

Last reviewed: 28 May 2024



CDPP

2026F00014
Australian Federal Prosecution Service

Released by the CDPP under FOI Act 1982



Portfolio Agency Information

Brief No: 1

Last update: October 2024

s 22(1)(a)(ii)

s 22(1)(a)(ii)

A large rectangular area of the document is completely redacted with a solid grey fill, covering the majority of the upper half of the page.

s 22(1)(a)(ii)

A large rectangular area of the document is completely redacted with a solid grey fill, covering the middle section of the page.

- 6.3. war crimes prosecutions flowing from the Office of the Special Investigator [refer to Brief 19 – War crimes prosecution];

s 22(1)(a)(ii)

A horizontal rectangular area at the bottom of the page is redacted with a solid grey fill.

OFFICIAL

s 22(1)(a)(ii)



E. DOCUMENT RELEASE INFORMATION

Contact Officer

Name	s 22(1)(a)(ii)
Position	Stakeholder and Government Engagement LCP
Date	22 October 2024

Cleared by

Name	s 22(1)(a)(ii)
Position	Acting Commonwealth Solicitor of Public Prosecutions
Date	22 October 2024

Version control

Version	Date	Author	Description	Next review
1.0	22 October 2024	LCP	Senate Estimates Brief	As required

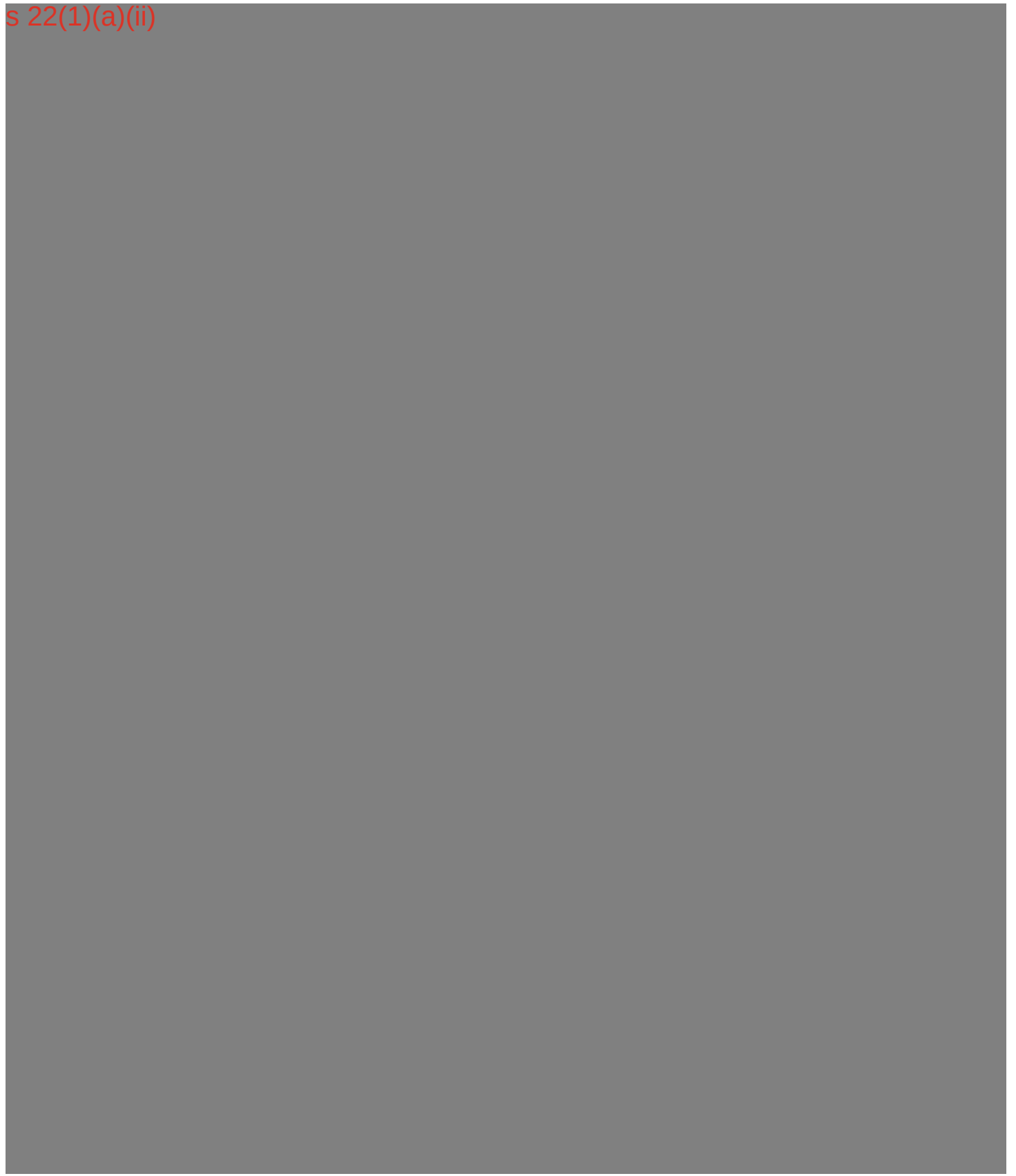


Media Monitoring

Brief No: 2

Last update: 29 October 2024

s 22(1)(a)(ii)



s 22(1)(a)(ii)

Contact Officer

Name	s 22(1)(a)(ii)
Position	Senior Media Advisor
Date	29 October 2024

Cleared by

Name	s 22(1)(a)(ii)
Position	Acting Chief Digital Officer
Date	29 October 2024

Version control

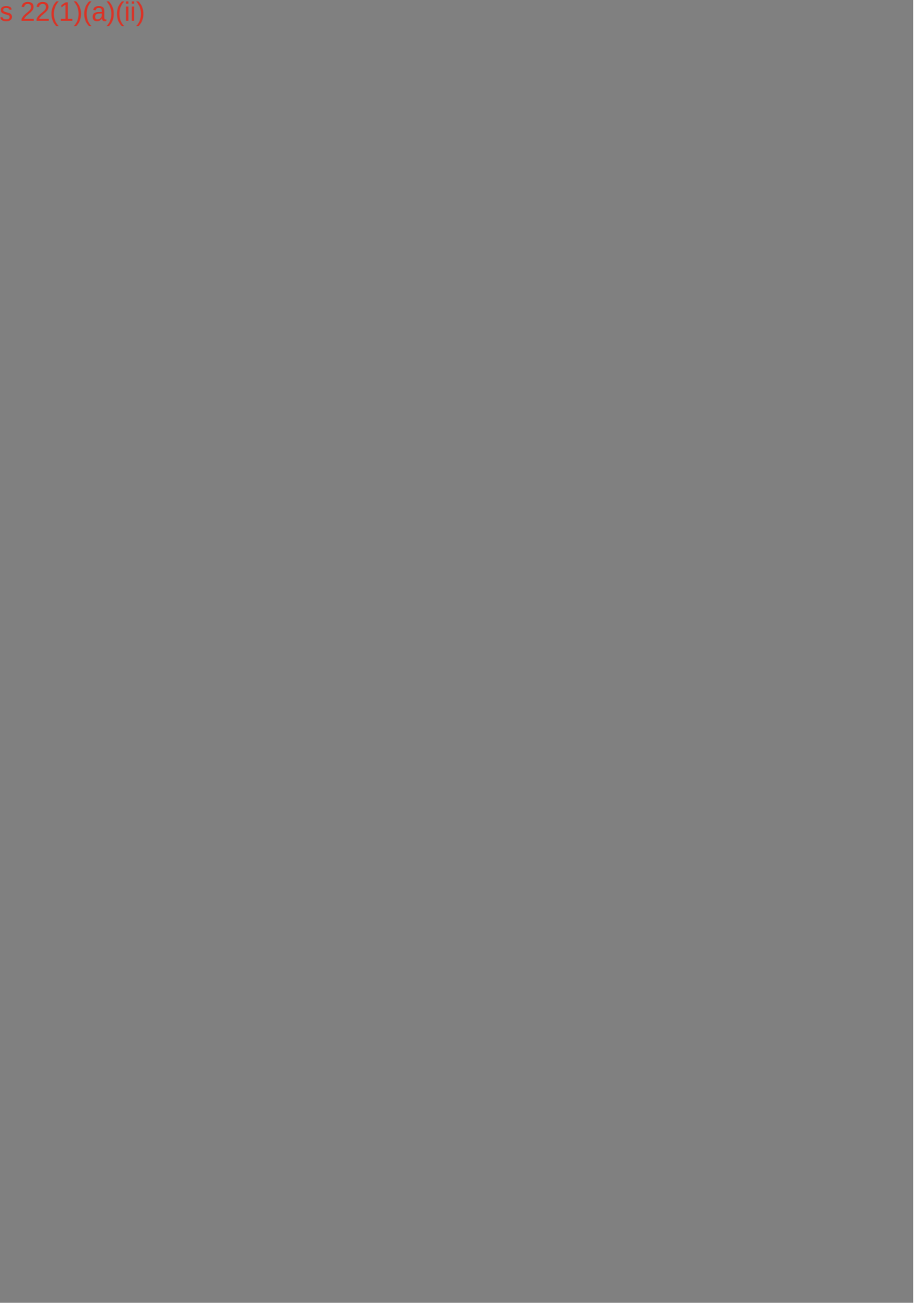
Version	Date	Author	Description	Next review
1.0	29 October 2024	CDPP Comms	CDPP Media	As required

s 22(1)(a)(ii)



OFFICIAL

s 22(1)(a)(ii)



OFFICIAL

s 22(1)(a)(ii)

22. s 22(1)(a)(ii)

s 22(1)(a)(ii)

22.3. 25 September Received media enquiry from The Guardian regarding war crimes, s 22(1)(a)(ii)

s 22(1)(a)(ii) :

- (a) I'm not sure whether the CDPP wishes to comment on this, but I am planning to report on FOI documents released to s 22(1)(a)(ii) concerning the training of war crimes prosecutors (FOI reference: 2023FI00027 and also attached).
- (b) The documents say that by March 2022, the CDPP had trained 21 prosecutors to deal in war crimes matters in anticipation of cases flowing from the Brereton findings. There was to be a second training course run in November 2022, according to the documents.
- (c) My questions on this are as follows:
 - (i) How many prosecutors have now been trained to deal with potential war crimes cases in the CDPP?
 - (ii) How many training courses have been run? Does the CDPP believe it is now adequately resources and/or prepared for a large number of war crimes cases?

22.4. Response:

- (a) The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI.
- (b) An Assistant Director and a Prosecution Team Leader have been appointed to oversight this work to liaise with and provide pre-brief advice to the OSI, assess future CDPP resourcing requirements and ensure CDPP lawyers are appropriately trained.
- (c) Twenty-one prosecutors from the CDPP completed a preliminary specialised war crimes 2-day training program in March 2022 in preparation to undertake war crimes prosecutions. A further 2-day training program focusing on managing complex prosecutions took place in November 2022. Discrete training sessions have also been

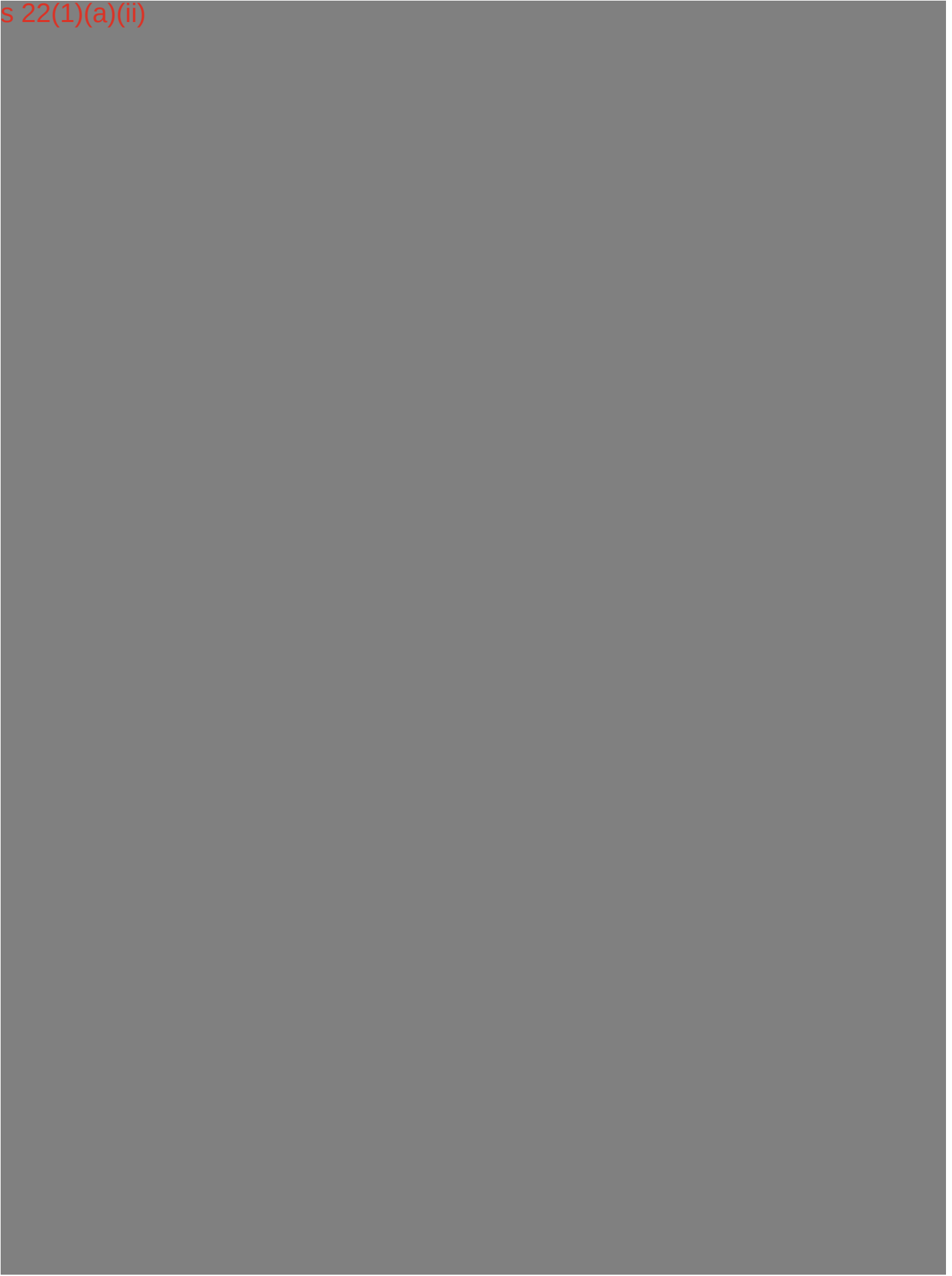
provided over 2022 and 2023. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.

