

#### ANSWERING QUESTIONS SEEKING DETAILS OF INVESTIGATIONS (ONGOING OR FINALISED)

- Any details of investigations or police methodology
  - Which powers to use and when (covert or overt)
  - Who to investigate / question or approach for cooperation
  - Timing of warrants (except to say not directed by Minister / Govt / Department)
  - Specifics in relation to warrants
  - General overview of investigations / police methodology
- Current investigation (e.g. Op WOOLF and Op KLASIES) or details of past (any) investigations  
Whether any investigations or special projects (SD/ TI /CAW) have been used on particular person or class of persons.

#### ANSWER – SUGGESTED WORDING

That question goes into the specifics of operational matters and investigations, and I am not prepared to provide that level of detail in a public forum.

##### IF PRESSED:

I am conscious this is a public forum and it is not appropriate to provide this information here. The AFP will need to consider whether the answer to this question is one over which the AFP might make a claim of Public Interest Immunity. This will require further consultation and inquires and I will take that question on notice.

##### IF FURTHER PRESSED:

The AFP could seek to make PII either because it would reveal police methodology, OR because there is an ongoing investigation.

#### ANSWERING QUESTIONS SEEKING DETAILS OF INVESTIGATIONS (ONGOING OR FINALISED) WHICH INCLUDES PERSONAL INFORMATION /WITNESS DETAILS

- Request to identify suspects or witnesses spoken to in any investigations
- Who to investigate / question or approach for cooperation

#### ANSWER – SUGGESTED WORDING

I'm conscious this is a public forum and therefore it is not appropriate to provide that information here.

##### IF PRESSED:

That question goes into the specifics of operational matters and investigations. It also goes to the identity and privacy of individuals who are private citizens and who, in so far as they may have been a suspect, have not been charged with an offence. Therefore, it would be an unreasonable disclosure of their personal information.

##### IF FURTHER PRESSED:

Successful police investigations rely on information from the public and the willingness of the public to cooperate with Police. Where people have provided information or cooperated with the police, including providing a witness statement, and the matter has not (or not yet) proceeded to court, to reveal their identity in a public forum would be an unreasonable disclosure of their personal information.

##### IF REALLY FURTHER PRESSED:

The AFP will need to consider whether the answer to this question is one over which the AFP might make a claim of Public Interest Immunity. This will require further consultation and inquires and I will take that question on notice.

- Any questions beyond statistics
- How many JIWs have you obtained in unauthorised disclosure investigations
- For which investigations
- Relating to which journalists /who
- Did you obtain one in XXX investigation

#### ANSWER – SUGGESTED WORDING

I am conscious this is a public forum and there are statutory prohibitions in the *Telecommunications (Interception & Access Act) 1979* on disclosing the existence or otherwise of a journalist information warrant.

As the Committee is aware, the AFP has statutory obligations to report to Parliament annually on the use of JIWs.

Further, under the *Telecommunications (Interception & Access Act) 1979* there are also oversight and reporting obligations to the Parliamentary Joint Committee on Intelligence and Security on the use of JIWs

As reported recently to the Parliamentary Joint Committee on Intelligence and Security, the AFP has had 2 JIWs issued in the 2017-18 financial year.

#### IF PRESSED

I am conscious this is a public forum and there are criminal offences in the *Telecommunications (Interception & Access Act) 1979* (section 181A) for disclosing the existence or otherwise of a journalist information warrant.

I am aware these prohibitions do not extend to reporting to Parliament or the PJICIS, , but I would like to seek further advice before disclosing this information in the course of a public hearing such as Senate Estimates.

Therefore I cannot comment further today.

#### QUESTION REGARDING INCONSISTENCY IN APPROACH TO ANSWERING QUESTIONS ABOUT JIWs

- DC Gaughan (and others) have previously stated in press conferences and other forums that JIWs were not sought in particular matters (Eg: WOOLF, KLAISSES).
  - Isn't this inconsistent
  - Why won't you confirm /repeat in this forum
  - Why can't you say the same /give the same assurances for other investigations

#### ANSWER – SUGGESTED WORDING

The AFP is aware of the statutory prohibitions on disclosure of information relating to JIWs.

However, there are exceptions to these prohibitions, and the significant public interest in these matters at the time of the warrants, meant it was appropriate for the AFP to provide this information to maintain public confidence in the enforcement of the criminal law.

Further these prohibitions do not prevent the AFP from providing basic information *in camera* to a Parliamentary Committee (such as the PJICIS). However, Senate Estimates is a public forum and therefore I cannot provide further detail in this forum.

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# Executive Brief

## AFP Reviews

<p><b>Key Messages</b></p>	<ul style="list-style-type: none"> <li>• I have commenced two reviews of the AFP since my commencement of Commissioner.</li> <li>• A Review of AFP Response to and Management of Sensitive Investigations.</li> <li>• EY Review with the engagement of previous New South Wales Police Commissioner, Andrew Scipione.</li> </ul>
<p><b>Key Facts</b></p>	<p><b>Independent Review of the Conduct of Sensitive Investigations in the AFP (John Lawler Review)</b></p> <ul style="list-style-type: none"> <li>• In light of public commitment to improve the processes around the recent investigations involving NewsCorp and the ABC, I have enlisted the services of former CEO of the Australian Crime Commission, Mr John Lawler AM, APM to conduct a review into all sensitive investigations.</li> <li>• This incorporates matters relating to unauthorised disclosure; the application of Parliamentary Privilege; espionage and foreign interference; and war crimes.</li> <li>• The review will not be an audit into the current matters at hand but rather a holistic approach to ensure we have in place investigative policy and guidelines that are fit for purpose.</li> </ul> <p><b>EY Review</b></p> <ul style="list-style-type: none"> <li>• I have engaged an expert team to improve the operating model of the organisation to better align with the AFP's purpose and priorities; and stakeholder expectations. This will involve reorganising our structure and streamlining our processes.</li> </ul>
<p><b>John Lawler ToR's</b></p>	<p>The Australian Federal Police, as the Australian Government's only policing agency, receives a range of referrals that have levels and/or aspects of sensitivity beyond those normally received. Such referrals typically have a political imperative, higher than normal levels of classification and media scrutiny, and require some form of senior management oversight. At present, sensitive investigations include matters relating to unauthorised disclosures; the application of Parliamentary privilege; espionage and foreign interference; and war crimes. In light of my public commitment to review the processes around the recent investigations involving News and the Australian Broadcasting Commission, I require a process review into the handling of sensitive investigations with a view to ensuring all aspects of their conduct (from point of referral through the authorisation and their ongoing management) are as efficient and effective as possible and to determine whether the existing investigative policy and guidelines are fit for purpose.</p>

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	<p>Drawing, as appropriate, on case studies and consultations this review of sensitive investigations will provide my Office with options around opportunities for interventions and strategies to ensure the AFP is best placed to address sensitive investigations in the future, including the:</p> <ul style="list-style-type: none"> <li>a. Baselineing of what constitutes a sensitive investigation</li> <li>b. