MEDIA RELEASE
05 June 2019

AFP statement on activity in Canberra and Sydney

Wednesday, 5 June 2019, Publish time: 4:32pm

The Australian Federal Police (AFP) can confirm there is no link between the execution of search warrants in the ACT suburb of Kingston yesterday (4 June 2019) and those on the Ultimo premises of the ABC today (5 June 2019). Both relate to separate allegations of publishing classified material, contrary to provisions of the Crimes Act 1914, which is an extremely serious matter that has the potential to undermine Australia’s national security.

The AFP received two separate referrals from agency heads in relation to these serious matters.

The AFP’s actions have been independent and impartial at all times. The AFP’s role is to investigate breaches of Commonwealth criminal law. When the AFP receives referrals it assesses them for criminality and does not make value judgements on the issue. It identifies whether there have been any contraventions of Commonwealth law, and evidence as to whether the offence has been committed or otherwise.

AFP investigators are required to assess all the relevant facts in every matter. This includes enquiries into the classification of the information concerned, how it was handled and who had access to it. The execution of search warrants is an important tool to enable our investigators to achieve this, but it is just one aspect of our work. There are many avenues of inquiry and tools available to the AFP in investigations such as this.

All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

The AFP can confirm the Minister for Home Affairs was not notified prior to the execution of the warrants.

The search warrants related to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).
The AFP was unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 (Cth) by the National Security Legislation (Espionage and Foreign Interference) Act 2018 (Cth), as the alleged conduct occurred before the new offences commenced.

Media enquiries
AFP Media: 02 6131 6333
MEDIA TALKING POINTS:

OPENING STATEMENT:

My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I want to assure the public that the AFP’s actions over the past two days has been independent and impartial at all times.

The AFP has been investigating these matters since July 2017 and April 2018 respectively. The matters primarily relate to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).

The AFP’s role is to investigate breaches of Commonwealth criminal law. We investigate laws passed by the Parliament, using powers granted to us by the Parliament.

Our investigations are an objective search for the truth. It involves the discovery and presentation of evidence in an exhaustive, comprehensive and organised manner. This includes the conduct of search warrants. No sector of the community should be immune from evidence collection, this includes law enforcement itself, the media or indeed politicians.
There are criminal allegations being investigated and we cannot ignore them. We are duty-bound to conduct these investigations impartially and thoroughly. Not to do so would be a breach of our oath of office as police officers.

These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

The execution of these warrants and the timing of these search warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in manner that will withstand the scrutiny of a court of law.

The collection of evidence and investigative processes undertaken by my staff, and by police more broadly when conducting an investigation must be within the law. Throughout the execution of the search warrants, in collaboration with the people affected, the AFP took additional care to protect the confidentiality of other personal or professional information.

Both of these investigations relate to national security information, how it was handled and who had access to it.
The material subject of these investigations and search warrants, relates to documents classified as both “Top Secret” and “Secret”. The compromise of such material could cause exceptionally grave damage or serious damage to the National interest, organisations or individuals.

I need to emphasise not the Government nor any Minister has directed the actions of these investigations.

The AFP notified the Minister’s Office it was investigating these matters. This notification occurred on referral of each matter to the AFP at the time. We did not provide regular updates on operational activities, nor did we tell them we had obtained search warrants and planned to execute these warrants.

Notification of the search warrants being executed occurred after the activity commenced. This was an operational decision and in accordance with our governance, and standard practice.

These investigations are typically complex and lengthy. The timing of these activities was influenced only by the progress of the investigation to date and sufficient information being available to support the application for a
search warrant. Any inference that suggests our decisions were influenced by anyone outside of our organisation, is strongly refuted.

I reject the claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP supports press freedom. The media plays an important role in today’s society in keeping the Australian community informed.

And finally I would like to state that my members have been subject to unprecedented scrutiny over the past few days and I want to reinforce my support to their actions. They have acted professionally and respectfully under challenging circumstances.

Thank you. I will now take any questions.

**IF ASKED:**

Is this an attack on freedom of the press? Why are journalists being targeted if you are looking for the source of the leak?