- (d) The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in Afghanistan. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in the 2023-24 year, and \$3.4 million in the 2024–25 year, to support the work of the Office of the Special Investigator.

s 22(1)(a)(ii)



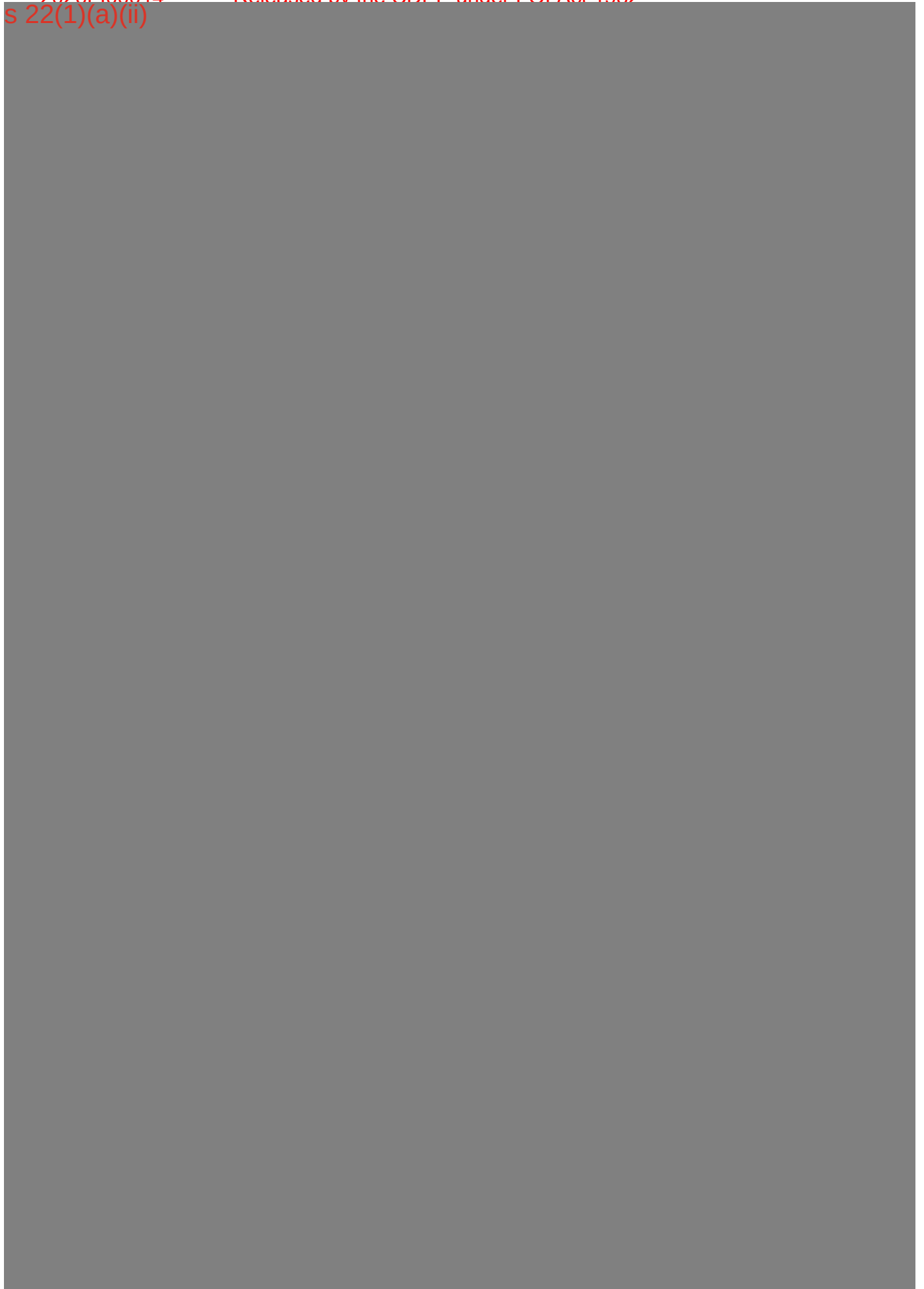
s 22(1)(a)(ii)



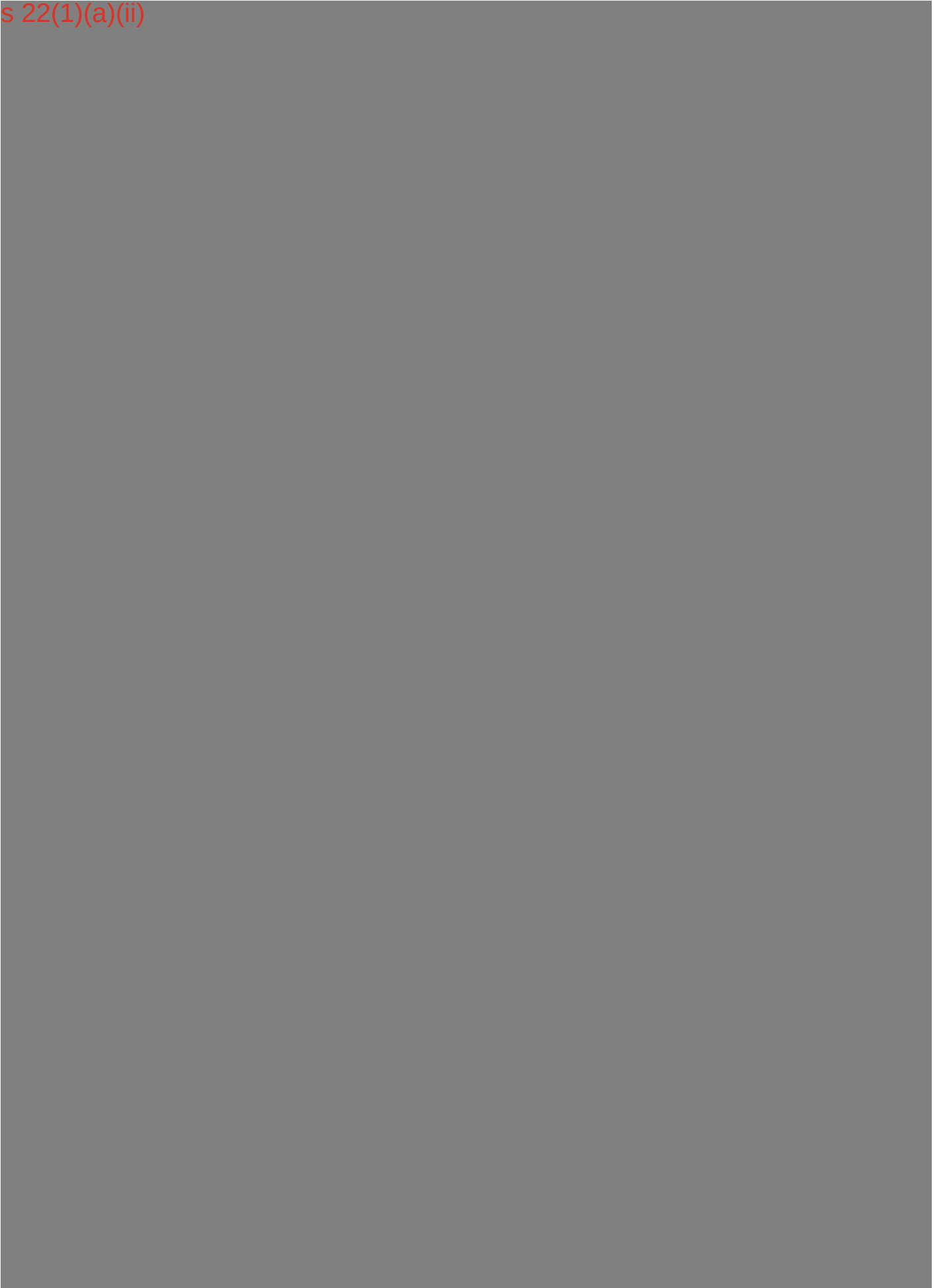
OFFICIAL

2026FI00014
s 22(1)(a)(ii)

Released by the CDPP under FOI Act 1982



s 22(1)(a)(ii)



OFFICIAL

s 22(1)(a)(ii)



OFFICIAL



War crimes prosecutions

Brief No: 19

Last update: October 2024

A. CURRENT ISSUE

1. There has been one person, Oliver Schulz, charged following an investigation by the Office of the Special Investigator (OSI).

B. CURRENT STATUS

Name of defendant	Oliver Schulz
Current phase and court	Currently before the Downing Centre Local Court
NIC Date	26 November 2024 for hearing of Crown application pursuant to s 82 of the <i>Criminal Procedure Act 1986</i> (NSW)
s 42(1)	
Date arrested/charged	Arrested and charged on 20 March 2023
Date committed for trial	Matter is yet to be committed
Date indictment filed	Indictment is yet to be filed

C. CURRENT CHARGES

Count	Offence	Date and Description	Maximum Penalty
1	Section 268.70(1) of the <i>Criminal Code</i> (Cth)	War crime of murder	Life imprisonment

D. CURRENT ISSUE OF INTEREST

2. The allegation is that on or about 28 May 2012 in Deh Jawz-e Hasanzai in Uruzgan Province, Afghanistan, by conduct which took place in the context of, and was associated with, an armed conflict that was not an international armed conflict, Mr Schulz caused the death of a person known as Dad Mohammad, who was not taking an active part in the hostilities, and Mr Schulz knew, or was reckless

OFFICIAL

as to the factual circumstances establishing that the person was not taking an active part in the hostilities.

3. On 2 July 2024, the Prosecution indicated an intention to make an application to call witnesses under s 82 of the *Criminal Procedure Act 1986* (NSW). The application has been listed on 26 November 2024 before the Downing Centre Local Court.

If asked about the merits of the prosecution:

4. This matter is currently before the court, and it is not appropriate for CDPP to comment further.

If asked about the investigation / basis for charges:

5. CDPP is not an investigative agency; we rely on the referral of briefs for consideration. Questions about the investigation of Mr Schulz are best directed to the investigative agency, the OSI.

If asked about the decision to prosecute / the Prosecution Policy:

6. s 42(1)
7. In all matters that are referred to us, we apply the *Prosecution Policy of the Commonwealth*. It's a two-stage test that is set out under the policy: we look to see whether there's sufficient evidence to establish a prima facie case and reasonable prospect of conviction, and after being satisfied of that component we consider whether the prosecution is in the public interest.

If asked about the National Security Information Act (Criminal and Civil Proceedings) Act 2004 (NSI Act):

8. The CDPP invoked the NSI Act by the service of notice by the CDPP pursuant to s6 of the NSI Act on 11 May 2023. On 17 May 2023 the Attorney-General authorised the Minister for Finance to act on his behalf in the performance of all functions and duties and the exercise of all powers under the NSI Act insofar as they relate to the prosecution of Oliver Schulz.

If asked about external costs:

9. The total external costs of the prosecution of Mr Schulz as at 18 October 2024 is \$346,390 (excluding GST).
10. The CDPP does not record internal costs for matters which it prosecutes. In accordance with established office protocols, key legal decisions were made by more experienced legal managers as and when required.

E. KEY FACT AND RESPONSES

Briefs of evidence from the Australian Federal Police (AFP) or the OSI

11. The CDPP has received 1 brief of evidence (re Oliver Schulz) which it has assessed in accordance with the *Prosecution Policy of the Commonwealth*.

Resourcing

12. The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate,

prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in Afghanistan.

13. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP.
14. Currently, one Assistant Director, two Prosecution Team Leaders and two Senior Federal Prosecutors are assigned to a dedicated war crimes branch of the CDPP. The CDPP has also briefed external counsel.
15. In March 2022, twenty-one prosecutors completed a preliminary specialised war crimes 2 day training program in preparation to undertake war crimes prosecutions. A further 2 day training program focusing on managing complex prosecutions took place in November 2022. Discrete training sessions were provided over 2022 and 2023 and will continue into 2024.
16. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in the 2023-24 year, and \$3.4 million in the 2024-25 year, to support the work of the Office of the Special Investigator.

F. ATTACHMENTS

17. Attachment A - Additional Information, including previous questions.

G. DOCUMENT RELEASE INFORMATION

Contact Officer

Name	s 22(1)(a)(ii)
Position	s 22(1)(a)(ii)
Date	15.10.2024

Cleared by

Name	s 22(1)(a)(ii)
Position	SES-2
Date	21.10.2024

Version control

Version	Date	Author	Description	Next review
1.1	15.10.2024	OCNS	Senate Estimates Brief - War crimes prosecutions	

Office of the Special Investigator

18. The Hon Mark Weinberg AO KC is the Special Investigator and Chris Moraitis is the Director-General.

Previous questions

19. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:

19.1. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.

19.2. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

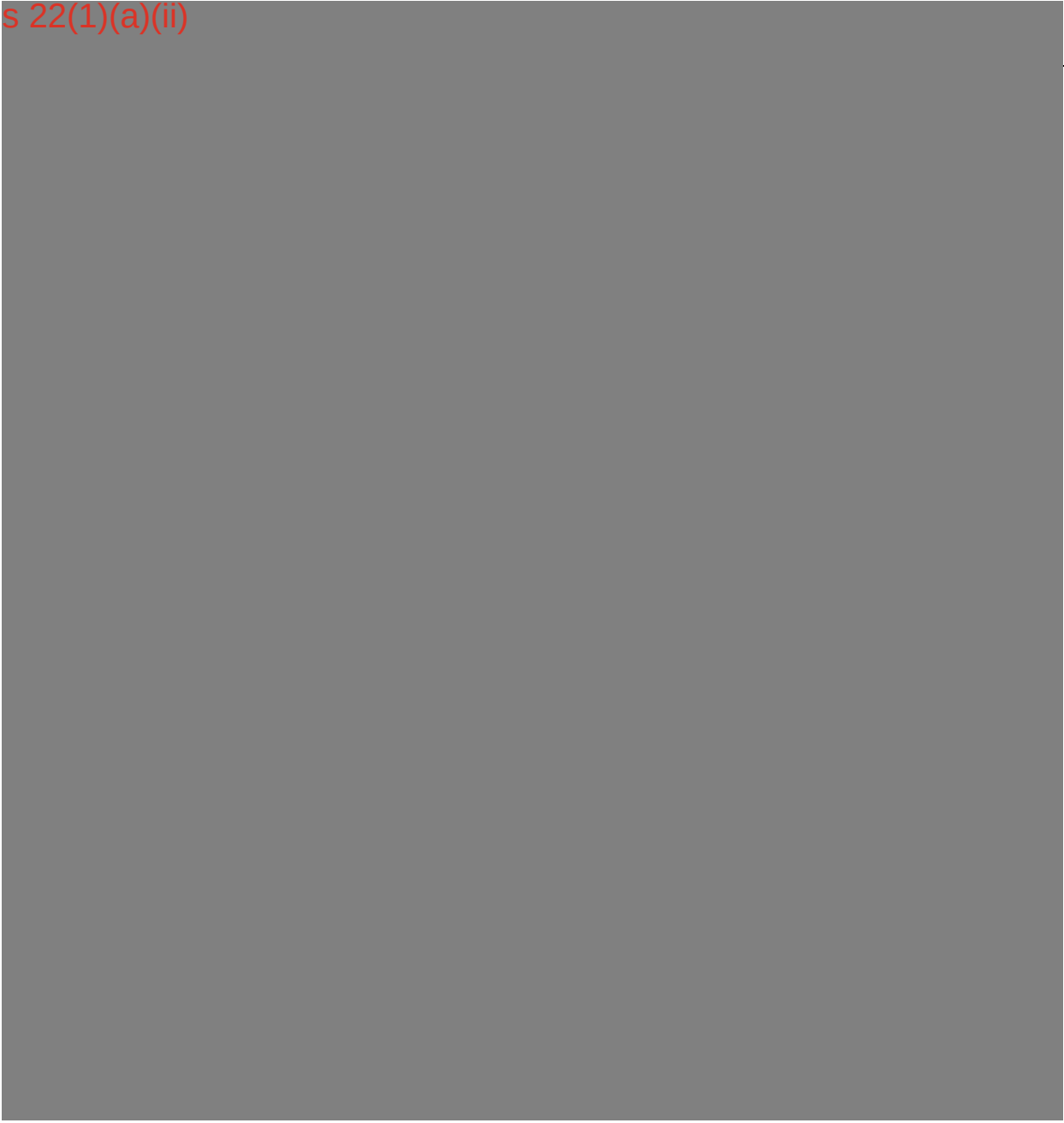


Summary

Brief No: 1

Last update: February 2025

s 22(1)(a)(ii)



s 22(1)(a)(ii)



B. MEDIA MONITORING

Current high-profile prosecutions

s 22(1)(a)(ii)



- 1.2. war crimes prosecutions flowing from the Office of the Special Investigator (see **Brief 14 – War crimes prosecution**);

s 22(1)(a)(ii)

**Key media articles**

2. Media coverage for period November 2024 to February 2025 includes:

s 22(1)(a)(ii)



- 2.4. [war crimes](#);

s 22(1)(a)(ii)



s 22(1)(a)(ii)



- A. [Media Monitoring – Senate Estimates](#)
B. Questions on Notice – November 2024 to February 2025

