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OCOM 2022/102

Senator Tony Sheldon
C/O Committee Secretary
Senate Select Committee on Job Security
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator

Warrant execution in Bundaberg, Queensland

The Senate Select Committee on Job Security has inquired into the execution of a warrant in Bundaberg, Queensland under section 487ZC of the *Migration Act 1958*. I write to assist the Senate with additional information and to make some consequent corrections to evidence given.

Review of action and material identified

Following other Senate hearings on 14 February 2022, I directed the Australian Border Force to review the execution of the warrant, particularly, for the handling of material held by the Australian Border Force to identify the processes undertaken and people who searched for and accessed any of that material.

During the execution of the warrant, material was seized from a mobile phone. The review outlined the process undertaken for that seizure:

- The person of interest's phone was connected to an ABF Digital Forensic laptop and a search conducted for terms in the second condition in the warrant;
- Two officers examined the results to confirm that material on the phone satisfied the warrant conditions as follows: Condition 1: Phone. Condition 2: Eden Farm. Condition 3: Number of workers required;
- The whole of the data on the phone was not examined. The officers review only the returns from keyword searches and identify only information that is of evidentiary value;
- A data extraction of the phone was made to a digital forensics system, after which the laptop was wiped and a DVD created for evidentiary purposes. The DVD was placed in and remains in a sealed evidence bag contained in a secure evidence room.

The review identified two documents which have a connection to the High Commissioner for Vanuatu, His Excellency Mr Samson Vilvil Fare. These documents did not come to light

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previously because they are of no evidentiary value. Prompted by the review, an officer recalled them:

- Keyword searches of the material returned a text message from a third party to the subject of the warrant, Mr Smith. The officer recalls that the message had been forwarded by Mr Smith to the High Commissioner. The text was not identified as having evidentiary value and the data has been quarantined;
- During the execution of the warrant, the officer located and took a photograph of an email which satisfied the second condition to the warrant because it contained the letterhead of a farm and a list of workers names. That email appears to be an email chain of three emails between the subject of the warrant, the High Commissioner and a third party. The original document was left at the warrant premises. The photo of the document was stored on the Australia Border Force's secure file management system. As a result of the review the officer recalled this photo which has been quarantined pending data disposal at the conclusion of the investigation.

Following the review, advice has been given by the Australian Government Solicitor about whether there has been a breach of the *Diplomatic Immunities and Privileges Act 1967*. I am satisfied that the execution of the warrant, including the seizure and handling of the two documents mentioned above, has not breached the *Diplomatic Immunities and Privileges Act 1967*.

Select Committee on Job Security 2 February 2022

On 2 February 2022 evidence was given to the Senate Select Committee on Job Security by Phil Brezzo, Assistant Commissioner, South and Enforcement Division, Australian Border Force. As a result of the information now known, I make the following corrections to that evidence.

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CHAIR: Would you concede that you now have documents that were of a private nature between the high commissioner, Mr Smith and potentially other people?

Mr Brezzo: No, we do not have documents of a sensitive nature relating to the high commissioner.

Correction: The ABF is now aware that it holds a text which was forwarded to the High Commissioner, and email correspondence between the subject of the warrant, a third party and the High Commissioner. These may be private, at least in the sense that they are sent from one person to another.

CHAIR: Do you have any documents in relationship to the high commissioner and this matter that's on the warrant?

Mr Brezzo: Not to my knowledge, but again, that's about the limit that I would go to. It's an ongoing investigation.

Correction: The ABF is now aware that it holds a text message which was forwarded to the High Commissioner, and email correspondence between the subject of the warrant, a third party and the High Commissioner.

Select Committee on Job Security 3 February 2022

On 3 February 2022, Assistant Commissioner Brezzo and Ms Cheryl-anne Moy gave further evidence to the Senate Select Committee on Job Security. As a result of the information now known, I make the following corrections to that evidence.

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CHAIR: Yesterday we raised the matter of some information that we were seeking on whether there'd been material obtained from the warrant that included material that had communications from the Vanuatu high commissioner. Are you able to give us an update on where that's up to?

Ms Moy: I will ask Mr Brezzo to provide a response.

Mr Brezzo: I can confirm that the ABF has not been able identify any official material relating to the High Commissioner of Vanuatu, to his office or staff or to the High Commissioner of Vanuatu in-Australia more broadly. The ABF is obviously aware of the references to the High Commissioner on a [inaudible] warrant 'activity. If that material exists, the ABF is not aware of it as no such material met the conditions of the warrant and therefore it was not examined as part of our investigation.

Correction: The ABF has identified email correspondence between the subject of the warrant, a third party and the Vanuatu High Commissioner.

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CHAIR: Thank you. Again, to make sure that I'm accurately describing what you put to us, there is no correspondence, document or any other form of material listed in the first condition of the warrant that was obtained by the Australian Border Force which was created by, confidentially shared by or could otherwise be deemed to belong to or relate to the high commissioner of Vanuatu, his office or staff or the high commissioner of Vanuatu in Australia?

Mr Brezzo: Yes. What I'm saying, as Ms Moy said before, is that the information, that may have been gathered from, in this case, [inaudible] device, is searched for evidence or information that relate to the three conditions of the warrant. So the [inaudible] or the information that relates to that is subject then to the examiner. So what I can certainly confirm is that the ABF has not examined and therefore found anything that relates to the Vanuatu high commissioner or Vanuatu high commission in the information that's been examined.

Ms Moy: So, again, my understanding -from the information we've received is that no information, either in document or in the phone, related to the high commissioner was examined.

CHAIR: Ms Moy, I appreciate that you explained it consistently with what you said before. Again, just so I'm very clear, when you say 'examined' that means it wasn't—and Mr Brezzo,

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or Ms Moy, you might say more about the process, of looking at documents or looking at mobile phone communications. There would be an assessment of those people on the warrant. I would have thought the name of the individual would be a keyword on the warrant—for example on Mr Smith's mobile phone and other communications—and there would be an assessment of that material and whether it should be further examined. There's 'examine' and 'examine'. One is perusing the material to see whether we should actually be examining it further for investigation purposes and there is perusing the communications. Was there any perusing of the communications between the high commissioner and Mr Smith?

Mr Brezzo: No, there wasn't.

Correction: The ABF is now aware that it holds a text message which was forwarded to the High Commissioner, and email correspondence between the subject of the warrant, a third party and the High Commissioner.

Yours sincerely

Michael Outram APM
Commissioner

29th March 2022