- No. The AFP supports press freedom. The media plays an important role in today’s society in keeping the Australian community informed.

- The AFP targets criminal activity – in these cases we received referrals from other agencies that identified material which they assessed as classified or an official secret, and which had been published.
Search warrant processes

- All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that relates to these allegations.

What legislation do these warrants relate to?

- The search warrants relate to offences under the secrecy offences in Part 6 of the Crimes Act 1914 (Cth)

- The AFP was unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 by the National Security Legislation (Espionage and Foreign Interference) Act 2018, as the alleged conduct occurred before the new legislation commenced.

Did your officers go through the journalist’s underwear draw?
• Search warrants have to be thorough when they are executed.

• We understand they can be intrusive for people concerned, and my officers were sensitive to people’s privacy and concerns, where possible.

• For example, during Tuesday’s warrant in Kingston, only female officers conducted searches of Ms Smehurst’s bedroom and bathroom.
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There are criminal allegations being investigated and we cannot ignore them. We are duty-bound to conduct these investigations impartially and thoroughly. Not to do so would be a breach of our oath of office as police officers.

These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

The execution of these warrants, and the timing of these search warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in manner that will withstand the scrutiny of a court of law.

The collection of evidence and investigative processes undertaken by my staff, and by police more broadly when conducting an investigation, must be within the law. Throughout the execution the search warrants, in collaboration with the people effected the AFP took additional care to protect the confidentiality of other personal or professional information.

Both of these investigations relate to national security information, how it was handled and who had access to it.
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These search warrants were authorised by an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at a certain location.

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The material subject of these investigations and search warrants, relates to documents classified as both “Top Secret” and “Secret”. The compromise of such material could cause exceptionally grave damage or serious damage to the National interest, organisations or individuals.
These definitions come from the Commonwealth Protective Security Policy Framework. The publication and disclosure of such classified material is a criminal offence.

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The Australian Federal Police (AFP) can confirm there is no link between the execution of search warrants in the ACT suburb of Kingston yesterday (4 June 2019) and those on the Ultimo premises of the ABC today (5 June 2019). Both however relate to separate allegations of publishing classified material, contrary to provisions of the Crimes Act 1914, which is an extremely serious matter that has the potential to undermine Australia’s national security.

The AFP received two separate referrals from agency heads in relation to these serious matters.

The AFP’s actions have been independent and impartial at all times. The AFP’s role is to investigate breaches of Commonwealth criminal law. When the AFP receives referrals it assesses them for criminality and does not make value judgements on the issue instead identifying whether there has been any contraventions of Commonwealth Law, and when evidence as to whether the offence has been committed or otherwise.

AFP investigators are required to assess all the relevant facts in every matter. This includes enquiries into the classification of the information concerned, how it was handled and who had access to it. The execution of search warrants is an important tool to our investigations to achieve this but is just one aspect of our work. There are many avenues of inquiry and tools available to the AFP in investigations such as this.

All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

The AFP can confirm the Minister for Home Affairs was not notified prior to the execution of the warrants.

The search warrants related to offences under the secrecy offences in Part 6 of the Crimes Act 1914.

The AFP were unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 by the National Security Legislation (Espionage and Foreign Interference) Act 2018, as the alleged conduct occurred before the new offences commenced.
MEDIA TALKING POINTS:

OPENING STATEMENT:

Good afternoon, and thank for being here today.

My name is Neil Gaughan and I am the acting Commissioner of the Australian Federal Police.

I am here to assure the public and Australian media outlets that the AFP’s actions over the past couple of days have been independent and impartial at all times.

Our role is to investigate breaches of Commonwealth criminal law. When the AFP receives referrals it assesses them for criminality and does not make value judgements on the issue. We identify whether there have been any contraventions of Commonwealth law, and seek to gather evidence as to whether the offence has been committed or otherwise.

Our investigators are required to assess all the relevant facts in every matter. In these matters, this includes enquiries into the classification of the information concerned, how it was handled and who had access to it.