E. DOCUMENT RELEASE INFORMATION

Contact Officer

Name	s 22(1)(a)(ii)
Position	s 22(1)(a)(ii)
Date	17 February 2025

Cleared by

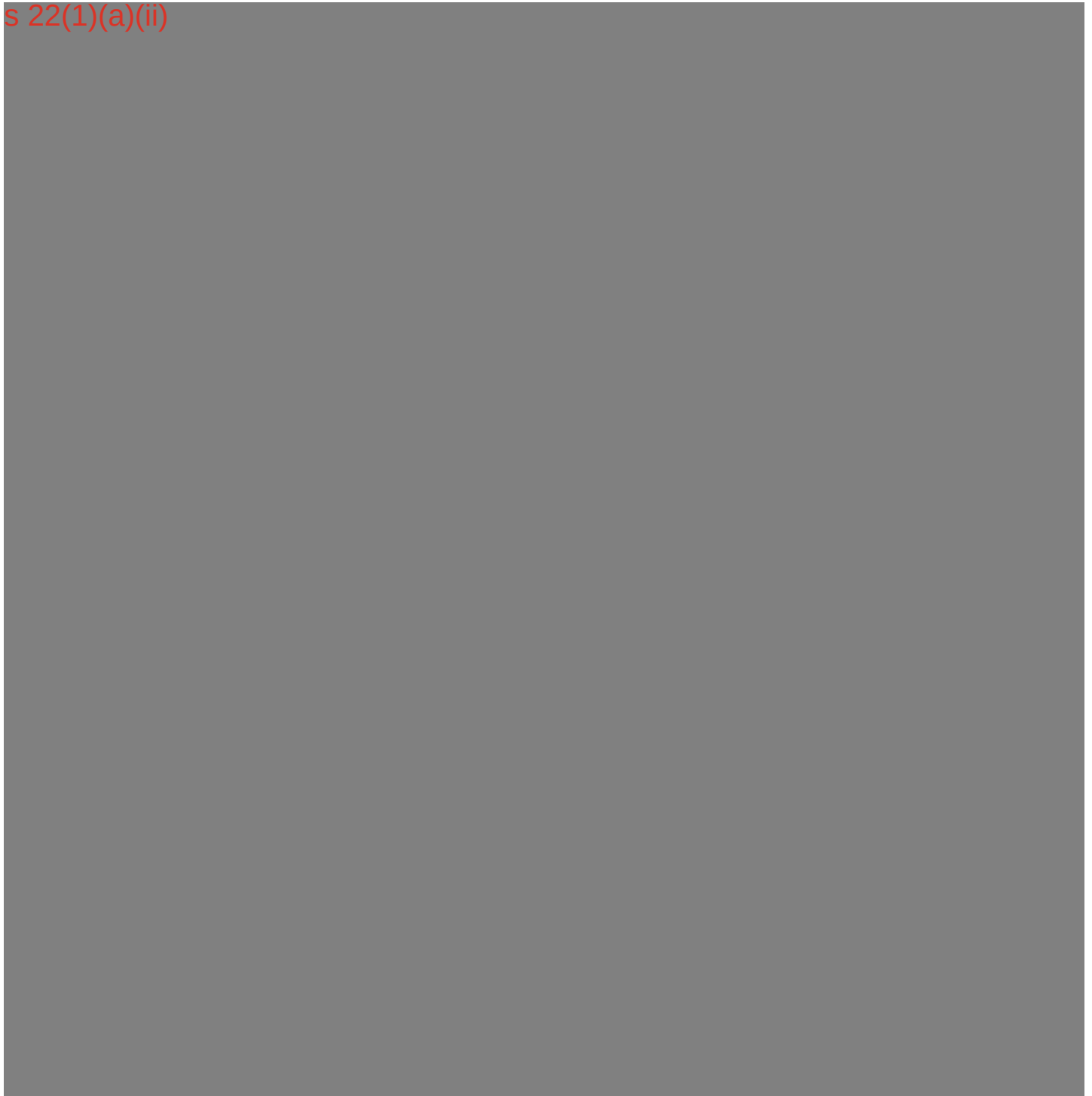
Name	s 22(1)(a)(ii)
Position	Executive Officer
Date	19 February 2025

Version control

Version	Date	Author	Description	Next review
1.0	17 Feb 2025	s 22(1)(a)(ii)	Portfolio Agency Information Brief	3 months

OFFICIAL

s 22(1)(a)(ii)

**War Crimes**

18. 6 December 2024 [Lawyer who took down Ben Roberts-Smith made a judge](#)
19. 30 November 2024 [War crimes cases against former soldiers dropped](#)
20. 16 November 2024 [NACC chief rebuffs calls to step down](#)

s 22(1)(a)(ii)





War crimes prosecutions

Brief No: 14

Last update: February 2025

A. CURRENT ISSUE

1. One person, Oliver Schulz, has been charged following an investigation by the Office of the Special Investigator (OSI).

B. CURRENT STATUS

Name of defendant	Oliver Schulz
Current phase and court	Currently before the Downing Centre Local Court
NIC Date	14 February 2025 for hearing a media access request; 14 March 2025 for hearing of Crown application pursuant to s 82 of the <i>Criminal Procedure Act 1986</i> (NSW)
s 42(1)	
Date arrested/charged	Arrested and charged on 20 March 2023
Date committed for trial	Matter is yet to be committed
Date indictment filed	Indictment is yet to be filed

C. CURRENT CHARGES

Count	Offence	Date and Description	Maximum Penalty
1	Section 268.70(1) of the <i>Criminal Code</i> (Cth)	War crime of murder	Life imprisonment

D. CURRENT ISSUE OF INTEREST

2. The allegation is that on or about 28 May 2012 in Deh Jawz-e Hasanzai in Uruzgan Province, Afghanistan, by conduct which took place in the context of, and was associated with, an armed conflict that was not an international armed conflict, Mr Schulz caused the death of a person known as Dad Mohammad, who was not taking an active part in the hostilities, and Mr Schulz knew, or was reckless as to the factual circumstances establishing that the person was not taking an active part in the hostilities.
3. On 2 July 2024, the prosecution indicated an intention to make an application to call witnesses under s 82 of the *Criminal Procedure Act 1986* (NSW).

OFFICIAL

- 2026FI00014 Released by the CDPP under FOI Act 1982
4. On 26 November 2024, the first part of the application was heard and directions were made for those witnesses to attend and give evidence on certain topics. The remainder of the application will be heard on 14 March 2025. The examination hearings are listed to commence on 7 April 2025.

If asked about the merits of the prosecution:

5. This matter is currently before the court, and it is not appropriate for CDPP to comment further.

If asked about the investigation / basis for charges:

6. The CDPP is not an investigative agency; we rely on the referral of briefs for consideration. Questions about the investigation of Mr Schulz are best directed to the investigative agency, the OSI.

If asked about the decision to prosecute / the Prosecution Policy:

7. The prosecution is brought in the name of the Attorney-General.

8. s 42(1)

9. In all matters that are referred to us, we apply the *Prosecution Policy of the Commonwealth* (the **Prosecution Policy**). It sets out a two-stage test: we look to see whether there is sufficient evidence to establish a prima facie case and reasonable prospect of conviction, and after being satisfied of that component we consider whether the prosecution is in the public interest.

If asked about the National Security Information Act (Criminal and Civil Proceedings) Act 2004 (NSI Act):

10. The CDPP applied the NSI Act by the service of notice by the CDPP pursuant to s 6 of the NSI Act on 11 May 2023.
11. On 17 May 2023, the Attorney-General authorised the Minister for Finance to act on his behalf in the performance of all functions and duties and the exercise of all powers under the NSI Act insofar as they relate to the prosecution of Oliver Schulz.

If asked about external costs:

12. The total external costs of the prosecution of Mr Schulz as at 31 December 2024 is \$401,471 (excluding GST).

s 47E(d)

13. The CDPP does not record internal costs for matters which it prosecutes. In accordance with established office protocols, key legal decisions were made by more experienced legal managers as and when required.

E. KEY FACT AND RESPONSES

Briefs of evidence from the Australian Federal Police (AFP) or the OSI

14. The CDPP has received one brief of evidence (Oliver Schulz) which it has assessed in accordance with the Prosecution Policy.

15. The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in Afghanistan.
16. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP.
17. Currently, one Assistant Director, two Prosecution Team Leaders, two Senior Federal Prosecutors and one Federal Prosecutor are assigned to a dedicated war crimes branch of the CDPP. Further prosecutors at various levels will be commencing in the war crimes branch in 2025.
18. The CDPP has also briefed external counsel.

Training

19. In March 2022, 21 prosecutors completed a preliminary specialised war crimes two-day training program in preparation to undertake war crimes prosecutions.
20. A further two-day training program focusing on managing complex prosecutions took place in November 2022.
21. In February 2025, 25 prosecutors completed a specialised war crimes two-day training program in preparation to undertake war crimes prosecutions.
22. Discrete training sessions were provided over 2022, 2023 and 2024, and will continue into 2025.
23. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in the 2023-24 year, and \$3.4 million in the 2024-25 year, to support the work of the OSI.

F. ATTACHMENTS

- A. [Additional Information, including previous questions.](#)

Contact Officer

Name	s 22(1)(a)(ii)
Position	s 22(1)(a)(ii)
Date	7.2.2025

Cleared by

Name	s 22(1)(a)(ii)
Position	A/SES-2
Date	7.2.2025

Version control

Version	Date	Author	Description	Next review
1	February 2025	OCNS	Senate Estimates Brief - War crimes prosecutions	As required

Office of the Special Investigator (OSI)

1. The Hon Mark Weinberg AO KC is the Special Investigator and Chris Moraitis is the Director-General.

Previous questions

2. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:
 - 2.1. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
 - 2.2. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.



Summary

Brief No: 1

Last update: March 2025

s 22(1)(a)(ii)



s 22(1)(a)(ii)



B. BUDGET MEASURES 2025-26

s 22(1)(a)(ii)



If asked about additional funding received in the 2025-26 Budget

s 22(1)(a)(ii)



2.3. \$3.5 million in 2025–26 for prosecution activities relating to war crimes.

s 22(1)(a)(ii)



OFFICIAL

s 22(1)(a)(ii)



D. MEDIA MONITORING

Current high-profile prosecutions

s 22(1)(a)(ii)



- 9.4. war crimes prosecutions flowing from the Office of the Special Investigator (see **Brief 12 – War crimes prosecution**);

s 22(1)(a)(ii)



Key media articles

10. Media coverage for period November 2024 to March 2025 includes:

s 22(1)(a)(ii)



10.6. [war crimes; and](#)

s 22(1)(a)(ii)

**E. QUESTIONS ON NOTICE**

s 22(1)(a)(ii)



s 22(1)(a)(ii)



OFFICIAL

F. ATTACHMENTS

s 22(1)(a)(ii)

G. DOCUMENT RELEASE INFORMATION

Contact Officer

Name	s 22(1)(a)(ii)
Position	s 22(1)(a)(ii)
Date	27 March 2025

Cleared by

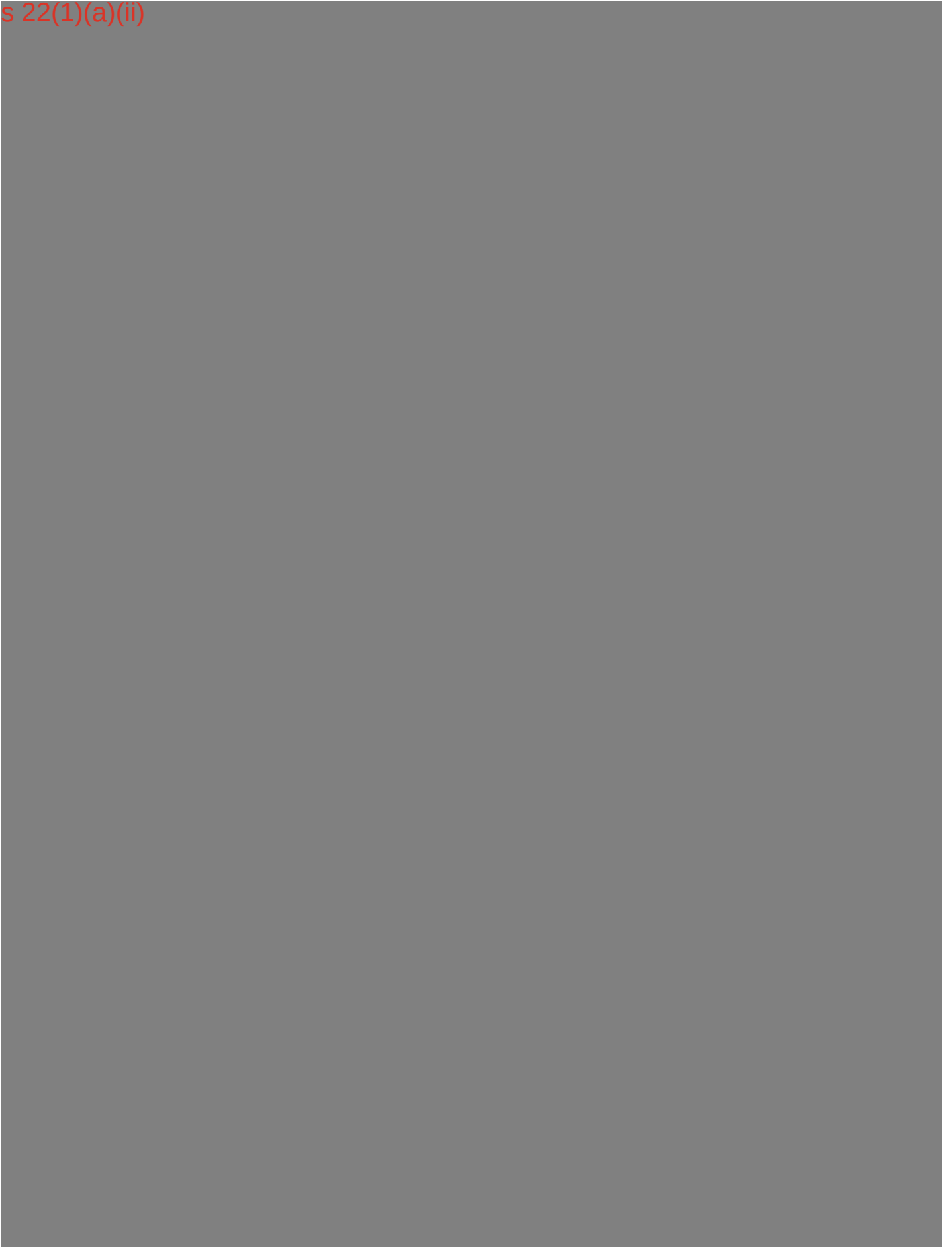
Name	s 22(1)(a)(ii)
Position	Executive Officer
Date	27 March 2025

Version control

Version	Date	Author	Description	Next review
1.0	17 Feb 2025	s 22(1)(a)(ii)	Portfolio Agency Information Brief	3 months
2.0	26 March 2025	s 22(1)(a)(ii)	Updates to brief	3 months

OFFICIAL

s 22(1)(a)(ii)



OFFICIAL

s 22(1)(a)(ii)



War Crimes

- 33. 6 December 2024 [Lawyer who took down Ben Roberts-Smith made a judge](#)
- 34. 30 November 2024 [War crimes cases against former soldiers dropped](#)
- 35. 16 November 2024 [NACC chief rebuffs calls to step down](#)

s 22(1)(a)(ii)





War crimes prosecutions

Brief No: 12

Last update: March 2025

A. CURRENT ISSUE

1. One person, Oliver Schulz, has been charged following an investigation by the Office of the Special Investigator (OSI).

