

**SENATE ENVIRONMENT AND COMMUNICATIONS REFERENCES  
COMMITTEE**

**Attorney General's Department**

**Inquiry into press freedom**

**PUBLIC HEARING**

**Friday 15 November 2019**

**Senator McMahon asked the following question at the hearing on 15 November 2019:**

Could you give an overview of any trends noted in the volume and complexity of FOI requests coming to you in recent years?

[...]

Do you have any general comment on trends—are there fewer or more?

**The response to the honourable senator's question is as follows:**

As at 22 November 2019, the Attorney-General's Department (the department) has received 271 requests for access to documents under the Freedom of Information Act 1982 (FOI Act) this calendar year. The department currently has 25 active FOI requests. Of the 271 requests received, 113 were requests for personal information and 156 relate to other information held by the department.

Since 2016, the department has experienced a 53% increase in FOI requests, with the greatest increase being in requests for personal information. This is predominately due to an increase in requests from members of the public regarding their personal information relevant to recent Royal Commissions.

The department publishes information about the documents it has released under the FOI Act on its disclosure log, published on the department's website at [www.ag.gov.au](http://www.ag.gov.au). The disclosure log contains records of FOI requests since 2011 (with the exception of requests relating to personal information).

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**Senator Hanson-Young asked the following question at the hearing on 15 November 2019:**

Mr Walter, can I ask you specifically to reflect on sections 131.1 and 132.2 of the Criminal Code. These are the relevant elements in relation to the charges laid against David McBride, one of the individuals who have obviously been implicated and one of the reasons why the raids on the ABC have occurred. Could you explain for me what the significant difference is between charging somebody like David McBride with theft for stealing public property and charging someone with releasing confidential information? What's the key difference between those two elements? It's been put to us by a number of witnesses that the impact on journalism is significant based on what charge was chosen.

**The response to the honourable senator's question is as follows:**

It would not be appropriate for the department to comment on any specific prosecutions or matters before a court.

As a general matter, decisions about the commencement of prosecutions, including the choice of charges, are a matter for the Commonwealth Director of Public Prosecutions (CDPP) and are taken independently of government, in line with the Prosecution Policy of the Commonwealth.

The department notes paragraphs 2.19 to 2.23 of the Prosecution Policy outline considerations undermining decisions concerning choices of charges, including that:

*Care must ... be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the Court with an appropriate basis for sentence.*

*Section 131.1 – Criminal Code*

Section 131.1 of the Criminal Code contains the offence of theft. The elements of this offence will be satisfied where a person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property, and the property belongs to a Commonwealth entity. Property is defined to include personal property, which may include information or documents. Theft and other property offences are contained in Part 7.2 of the Criminal Code.

### *Section 70 – Crimes Act 1914 (now repealed)*

Section 70 of the *Crimes Act 1914*, which was repealed by the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* (EFI Act), contained offences for current and former Commonwealth officers who published or communicated any fact or document which came into their knowledge or possession by virtue of being, or having been, a Commonwealth officer and which it was their duty not to disclose, where such publication or communication was not subject to any authorisation, lawful authority or excuse. This section was intended to target unauthorised disclosure of information by Commonwealth officers.

### *Part 5.6 – Criminal Code*

The previous general secrecy offences in sections 70 and 79 of the *Crimes Act 1914* were repealed by the EFI Act, which introduced a suite of new Commonwealth secrecy offences into Part 5.6 of the Criminal Code. The new secrecy offences in Part 5.6 criminalise unauthorised disclosure and unlawful handling of information that is inherently harmful (such as security classified information) or would otherwise cause harm to essential Australian interests.

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**Senator Hanson-Young asked the following question at the hearing on 15 November 2019:**

Was there any conversation, briefing or work that your department was asked to do prior to any of these raids occurring—advice as to which section of the code would be more applicable?

**The response to the honourable senator's question is as follows:**

The department was not involved in any relevant conversation, briefing or work prior to the execution of search warrants by the AFP in June 2019, nor did the department provide any advice regarding the application of sections of the Criminal Code.