



Senate Legal and Constitutional Affairs Committee

Inquiry into the current investigative processes and powers of the Australian Federal Police in relation to non-criminal matters

Supplementary Submission by the Australian Federal Police

April 2014

Introduction

The AFP welcomes the opportunity to provide the Committee with a supplementary submission as part of the inquiry into the current investigative processes and powers of the AFP in relation to non-criminal matters.

2. This supplementary submission addresses a range of issues arising during the inquiry, including questions taken on notice during the AFP's appearance before the Committee on 7 April 2014.

3. The AFP considers it important to reiterate that criminal asset confiscation action takes place through two distinct stages: the investigative stage and the litigation stage. At times, advice is sought from litigators during the investigative stage and further investigation is sought by litigators during the litigation stage. As outlined in the AFP's original submission to this inquiry, the functions of investigating potential proceeds of crime matters, and litigating those matters, are undertaken by two separate areas within the AFP, each with separate lines of reporting and accountability in keeping with the Attorney-General's approval dated 18 September 2012.

4. The use of the investigative powers under consideration by the Committee may be invoked during the investigative stage of any potential literary proceeds action, such as the production orders and search warrants issued against Seven West in relation to the investigation concerning Ms Corby. The literary proceeds investigation into Ms Corby was discontinued prior to a referral being made from the investigators to AFP litigators. Proceedings were never commenced. Accordingly, any consideration of the ongoing appropriateness of the AFP conducting litigation under PoCA 2002 is of no direct relevance to the matters at hand. The focus of the inquiry, in the AFP's view, should be instead:

- whether specific investigative powers should be available under PoCA 2002 for any potential literary proceeds action, and
- what, if any, legislative or administrative reforms are required in light of the use of such powers by the AFP in the Seven West case.

Investigation of potential proceeds of crime action

The need for specific investigative powers under PoCA 2002

5. The AFP's original submission to this inquiry made a clear case that specific investigative powers should be available under PoCA 2002. It has become apparent during the inquiry that the key question is not whether specific investigative powers are appropriate for proceeds of crime and unexplained wealth matters under PoCA 2002, but rather whether such powers should continue in their current form in relation to literary proceeds matters specifically.

6. The key difference between literary proceeds matters, and other matters under PoCA 2002, is that it is not an offence to pay a person for their story, nor for a person to be paid for their story. Rather, PoCA 2002 provides a mechanism for the recovery of the payment on the basis that a person should not be entitled to become enriched as a result of his or her unlawful conduct by obtaining benefits through the exploitation of his or her criminal notoriety.

7. Whilst the suggestion is that literary proceeds orders should be dealt with differently from other PoCA proceedings, that is a future possible state for consideration by this committee and not the current state. Therefore it is appropriate that in this matter PoCA powers were utilised fully and it is appropriate that normal investigative (e.g. search warrant execution) procedures were followed.

8. Points of difference have also been made as to the nature of the parties likely to be affected as part of an investigation in to literary proceeds matters. The rationale offered by contributors to the inquiry is that while powers for other types of proceeds action may need to be exercised against persons involved in criminal activity, in literary proceeds matters the powers are likely to be used in respect of third parties (such as media/publishing organisations) that can therefore be expected to work more cooperatively with the AFP.

9. The AFP does not wish to enter into debate about the nature of parties potentially affected by literary proceeds investigations. Instead, however, the AFP has focussed its comments in this supplementary submission in relation to proposals for legislative or administrative reform as relating only to literary proceeds, and no other kinds of action that can be taken under PoCA 2002.

Reliance on general civil litigation powers

10. During the inquiry, it has been suggested that since PoCA 2002 proceedings are civil proceedings, there should be a reliance on civil litigation powers (such as civil discovery and Anton Piller orders) rather than specialised investigative powers.

11. The AFP does not consider it appropriate to rely on general civil litigation powers when pursuing proceeds of crime matters generally or literary proceeds matters specifically. Persons deriving literary proceeds may take professional advice on how to receive the literary proceeds in a way that either attempts to avoid or obfuscate action under PoCA 2002 (none of which is unlawful). This can make investigating and litigating literary proceeds matters considerably more difficult than other types of civil litigation. In addition, it must be remembered that the Commissioner is an entirely unrelated party to any dealings or contractual arrangements between the parties in question, which means that normal civil powers and procedures have limited utility when applied to literary proceeds cases.

12. Some jurisdictions have drawn a deliberate distinction between proceeds of crime proceedings and ordinary civil proceedings. For example, the *Civil Procedure Act 2010* (Vic) expressly carves out proceedings under the Victorian *Confiscation Act 1997* and PoCA 2002 from the application of the Civil Procedure Act. Additionally, the Victorian County and Supreme Court rules of civil procedure provide that the ordinary rules of civil procedure do not apply to proceedings under the Confiscation Act and PoCA 2002.

13. Discovery is generally not available in relation to proceeds of crime proceedings where the respondent is a natural person, including in literary proceeds matters. In several cases the courts have held that the respondents are not required to complete discovery on the grounds that they have a right to claim privilege against exposure to a penalty (and that PoCA 2002 does not overrule the right to claim this privilege). However, where it has been available,

the AFP has found discovery to be of limited use in proceeds of crime matters, as a large proportion of respondents don't fully comply with discovery processes. Finally, discovery is generally only available once proceedings have commenced. As such, much of the investigation will have already been completed by the time any opportunity to seek discovery arises.