B. CURRENT STATUS

Name of defendant	Oliver Schulz
Current phase and court	Currently before the Downing Centre Local Court
NIC Date	26 March 2025 for balance of the hearing pursuant to s 82 of the <i>Criminal Procedure Act 1986</i> (NSW) and delivery of the judgment.
s 42(1)	
Date arrested/charged	Arrested and charged on 20 March 2023
Date committed for trial	Matter is yet to be committed
Date indictment filed	Indictment is yet to be filed

C. CURRENT CHARGES

Count	Offence	Date and Description	Maximum Penalty
1	Section 268.70(1) of the <i>Criminal Code</i> (Cth)	War crime of murder	Life imprisonment

D. CURRENT ISSUE OF INTEREST

2. The allegation is that on or about 28 May 2012 in Deh Jawz-e Hasanzai in Uruzgan Province, Afghanistan, by conduct which took place in the context of, and was associated with, an armed conflict that was not an international armed conflict, Mr Schulz caused the death of a person known as Dad Mohammad, who was not taking an active part in the hostilities, and Mr Schulz knew, or was reckless as to the factual circumstances establishing that the person was not taking an active part in the hostilities.
3. On 2 July 2024, the prosecution indicated an intention to make an application to call witnesses under s 82 of the *Criminal Procedure Act 1986* (NSW).

OFFICIAL

- 2026FI00014 Released by the CDPP under FOI Act 1982
4. On 26 November 2024, the first part of the application was heard and directions were made for those witnesses to attend and give evidence on certain topics. The remainder of the application was heard on 14 March 2025. The examination hearings are listed to commence on 7 April 2025.

If asked about the merits of the prosecution:

5. This matter is currently before the court, and it is not appropriate for CDPP to comment further.

If asked about the investigation / basis for charges:

6. The CDPP is not an investigative agency; we rely on the referral of briefs for consideration. Questions about the investigation of Mr Schulz are best directed to the investigative agency, the OSI.

If asked about the decision to prosecute / the Prosecution Policy:

7. The prosecution is brought in the name of the Attorney-General.

8. s 42(1)

9. In all matters that are referred to us, we apply the Prosecution Policy of the Commonwealth (the Prosecution Policy). It sets out a two-stage test: we look to see whether there is sufficient evidence to establish a prima facie case and reasonable prospect of conviction, and after being satisfied of that component we consider whether the prosecution is in the public interest.

If asked about the National Security Information Act (Criminal and Civil Proceedings) Act 2004 (NSI Act):

10. The CDPP applied the NSI Act by the service of notice by the CDPP pursuant to s 6 of the NSI Act on 11 May 2023.
11. On 17 May 2023, the Attorney-General authorised the Minister for Finance to act on his behalf in the performance of all functions and duties and the exercise of all powers under the NSI Act insofar as they relate to the prosecution of Oliver Schulz.

If asked about external costs:

12. The total external costs of the prosecution of Mr Schulz as at 31 December 2024 is \$401,471 (excluding GST).
- 12.1. On 17 February 2025, the CDPP advised the Attorney-General's Department that in respect of the Prosecution of Mr Schulz, total external expenses recorded to 10 February 2025 total \$425,288 (excluding GST).
13. The CDPP does not record internal costs for matters which it prosecutes. In accordance with established office protocols, key legal decisions were made by more experienced legal managers as and when required.

E. KEY FACT AND RESPONSES

Briefs of evidence from the Australian Federal Police (AFP) or the OSI

14. The CDPP has received one brief of evidence (Oliver Schulz) which it has assessed in accordance with the Prosecution Policy.

15. The CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force (ADF) personnel in Afghanistan.
16. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP.
17. Currently, one Assistant Director, two Prosecution Team Leaders, two Senior Federal Prosecutors and one Federal Prosecutor are assigned to a dedicated war crimes branch of the CDPP. Further prosecutors at various levels will be commencing in the war crimes branch in 2025.
18. The CDPP has also briefed external counsel.

Training

19. In March 2022, 21 prosecutors completed a preliminary specialised war crimes two-day training program in preparation to undertake war crimes prosecutions.
20. A further two-day training program focusing on managing complex prosecutions took place in November 2022.
21. In February 2025, 25 prosecutors completed a specialised war crimes two-day training program in preparation to undertake war crimes prosecutions.
22. Discrete training sessions were provided over 2022, 2023 and 2024, and will continue into 2025.
23. The 2023–24 budget announced that the CDPP would be provided with \$2.1 million in the 2023-24 year, and \$3.4 million in the 2024-25 year, to support the work of the OSI.

F. ATTACHMENTS

- A. [Additional Information, including previous questions](#)

Contact Officer

Name	s 22(1)(a)(ii)
Position	s 22(1)(a)(ii)
Date	7.2.2025

Cleared by

Name	s 22(1)(a)(ii)
Position	A/SES-2
Date	7.2.2025

Version control

Version	Date	Author	Description	Next review
1	February 2025	OCNS	Senate Estimates Brief - War crimes prosecutions	As required
1.1	24 February 2025	OCNS	Amended error of date in paragraph 12.1.	As required
1.2	24 March 2025	OCNS	Amended next in court date.	As required.

Office of the Special Investigator (OSI)

1. The Hon Mark Weinberg AO KC is the Special Investigator and Chris Moraitis is the Director-General.

Previous questions

2. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:
 - 2.1. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
 - 2.2. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.



Supplementary Budget Estimates – October 2025

Last update: October 2025

A. BRIEFS

Legal Practice Briefs

High profile matters | Matters before the court

s 22(1)(a)(ii)

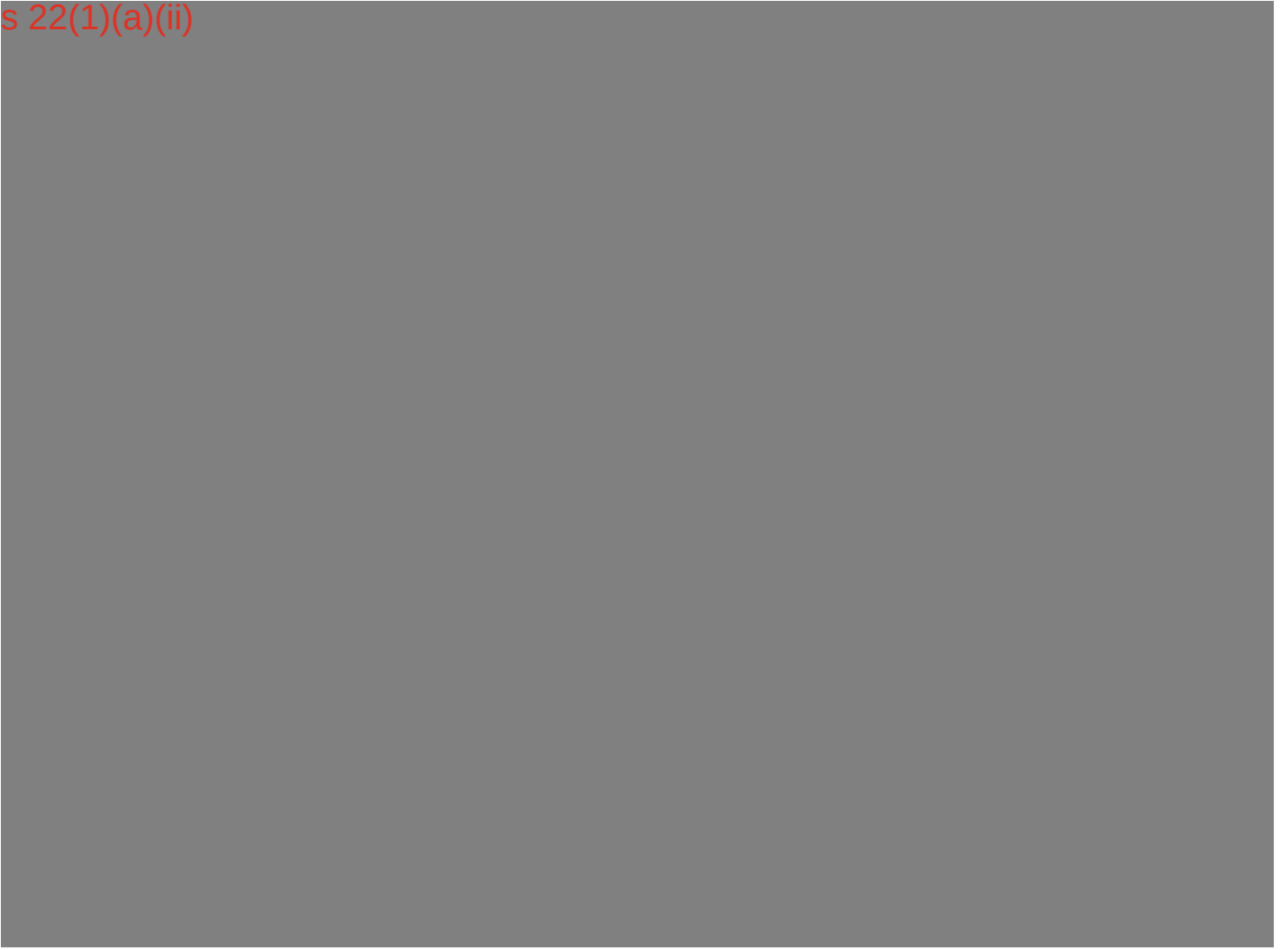
7. Office of the Special Investigator Prosecutions

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)





Office of the Special Investigator Prosecutions

Brief No: 7

Last update: September 2025

A. TALKING POINTS

1. The CDPP has carriage of one current prosecution referred by the Office of the Special Investigator (**OSI**).
2. On 20 March 2023 Oliver Schulz was arrested and charged with the war crime of murder contrary to s 268.70(1) of the *Criminal Code* (Cth).
3. The CDPP works collaboratively with the OSI and provides ongoing pre-brief legal advice to OSI investigators. The CDPP also provides relevant training to prosecutors.

B. KEY FACTS

1. One person, Oliver Schulz, has been charged with the war crime of murder contrary to s 268.70(1) of the *Criminal Code* (Cth) (**Criminal Code**) following an investigation by the OSI.

C. KEY RESPONSES

If asked about the merits of the prosecution:

2. This matter is currently before the court, and it is not appropriate for CDPP to comment.

If asked about the decision to prosecute / the Prosecution Policy:

3. The CDPP prosecutes offences in accordance with the [Prosecution Policy of the Commonwealth](#) (the **Prosecution Policy**).

If asked whether the Attorney-General has consented to the prosecution:

4. The prosecution is brought in the name of the Attorney-General pursuant to s 268.121(2) of the *Criminal Code*.

5. s 42(1)

If asked about the investigation / basis for charges:

6. The CDPP is not an investigative agency and relies on the referral of briefs of evidence for consideration. Questions about investigations are best directed to the relevant investigative agency, the OSI.

If asked about external costs:

7. A question about the external costs of the prosecution of Mr Schulz will be taken on notice.
8. The CDPP does not record internal costs for matters which it prosecutes.
9. Refer to funding for external budget measures at paragraph [1717] below.

D. CURRENT STATUS

Name of defendant	Oliver Schulz
Current phase and court	Awaiting trial in NSW Supreme Court
NIC Date	3 October 2025 for arraignment
s 42(1)	
Date arrested/charged	Arrested and charged on 20 March 2023
Date committed for trial	Committed for trial in the NSW Supreme Court on 20 August 2025
Date indictment filed	19 September 2025

E. CURRENT CHARGES

Count	Offence	Date and Description	Maximum Penalty
1	<i>Criminal Code, s 268.70(1)</i>	War crime of murder	Life imprisonment

F. CHRONOLOGY

10. The following are key procedural events in the prosecution against Mr Schulz:

Date	Key event
s 42(1)	
20 March 2023	Mr Schulz arrested and charged.
11 May 2023	CDPP applied the <i>NSI Act</i> .
2 July 2024	Prosecution indicated an intention to make an application to call witnesses under s 82 of the <i>Criminal Procedure Act 1986</i> (NSW) (the s 82 application).

Date	Key event
26 November 2024 and 14 March 2025	The s 82 application was heard and directions were made for those witnesses to attend and give evidence on certain topics.
7 April 2025 to 19 May 2025 (on various dates)	The s 82 application hearing and examination of witnesses took place in the Downing Centre Local Court over 11 days.
20 August 2025	Committed to the Supreme Court of NSW for trial.
19 September 2025	Indictment signed by the Director served and filed in the NSW Supreme Court.
3 October 2025	Next in court, listed for arraignment.

G. ADDITIONAL INFORMATION

Nature of the allegation (per the indictment signed by the Director)

11. It is alleged that on or about 28 May 2012 in Deh Jawz-e Hasanzai, Uruzgan Province, in the Islamic Republic of Afghanistan, Mr Schulz did, by intentional conduct, which took place in the context of and was associated with an armed conflict that was not an international armed conflict, intentionally cause the death of a person known as Dad Mohammad, who was not taking an active part in the hostilities and Mr Schulz knew or was reckless as to:
 - 11.1. the factual circumstances establishing that the person known as Dad Mohammad was not taking an active part in the hostilities; and
 - 11.2. The fact that his conduct took place in the context of and was associated with an armed conflict that was not an international armed conflict.

Referrals of briefs of evidence from the OSI

12. The CDPP has received one brief of evidence referral for prosecution (Oliver Schulz) from the OSI which has been assessed in accordance with the *Prosecution Policy*.

Resourcing & budgeting

13. To ensure the CDPP will have sufficient resources, the CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI. Forward planning will ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force personnel in Afghanistan.
14. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP.

15. The War Crimes Branch of the CDPP is currently resourced with the following staff:
 - 15.1. one Assistant Director (SES B1);
 - 15.2. two Principal Federal Prosecutors (EL2);
 - 15.3. three Senior Federal Prosecutors (EL1); and
 - 15.4. one Federal Prosecutor (APS6).
16. The CDPP has also briefed external counsel.
17. The 2024–25 budget announced that the CDPP would be provided with \$3.5 million in the 2025–26 financial year to support the work of the OSI.

Training

18. The CDPP provides ongoing training to prosecutors and counsel, including training in March 2022, November 2022 and February 2025.

H. ATTACHMENTS

- A. [Additional Information](#)

ATTACHMENT A – ADDITIONAL INFORMATION

Office of the Special Investigator (OSI)

1. The Hon Mark Weinberg AO KC is the Special Investigator.
2. Chris Moraitis PSM is the Director-General.

Previous questions

3. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:
 - 3.1. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
 - 3.2. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

Media reporting

4. On 22 July 2025, a media article written by Joanna Panagopoulos titled 'Magistrate Lashes CDPP on Oliver Schulz War Crime Charge Delay', was published in *The Australian*. The article reported that a "a legal representative for the Commonwealth Director of Public Prosecutions told a court the Attorney-General's Department had raised a 'procedural issue' overnight" and the issue related to "the authorisation to prosecute the matter." The legal representative was also quoted as saying "we...need to ensure all of the ducks are in a row procedurally before the matter is taken out of this court into the Supreme Court."
5. The article further reported that in response to the submission by the Crown, Magistrate Grogin described the delay as "unsatisfactory" and said "it's only been thirteen years since the alleged offence and we've now been at committal for many, many months and something arose last night, really?" His Honour was further quoted as saying it would not "wash" if another "irregularity arose overnight" the next time the matter came before the court.



Supplementary Budget Estimates – December 2025

Last update: November 2025

A. BRIEFS

High profile matters | Matters before the court

s 22(1)(a)(ii)

3. Office of the Special Investigator Prosecutions



s 22(1)(a)(ii)

s 22(1)(a)(ii)





Office of the Special Investigator Prosecutions

Brief No: 3

Last update: November 2025

A. TALKING POINTS

1. The Office of the Director of Public Prosecutions (Cth) (**CDPP**) has carriage of one current prosecution referred by the Office of the Special Investigator (**OSI**).
2. On 20 March 2023 Oliver Schulz was arrested and charged with the war crime of murder contrary to s 268.70(1) of the *Criminal Code* (Cth).
3. The CDPP works collaboratively with the OSI and provides ongoing pre-brief legal advice to OSI investigators. The CDPP also provides relevant training to prosecutors.

B. KEY FACTS

1. One person, Oliver Schulz, has been charged with the war crime of murder contrary to s 268.70(1) of the *Criminal Code* (Cth) (**Criminal Code**) following an investigation by the OSI.

