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AUSTRALIAN FEDERAL POLICE

PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Senate Environment and Communications References Committee
31 August 2020

Subject: Sensitive Investigations Oversight Board

Asked by: *Chair*

Question:

Mr McCartney: I think a starting point for us was the ministerial direction from Minister Dutton. It worked through a range of issues. It highlighted and formalised the public interest considerations, specifying the importance of a free and open press. It directed the AFP to exhaust all alternative investigate every actions prior to considering the investigative action involving a professional journalist. It also seeks voluntary assistance from journalists. Lastly and importantly, it directed the AFP to strengthen its guidance and processes around unauthorised disclosure referrals. Parallel to that was, in effect, the review that the commissioner put in place in the Lawler review. There was a number of learning outcomes for us in governance. So rather than sitting on one deputy commissioner's desk to make an important decision like this, it now comes before a board, which includes myself, one of our other deputy commissioners, my chief counsel, and at least three or four assistant commissioners to work through these issues. The guiding point for us in relation to these investigations is the ministerial direction.

CHAIR: How many times have you used this process since you put it in place?

Mr McCartney: I'll take that on notice. We probably brought—this is a ballpark figure—about 30 matters before this board, but I'll take that on notice and come back—

CHAIR: When was the board put in place?

Mr McCartney: The board was put in place, in effect, from January onwards this year.

CHAIR: So over the last eight months there have been 30-odd. You'll take that on notice to correct it, if that's wrong.

Mr McCartney: Correct

Answer:

The Sensitive Investigations Oversight Board (SIOB) was established in January 2020 in response to Recommendation 20 of the review into the AFP's response to and management of sensitive investigations, conducted by Mr John Lawler AM APM. The SIOB consists of a quorum of Deputy Commissioners and Assistant Commissioners with DC McCartney as the decision maker. Since its establishment, the SIOB have convened on nine separate occasions with a total of 39 reviews completed across 16 separate investigations, noting some matters have more than one review.

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Senate Environment and Communications References Committee
31 August 2020

Subject: Current Sensitive Investigations

Asked by: Chair

Question:

Mr Pezzullo: I think, Commissioner, it's fair to say that there are not 30 matters involving the press freedom issues.

Mr Kershaw: No, definitely not.

CHAIR: Good clarification. How many matters have involved politicians?

Mr McCartney: I'll have to take that on notice.

Answer:

Since the establishment of the Sensitive Investigations Oversight Board (SIOB), the SIOB has oversighted two matters involving politicians that are public knowledge. Any other matters are ongoing investigations and it would be inappropriate to comment.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Senate Environment and Communications References Committee
31 August 2020

Subject: Journalist under Investigation

Asked by: Senator Green

Question:

Senator GREEN: Mr Kershaw, we were talking a little bit earlier about sensitive investigations. Just to be clear, how many journalists are currently being investigated by the AFP in relation to an alleged breach of an authorised disclosure or a Commonwealth secrecy provision?

Mr Kershaw: I don't have any information that any are, but I'll take that on notice.

Answer:

The AFP currently has one matter relating to a journalist for an alleged unauthorised disclosure. A brief of evidence for this matter is now with the Commonwealth Director of Public Prosecutions for consideration.

The AFP has no other investigations regarding journalists for alleged unauthorised disclosure or a breach of a Commonwealth secrecy provision.

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Senate Environment and Communications References Committee
31 August 2020

Subject: CDPP Referral

Asked by: *Senator Green*

Question:

Senator GREEN: Has the DPP requested any further information from the AFP?

Mr McCartney: There's ongoing consultation with DPP, but I'd have to take that on notice, Senator.

Senator GREEN: Okay. What offences has the AFP asked the DPP to consider charging Mr Oakes with? And could you provide a list of those offences?

Mr McCartney: There's a range of offences, Senator, but I'll take that on notice for a more complete response.

Senator GREEN: Okay, take that on notice. But could you at least tell me whether section 79 of the Crimes Act is one of those offences? That was the offence that was specifically referred to by the AFP when the investigations became public.

Mr McCartney: I believe that's one of the offences, Senator, but I'll take that on notice and come back to you.

Answer:

A brief of evidence has now been forwarded to the Office of the Commonwealth Director of Public Prosecution (CDPP). Whilst the AFP has identified offences for the CDPP to consider, it is not appropriate for the AFP to comment further as the discussions with CDPP are a matter of legal professional privilege.

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Senate Environment and Communications References Committee
31 August 2020

Subject: AFP Transparency

Asked by: Senator Green

Question:

Senator GREEN: Sure. Mr Kershaw, when you became the AFP commissioner, you promised a new era of transparency, and you've spoken today about a few of the steps that you've taken. As part of that, you said the AFP would release information previously only accessible by freedom-of-information requests. Are we living in that new age of transparency? Has it started yet?

Mr Kershaw: Yes, most definitely. If you wanted to ask some of the journalists around town, we've not required on quite a number of occasions an FOI to be submitted. It depends on who you're speaking to, but I know for a fact that we are actually more open and transparent than ever before.

Senator GREEN: What types of information are you giving that you don't require an FOI for?

Mr Kershaw: I'd have to come back to you on the actual examples, but it may be certain information about an investigation or an arrest that's been made. There are internal matters that we get FOIs on. There are a whole range of things in relation to the request for information from the AFP.

Senator GREEN: Who decides whether to give that information?

Mr Kershaw: That's part of the FOI unit and council; they make that decision. But it hasn't been brought to my attention that there have been issues and problems. If there have been, I welcome to hear them.