14. In the AFP's view, an Anton Piller order is an inappropriate civil procedure tool to perform the function that is performed by both production orders and search warrants issued under PoCA 2002.

15. Anton Piller orders are an interlocutory civil order that compels a defendant to allow the plaintiff to inspect the property and premises of the defendant, otherwise called a "search order". The conditions to obtain an Anton Piller order are extensive and traditionally they have been limited to extreme cases. Their aim is to facilitate discovery in civil litigation (which is more limited in its application) rather than to facilitate investigation that may, but equally may not, result in litigation being commenced.

16. Anton Piller orders have been designed for disputes between parties, rather than as a law enforcement tool. Usually, potential parties to litigation will have some understanding of the case likely to be put before the court, as a result of a pre-established relationship or otherwise be aware of how the defendant's action may detrimentally affect the plaintiff.

17. Anton Piller orders (and the associated thresholds that apply) are not well suited to proceeds matters for several reasons. Before an Anton Piller order can be granted the plaintiff must satisfy three preconditions. The first is that there must be an extremely strong prima facie case. The AFP is unlikely to be in possession of a strong prima facie case at the stage of executing a search warrant, as it is not a party to any contractual negotiations, agreements or relationships that have occurred that have led to the investigation into a literary proceeds matter.

18. The second precondition is that the damage that the plaintiff has suffered or may suffer must be very serious. It would be difficult if not impossible for a proceeds of crime authority to establish that it had suffered or would suffer damage sufficient to satisfy this condition. The third precondition is that there must be clear evidence that the defendant has in its possession incriminating or damaging documents or other material and there is a real possibility that the material might be destroyed before any application between the parties could be brought.

19. Anton Pillar orders are based on the evidential material being in the possession of the defendant. Evidential material in support of literary proceeds action may be held by people who are not party to the litigation (e.g. media / publishing organisations or lawyers). Further, the evidential material may relate to people who may not be directly part of the litigation (e.g. where the agreement is for literary proceeds to be paid to an agent or other third party).

What legislative or administrative reforms are required?

20. A range of legislative and administrative reform proposals have been canvassed throughout the inquiry. Where appropriate, the AFP has considered and responded to these proposals from the perspective that they would only apply to investigation into potential literary proceeds matters.

Legislative reform proposals

AFP should rely on a third party to apply for production orders and/or search warrants

21. There has been a suggestion during the inquiry that the AFP should not be able to directly apply for production orders or search warrants. The AFP interprets this to mean that when conducting literary proceeds investigations, the AFP should be required to apply for such orders through an intermediary.

22. The AFP has a range of concerns with such a proposal. Timeliness is a factor in any investigation but particularly when pursuing money flows. Value transfer through electronic means can quickly dissipate literary proceeds and place vital evidence out of the reach of authorised agencies. The agency conducting literary proceeds investigation needs direct access to information gathering powers to ensure action in as timely a manner as possible. Adding a layer of external authority for investigative agencies to “brief out” in order to access production orders and search warrants would significantly impede the agility and effectiveness of any investigation.

23. The AFP considers that the involvement of an independent and impartial third party is already provided for in the position of the issuing officer for search warrants and production orders.

Production orders as a condition precedent to search warrants

24. PoCA 2002 provides a suite of investigative powers which can be used as part of the investigation into whether proceeds of crime action should be undertaken. While the legislation prescribes how such powers are to be applied for and used, the legislation does not prescribe the stages of the investigation at which such powers are to be used.

25. The inquiry to date has given consideration to whether production orders are, or should be, a condition precedent to the exercise of search warrant powers. The legislative position is clear on this matter; there is no prescribed order in which such powers are to be used, nor is there a requirement to use all or any of the powers in a particular investigation.

26. In each investigation, a decision on which powers to use, and in which order, will be made on a case-by-case basis. In the Seven West case, the AFP initially chose to utilise a production order, before moving to the use of search warrants. While a similar approach might be used in other proceeds of crime investigations, such an approach may not be suitable in other circumstances.

27. The Rule of Law Institute of Australia (RoLIA) proposes that section 225 of PoCA 2002 be amended to prevent a magistrate from issuing a search warrant unless:

- the document cannot be identified or described with sufficient particularity for the purposes of obtaining a production order
- a production order requiring the document has been given but not complied with
- there are reasonable grounds to suspect that a production order would not be complied with, or
- the investigation for the purposes of which the warrant is being sought might be seriously prejudiced by seeking a production order if an authorised officer does not gain immediate access to the document without notice to any person.

28. The AFP has a number of concerns with this suggestion as it does not readily translate to the current PoCA 2002, will delay investigations, and will have a serious adverse impact on the AFP's ability to investigate and litigate other types of proceeds of crime matters.

29. It is important to note that as literary proceeds form part of the broader proceeds of crime regime, amending the existing investigatory provisions to restrict or dilute the investigatory powers in PoCA 2002 as a result of the Seven West case will also affect the investigation and litigation of other types of proceeds of crime orders. Even if literary proceeds were moved outside of the broader proceeds of crime regime, the AFP still has concerns that the RoLIA amendment could affect the efficient and effective gathering of information. The AFP does not support amendments being made as suggested by RoLIA even if they were restricted in their application to literary proceeds investigations.

30. The provision put forward by the RoLIA is modelled on clause 219 of the Proceeds of Crime Bill 2001 (which was in turn similar to section 71 of PoCA 1987). However, there are differences between the previous legislative regimes and the current search warrant provisions under PoCA 2002, which affect how this amendment would operate.

31. Under PoCA 1987, production orders and search warrants could only be sought for the same kind of documents (property tracking documents). However, under PoCA 2002 production orders are limited to property tracking documents, while search warrants can be used to obtain "tainted property" or "evidential material". The categories of documents and material that can be obtained under a search warrant are therefore greater than the material that can be obtained under a production order. Production orders can only be served on a body corporate, to obtain documents that are in the possession or control of a person (including body corporates) and that are used (or intended to be used) in the carrying on of a business. Search warrants are not similarly confined and can be issued in relation to any type of premises and can also obtain information from natural persons. Consequently, there are instances where the AFP will not be in a position to apply for a production order or not be able to obtain the material that is required through the use of a production order.

32. Further, it is possible in some circumstances that issuing a production order prior to obtaining a search warrant is likely to prejudice an investigation by putting a person who has derived literary proceeds (or their associates) on notice that they are being investigated, thus giving them the opportunity to move their assets out of the reach of law enforcement.

Enforceable undertakings

33. Throughout the inquiry there has been the suggestion that the AFP ought to be able to seek certain legally enforceable undertakings from media/publishing organisations in relation to potential literary proceeds matters. The AFP would support further consideration being given to such a proposal, on the basis that the AFP would not be bound to use undertakings but rather that the ability to accept and enforce such undertakings would be a course of action open to the AFP.

34. Enforceable undertakings form part of, for example, the regulatory regime administered by the Australian Securities and Investments Commission (ASIC). The AFP understands that under sections 93AA and 93A of the *Australian Securities and Investments Commission Act 2001*, ASIC is able to accept and enforce undertakings and that breach of an undertaking is dealt with through a range of court orders. ASIC has also developed a policy to guide when undertakings will be accepted (for example, where an undertaking achieves a more effective outcome than civil action) and which, among other things, requires undertakings to be made public (i.e. cannot be made on a confidential basis).

35. It is important to note that in the ASIC context, enforceable undertakings are an alternative way to pursue suspected breaches and are not an alternative to investigative powers and procedures. The ASIC system of enforceable undertakings is based on their being an advantage to both parties, that is to say, that ASIC is provided with a more effective outcome and the other party is able to redress their breach through a negotiated settlement. Whether the ASIC model is appropriate in a literary proceeds context is therefore open to question, where there is no offence of paying/being paid for a story and there is no concrete advantage for both parties in relation to the undertaking.

36. Further, the AFP is not able to comment on how effective undertakings have been in relation to the functions and objectives of ASIC; such matters would be more appropriately directed to ASIC.

37. However, should a legislative basis for enforceable undertakings be made available in relation to literary proceeds matters, a range of factors would need to be considered. Such factors include, for example:

- the fact that undertakings could only be entered into voluntarily by both parties (noting that under the ASIC regime, ASIC can neither require nor compel an undertaking to be entered into);
- any undertaking would need to override any contractual obligation that the media / publishing organisation may or intend to have with the individual concerned;
- the undertaking would need to include a requirement on the media / publishing organisation to notify the AFP if they entered into an agreement with an individual who was attempting to commercially exploit their notoriety, where the person had committed an indictable offence or foreign indictable offence or were considering entering into negotiations with such an individual;
- the undertaking would need to include a requirement on the media / publishing organisation to notify the AFP (with an agreed timeframe) prior

to making any payment under an agreement to the individual or alternatively agreeing not to make any payment to the individual under an agreement;

- the undertaking would need to include a requirement on the media / publishing organisation to advise:
 - if an agreement had already been entered into and if so, the details of the agreement;
 - whether any monies (or property, etc.) had already been paid under the contract and if so: who the recipient (or intended recipient) was, whether the money was paid overseas or within Australia, when the monies were paid and so forth; and
- there would need to be appropriate penalties or action that could be taken in response to breaches of undertakings, including consideration of civil penalties, criminal offences and/or a requirement to pay a certain amount of monies to the Commonwealth (an amount that would need to be commensurate with the value of any agreement to ensure that paying such monies could not be written off as a cost of doing business).

Consideration of inconvenience to subjects of orders

38. A suggestion made to the Committee was that inconvenience to third parties, especially media organisations, should specifically be taken into account before PoCA orders and warrants are issued. The AFP does not support special consideration being given to particular types of entities which may be subject to production orders or search warrants. All entities should be considered as equal before the law, and a test of 'inconvenience' does not form part of requirements for a criminal search warrant (under section 3E of the *Crimes Act 1914*).

39. The AFP notes that as entities are not represented at the application for a production order or search warrant, a magistrate would not have any evidence before them on which to make such a determination and would instead have to make a decision based on his or her 'best guess' of the likely impact.

Consideration of public interest factors

40. A further law reform proposal made to the Committee was that public interest factors, such as those contained in section 154 of the PoCA, be taken into account before a court will issue a production order or a search warrant under section 202 or s225 of the POCA.

41. It is appropriate that magistrates take public interest factors into account when determining whether to make a final order in relation to a literary proceeds matter. This is the appropriate point in proceedings where such factors should be considered. The AFP does not consider it appropriate for such factors to be taken into account prior to this time.

42. The focus for the magistrate at the investigative stage should be on whether the threshold for the use of information gathering powers has been met, not whether the ultimate literary proceeds action should be determined in a particular way. At the time of making the production order or issuing a search warrant, many of the public interest factors present in section 154 would not be known as the publication or interview may not have been produced. The AFP

would also note that it is in the public interest to conduct an investigation into potential literary proceeds matters.

Administrative reform proposals

Best practice investigative procedures

43. The AFP note and acknowledge the judgement of Judge Jagot in relation to the AFP's actions in this matter.

44. The AFP has already given evidence that there are pro-forma templates for PoCA 2002 powers which are available to all investigators through the AFP Intranet (the portal is known internally as the "Investigator's Toolkit"). The Investigators Toolkit is commonly used throughout the organisation. It is a 'go to' site to help investigators through the provision of standard form templates, legislation, aide memoires and a raft of other information. The templates available in the Toolkit accurately reflect legislative requirements and provide guidance for those completing them.

45. An investigator's E-newsletter was launched in September 2013 (the most recent one being circulated in March 2014). These newsletters capture changes to the content held in the Investigator's Toolkit.

46. The AFP Investigations Standards and Practices (ISP) provide a mechanism to promote, implement and maintain quality and best practice for all AFP investigators. Established on 8th April 2014, the ISP includes a team of investigative advisers (RIA) located in each of the major regional offices. These RIA members provide real time tactical mentoring and coaching of team leaders to ensure regulatory compliance, best practice and national consistency. The RIA will be supported by a centralised team at AFP HQ who develop and maintain Doctrine, Policy, guidelines and investigative process documentation.

47. The suggestion has also been made through the inquiry that applications for warrants or production orders made under PoCA 2002 should be accompanied by relevant extracts of the legislation, or that copies of the Act should be made available to the magistrate as necessary and appropriate (particularly where applications are made outside chambers). The AFP would be happy to consider integrating this suggestion into its practices and procedures for literary proceeds investigations.

48. Further, the inquiry has raised the need to ensure that general investigators have a better understanding of the differences between criminal investigations and investigations in support of civil action under PoCA 2002. The AFP is considering how additional education for relevant functional areas may be delivered, including updating the Investigators Toolkit and including a specific component in the Proceeds of Crime Investigation Program (POCIP).

Protecting journalists' confidential sources

49. During the inquiry, concerns have been raised about the protection of journalists' confidential sources during literary proceeds investigations.

50. Generally speaking, the journalist's source in a potential literary proceeds matter will be known to the AFP, because it is the capitalisation of the

individual's criminal notoriety that is the basis for seeking the literary proceeds order. Additional protection for journalists' sources, assuming the information obtained under a search warrant contains details of sources not already known to the AFP, is already provided through the limited use that can be made of material seized under a search warrant.

51. However, in its evidence before the Committee on 7 April 2014, the AFP indicated that it would be willing to explore the possibility of creating guidelines for the exercise of PoCA 2002 search warrants in support of literary proceeds investigations. It was suggested by the AFP at the time that the existing guidelines for executing search warrants where legal professional privilege (the LPP Guidelines) is or may be claimed could be used as a basis for a similar guideline where concerns may be raised about confidential journalists' sources. At the time, however, the AFP cautioned that such guidelines would need to be carefully developed and would only apply where the journalists' source was distinct from the subject of the investigation.

52. It is not possible to simply replicate the current LPP Guideline and amend the content to cover journalists' privilege, as to do so would give journalists the right to claim a privilege over information that they do not currently have and which is not currently recognised by law (or the courts). Legal professional privilege can be distinguished from journalists' privilege, as the latter has not been recognised at common law. Section 126H of the *Evidence Act 1995 (Cth)* (Evidence Act) gives legislative effect to journalists' privilege, but only in relation to giving evidence or producing documents; it does not cover the seizure of documents. The privilege in section 126H requires the journalist to have promised to keep the identity of the informant confidential and the court determines whether the privilege applies after taking into account public interest grounds.

53. There are also administrative hurdles to negotiating a guideline. The LPP Guideline was negotiated with the Law Council of Australia. However, there is no peak representative body that independently represents all media organisations and publishing companies that the AFP could negotiate an agreement with. The most relevant body would be the Australian Press Council, which covers media organisations, but not publishing companies.

54. Notwithstanding the above, the AFP has considered whether the basic principles outlined in the LPP Guideline could be applied to situations in which a section 225 search warrant, in relation to literary proceeds orders, was being executed at premises where details of journalists' sources may be held. Reliance on these procedures would need to be considered on a case by case basis, depending on which premises the warrant was being executed. The AFP would be open to further considering a set of basic principles which covered the following:

- taking a cooperative approach in relation to the search, in the context of literary proceeds matters, where journalists' source information may be held at premises at which a section 225 search warrant is being executed;
- keeping search team member numbers to the lowest number possible; and
- sealing the premises until an appropriate representative is present (e.g. a person who can advise of any potential sensitive journalists' sources

considered irrelevant to the investigation into the literary proceeds matter).

55. Any further protection, such as preventing enforcement agencies from even seeing such information when executing their lawful powers, is a policy matter for government.

Proceeds of crime litigation function

56. While the AFP does not consider that the conduct of its proceeds of crime litigation function is directly relevant to the inquiry, for completeness, issues raised in relation to this matter as part of the inquiry are addressed below.

57. The Criminal Assets Confiscation Taskforce (CACT) contains two distinct streams; the investigations teams and the Proceeds of Crime Litigation teams (POCL). These teams are co-located and work collaboratively but have separate reporting lines and exercise their functions independent of each other in accordance with the Attorney-General's approval referred to above.

58. The investigations teams within the CACT (which include investigators, forensic accountants, and Australian Crime Commission and Australian Tax Office secondees) have primary responsibility for the investigation of Commonwealth proceeds of crime matters, including literary proceeds. Once sufficient evidence has been collected, the investigations team will refer the matter to POCL.

59. POCL provides independent legal advice and representation to the AFP in line with its duties to the courts, professional duties and the Model Litigant Rules. POCL is managed by a Senior Executive employee (Manager POCL), who is a lawyer with extensive experience in undertaking proceeds of crime litigation. The Commissioner's powers under the PoCA 2002 have been delegated to this Manager. All litigation decisions under PoCA 2002 are made by the POCL litigators in accordance with instructions provided by Manager POCL. The exception to this is where a matter is "high risk", in which case Manager POCL will seek instructions from the Commissioner.

60. In some instances, POCL may assist investigators prior to a formal referral being made. For example, investigators may seek POCL's advice in relation to the evidentiary issues or the ambit of PoCA 2002. POCL must be consulted on applications for freezing orders, as these orders can significantly impact on the litigation process. POCL will also accompany an authorised officer to court when applying for a monitoring order as a 'friend to the court', as these orders are required to be made by a judge as a designated person of a court higher than a Magistrates court.

61. POCL does not routinely assist with applications for search warrants or production orders, though is available to assist if specifically requested. In addition, AFP Legal is able to assist investigators by providing advice in relation to operational issues.

62. In terms of accountability, the actions of POCL are subject to the scrutiny of the courts, and to the full suite of internal and external oversight mechanisms which apply to the AFP as a whole including: the professional standards framework set out in Part V of the *Australian Federal Police Act 1979*, external scrutiny from the Ombudsman and Australian Commission for Law Enforcement

Integrity, and from the Parliament through the annual reporting process, Senate Estimates and the Parliamentary Joint Committee on Law Enforcement.

Responses to Questions on Notice

The following questions were taken on notice during the AFP's appearance before the Committee on 7 April 2014.

Senator Xenophon asked the AFP (at page 5 of the Proof Transcript) to provide the full chain of correspondence between the AFP and Seven in relation to the matter.

A correspondence log and copies of the correspondence are at [Attachment A](#) to this supplementary submission.

Senator Xenophon asked (at page 9 of the Proof Transcript) what time the AFP wrote to Seven's lawyers on 17 February 2014.

The letter was delivered to Ms Munsie's home address (after attempting to deliver it to her work address) at or around 12 noon.

Senator Xenophon asked (at page 32 of the Proof Transcript) whether the magistrate was advised that Seven's lawyers had until 5pm that day to comply with the production orders.

At the time of applying for the section 225 search warrants the magistrate was not advised of the letter sent to Seven West by the AFP outlining a 5pm deadline on 17 February 2014 for which Seven West was requested to comply with the terms of the section 202 Production Order.

Senator Ludwig asked (at page 22 of the Proof Transcript) how much the execution of search warrants in relation to the matter cost.

As at 24 February 2014 the cost of the time of officers involved in the raid execution of search warrants and associated investigations, including work on production order before the warrant, is estimated at \$88,143.

Senator Ludwig asked (at page 26 of the Proof Transcript) which of the five premises at which search warrants were executed made claims of legal professional privilege.

All five search warrants had LPP claims made during the execution of those warrants. These included the premises of Seven West Media Ltd (38-42 Pirrama Rd, Pyrmont NSW), Addison Lawyers (Lvl12, 60 Carrington St, Sydney NSW), Kalantzis Lawyers (55 Stanley St, East Sydney NSW), Pacific Magazines (Media City 8 Central Ave, Eveleigh NSW), Channel 7 Media City (Media City Lvl 4, 8 Central Ave, Eveleigh NSW).

Senator Ludwig asked (at page 27 of the Proof Transcript) whether a property seizure record was provided for each of the five premises at which search warrants were executed.

At each of the five premises including Seven West Media Ltd (38-42 Pirrama Rd, Pyrmont NSW), Addison Lawyers (Lvl12, 60 Carrington St, Sydney NSW), Kalantzis Lawyers (55 Stanley St, East Sydney NSW), Pacific Magazines (Media City 8 Central Ave, Eveleigh NSW), Channel 7 Media City (Media City Lvl 4, 8 Central Ave, Eveleigh NSW), a copy of the respective Property Seizure Record/s was supplied to the nominated occupier or representative of the occupier.

Senator Ludwig asked (at page 28 of the Proof Transcript) whether any searches were conducted prior to lawyers being present (or did the AFP wait for the lawyers to arrive).

At each of the five premises searched there was a lawyer present during the execution of the search warrant.

- Addison Lawyers: Partner Lawyers for Addison's were present at time of arrival and lawyers from Addison Lawyers were present prior to any searching commencing.
- Kalantzis Lawyers: Principle lawyer was onsite during the execution of the search warrant and was present prior to any searching commencing.
- Seven West Media Ltd: In-house legal counsel was present at time of the search warrant and prior to searching commencing. During the course of the search warrant further legal representatives attended and assisted.
- Pacific Magazines: Prior to physical searching commencing at the warrant premises, a legal representative arrived for Pacific Magazines.
- Channel 7 Media City: Lawyers were onsite at time of arrival and further legal representatives arrived during the execution of the search warrant.