C. KEY RESPONSES

If asked about the merits of the prosecution:

2. This matter is currently before the court and it is not appropriate for CDPP to comment.

If asked about the decision to prosecute / the Prosecution Policy:

3. The CDPP prosecutes offences in accordance with the [Prosecution Policy of the Commonwealth](#) (the **Prosecution Policy**).

If asked whether the Attorney-General has consented to the prosecution:

4. The prosecution is brought in the name of the Attorney-General pursuant to s 268.121(2) of the *Criminal Code*.

5. s 42(1)

If asked about the investigation / basis for charges:

6. The CDPP is not an investigative agency and relies on the referral of briefs of evidence for consideration. Questions about investigations are best directed to the relevant investigative agency, the OSI.

If asked about external costs:

7. A question about the external costs of the prosecution of Mr Schulz will be taken on notice.
8. The CDPP does not record internal costs for matters which it prosecutes.
9. Refer to funding for external budget measures at paragraph [17] below.

D. CURRENT STATUS

Name of defendant	Oliver Schulz
Current phase and court	Awaiting trial in NSW Supreme Court
NIC Date	12 December 2025 for case management mention
s 42(1)	
Date arrested/charged	Arrested and charged on 20 March 2023
Date committed for trial	Committed for trial in the NSW Supreme Court on 20 August 2025
Date indictment filed	19 September 2025

E. CURRENT CHARGES

Count	Offence	Date and Description	Maximum Penalty
1	<i>Criminal Code, s 268.70(1)</i>	War crime of murder	Life imprisonment

F. CHRONOLOGY

10. The following are key procedural events in the prosecution against Mr Schulz:

Date	Key event
s 42(1)	
20 March 2023	Mr Schulz arrested and charged.
11 May 2023	CDPP applied the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> .

Date	Key event
2 July 2024	Prosecution indicated an intention to make an application to call witnesses under s 82 of the <i>Criminal Procedure Act 1986</i> (NSW) (the s 82 application).
26 November 2024 and 14 March 2025	The s 82 application was heard and directions were made for those witnesses to attend and give evidence on certain topics.
7 April 2025 to 19 May 2025 (on various dates)	The s 82 application hearing and examination of witnesses took place in the Downing Centre Local Court over 11 days.
20 August 2025	Committed to the Supreme Court of NSW for trial.
19 September 2025	Indictment signed by the Director served and filed in the Supreme Court of NSW.
3 October 2025	Mr Schulz was arraigned and entered a plea of not guilty.
12 December 2025	Next in court, listed for case management mention.

G. ADDITIONAL INFORMATION

Nature of the allegation (per the indictment signed by the Director)

11. It is alleged that on or about 28 May 2012 in Deh Jawz-e Hasanzai, Uruzgan Province, in the Islamic Republic of Afghanistan, Mr Schulz did, by intentional conduct, which took place in the context of and was associated with an armed conflict that was not an international armed conflict, intentionally cause the death of a person known as Dad Mohammad, who was not taking an active part in the hostilities and Mr Schulz knew or was reckless as to:
 - 11.1. the factual circumstances establishing that the person known as Dad Mohammad was not taking an active part in the hostilities; and
 - 11.2. The fact that his conduct took place in the context of and was associated with an armed conflict that was not an international armed conflict.

Referrals of briefs of evidence from the OSI

12. The CDPP has received one brief of evidence referral for prosecution (Oliver Schulz) from the OSI which has been assessed in accordance with the *Prosecution Policy*.

Resourcing & budgeting

13. To ensure the CDPP will have sufficient resources, the CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI. Forward planning will ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force personnel in Afghanistan.
14. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP.

15. The War Crimes Branch of the CDPP is currently resourced with the following staff:
 - 15.1. one Senior Executive Lawyer (SES B1);
 - 15.2. two Principal Federal Prosecutors (EL2);
 - 15.3. two Senior Federal Prosecutors (EL1); and
 - 15.4. one Federal Prosecutor (APS6).
16. The CDPP has also briefed external counsel.
17. The 2024–25 Budget announced that the CDPP would be provided with \$3.5 million in the 2025–26 financial year to support the work of the OSI.

Training

18. The CDPP provides ongoing training to prosecutors and counsel, including training in March 2022, November 2022 and February 2025.

H. ATTACHMENTS

- A. [Additional Information](#)

ATTACHMENT A – ADDITIONAL INFORMATION

Office of the Special Investigator (OSI)

1. The Hon Mark Weinberg AO KC is the Special Investigator.
2. Chris Moraitis PSM is the Director-General.

Previous questions

3. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:
 - 3.1. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
 - 3.2. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

Media reporting

4. On 22 July 2025, a media article written by Joanna Panagopoulos titled 'Magistrate Lashes CDPP on Oliver Schulz War Crime Charge Delay', was published in *The Australian*. The article reported that a "a legal representative for the Commonwealth Director of Public Prosecutions told a court the Attorney-General's Department had raised a 'procedural issue' overnight" and the issue related to "the authorisation to prosecute the matter." The legal representative was also quoted as saying "we...need to ensure all of the ducks are in a row procedurally before the matter is taken out of this court into the Supreme Court."
5. The article further reported that in response to the submission by the Crown, Magistrate Grogin described the delay as "unsatisfactory" and said "it's only been thirteen years since the alleged offence and we've now been at committal for many, many months and something arose last night, really?" His Honour was further quoted as saying it would not "wash" if another "irregularity arose overnight" the next time the matter came before the court.
6. On 3 October 2025 the Associated Press published a news article titled 'Australian Accused of Afghanistan War Crime Pleads Not Guilty but Trial Held Until At Least 2027' which reported that during the arraignment hearing on 3 October 2025, the prosecutor said the accused is unlikely to stand trial before 2027, and defence counsel Philip Boulton SC agreed. The article reported that "a trial date would usually be set on such an appearance, but national security concerns have prevented prosecutors and defence lawyers from seeing much of the evidence against the former Special Air Service Regiment elite soldier." The article quoted defence counsel as stating "I understand the importance of getting a trial date in a normal case...this is not a normal case."

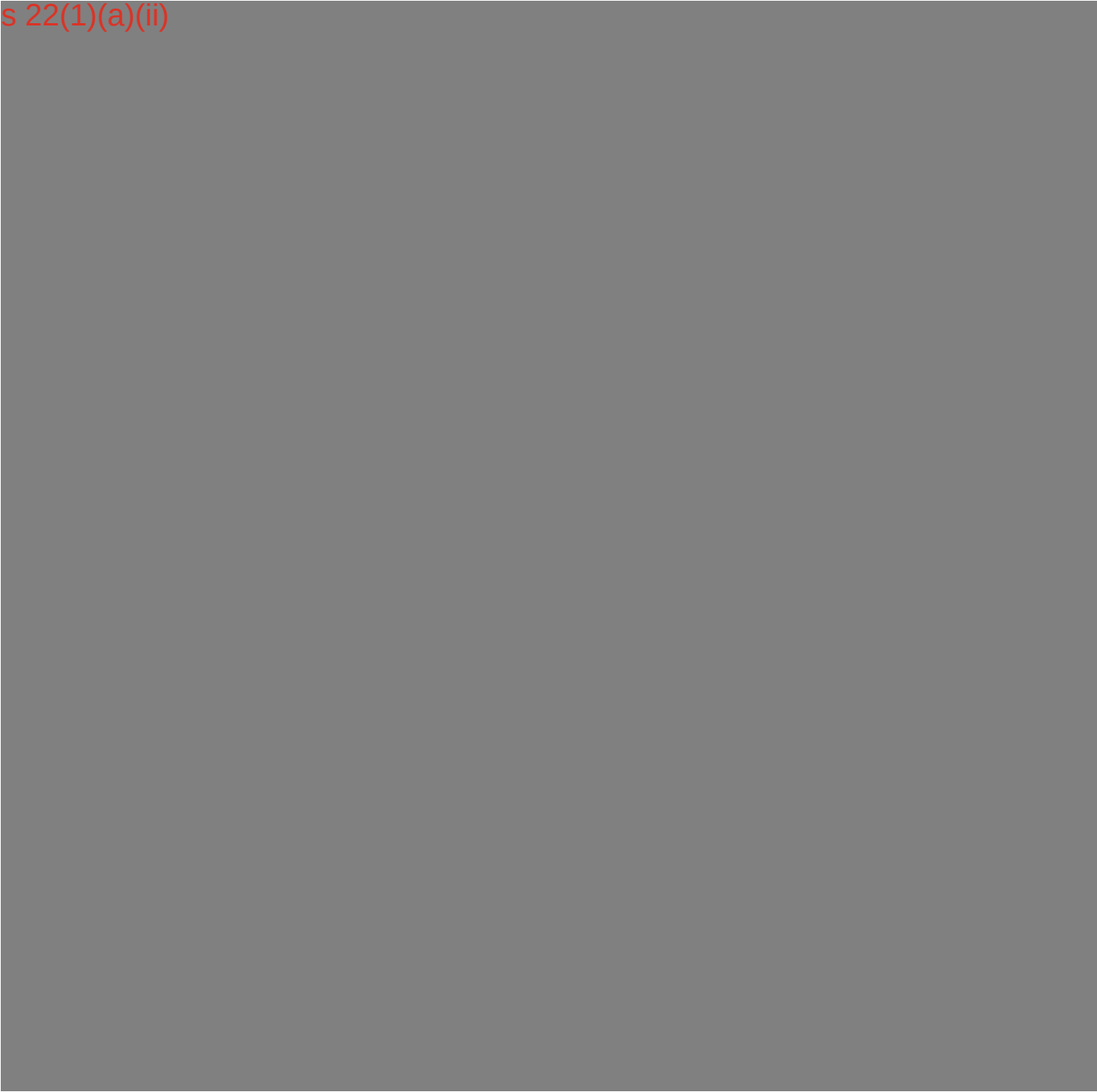


Media Summary

Last update: December 2025

A. TALKING POINTS

s 22(1)(a)(ii)



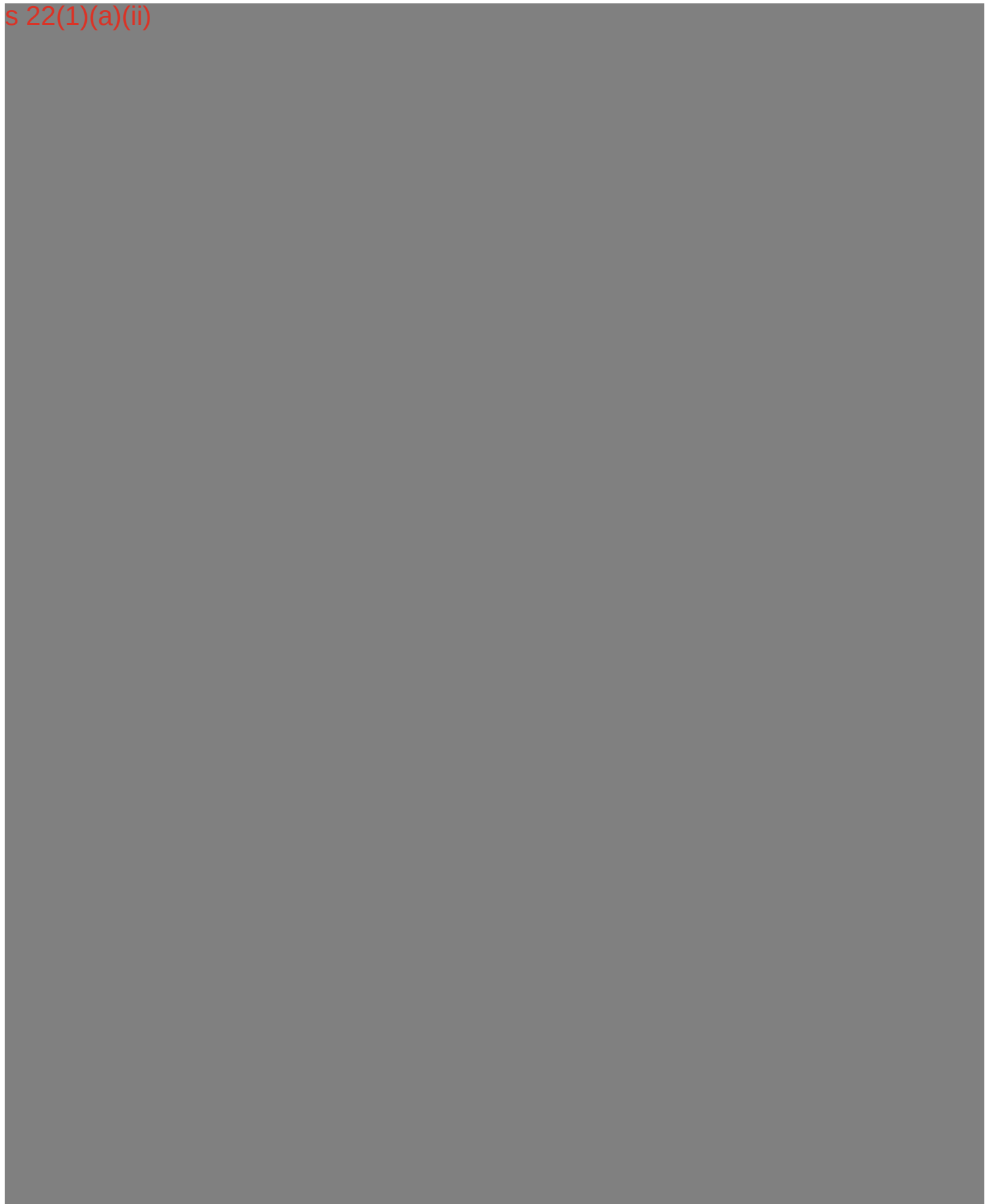
Office of the Special Investigator Prosecutions

3. Relevant media articles:

- 3.1. 24 October 2025 [The bill for investigating 19 Afghan war veterans is about to hit \\$17 million each](#) (redacted to remove reference to Brereton Inquiry)
- 3.2. 29 October 2025 [Afghanistan war crime probe: Pressure builds to resolve investigation into SAS](#) (redacted to remove reference to Brereton Inquiry)
- 3.3. 10 October 2025 [\\$250m spent on war crime probe](#) (redacted to remove reference to Brereton Inquiry)

s 22(1)(a)(ii)

s 22(1)(a)(ii)



s 22(1)(a)(ii)





Additional Budget Estimates – February 2026

Last update: February 2026

s 22(1)(a)(ii)



Briefs for information

7. Office of the Special Investigator Prosecutions



s 22(1)(a)(ii)



s 22(1)(a)(ii)





Office of the Special Investigator Prosecutions

Brief No: 7

Last update: January 2026

A. TALKING POINTS

1. CDPP has carriage of one current prosecution referred by the Office of the Special Investigator (OSI).
2. On 20 March 2023 Oliver Schulz was arrested and charged with the war crime of murder contrary to s 268.70(1) of the *Criminal Code* (Cth). The matter is listed for trial on 8 February 2027 in the Supreme Court of NSW.
3. The CDPP works collaboratively with the OSI and provides ongoing pre-brief legal advice to OSI investigators. The CDPP also provides relevant training to prosecutors.

B. KEY FACTS

1. One person, Oliver Schulz, has been charged with the war crime of murder contrary to s 268.70(1) of the *Criminal Code* (Cth) (the **Criminal Code**) following an investigation by the OSI.

C. KEY RESPONSES

If asked about the merits of the prosecution:

2. This matter is currently before the court, and it is not appropriate for CDPP to comment.

If asked about the decision to prosecute / the Prosecution Policy:

3. The CDPP prosecutes offences in accordance with the [Prosecution Policy of the Commonwealth](#) (the **Prosecution Policy**).

If asked whether the Attorney-General has consented to the prosecution:

4. The prosecution is brought in the name of the Attorney-General pursuant to s 268.121(2) of the Criminal Code.

5. s 42(1)

If asked about the investigation / basis for charges:

6. The CDPP is not an investigative agency and relies on the referral of briefs of evidence for consideration. Questions about investigations are best directed to the relevant investigative agency, the OSI.