Answer:

In accordance with Part II of the *Freedom of Information Act 1982* (FOI Act) and Information Publication Scheme requirements, the Australian Federal Police (AFP) proactively publishes a wide range of information on its website.

In addition, the AFP seeks to engage directly with individuals seeking information from the AFP and provide this outside of the FOI process wherever appropriate.

For example:

- Current and former employees may obtain their personnel, security and medical records outside of the FOI process.
- Researchers (and other interested parties) are able to obtain information and statistics directly from the AFP wherever appropriate.
- Journalists have the opportunity to submit media enquiries to AFP Media, who may be in a position to facilitate the release of information in the public interest, outside of the FOI process.

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While the AFP encourages a pro-disclosure culture wherever possible, the AFP is also mindful of its requirements under section 60A of the *Australian Federal Police Act 1979* and other legislation that restricts how the AFP can use and disclose sensitive personal and operational information.

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PARLIAMENTARY INQUIRY QUESTION TAKEN ON NOTICE:

Senate Environment and Communications References Committee
31 August 2020

Subject: Lawler Review

Asked by: *Senator Green*

Question:

Senator GREEN: Okay. At the beginning of the hearing you talked about some of the steps you've taken around transparency related information. Have you put any policies in place? And, probably on notice, would you be able to provide the documents of those policies?

Mr Kershaw: Yes. I provided a copy of the entire John Lawler review, and we've accepted the 24 recommendations, so that's quite clear on what we're establishing. And we have updated some of our policies, and I'm happy to supply those.

Senator GREEN: I have read the review. I have a copy with me here. The report you're mentioning has 24 options and, Mr Kershaw, you said that you accepted all of the review's options in principle.

Mr Kershaw: Yes.

Senator GREEN: Have all of the options been implemented?

Mr Kershaw: No.

Mr McCartney: Just for your information, Senator, four options have been implemented. We're close to implementing a further five. In terms of the receipt of the report, we've set up a governance team to sit over the top. We've staffed that governance and project team to ensure that all of the options or recommendations that we've already stated on notice that we've supported will be put in place.

Senator GREEN: On notice, would it be possible for you to provide the status of each of the different options so we understand which five have been implemented and which four are in the process?

Mr Kershaw: It's quite a large spreadsheet—I get it regularly. I've actually got it sitting on my desk. We use a green, red, amber—

Senator GREEN: I'm very familiar with colour coded spreadsheets, so if you want to table it, I'm fine with that.

Mr Kershaw: We probably would be able to—

Mr McCartney: We'll take it on notice, looking at some of the sensitivities

Answer:

The status of the Lawler Review Options are:

- 10 Options Complete: (1, 2, 7, 12, 14, 17, 18, 19, 20 and 21)
- 13 Options in Progress: (3, 4, 5, 6, 8, 9, 10, 11, 13, 15, 16, 23 and 24)
- 1 Option on Hold: 22

A copy of the Lawler Review was provided to the Committee prior to the hearing on 31 August 2020. A copy of the review is also publicly available.

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Subject: Lawler Review

Asked by: *Senator Green*

Question:

Senator GREEN: I do. In an interview, when you first became the commissioner, you said that you would meet with media organisations and start repairing those relationships.

Mr Kershaw: Yes.

Senator GREEN: How many times have you met with media executives and when have those meetings taken place?

Mr Kershaw: I have been on record, and I'll have to come back to you, but I have had formal media roundtables. COVID, obviously, got in the way of the planned next ones. I met with a media roundtable in Sydney with most of the agencies represented up there, including chairs and CEOs, and also here in Canberra, and listened to all of the concerns. We were planning further meetings; however, COVID has got in the way of that. We were due to meet again—from memory in March-April this year—with the same group that I met in Sydney, which were News, ABC and a whole range of other outlets and organisations. However, that's been delayed pending COVID.

Answer:

On 14 November, AFP Commissioner Kershaw hosted a Roundtable in Sydney for Executives from a range of media organisations. It was intended for another Executive Roundtable to be held this year, however COVID restrictions have precluded this.

On 29 November 2019, Commissioner Kershaw held a Press Gallery Roundtable in Canberra for journalists from a range of outlets.

The Commissioner spoke with the ABC Managing Director on 10 June 2020, via phone.

Separately, since the last hearing, Commissioner Kershaw has had multiple one-on-one engagements with individual journalists, given two addresses to the Press Club (19 February and 22 July 2020) and held a media doorstep at AFP headquarters (15 April 2020).

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Senate Environment and Communications References Committee
31 August 2020

Subject: Freedom of Information

Asked by: *Chair*

Question:

CHAIR: Mr Kershaw, in response to some questions from Senator Green, you started talking about FOIs—making sure you're responding to FOIs and you're not holding up the process. How many FOI requests from the media do you currently have on your desk?

Mr Kershaw: I'd have to take that one on notice.

Answer:

As at 9 September 2020, 11 Freedom of Information requests made by journalist applicants are being processed.

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Senate Environment and Communications References Committee
31 August 2020

Subject: Freedom of Information

Asked by: *Chair*

Question:

CHAIR: Are there any FOI documents in relation to George Christensen?

Mr Kershaw: Do you mean current ones?

CHAIR: Yes.

Mr Kershaw: I'd have to take that on notice. I know there has been, but I'm not too sure about current ones.

Answer:

The Australian Federal Police (AFP) does not have any current Freedom of Information (FOI) requests relating to Mr George Christensen MP.

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