Senator Ludwig asked (at page 29 of the Proof Transcript) whether there was a letter that had been sent to Seven and Ms Munsie about what had occurred and what the AFP's view of those actions was.

The AFP can confirm that a letter was sent to Ms Munsie as Seven's legal representative. The AFP also notes the public apology made by DC Phelan during his press conference of 22 February 2014 and at the hearing.

Attachment A

CHRONOLOGY OF CORRESPONDENCE BETWEEN AFP AND ADDISON LAWYERS – PRE 18 FEBRUARY 2014

11.02.14	4:16pm	Production Order pursuant to section 202 of the Crimes Act 2002 (PO) made by Magistrate Grogan at Downing Centre Local Court.	
11.02.14	5.12pm	PO served on John Kinninmont at Seven Media by Jeff Kokles and Morgan Blunden. He was advised of the 72 hour turn around and the non-disclosure provision. He said words to the effect "I'll give it straight to my legal people and they'll be in contact".	
14.02.14	12.15pm	Justine Munsie, Solicitor of Addison Lawyers, called Jeff Kokles requesting a narrowing of the documents sought in the PO and restricting the time period to be from 1 January 2014. She was asked to put those requests in writing.	
14.02.14	12.42pm	Email from Justine Munsie to Jeff Kokles requesting a limitation to documents which came into existence from 1 January 2014 and clarification about requests dealing with payments. She apologised for the late request.	Email Correspondence from Addisons 12.42pm14FEB2014.pdf
14.02.14	1.52pm	Email from Jeff Kokles to Justine Munsie advising that AFP would agree to deliver of documents in 2 tranches: <i>(a) Specified documents from the past 2 years to be provided by 4pm this date as stated in the order; and</i> <i>(b) All other documents to be provided by 25 February 2014 (14 days from the order date).</i>	Email Correspondence to Addisons 1.52pm14FEB2014.pdf
14.02.14	3.35pm	Jeff Kokles received a telephone call from Justine Munsie saying that she was on her way to 110 Goulburn Street to deliver the documents. He arranged to meet her there.	
14.02.14	3.50pm	Jeff Kokles, Morgan Blunden and Trent Schmidt met with Justine Munsie at 110 Goulburn Street to receive the documents.	
17.02.14	11.50am	Letter to Justine Munsie from AFP emailed by Adam Sandon signed by Stephen Dametto advising that 'AFP did not consider	Letter to Addisons 17 2 14 .pdf

		<i>that Seven had complied with even the first tranche of the PO and inviting them to reconsider and do so by close of business failing which AFP would have no alternative but to consider further action to be taken under POCA'.</i>	
17.02.14	12.00pm	Letter last referred to was delivered by Morgen Blunden and Adrian Edwards to Addisons who advised Justine Munsie worked from home on Mondays and provided her home address. She was then served with the letter at 12noon on that day at her home address. Whilst documents were being served Munsie stated words to the effect of that Seven had complied with the order already and there was no additional material to be provided.	Letter to Addisons 17 2 14 .pdf
17.02.14	4.24pm	Email from Justine Munsie to Adam Sandon with letter in reply	Letter to AFP 17022014 From Addisons.pdf
17.02.14	5:24pm	Telephone call from Justine Munsie to Adam Sandon advising that she now has some remittance advices from Seven which she will send through and enquiring if there was a reply to her recent correspondence. She was advised by Adam that the AFP were "considering her letter".	
17.02.14	5.46pm	Email from Justine Munsie to Adam Sandon enclosing 5 remittance advices regarding payments by New Idea to either Mercedes Corby, Roseleigh Rose or Wayan Widyarthi. Remittance advices excised from correspondence in line with AFP agreement with Channel 7 to destroy all information produced in response to production order.	Email Correspondence from Addisons 5.46pm 17FEB2014.pdf

Gerard, Benjamin

From: Justine Munsie
Sent: Friday, 14 February 2014 12:42 PM
To: Kokles, Jeff
Subject: Production Order

Jeff

Thank you for taking my call today.

I confirm that I act for Seven West Media (**Seven**) and will coordinate Seven's response to the production order served earlier this week.

In order to ensure that Seven properly fulfils its obligations in respect of the order, I am writing to request your clarification on some aspects of it. I apologise for not making my request earlier but these matters have only recently occurred to me.

1. The order is currently not limited as to time and would therefore require Seven to search its archives and make enquiries of a large number of people, many of whom are no longer employed by Seven about the existence of any relevant documents. This is particularly the case for Seven's magazine division, Pacific Magazines, which includes the New Idea title. If the order can be limited to documents which came into existence, or into Seven's possession or control from, say, 1 January 2014, those enquiries could be appropriately made in a short time.
2. Could you please clarify the documents which are sought by paragraphs 4 and 5. These paragraphs seek records of "payments" or "other benefits" from Seven "in relation to CORBY". On one reading of those paragraphs, they could capture payments to Seven's own staff who have prepared previous stories which relate in someone to CORBY's conviction or imprisonment. Could the order be altered to read "...from Seven West Media Limited and/or associated companies to a third party in relation to the publication of CORBY's story"?
3. Could you also please clarify the documents sought by paragraph 6? On my reading of that paragraph it seeks Electronic and hardcopy documents providing directions, instructions and/or arrangements for the provision of any payment or benefit to any third party in relation to the commercial exploitation of CORBY's criminal notoriety. Is that correct?