If asked about external costs:

7. A question about the external costs of the prosecution of Mr Schulz will be taken on notice.
8. The CDPP does not record internal costs for matters which it prosecutes.
9. Refer to funding for external budget measures at paragraph [17] below.

D. CURRENT STATUS

Name of defendant	Oliver Schulz
Current phase and court	Awaiting trial in NSW Supreme Court
NIC Date	27 February 2026 for case management mention 7 and 8 May 2026 for hearing in relation to trial phase orders under the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> (Cth) 8 February 2027 for trial
s 42(1)	
Date arrested/charged	Arrested and charged on 20 March 2023
Date committed for trial	Committed for trial in the NSW Supreme Court on 20 August 2025
Date indictment filed	19 September 2025

E. CURRENT CHARGES

Count	Offence	Date and Description	Maximum Penalty
1	<i>Criminal Code</i> , s 268.70(1)	War crime of murder	Life imprisonment

F. CHRONOLOGY

10. The following are key procedural events in the prosecution against Mr Schulz:

Date	Key event
s 42(1)	

Date	Key event
20 March 2023	Mr Schulz arrested and charged.
11 May 2023	CDPP applied the <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> .
2 July 2024	Prosecution indicated an intention to make an application to call witnesses under s 82 of the <i>Criminal Procedure Act 1986</i> (NSW) (the s 82 application).
26 November 2024 and 14 March 2025	The s 82 application was heard and directions were made for those witnesses to attend and give evidence on certain topics.
7 April 2025 to 19 May 2025 (on various dates)	The s 82 application hearing and examination of witnesses took place in the Downing Centre Local Court over 11 days.
20 August 2025	Committed to the Supreme Court of NSW for trial.
19 September 2025	Indictment signed by the Director served and filed in the Supreme Court of NSW.
3 October 2025	Mr Schulz was arraigned and entered a plea of not guilty.
12 December 2025	The matter was listed for a five month trial before Justice Hamill SC, commencing 8 February 2027.

G. ADDITIONAL INFORMATION

Nature of the allegation (per the indictment signed by the Director)

11. It is alleged that on or about 28 May 2012 in Deh Jawz-e Hasanzai, Uruzgan Province, in the Islamic Republic of Afghanistan, Mr Schulz did, by intentional conduct, which took place in the context of and was associated with an armed conflict that was not an international armed conflict, intentionally cause the death of a person known as Dad Mohammad, who was not taking an active part in the hostilities and Mr Schulz knew or was reckless as to:
 - 11.1. the factual circumstances establishing that the person known as Dad Mohammad was not taking an active part in the hostilities; and
 - 11.2. the fact that his conduct took place in the context of and was associated with an armed conflict that was not an international armed conflict.

Referrals of briefs of evidence from the OSI

12. The CDPP has received one brief of evidence referral for prosecution (Oliver Schulz) from the OSI which has been assessed in accordance with the *Prosecution Policy*.

Resourcing & budgeting

13. To ensure the CDPP will have sufficient resources, the CDPP continues to work closely with relevant staff from the Attorney-General's Department and the OSI. Forward planning will ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by Australian Defence Force personnel in Afghanistan.
14. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP.
15. As at January 2026, the War Crimes Branch of the CDPP is currently resourced with the following staff:
 - 15.1. one Senior Executive Lawyer (SES B1);
 - 15.2. two Principal Federal Prosecutors (EL2);
 - 15.3. two Senior Federal Prosecutors (EL1); and
 - 15.4. one Federal Prosecutor (APS6).
16. The CDPP has also briefed external counsel.
17. The 2024–25 Budget announced that the CDPP would be provided with \$3.5 million in the 2025–26 financial year to support the work of the OSI.

Training

18. The CDPP provides ongoing training to prosecutors and counsel, including training in March 2022, November 2022 and February 2025.

H. ATTACHMENTS

- A. [Additional Information](#)

ATTACHMENT A – ADDITIONAL INFORMATION

Office of the Special Investigator (OSI)

1. The Special Investigator, Hon Mark Weinberg AO KC retired at the end of 2025. Given the advanced stage of investigations, the OSI will conclude its operations with its existing experienced staff, including the Counsel who have worked very closely with Mr Weinberg in providing advice to the investigations.¹ Questions about the OSI's organisation structure should be directed to the OSI.
2. Chris Moraitis PSM is the Director-General.

Previous questions

3. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:
 - 3.1. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
 - 3.2. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

Media reporting

4. On 22 July 2025, a media article written by Joanna Panagopoulos titled 'Magistrate Lashes CDPP on Oliver Schulz War Crime Charge Delay', was published in *The Australian*. The article reported that a "a legal representative for the Commonwealth Director of Public Prosecutions told a court the Attorney-General's Department had raised a 'procedural issue' overnight" and the issue related to "the authorisation to prosecute the matter". The legal representative was also quoted as saying "we...need to ensure all of the ducks are in a row procedurally before the matter is taken out of this court into the Supreme Court".
5. The article further reported that in response to the submission by the Crown, Magistrate Grogin described the delay as "unsatisfactory" and said "it's only been thirteen years since the alleged offence and we've now been at committal for many, many months and something arose last night, really?". His Honour was further quoted as saying it would not "wash" if another "irregularity arose overnight" the next time the matter came before the court.

¹ [Statement by Director-General Chris Moraitis PSM, "Update on the work of the OSI and retirement of the Hon Mark Weinberg AC KC", 23 December 2025.](#)

6. On 3 October 2025 the Associated Press published a news article titled ‘Australian Accused of Afghanistan War Crime Pleads Not Guilty but Trial Held Until At Least 2027’ which reported that during the arraignment hearing on 3 October 2025, the prosecutor said the accused is unlikely to stand trial before 2027, and defence counsel Philip Boulton SC agreed. The article reported that “a trial date would usually be set on such an appearance, but national security concerns have prevented prosecutors and defence lawyers from seeing much of the evidence against the former Special Air Service Regiment elite soldier”. The article quoted defence counsel as stating “I understand the importance of getting a trial date in a normal case...this is not a normal case”.



CDPP

Australia's Federal Prosecution Service

2026F100014

OFFICIAL

Released by the CDPP under FOI Act 1982

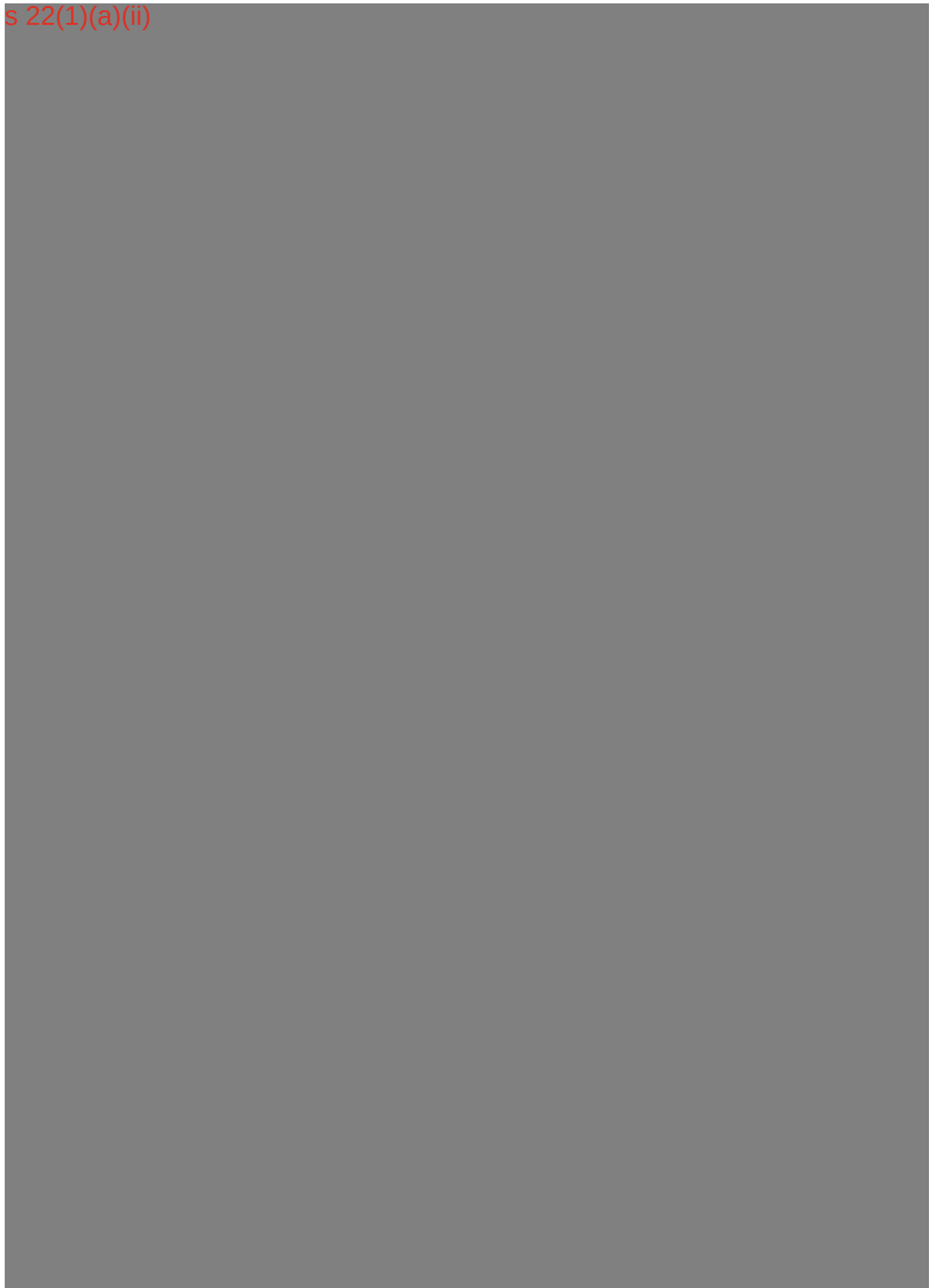


Media Summary

Last update: February 2026

s 22(1)(a)(ii)

s 22(1)(a)(ii)



s 22(1)(a)(ii)



Office of the Special Investigator Prosecutions

5. Relevant media articles:

- 5.1. 5 February 2026 [Attorney-General asked anti-corruption chief to explain himself after Defence ties emerged](#);
- 5.2. 16 December 2025 [NACC Commissioner tells hearing there is no conflict of interest over his continued ADF work](#);
- 5.3. 12 December 2025 [NACC boss says he's a target of false claims](#);
- 5.4. 11 December 2025 [Paul Brereton: NACC chief told to choose between war crimes investigations or corruption fight](#); and
- 5.5. 1 December [Kerry O'Brien's speech at last week's Walkley Awards](#).

s 22(1)(a)(ii)



s 22(1)(a)(ii)





Budget Estimates – May 2026

Last update: May 2026

A. BRIEFS

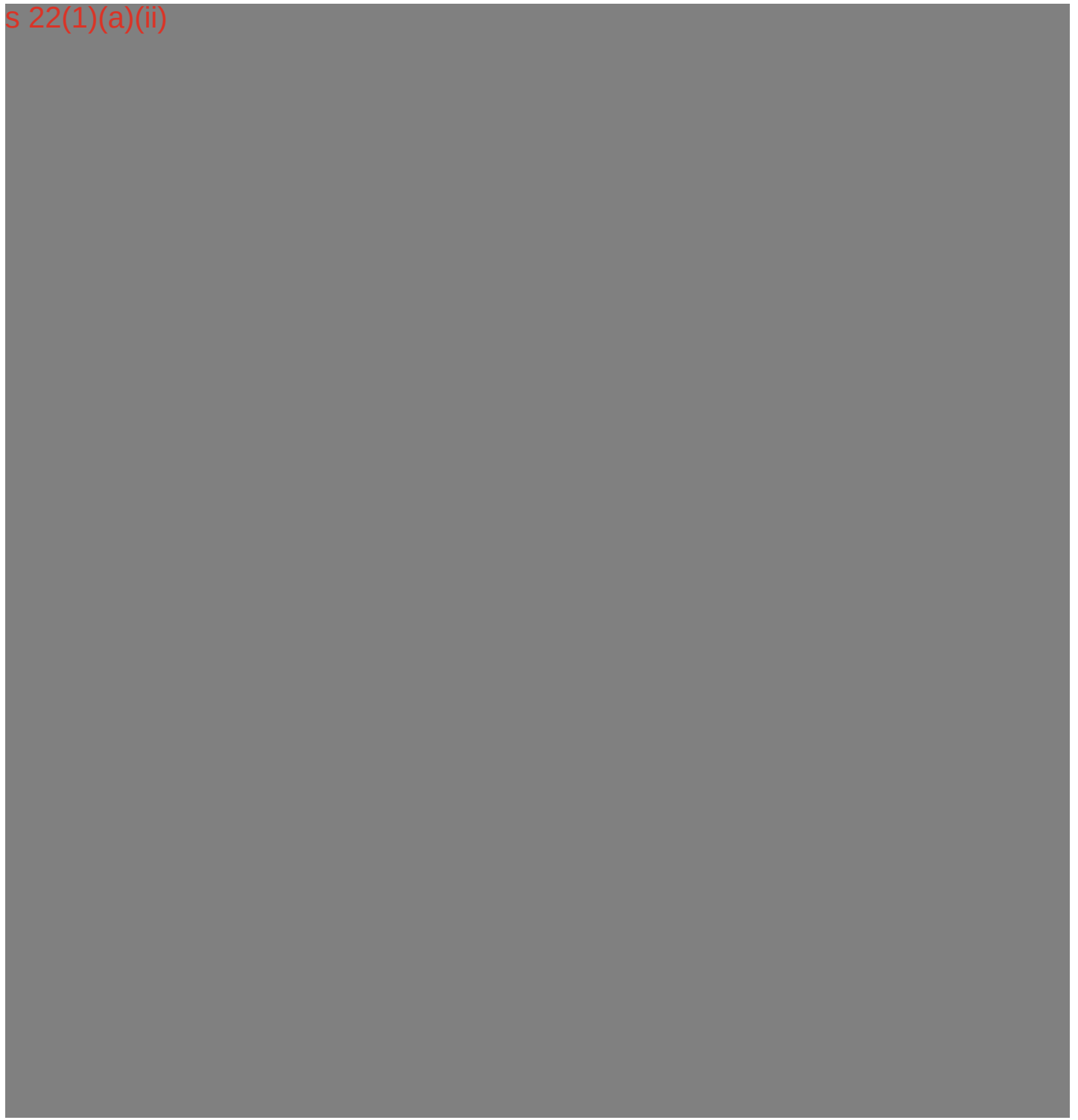
High profile matters | Matters before the court

1. Office of the Special Investigator Prosecutions

Section 22(1)(a)(ii)

s 22(1)(a)(ii)

s 22(1)(a)(ii)





Office of the Special Investigator Prosecutions

Brief No: 1

Last update: May 2026

A. TALKING POINTS

1. My Office has carriage of two prosecutions referred by the Office of the Special Investigator (OSI).
2. The prosecutions are brought in the name of the Attorney-General (Cth) and with the consent of the Attorney-General (Cth), pursuant to s 268.121 of the *Criminal Code* (Cth) (the **Code**).
3. On 20 March 2023, Oliver Schulz was arrested and charged with the war crime of murder contrary to s 268.70(1) of the Code. The matter is listed for trial on 8 February 2027 in the Supreme Court of NSW.
4. On 7 April 2026, Benjamin Roberts-Smith was arrested and charged with five offences of the war crime of murder contrary to s 268.70(1) of the Code. The matter is next listed on 2 June 2026 at the Downing Centre Local Court for committal mention.

B. KEY FACTS

1. Two people have been charged with the war crime of murder contrary to s 268.70(1) of the Code following an investigation by the OSI:
 - 1.1. Oliver Schulz is charged with one count of the war crime of murder, contrary to s 268.70(1) of the Code; and
 - 1.2. Benjamin Roberts-Smith is charged with five counts of the war crime of murder, contrary to s 268.70(1) of the Code.

