

Tim Worner
Chief Executive Officer



21 February 2014

The Director
Professional Standards
Operations Monitoring Centre
PO Box 401
Canberra City
ACT 2601
Email: prsombc@afp.gov.au

Dear Sir/Madam

Complaint regarding AFP conduct: Seven West Media Limited

I am writing to express the serious concerns of Seven West Media Limited (**Seven**) and make a formal complaint regarding the recent treatment of Seven, its management, staff and agents by the Australian Federal Police.

Specifically, Seven's complaint relates to the conduct of the AFP in applying for and executing search warrants served on Seven and its solicitors on Tuesday 18 February 2014 (**Conduct**).

The Conduct is described in detail in this letter and in Seven's view amounts to serious misconduct requiring investigation and appropriate determinations by Professional Standards as well as the Commissioner and the Ombudsman pursuant to the Australian Federal Police Act 1979.

The Conduct contravened at least the following provisions of the AFP Code of Conduct and constitutes seriously reprehensible behaviour by the AFP and a grave breach of the AFP's professional standards:

- The AFP appointee responsible for making the application in relation to a search warrant failed to act with honesty and propriety in the course of AFP duties.
- The AFP appointee responsible for making the application in relation to a search warrant failed to act with due care and diligence in the course of AFP duties.
- The AFP appointees responsible for the Production Order and the search warrant served on Seven failed to act with reasonableness, courtesy and respect in the course of AFP duties.
- The AFP appointees responsible for the execution of search warrants fundamentally misused and mismanaged Commonwealth resources and failed to follow proper protocols in their dealings with Seven and its solicitors.

Seven's detailed complaint is set out below. Given the seriousness of this matter, I would appreciate you directing your urgent attention to the complaint and providing your considered response as soon as possible.

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Dealings with Seven and its representatives

I attach a timeline to this letter which describes the interaction and correspondence between the AFP and Seven and its solicitors from the time the AFP served on Seven a production order under section 202 of the Proceeds of Crime Act 2002 on 11 February 2014 (**Production Order**) until after the execution of warrants on Seven and its solicitors, Addisons.

The timeline reveals:

- (a) the extent of cooperation and assistance given by Seven and Addisons in responding to the Production Order, which cooperation is ongoing;
- (b) the refusal by the AFP to respond to questions repeatedly raised by Seven regarding compliance with the Production Order;
- (c) a complete lack of respect, courtesy and reasonableness in dealing with Seven and Addisons, despite the assistance which had been extended to the AFP.

Moreover, the timeline clearly demonstrates that the applications made by the AFP for search warrants took place at the same time that Seven, having produced documents in the previous week, was requesting information and clarification of the Production Order and continuing to produce documents in order to comply with its terms and assist the AFP. Had the AFP officers engaged appropriately with this process, then they would have realised that the issuing of search warrants was completely unnecessary and the cost incurred in their execution could have been avoided.

Application for search warrant

The AFP made applications on 17 February 2014 under section 225 of the Proceeds of Crime Act for search warrants to be executed at Seven's premises (**Seven Warrant**) and those of its solicitors, Addisons Lawyers (**Addisons Warrant**).

In the course of making those applications, Federal Agent Jeffrey KOKLES also made an application for an order under section 246 of the Proceeds of Crime Act in respect of premises at Addisons Lawyers and which was addressed to Justine Munsie, a partner of that firm (**246 Order**).

The 246 Order was made by Magistrate Graeme Curran who states on the face of the 246 Order that he is satisfied, amongst other things that, "you [being Justine Munsie and/or Addisons Lawyers, the addressees of the 246 Order] are reasonably suspected of having committed the offence stated in the relevant warrant...".

At the time of execution of the Addisons Warrant, Ms Munsie asked the AFP officers at her premises for precise details of the offence which about which Magistrate Curran had been informed and which he had been satisfied she or her firm was reasonably suspected of committing. She indicated that this was obviously a matter of the greatest importance to her and was causing her great discomfort and distress given the implications for her as a practising solicitor and officer of the Court.

In reply, the relevant AFP Agent told her she need not worry as there was no suggestion she had committed a criminal offence and no offences were being investigated in the course of executing the Addisons Warrant. He was otherwise unable to explain the wording of the 246 Order so far as it related to this subject.

Seven has received confirmation from the AFP this afternoon that the statement about Ms Munsie was incorrect, and a "regrettable" "word processing" error.