Regards

Justine Munsie | Partner
ADDISONS

Level 12, 60 Carrington Street, Sydney NSW 2000

www.addisonslawyers.com.au

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Gerard, Benjamin

From: Kokles, Jeff
Sent: Friday, 14 February 2014 1:52 PM
To: Justine Munsie
Subject: RE: Production Order [SFC=UNCLASSIFIED]

UNCLASSIFIED

Justine,

Below you will find the AFP's response to your email.

1. The order is currently not limited as to time and would therefore require Seven to search its archives and make enquiries of a large number of people, many of whom are no longer employed by Seven about the existence of any relevant documents. This is particularly the case for Seven's magazine division, Pacific Magazines, which includes the New Idea title. If the order can be limited to documents which came into existence, or into Seven's possession or control from, say, 1 January 2014, those enquiries could be appropriately made in a short time.

The AFP agrees that Seven West Media Ltd can provide requested documents in two (2) tranches as follows:

- Specified documents from the past 2 years to be provided by 4.00 pm this date as stated in the order; and
 - All other documents to be provided by 25 February 2014 (14 days from the order date).
2. Could you please clarify the documents which are sought by paragraphs 4 and 5. These paragraphs seek records of "payments" or "other benefits" from Seven "in relation to CORBY". On one reading of those paragraphs, they could capture payments to Seven's own staff who have prepared previous stories which relate in someone to CORBY's conviction or imprisonment. Could the order be altered to read "...from Seven West Media Limited and/or associated companies to a third party in relation to the publication of CORBY's story"?

These paragraphs refer to payments or other benefits made to Corby and or related third parties. I can confirm that there is no requirement to provide information in relation to payments made to Seven West Media Limited staff for payments of regular salaries or wages. However, any bonuses or other additional payments made as a result of the Corby matter are to be included.

3. Could you also please clarify the documents sought by paragraph 6? On my reading of that paragraph it seeks Electronic and hardcopy documents providing directions, instructions and/or arrangements for the provision of any payment or benefit to any third party in relation to the commercial exploitation of CORBY's criminal notoriety. Is that correct?

Yes that is correct.

Given the requirement to comply by this afternoon should you have any further queries please do not hesitate to contact me as a matter of urgency.

Regards,



JEFF KOKLES
FEDERAL AGENT
SERIOUS & ORGANISED CRIME

www.afp.gov.au

UNCLASSIFIED

From: Justine Munsie
Sent: Friday, 14 February 2014 12:42 PM
To: Kokles, Jeff
Subject: Production Order

Jeff

Thank you for taking my call today.

I confirm that I act for Seven West Media (**Seven**) and will coordinate Seven's response to the production order served earlier this week.

In order to ensure that Seven properly fulfils its obligations in respect of the order, I am writing to request your clarification on some aspects of it. I apologise for not making my request earlier but these matters have only recently occurred to me.

1. The order is currently not limited as to time and would therefore require Seven to search its archives and make enquiries of a large number of people, many of whom are no longer employed by Seven about the existence of any relevant documents. This is particularly the case for Seven's magazine division, Pacific Magazines, which includes the New Idea title. If the order can be limited to documents which came into existence, or into Seven's possession or control from, say, 1 January 2014, those enquiries could be appropriately made in a short time.
2. Could you please clarify the documents which are sought by paragraphs 4 and 5. These paragraphs seek records of "payments" or "other benefits" from Seven "in relation to CORBY". On one reading of those paragraphs, they could capture payments to Seven's own staff who have prepared previous stories which relate in someone to CORBY's conviction or imprisonment. Could the order be altered to read "...from Seven West Media Limited and/or associated companies to a third party in relation to the publication of CORBY's story"?
3. Could you also please clarify the documents sought by paragraph 6? On my reading of that paragraph it seeks Electronic and hardcopy documents providing directions, instructions and/or arrangements for the provision of any payment or benefit to any third party in relation to the commercial exploitation of CORBY's criminal notoriety. Is that correct?

Regards

Justine Munsie | Partner
ADDISONS

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SERIOUS & ORGANISED CRIME

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ABN 17 864 931 143

17 February 2014

Ms Justine Munsie
Addisons
Level 12, 60 Carrington Street,
Sydney, NSW

By Email:

Dear Ms Munsie,

PRODUCTION ORDER PURSUANT TO SECTION 202 OF THE PROCEEDS OF CRIME ACT 2002 ("the Act").

We refer to the Production Order issued to Seven West Media Limited (**Seven**) on the application of the Australian Federal Police (**AFP**) pursuant to section 202 of the Act on 11 February 2014 (the Order).

We note the Order was served at the offices of Seven on Tuesday 11 February 2014 and required production by 14 February 2014.

We note that at about 3:50pm on Friday 14 February 2014, you provided documents, under cover of your letter of that date, to the AFP, at 110 Goulburn Street, Sydney, in response to the Order.

We note that the AFP had agreed, at your request, that all documents required under the Order were to be provided in two (2) tranches as follows:

- (a) all documents required to be produced for the past two years to be provided by 4.00pm on 14 February 2014; and
- (b) all other documents required to be produced by 25 February 2014.

The AFP has now reviewed the documents produced by Seven in response to the Order.

In our view, it is clear from a review of the documents provided that Seven has not complied with the Order.