C. KEY RESPONSES

If asked about the merits of the prosecutions:

2. The matters are currently before the court, and it is not appropriate for CDPP to comment.

If asked about the decision to prosecute / the Prosecution Policy:

3. The prosecutions are commenced and conducted in accordance with section 268.121 of the Code and the [Prosecution Policy of the Commonwealth](#) (the **Prosecution Policy**).
4. Section 268.121(1) of the Code provides that proceedings for an offence against Division 268 of the Code, which includes the offence of the war crime of murder, must not be commenced without the Attorney-General's written consent. Section 268.121(2) of the Code provides that an offence against Division 268 may only be prosecuted in the name of the Attorney-General.

5. The Prosecution Policy is a publicly available document. It is a guideline for making decisions in the prosecution process and outlines the steps that are undertaken to determine whether a prosecution can be laid.
 - 5.1. The first step is where there's a *prima facie* case: has there been an offence committed?
 - 5.2. The second step is: are there reasonable prospects of conviction? This involves a thorough analysis of the evidence contained in a particular brief of evidence.
 - 5.3. It's only then, if there are reasonable prospects of conviction, that the third stage of the test – whether the proceeding is in the public interest – is considered.
6. The CDPP is an independent prosecution service. All decisions regarding the prosecution of the defendants will be made in accordance with the Prosecution Policy.

If asked about the choice of jurisdiction of the arrest of Mr Roberts-Smith:

7. When and where to arrest a defendant is an operational decision for the Office of the Special Investigator (OSI) and the Australian Federal Police (AFP).

If asked about the choice of jurisdiction of the trial of Mr Roberts-Smith:

8. It would not be appropriate to comment as the matter is before the court.

If asked whether the Attorney-General (Cth) has consented to the prosecution:

9. Prosecutions for the war crime offence of murder contrary to s 268.70 of the Code are brought in the name of the Attorney-General pursuant to s 268.121(2) of the Code. Pursuant to s 268.121(1) proceedings for an offence under Division 268 of the Code, which includes the war crime offence of murder, must not be commenced without the consent of the Attorney-General.
10. s 42(1) [REDACTED]
11. s 42(1) [REDACTED]

If asked about the investigation and/or basis for charges:

12. The CDPP is not an investigative agency and relies on the referral of briefs of evidence for consideration. Questions about investigations are best directed to the relevant investigative agency, the OSI.

If asked about external costs:

13. As at 30 April 2026, the total external costs of all war crime matters totals \$1,763,411 (GST exclusive).
14. In some instances, advice sought under specific operation files has general applicability in all war crimes referrals.

s 47E(d) (Pre-brief advice that did not result in a prosecution)

15. As at 30 April 2026, the total external legal cost recorded by the CDPP in the matters relating to s 47E(d) were \$39,546 (GST exclusive).

16. The cost of external counsel in the matter was \$39,546 (GST exclusive).

s 47E(d)

17. As at 30 April 2026, the total of external legal expenses in the matters relating to s 47E(d) were \$639,948 (GST exclusive).

18. The cost of external counsel in the matter was \$631,219 (GST exclusive).

s 47E(d)

19. As at 30 April 2026, the total external legal cost recorded by the CDPP in the matters relating to s 47E(d) were \$1,066,198 (GST exclusive).

20. The cost of external counsel in the matter was \$1,042,192 (GST exclusive).

s 47E(d)

21. As at 30 April 2026, the following total external legal costs relating to the s 47E(d) were recorded by the CDPP:

21.1. s 47E(d) - \$1,563 (GST exclusive).

21.2. s 47E(d) - \$15,018 (GST exclusive). The cost of external counsel in the matter was \$8,205 (GST exclusive).

21.3. s 47E(d) - \$1,138 (GST exclusive).

22. The CDPP does not record internal costs for matters which it prosecutes.

D. ADDITIONAL INFORMATION

Referrals of briefs of evidence from the OSI

23. The CDPP received a brief of evidence from the OSI in the Oliver Schulz prosecution which has been assessed in accordance with the [Prosecution Policy](#).

24. The brief of evidence for Benjamin Roberts-Smith was due to be served on the parties on 21 May 2026. On 20 May 2026, the *National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth)* (NSI Act) was invoked, preventing the disclosure of information until NSI orders are made. The matter is next in court on 2 June 2026 when it is expected the matter will be adjourned for a hearing in relation to NSI orders in the proceeding.

Resourcing & budgeting

25. The CDPP received \$3.5 million for war crimes prosecutions in the 2025-2026 financial year. On 12 May 2026, the 2026-2027 Budget announced the CDPP would be provided with \$3.5 million to support the work of the OSI.

26. Accordingly, as at April 2026, the CDPP is resourced with the following staff to manage referrals from the OSI including current prosecutions:
 - 26.1. one Senior Executive Lawyer (SES B1);
 - 26.2. three Principal Federal Prosecutors (EL2); and
 - 26.3. two Senior Federal Prosecutors (EL1).
27. Several additional lawyers are being recruited.
28. The CDPP has also briefed external counsel.

Legislative definition of “hors de combat”

29. The Dictionary to the Code defines *hors de combat*. This was amended in August 2024. The legislative history of hors de combat is set out at Annexure D.
30. From time to time, the CDPP will consult with officers of the AGD on the operation or anticipated operation of federal criminal law.
31. The chronology of the consultation between the CDPP and AGD is below:
 - 31.1. 17 April 2024: National Practice Leader, s 22(1)(a)(ii), sent a letter to AGD Deputy Secretary s 22(1)(a)(ii), with s 22(1)(a)(ii) responding the same day confirming that AGD will consider the matter as a priority;
 - 31.2. 16 May 2024: AGD forwarded to the CDPP a copy of advice they received from the AGD Office of International Law;
 - 31.3. 13 June 2024: Director (Cth) met with AGD Deputy Secretary s 22(1)(a)(ii);
 - 31.4. 14 June 2024: CDPP sent AGD a further advice from counsel briefed by the CDPP on the amendment; and
 - 31.5. 9 August 2024: AGD informed the CDPP that AGD intended to include the amendment in an Omnibus bill currently before Parliament: *Crimes and Other Legislation Amendment (Omnibus No 1) Bill 2024*.

E. ATTACHMENTS

- A. [Prosecution of Oliver Schulz](#)
- B. [Prosecution of Benjamin Roberts-Smith](#)
- C. [Additional Information](#)
- D. [Legislative history of hors de combat](#)

ATTACHMENT A – PROSECUTION OF OLIVER SCHULZ

Current Status

Name of defendant	Oliver Schulz
Current phase and court	Awaiting trial in NSW Supreme Court
NIC Date	26 and 27 May 2026 for hearing in relation to trial phase orders under the NSI Act 8 February 2027 for trial
s 42(1)	
Date arrested/charged	Arrested and charged on 20 March 2023
Date committed for trial	Committed for trial in the NSW Supreme Court on 20 August 2025
Date indictment filed	19 September 2025

Current Charges

Count	Offence	Date and Description	Maximum Penalty
1	<i>Criminal Code</i> , s 268.70(1)	War crime of murder	Life imprisonment

Chronology

32. The following are key procedural events in the prosecution against Oliver Schulz:

Date	Key event
1942(1)	

Date	Key event
s 42(1)	
20 March 2023	Oliver Schulz arrested and charged.
11 May 2023	CDPP applied the NSI Act.
2 July 2024	Prosecution indicated an intention to make an application to call witnesses under s 82 of the <i>Criminal Procedure Act 1986</i> (NSW) (the s 82 application).
26 November 2024 and 14 March 2025	The s 82 application was heard and directions were made for those witnesses to attend and give evidence on certain topics.
7 April 2025 to 19 May 2025 (on various dates)	The s 82 application hearing and examination of witnesses took place in the Downing Centre Local Court over 11 days.
20 August 2025	Committed to the Supreme Court of NSW for trial.
19 September 2025	Indictment signed by the Director served and filed in the Supreme Court of NSW.
3 October 2025	Oliver Schulz was arraigned and entered a plea of not guilty.
12 December 2025	The matter was listed for a five month trial before Justice Hamill SC in the Supreme Court of NSW, commencing 8 February 2027.

Nature of the allegation (per the indictment signed by the Director)

33. It is alleged that on or about 28 May 2012 in Deh Jawz-e Hasanzai, Uruzgan Province, in the Islamic Republic of Afghanistan, Oliver Schulz did, by intentional conduct, which took place in the context of and was associated with an armed conflict that was not an international armed conflict, intentionally cause the death of a person, known as Dad Mohammad, who was not taking an active part in the hostilities and Oliver Schulz knew or was reckless as to:
- 33.1. the factual circumstances establishing that the person known as Dad Mohammad was not taking an active part in the hostilities; and
 - 33.2. the fact that his conduct took place in the context of and was associated with an armed conflict that was not an international armed conflict.

ATTACHMENT B – PROSECUTION OF BENJAMIN ROBERTS-SMITH

Current Status

Name of defendant	Benjamin Roberts-Smith
Current phase and court	Awaiting committal in Downing Centre Local Court
NIC Date	2 June 2026 for committal mention Brief of evidence is due to be served by 21 May 2026
s 42(1)	
Non-publication orders	Non-publication orders have been made in the proceeding s 47E(d) s 47E(d)
Date arrested/charged	Arrested and charged on 7 April 2026

Current Charges

Count	Offence	Offence Date and Description	Maximum Penalty
1	The Code, s 268.70(1)	War crime of murder	Life imprisonment
2	The Code, s 268.70(1), by operation of s 11.2(1)	Aid, abet, counsel or procure war crime of murder	Life imprisonment
3	The Code, s 268.70(1), by operation of s 11.2(1)	Aid, abet, counsel or procure war crime of murder	Life imprisonment
4	The Code, s 268.70(1), by operation of s 11.2(1)	Aid, abet, counsel or procure war crime of murder	Life imprisonment
5	The Code, s 268.70(1), by operation of s 11.2A(1)	Jointly commit war crime of murder	Life imprisonment

Chronology

34. The following are key procedural events in the prosecution against Mr Roberts-Smith:

Date	Key event
s 47E(d)	[REDACTED]
s 47E(d)	[REDACTED]
s 47E(d)	[REDACTED]
s 42(1)	[REDACTED]
s 42(1)	[REDACTED]
7 April 2026	Mr Roberts-Smith arrested and charged, remanded in custody.
17 April 2026	Mr Roberts-Smith applied for and was granted bail by Local Court Judge Grogin.
23, 24 April 2026 and 4 May 2026	Applications for non-publication orders heard and orders made.

ATTACHMENT C – ADDITIONAL INFORMATION

Office of the Special Investigator (OSI)

35. The Special Investigator, the Hon Mark Weinberg AC KC, retired at the end of 2025. Given the advanced stage of investigations, the OSI will conclude its operations with its existing experienced staff, including Senior Counsel who worked very closely with Mr Weinberg in providing advice to the investigations.¹ Questions about the OSI's organisation structure should be directed to the OSI.
36. Chris Moraitis PSM is the Director-General.

Previous questions

37. On 23 March 2021, Senator Steele-John asked how many prosecutors are being prepared to prosecute any incoming referrals from the OSI and whether there are sufficient resources being allocated to these future prosecutions. The following written response was provided to the Senator's question:
- 37.1. The CDPP is actively undertaking preparations and planning for the likely referral of war crimes matters from the OSI. An Assistant Director has been appointed to oversight this work, liaise with the OSI and make an assessment of future CDPP resourcing requirements. The number of prosecutors ultimately assigned to do this work will depend on the number and timing of matters referred to the CDPP by the OSI.
- 37.2. Whilst the CDPP has not yet received any dedicated war crime funding, the CDPP is working closely with relevant staff from the Attorney-General's Department and the OSI to ensure that the CDPP will have the resources required to assess and, where appropriate, prosecute any allegations of war crimes committed by ADF personnel in Afghanistan.

Media reporting – Schulz prosecution

38. On 22 July 2025, a media article written by Joanna Panagopoulos titled 'Magistrate Lashes CDPP on Oliver Schulz War Crime Charge Delay', was published in *The Australian*. The article reported that a "a legal representative for the Commonwealth Director of Public Prosecutions told a court the Attorney-General's Department had raised a 'procedural issue' overnight" and the issue related to "the authorisation to prosecute the matter". The legal representative was also quoted as saying "we...need to ensure all of the ducks are in a row procedurally before the matter is taken out of this court into the Supreme Court".
39. The article further reported that in response to the submission by the Crown, Magistrate Grogin described the delay as "unsatisfactory" and said "it's only been thirteen years since the alleged offence and we've now been at committal for many, many months and something arose last night, really?". His Honour was further quoted as saying it would not "wash" if another "irregularity arose overnight" the next time the matter came before the court.

¹ [Statement by Director-General Chris Moraitis PSM, "Update on the work of the OSI and retirement of the Hon Mark Weinberg AC KC", 23 December 2025.](#)

40. On 3 October 2025, the Associated Press published a news article titled ‘Australian Accused of Afghanistan War Crime Pleads Not Guilty but Trial Held Until At Least 2027.’ The article reported that, during the arraignment hearing on 3 October 2025, the prosecutor said the accused is unlikely to stand trial before 2027 and defence counsel Philip Boulton SC agreed. The article reported that “a trial date would usually be set on such an appearance, but national security concerns have prevented prosecutors and defence lawyers from seeing much of the evidence against the former Special Air Service Regiment elite soldier”. The article quoted defence counsel as stating, “I understand the importance of getting a trial date in a normal case...this is not a normal case”.

Media reporting and non-publication orders – Roberts-Smith prosecution

41. The Roberts-Smith prosecution has attracted significant media reporting. Following the arrest, numerous publications contained information that tended to identify, either directly or indirectly, prosecution witnesses who had been granted an indemnity from prosecution.
42. Subsequently, on 4 May 2026, the court made a non-publication order pursuant to s 10 of the [Court Suppression and Non-publication Orders Act 2010 \(NSW\)](#) that there be no publication of information which identifies or tends to identify witnesses in the proceedings who have been granted an indemnity from prosecution. The order was made on the basis that it was necessary to prevent prejudice to the proper administration of justice, and to protect the safety of any person.

ATTACHMENT D – LEGISLATIVE HISTORY OF HORS DE COMBAT IN THE CODE

Definition of *hors de combat* under the Geneva Convention

43. Article 41 of Additional Protocol 1 of the Geneva Conventions² provides (emphasis added):

A person is 'hors de combat' if:

- (a) he is in the power of an adverse party;
- (b) he clearly expresses an intention to surrender; **or**
- (c) he has been rendered unconscious or is otherwise incapacitated by wounds or sickness, and therefore is incapable of defending himself;

provided that in any of these cases he abstains from any hostile act and does not attempt to escape.

Definition of *hors de combat* in the Dictionary to the Code, prior to 2024

44. The previous Code definition was conjunctive. It defined a person as *hors de combat* only if the person is captured and either surrenders or is incapacitated. The definition in the *Criminal Code* is (emphasis added):

A person is hors de combat if:

- (a) the person is in the power of an adverse party; **and**
- (b) the person:
 - (i) clearly expresses an intention to surrender; or
 - (ii) has been rendered unconscious or is otherwise incapacitated by wounds or sickness and is therefore incapable of defending himself or herself; **and**
- (c) the person abstains from any hostile act and does not attempt to escape.

Definition of *hors de combat* in the Dictionary to the Code, after the 2024 amendments

45. The *Crimes and Other Legislation Amendment (Omnibus No 1) Bill 2024* amended the definition, with retrospective application. The definition as amended is as follows:

hors de combat: a person is hors de combat if:

- (a) any of the following apply:
 - (i) the person is in the power of an adverse party;
 - (ii) the person clearly expresses an intention to surrender;
 - (iii) the person has been rendered unconscious or is otherwise incapacitated by wounds or sickness and is therefore incapable of defending himself or herself; and
- (b) the person abstains from any hostile act and does not attempt to escape.

² There is no definition in the Rome Statute or the Rome Statute Elements of Crime.



Media Summary

Last update: 26 May 2026

A. TALKING POINTS

1. This brief provides a summary of media monitoring, relevant to the Budget Estimates briefs, for the period 26 January to 26 May 2026.