Search warrants are an important tool for investigators, but they are just one aspect of our work. There are many avenues of inquiry and tools available to the AFP – search warrants are not the first activity we do in every investigation.

The Department of Home Affairs is not involved in any of these investigations, and I feel they respect our independence in relation to our statutory obligations.

IF ASKED:

Is this an attack on freedom of the press? Why are journalists being targeted if you are looking for the source of the leak?

- No.
- The AFP targets criminal activity – we received referrals from other agencies that identified material they assessed as classified or an official secret that had been published.
- There are clear offences regarding this and we cannot ignore them. We are duty-bound to prioritise investigations into matters like this, and to conduct them thoroughly.
Search warrant processes

- All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.
- The search warrants were conducted in relation to the Crimes Act 1914 and extremely serious allegations which impact on Australia’s national security.
- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that relates to these allegations.

What legislation do these warrants relate to?

- The search warrants related to offences under the secrecy offences in Part 6 of the Crimes Act 1914. (CHECK)
- The AFP were unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 by the National Security Legislation (Espionage and Foreign Interference) Act 2018, as the alleged conduct occurred before the new offences commenced.

Did your officers go through the journalist’s underwear draw?

- Search warrants have to be thorough when they are executed.
- We understand they can be intrusive for people concerned, so we try and be sensitive to people’s concerns, where possible.
- For example, on Tuesday’s warrant in Kingston, only female officers conducted searches of the bedroom and bathroom.
THIS DOCUMENT HAS BEEN DECLASSIFIED AND RELEASED IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT 1982 (COMMONWEALTH) BY THE AUSTRALIAN FEDERAL POLICE
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My name is Neil Gaughan and I am here as the acting Commissioner of the Australian Federal Police.

I am here to assure the public and Australian media outlets that the AFP’s actions over the past couple of days have been independent and impartial at all times.

Our role is to investigate breaches of Commonwealth criminal law. When the AFP receives a referral about alleged criminal conduct, it assesses the available facts and sets about building a brief of evidence. We do not make value judgements on the issue.

We identify whether there have been any contraventions of Commonwealth law, and seek to gather evidence as to whether the offence has been committed or otherwise.

Our investigators are required to assess all the relevant facts in every matter. In these matters, this includes enquiries into the classification of the information concerned, how it was handled and who had access to it.

Search warrants are an important tool for investigators, but they are just one aspect of our work. There are many avenues of inquiry and tools available to the AFP – search warrants are not the first activity we do in every investigation.

We have been asked about the involvement of the Government. I need to emphasise the Government or any Minister did not direct the actions of these investigations. In fact, we have deliberately kept knowledge of these investigations to as few people as possible.

The AFP did notify the Minister’s Office that it was investigating these matters as per the AFP Guideline on Politically Sensitive Investigations.

In each instance, the Minister for Home Affairs’ Chief of Staff was made aware that the AFP had received a referral and was commencing an investigation. We did not provide regular updates on operational activities, or tell them that we had obtained search warrants and planned to execute them.

The Department of Home Affairs is not involved in any of these investigations, and I feel they respect our independence in relation to our statutory obligations.
To be honest, there is no ideal time to execute a search warrant on journalists or media outlets. Both of these matters, investigators had reached a point where we could not progress them further without executing the warrants.

We needed to ensure all investigators and digital forensics members required on these warrants were available at the same time. Because of this, it was determined that executing the warrants on consecutive days was the most effective use of their time.

I reject the multiple claims over the past few days that we trying to intimidate journalists or conduct a campaign against the media.

The AFP targets criminal activity – we received referrals from other agencies that identified material they assessed as classified or an official secret that had been published.

There are criminal offences that may apply to this and we cannot ignore them. We are duty-bound to prioritise investigations into matters like this, and to conduct them impartially and thoroughly. The easiest course of action for us to ignore them, but that would violate every oath we have taken as police.

IF ASKED:

Is this an attack on freedom of the press? Why are journalists being targeted if you are looking for the source of the leak?

- No.
- The AFP targets criminal activity – we received referrals from other agencies that identified material they assessed as classified or an official secret that had been published.
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