By way of example, but not limited to, we refer you to the copy provided of a letter from New Idea to Mercedes Corby dated 24th January 2014 (**Mercedes Letter**). Under the heading of "Fee" on page 3 of the Mercedes Letter there is a reference to an amount of "\$25,000(the Fee)". It is not articulated in the limited documentation provided as to how that payment is or was to be made. This information was clearly required to be produced under the terms of the Order.

Furthermore, in relation to the document provided titled "Mercedes Corby Exclusive Agreement" dated 7 February 2014 there is no mention of funds that are to be paid despite a signed contract.

We also note the Who Magazine article that was published at 12:00AM on 13 February 2014 titled 'Schapelle's First Days of Freedom'. Nowhere in the documentation provided is there any reference to articles in Who Magazine.

We note that pursuant to section 211 of the Act it is an offence to fail to comply with a Production Order and we refer you to the provisions set out therein.

Addisons

2

17 February 2014

We invite Seven to review its position and provide all the documents requested in the Order in their entirety for the past two years, by no later than the close of business today.

In the event that Seven does not fully comply with the Order as required the AFP will have no option but to consider further action be taken under the Act.

If you have any questions please do not hesitate to contact Adam Sandon at any time on or myself.

Yours faithfully,

Stephen Dametto
Detective Superintendent
Serious & Organised Crime



17 February 2014

Our Ref: JMM:SEV001/4053

Mr Stephen Dametto
Detective Superintendent
Australian Federal Police
110 Goulburn Street
SYDNEY NSW 2000

PRIVATE AND CONFIDENTIAL

By Email:

Dear Mr Dametto

Production Order: Seven West Media Limited

We refer to your letter dated 17 February 2014.

By way of clarification, we note that it was not at our or Seven's request that the documents sought in the production order be produced in two tranches as described in your letter. That method of production was stipulated by the AFP. Seven's suggested method of production was set out in Ms Munsie's email to Federal Agent Jeff Kokles sent at 12.42pm on Friday 14 February 2014.

We confirm that Seven has not yet produced all documents in response to the production order but has taken and is continuing to take all reasonable steps to comply with the terms of the order.

This was made clear at the time of production shortly before 4pm last Friday, 14 February, when Justine Munsie produced documents under cover of our letter to Agent Kokles in the presence of two other officers.

At the time of production, Ms Munsie informed Agent Kokles that:

1. All documents in response to the production order so far as they relate to Seven's television programs have been produced. In response to your query regarding the 7 February agreement headed "Mercedes Corby Exclusivity Agreement", there are no funds to be paid except for the matters referred to in the agreement. Accordingly, no such documents have been produced.
2. The 24 January 2014 letter agreement between New Idea and Mercedes Corby is an unsigned copy of the agreement. Seven is continuing to search for documents associated with that agreement, including documents in relation to the Fee referred to in the agreement and will produce them as soon as possible.
3. Seven has produced several other agreements between Seven's magazine division and other persons, including persons unrelated to the Corby family, which predate 1 January 2014 and which fall within the terms of the broadly drafted production order. Ms Munsie asked Agent Kokles to clarify whether the production order was intended to capture documents relating to those agreements, especially those between Seven and third parties not related to the Corby family. We have not yet received a response to this request.
4. Seven is aware of arrangements which its magazine division has entered into in the past for the purchase of photos relating to the Corby family but which Seven had not yet been able to locate in the limited time since service of the production order. These include arrangements

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Mr Stephen Dametto

17 February 2014

with third parties such as freelance photographers. Ms Munsie asked Agent Kokles to clarify whether the production order was intended to capture documents relating to those arrangements. We have not yet received a response to this request.

In response to your reference to last week's WHO magazine article, we are instructed that there were no payments made in relation to the information contained in that article and accordingly no documents have been produced. Further, apart from some arrangements which may have been made regarding the purchase of photos as described in paragraph 4 above, there are no documents in response to the production order which relate to WHO magazine.

Seven is continuing to search for and will produce any additional documents in response to the production order as soon as they are located. In the meantime, we would appreciate your responses to the requests for clarification made of Agent Kokles and set out above.

Yours faithfully

Justine Munsie
Partner

Gerard, Benjamin

From: Sandon, Adam
Sent: Monday, 17 February 2014 6:00 PM
To: Dametto, Stephen; Booth, Lynne
Subject: FW: CONFIDENTIAL: Production order [DLM=For-Official-Use-Only]
Attachments: image001.gif; ATT00001.htm; image002.jpg; ATT00002.htm; Mercedes Corby 11-Jul-11.pdf; ATT00003.htm; Mercedes Corby 24-Jan-14.pdf; ATT00004.htm; Rosleigh Rose 28-Aug-13.pdf; ATT00005.htm; Mercedes Corby 20-Apr-12.pdf; ATT00006.htm; Mercedes Corby 31-Mar-11.pdf; ATT00007.htm

For-Official-Use-Only



ADAM SANDON
TEAM LEADER
SERIOUS & ORGANISED CRIME
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For-Official-Use-Only

From: Justine Munsie
Sent: Monday, 17 February 2014 5:46 PM
To: Sandon, Adam
Subject: Fwd: CONFIDENTIAL: Production order

Mr Sandon

As discussed, I attach, by way of further production, remittance advices which relate to the New Idea contracts dated 2011 to 2014 and provided by Seven last Friday.

Please let me know if you require production of hard copies tomorrow.

Regards

Justine Munsie | Partner
ADDISONS

Level 12, 60 Carrington Street, Sydney NSW 2000

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