

Print on behalf of Kennedy
21.10.19



ANALYSIS

AFP raid on ABC reveals investigative put in same category as criminality

By the ABC's head of investigative journalism John Lyons

Updated Mon 15 Jul 2019, 3:45pm

On April 1, the Australian Federal Police (AFP) wrote an extraordinary letter which could signal a dramatic change in how the media is viewed in this country: it wanted the fingerprints of two senior journalists.

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Fingerprints? Given the date of the letter — sent two months before the AFP's June 6 raid on the ABC's Sydney headquarters — the two journalists could have been excused for thinking that this was some sort of April Fool's joke by their colleagues.

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But the letter was serious — the AFP wanted finger and palm prints from Dan Oakes and Sam Clark, the ABC journalists who two years earlier had produced stories on the activities of Australian special forces soldiers in Afghanistan between 2009 and 2013.

The letter that arrived in the email inbox of the two journalists stated that the AFP was "requesting your consent to a forensic procedure being the copying of your finger and palm prints".

ABC journalists targeted

Australian journalism had come to this: two journalists were being treated the same way as someone suspected of breaking into a house.

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This was a chilling development — it's believed to be the first time in Australia that journalists were being asked to provide fingerprints.

But the request by the AFP sits at odds with recent public statements by federal , would be "seriously disinclined to approve prosecutions except in the most excep particular attention to whether a journalist was simply operating according to the interest journalism".

Oakes and Clark were indeed being targeted.

In fact, that "fingerprint letter" specifically stated that both Oakes and Clark were offences — one under s79 (6) of the Crimes Act 1914 concerning "the receipt of (2) of the Defence Act 1903 concerning "unlawfully obtaining information," and a Code.

Remarkably, Mr Porter — Australia's highest law officer — recently suggested th journalists, while the AFP — which ultimately answers to Home Affairs Minister F Cabinet table as Mr Porter — was telling the journalists they were suspects.

The ABC raid came only 24 hours after the AFP raided the Canberra home of Ar who wrote a story that Australia's intelligence agencies were debating whether to Signals Directorate (ASD).

Currently, the ASD monitors and eavesdrops on conversations overseas but Aus conversations of Australians in Australia.

The ASD and some in the Government want to change that — the Smethurst sto no threat to national security.

Reporters receiving treatment once reserved f

And it was an officer of Mr Dutton's Home Affairs department who the day of the broadcaster Ben Fordham to ask him to reveal the source of a story.

Fordham refused to reveal his source.

Mr Porter has since retreated from his suggestion that the journalists were not targets, saying only limited information had been available to him when he made that statement.

He told The Sydney Morning Herald: "Operational investigations are obviously conducted by the AFP completely independently of government, and information about them which may be provided to a responsible minister ... comes from the Department of Home Affairs and the AFP."

The AFP's acting commissioner Neil Gaughan has made clear the AFP is

keeping open its option of charging Oakes, Clark and Smethurst.

That April 1 letter appeared to be part of a 10-month investigation by the AFP to try to build a case against the two journalists for breaking a story which had caused embarrassment to agencies of the Federal Government but posed no threat to national security.

The investigation came to prominence on June 5 when armed AFP officers raided the ABC's Sydney headquarters and sorted through 9,214 documents and emails which they hoped would help them build their case against the journalists, particularly Oakes.

Oakes was the reporter on the story while Clark was the producer.

These developments appear to be part of a new climate in which journalists and their sources of information, sometimes referred to as whistleblowers, are targeted.

As part of that new climate, journalists in Australia are receiving the sort of treatment terrorists.