If that be the case, then it follows that the AFP:

- (a) has prepared a false document or otherwise made a false application for the 246 Order and possibly also the Seven Warrant and the Addisons Warrant; and
- (b) has provided a Magistrate with a false document and/or false information in the course of making an application for the 246 Order and possibly also the Seven Warrant and the Addisons Warrant.

Notwithstanding that the AFP and the Commissioner have indicated that they regret such conduct, it indicates a failure at the very least to act with due care and diligence and which requires further and proper investigation.

Moreover, the conduct calls into question the propriety with which the applications for the Seven Warrant and the Addisons Warrant were made. We know now that the applications were prepared carelessly and included regrettable errors. We also know from the timeline described above that they were made at a time when Seven and its solicitors were continuing to provide the AFP with documents under the Production Order, including historical documents 8 or 9 years old. A Federal Agent executing the Addisons Warrant described to Ms Munsie the reason for the warrants – *"We didn't get what we wanted through the Production Order process"*.

These admissions raise serious questions regarding dereliction of duty and misuse of resources involved in the application of the warrants and their execution – why had the AFP allowed things to get to this stage? Why hadn't the AFP been able to prepare a clearly worded production order to capture the documents for which it was searching? Was the AFP acting only on the basis of false and hyperbolic media speculation about a paid agreement with Schapelle Corby or was there any rational basis for a suspicion that such an agreement existed

Execution of the warrants

The conduct of the AFP during the execution of the Seven Warrant and the Addisons Warrant must be viewed in light of the previous dealings between the AFP and Seven/Addisons identified in the timeline referred to above.

Given the way in which Seven had rendered assistance to the AFP, including by making its solicitor available at her home to take delivery of a single letter, the actions taken by the AFP in applying for and executing the Seven Warrant and the Addisons Warrant were on any reasonable view entirely unnecessary and completely disproportionate to the stated objectives of the warrants.

In particular:

- (a) the deployment of over 30 Federal Agents, many of them armed and with their firearms plainly visible, to search the commercial premises of Seven and Addisons amounts to a clear misuse of Commonwealth resources. The AFP knew from documents produced on the Production Order and explanations given by Ms Munsie of the nature of Seven's dealings with the Corby family throughout the time of Schapelle Corby's incarceration. Seven had produced two recent agreements with members of the Corby family as well as several historical agreements pursuant to the Production Order. Seven then volunteered production of another draft letter agreement (not the subject of the Production Order) soon after the commencement of the execution of the Seven Warrant. The use of large numbers of armed agents in these circumstances to search for hours for evidence of arrangements which simply do not exist is unjustifiable.
- (b) the presence of such a contingent of armed Federal Agents unsurprisingly caused distress to Seven's staff, including heavily pregnant women;
- (c) the agents in attendance at Seven's premises purported to execute the Seven Warrants, including in relation to documents held by Seven's in house lawyers (in the offices of those lawyers) in the face of objection made by Seven and the request that the search not

commence until Seven's independent solicitor had arrived to provide advice. Such conduct is in breach of basic protocol and specifically in breach of the General Guidelines between the AFP and the Law Council of Australia as to the execution of search warrants on lawyers' premises, law societies and like institutions in circumstances where a claim of legal professional privilege is made;

- (d) 8 Agents were sent to execute the Addisons Warrant where they spent 7 hours searching two small offices and the hard drive of Ms Munsie who informed them precisely where they could find any documents which related to Seven and any member of the Corby family and the date range of such documents. Despite this assistance, the AFP removed the entirety of Ms Munsie's hard drive from 1 December 2013 including personally sensitive, confidential and privileged information unrelated to this action in any way;
- (e) media outlets unrelated to Seven were apparently made aware that the Seven Warrant had been issued and was to be executed on Seven's premises on Tuesday morning as they were in attendance and recording images of the proceedings soon after the AFP arrived. Seven can only assume that the AFP had provided information about the Seven Warrant to those other media outlets in breach of fundamental protocols.

I would appreciate receiving your acknowledgment that this letter has been received and is being given your urgent attention.

Yours faithfully

Tim Worner

Timeline

10 February

Schapelle Corby is released from prison in Bali.

There followed several incorrect media reports that Seven had secured an exclusive interview with Ms Corby for which it would pay millions of dollars.

At no stage is Seven contacted by the AFP to inquire about those reports.

**11 February,
approx. 5pm**

Seven is served with the Production Order requiring production of various categories of documents within 3 business days, by 4pm on Friday 14 February 2014.