B. KEY ISSUES/FACTS

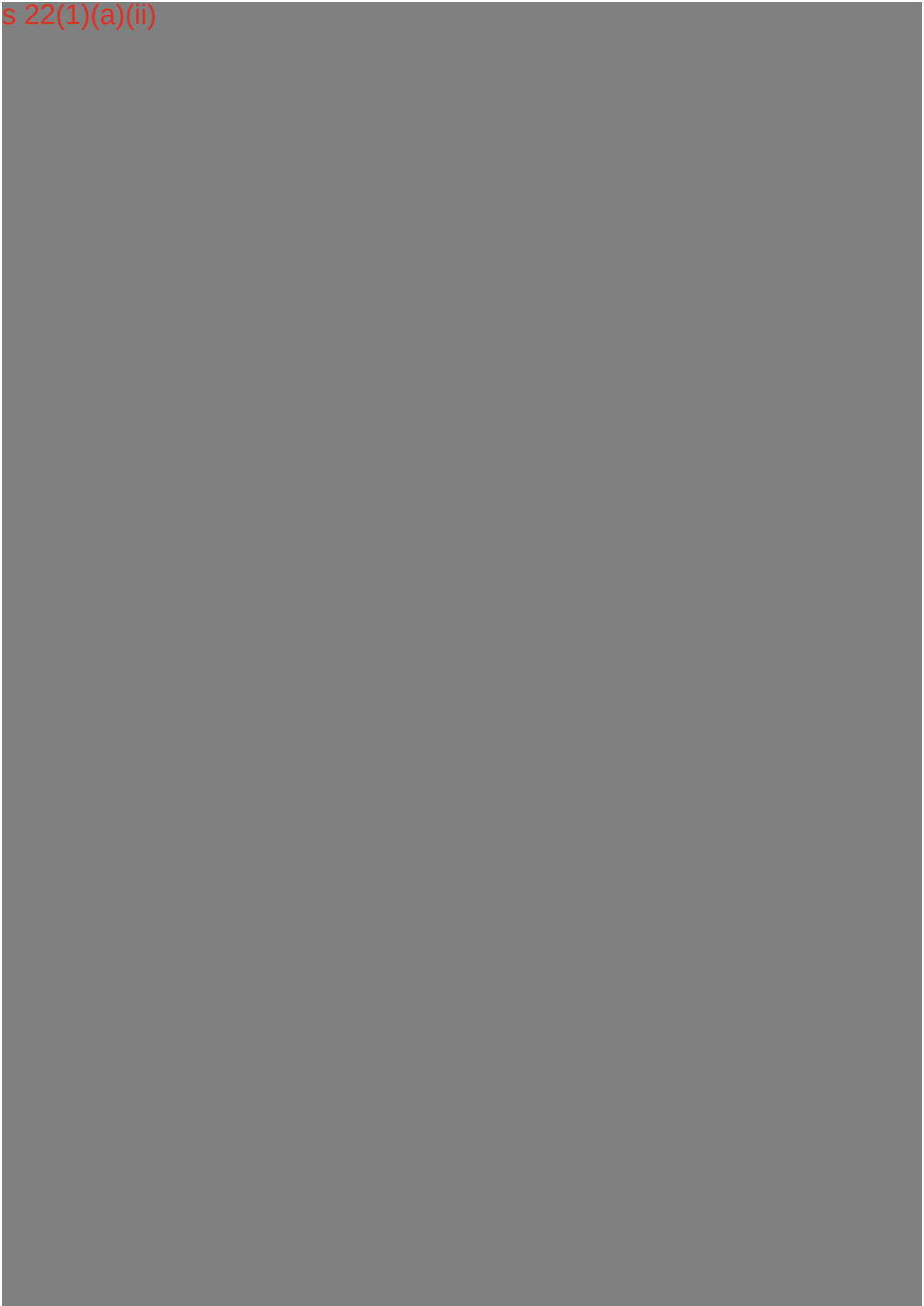
Office of the Special Investigator Prosecutions

1. Relevant media articles (**warning: some articles likely contain derivative use evidence**):
 - 1.1. 26 May 2026 [A-G had BRS in her sights](#)
 - 1.2. 26 May 2026 [A-G approved BRS case in just two days](#)
 - 1.3. 26 May 2026 [Corruption chief resigns](#)
 - 1.4. 26 May 2026 [NACC chief Brereton to face Senate grilling after shock resignation](#)
 - 1.5. 25 May 2026 ['Why such a rush': Coalition questions Ben Roberts-Smith charging timeline](#)
 - 1.6. 25 May 2026 [Coalition sounds alarm over law change easing war crimes prosecution](#)
 - 1.7. 19 May 2026 [If the SAS committed war crimes, where were the officers?](#)
 - 1.8. 13 May 2026 [Millions to pursue 'war crimes'](#);
 - 1.9. 28 April 2026 [Roberts-Smith's girlfriend calls potential witness MP a 'traitor'](#);
 - 1.10. 25 April 2026 [Amid war crimes investigations, some veterans are grappling with the Anzac legend](#);
 - 1.11. 24 April 2026 [Soldiers' cases expose critical weaknesses in Australian law](#);
 - 1.12. 23 April 2026 [Ben Roberts-Smith planned to leave Australia and researched buying wellness business in Spain, court documents show](#);
 - 1.13. 23 April 2026 ['Never planned to run away': Why Ben Roberts-Smith was planning to move overseas before arrest](#);
 - 1.14. 20 April 2026 ['I WILL ALWAYS FIGHT & NEVER GIVE UP'](#);
 - 1.15. 18 April 2026 [Ben Roberts-Smith prosecution for alleged war crimes complex, legal expert says](#);
 - 1.16. 18 April 2026 [BRS bailed, but case years away](#);

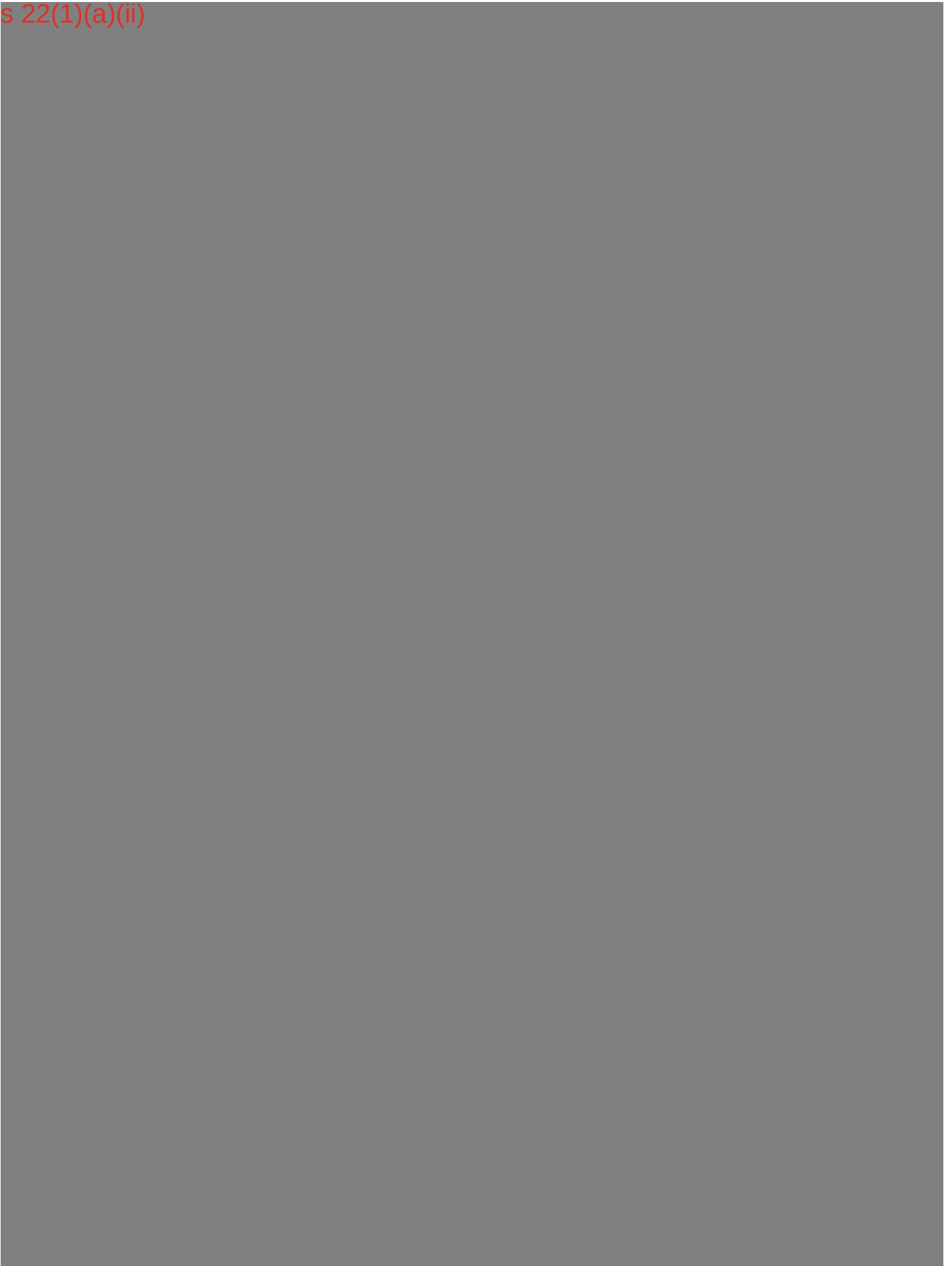
- 1.17. 17 April 2026 [SAS soldiers granted immunity for alleged murders to testify against Roberts-Smith;](#)
- 1.18. 17 April 2026 [Roberts-Smith sat impassively as judge revealed 'exceptional circumstances' to release him;](#)
- 1.19. 17 April 2026 [Ben Roberts-Smith war crimes trial could cost billions: expert;](#)
- 1.20. 14 April 2026 [His Day in the Correct Court;](#)
- 1.21. 13 April 2026 [Ben Roberts-Smith arrested in Sydney to influence jury selection: SAS veteran's stunning claim;](#)
- 1.22. 13 April 2026 [Monday Briefing: Office of the Special Investigator;](#)
- 1.23. 12 April 2026 [Ben Roberts-Smith's many persecutors are the ones who should be on trial, not our VC hero;](#)
- 1.24. 12 April 2026 ['Others pulled the trigger';](#)
- 1.25. 11 April 2026 [The Australian Plus benefits Ben Roberts-Smith case highlights unjust pursuit of our special forces;](#)
- 1.26. 10 April 2026 [A cop once shot by a jailbreaker and a stickler for detail: The crime fighters who built the case against Ben Roberts-Smith;](#)
- 1.27. 10 April 2026 [Missing crime scenes and fading memories: Ben Roberts-Smith case highlights the complexity of proving war crimes;](#)
- 1.28. 10 April 2026 [Many have politicised the Roberts-Smith case. That temptation should be over;](#)
- 1.29. 10 April 2026 [AFP ignored his offer to 'turn himself in';](#)
- 1.30. 9 April 2026 [Inside \\$300m probe before Ben Roberts-Smith's arrest for alleged war crime murders;](#)
- 1.31. 9 April 2026 [BRS arrest a test for nation: Howard;](#)
- 1.32. 9 April 2026 [Former soldier gathers elite team;](#)
- 1.33. 8 April 2026 [Gina Rinehart slams prosecutors over BRS war crimes charges;](#)
- 1.34. 8 April 2026 [Prosecuting Ben Roberts-Smith may signal a shaky return to ethical norms — or further shred them;](#)
- 1.35. 8 April 2026 [SAS soldiers and veterans say Ben Roberts Smith must be given fair trial;](#)
- 1.36. 8 April 2026 ['Wider ramifications': Michael McCormack worried Ben Roberts-Smith's arrest will hurt ADF;](#) and
- 1.37. 8 April 2026 [WAR HERO CHARGED WITH FIVE MURDERS.](#)

s 22(1)(a)(ii)

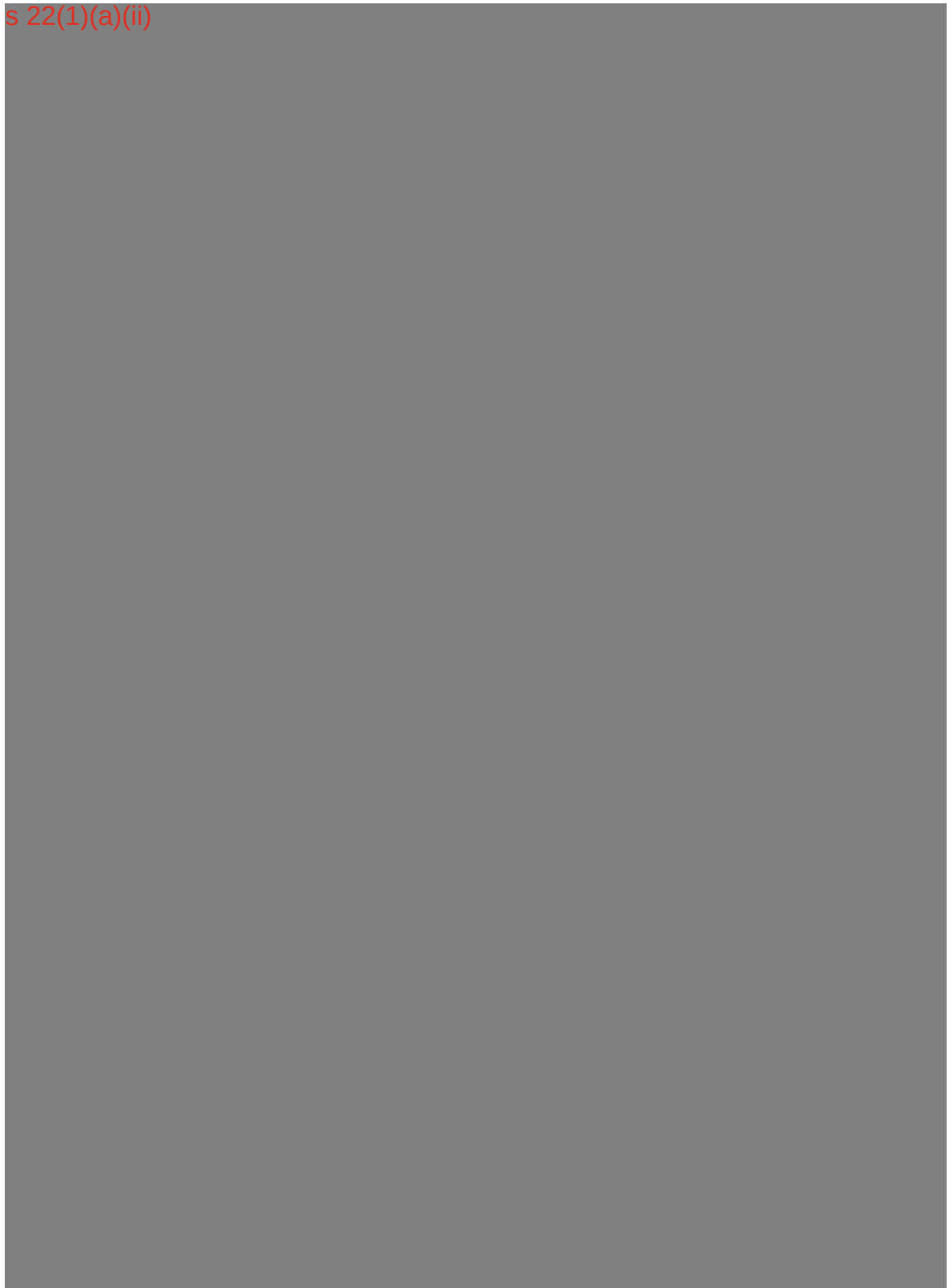
s 22(1)(a)(ii)



s 22(1)(a)(ii)



s 22(1)(a)(ii)



s 22(1)(a)(ii)



s 22(1)(a)(ii)