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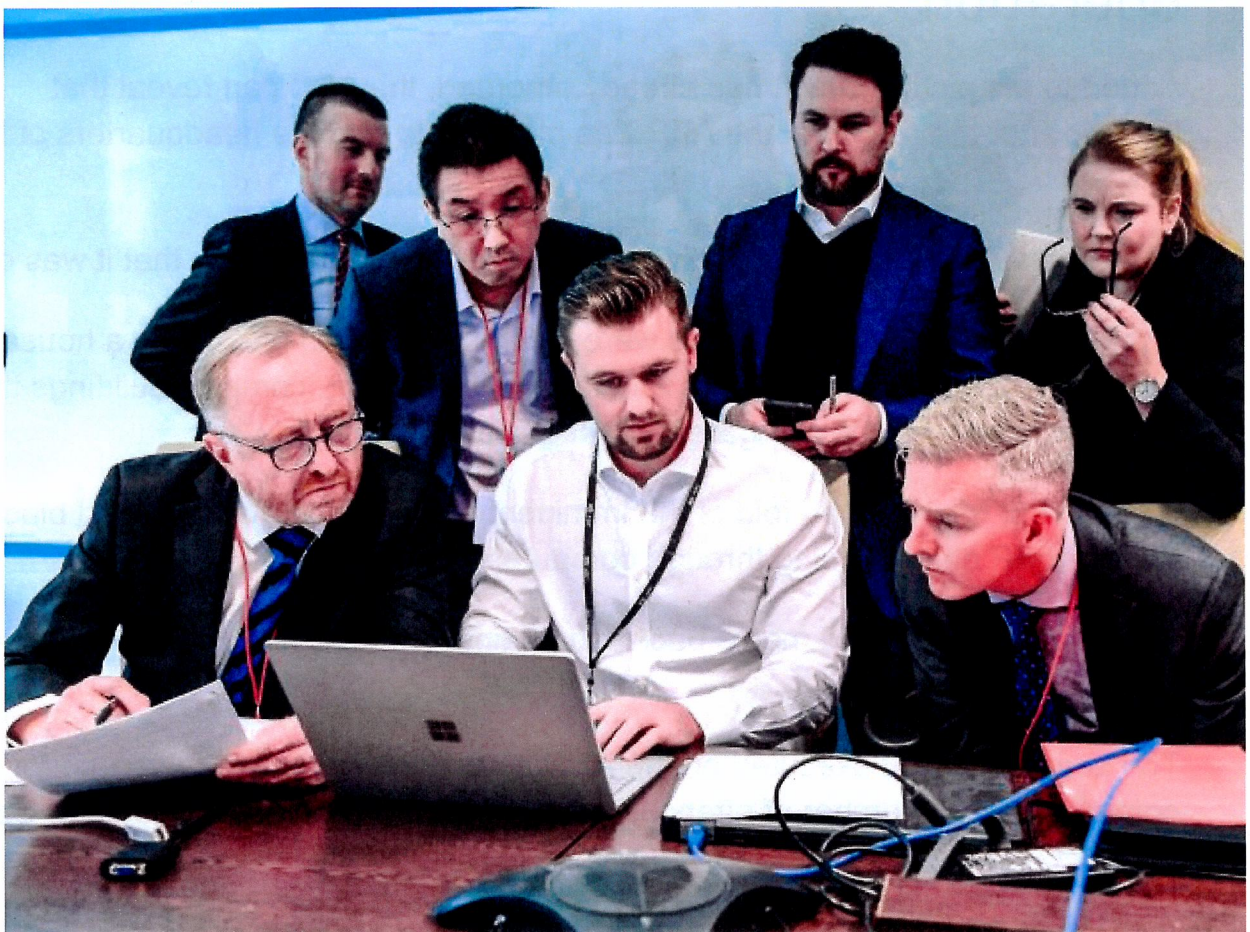


PHOTO: AFP officers sat with the ABC legal team and an IT specialist while the raids took place. (ABC)

The Sydney Morning Herald recently revealed that the AFP requested from Qantas information that the ABC has considered whether it breached privacy laws and its own obligations to clients such as the ABC.

Qantas made a public statement that it received numerous requests for information from law enforcement agencies and complied with these requests in accordance with its legal obligations and privacy legislation.

The SMH also revealed that the AFP used national security laws to access the metadata of journalists nearly 60 times in one year.

The effect of recent events is clear.

With fingerprints and flight details of journalists being sought, there's a strong sense that genuine investigative journalism is being placed by the Federal Government and its agencies in the same category as criminality.

AFP planned News Corp raid on same day as ABC operation

Added to the picture which has already emerged, the ABC can reveal that the day after the ABC raid the AFP was planning to raid the headquarters of News Corp's Hills.

As with the ABC, the AFP had given News Corp 24 hours' notice that it was coming.

The reason the two organisations were given notice is simple: unlike a house, the headquarters of both News Corp and the ABC are large, complex buildings that they would not know how to navigate without guidance.

News Corp, having been told of the imminent raid, set aside a room and blacked out windows so they would not see AFP officers going through computers and files.

After a quick public and media backlash against the ABC raid, the AFP decided to raid News Corp's headquarters.

The search warrant executed on the ABC sought to give power to search for the commission of a number of offences, including two allegedly connected to Oakes

Freedom of the media in a precarious position

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The warrant said the AFP was investigating whether Oakes "unlawfully obtained 73A (2) of the Defence Act 1903" and whether Oakes "dishonestly received stole the Criminal Code Act 1995".

But the warrant did not make reference to a possible offence by Oakes under s 7 referred to by the AFP in a letter to Oakes in September last year.



PHOTO: Mr Dutton is arguing that the AFP officers acted independently. (ABC News: Taryn Southcomb)

The significance of this is that the two offences which the AFP has told Oakes the consent by the Attorney-General prior to the commencement of a prosecution.

This means that even if Mr Porter was "disinclined" to allow the prosecution of a j Mr Dutton — could continue to push for prosecution regardless.

So precarious has freedom of the media become in Australia, that based on publ journalism could now be caught up in clearly differing positions between Mr Duttc Affairs Department, and Mr Porter, the Attorney-General.

Mr Dutton is arguing that AFP officers act independently.

But at the same time that officers who report ultimately to him — the AFP officers official who pressured Fordham — are executing search warrants and questioning land, Mr Porter, has said he is "disinclined" to see journalists charged.

This is a high-level, and very important, game of intrigue.

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Topics: abc, journalism, law-crime-and-justice, police, information-and-communication, federal-governm

