

CHAPTER 1

Introduction

Terms of reference

1.1 On 6 March 2014, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee for inquiry and report by 15 May 2014:

The current investigative processes and powers of the Australian Federal Police in relation to non-criminal matters, with particular reference to:

- (a) thresholds, including evidentiary thresholds, relating to the obtaining of production orders and search warrants, and in particular whether these reflect the rules applicable to civil litigation discovery rather than coercive search;
- (b) procedures preparatory to seeking production orders and search warrants, including taking into account the conduct of the recipient of such orders;
- (c) procedures for executing search warrants;
- (d) safeguards relating to the curtailment of freedom of speech, particularly in relation to literary proceeds matters;
- (e) safeguards for ensuring the protection of confidential information, including journalists' sources, obtained under search warrants, and particularly where that information does not relate to the search warrant;
- (f) the powers available to the Australian Federal Police to intercept telecommunications in circumstances where the matter being investigated does not involve criminal conduct;
- (g) the priorities of the Serious and Organised Crime Division, and the circumstances under which they should appropriately be deployed in relation to non-criminal matters; and
- (h) any related matters.

Conduct of the inquiry

1.2 In accordance with usual practice, the committee advertised the inquiry on its website and wrote to a number of organisations and individual stakeholders inviting submissions by 28 March 2014. Details of the inquiry were made available on the committee's website at www.aph.gov.au/senate_legalcon.

1.3 The committee received eight submissions, which are listed at Appendix 1. A public hearing was held in Canberra on 7 April 2014. A list of witnesses who appeared before the committee at the hearing is at Appendix 2.

Acknowledgment

1.4 The committee thanks all those who made submissions and gave evidence at its public hearing.

Note on references

1.5 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

Structure of the report

1.6 This report is comprised of five chapters.

1.7 Chapter 2 gives a broad outline of the legislative and operational framework for proceeds of crime matters, the area of law under which the Australian Federal Police (AFP) is empowered to investigate non-criminal matters. The chapter also includes background on a recent proceeds of crime investigation involving Seven West Media, which was a key focus of the inquiry.

1.8 Chapter 3 examines in further detail the use of investigative powers by the AFP, the appropriateness of these powers, and some specific issues raised in relation to the conduct of the AFP investigation involving Seven West.

1.9 Chapter 4 discusses issues relating to freedom of speech and freedom of the press that arise in relation to literary proceeds investigations conducted by the AFP.

1.10 Chapter 5 presents the committee's views and recommendations.