**14 February,
12.30pm**

Seven's solicitor, Justine Munsie, telephones Agent Jeff Kokles at the AFP to seek clarification of the documents sought in the order, especially on the basis that the categories were unlimited as to time and some were ambiguous in their terms.

Agent Kokles asks Ms Munsie to put her requests in writing which she did at 12.42pm.

Agent Kokles responds by email at 1.52pm.

**14 February,
3.50pm**

Justine Munsie personally attends the AFP in Goulburn Street to produce documents in response to the Production Order.

Ms Munsie spends approximately 10-15 minutes explaining to Agent Kokles and two of his colleagues what documents Seven has located in the time available and what other types of documents, especially historical documents, Seven believes it may have but for which it is still searching. Ms Munsie:

- directs Agent Kokles to the documents which are produced and relate to the proposed television interview between Seven and Schapelle Corby;
- informs Agent Kokles that Seven has so far directed its resources to searching for documents in relation to any television deal captured by the Production Order and has not been able to complete all searches of its magazine titles in the time available. However, Ms Munsie notes that Seven has produced a copy of a contract between Seven and New Idea dated 24 January 2014 which provides for payment of money and that she will confirm with him as soon as possible whether the fee under that contract has been paid;
- notes that Seven's magazine titles from time to time may have purchased photos relating to Schapelle Corby and that those documents are still being located;
- asks Agent Kokles to clarify some aspects of the production order given that it is very broadly drafted and would capture arrangements between Seven and third parties which are unrelated to the Corby family. For example, Ms Munsie notes that any payment made by Seven to a freelance photographer for a photo of Ms Corby or members of her family would be captured by the broadly worded Production Order and asks Agent Kokles if that were intended. Agent Kokles says that he is unable to provide a response to Ms Munsie at

that time.

No response has been received from Agent Kokles.

**17 February,
11.30am**

AFP Officers attend the premises of Addisons to serve Ms Munsie with a letter. As Ms Munsie is working from her home that day and the AFP insist that the letter be served personally, Ms Munsie invites the officers to her home to hand her the letter.

Three AFP officers arrive at Ms Munsie's home shortly before midday and hand her a letter signed by Det Superintendent Stephen Dametto, Serious & Organised Crime.

**17 February,
4.24pm**

Letter from Addisons to Det Superintendent Stephen Dametto answering the AFP's queries, assuring the AFP of Seven's ongoing production efforts and repeating earlier requests made of Agent Kokles for clarification.

No response has been received from AFP.

**17 February,
5.46pm**

Telephone call from Justine Munsie to Adam Sandon AFP to inform him that Seven has further documents to produce and she will send them immediately by email.

Email from Justine Munsie to AFP attaching further documents in response to the Production Order, being remittance notices for payments made by New Idea for stories published between 2011 and 2014. This includes one document which did not come into existence until sometime on 14 February 2014.

17 February

AFP applies for the Seven Warrant and Addisons Warrant

18 February

AFP executes the Seven Warrant and Addisons Warrant.

19 February

Addisons sends a further letter to AFP seeking clarification of matters relating to the Production Order.

No response has been received from the AFP.



AFP

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CRAMS 7253

24 February 2014

Mr Tim Worner
Chief Executive Officer
Seven West Media
PO Box 777
Pyrmont NSW 2009

Dear Mr Worner

I refer to your correspondence dated 21st February 2014, in which you have made a formal complaint in relation to the actions of the Australian Federal Police (AFP) in connection with the execution of a number of search warrants on Seven premises on 18th February 2014.

As you are aware, the matters that you refer to were also the subject of media statements by Seven on the evening of 19th February 2014.

At 7:30pm on the 19th February 2014, I referred the allegations arising from those media statements to both the AFP Professional Standards team and the Australian Commission for Law Enforcement Integrity (ACLEI) to ensure transparency and independence in the conduct of any investigation.

The matters raised in your correspondence of 21st February 2014 have been assessed by the AFP as falling wholly within the scope of the matters already notified to ACLEI. I have forwarded your letter to the Commissioner of ACLEI for his information.

On that basis, the AFP is precluded from conducting any further investigation of those matters until such time as ACLEI determines and advises on how it wishes to proceed.

I can assure you that I take the issues raised seriously and the matter will receive my personal attention.

Should you require any further information in relation to this matter, please contact Manager Professional Standards, Commander David McLean

Yours sincerely

T. W. Negus APM
Commissioner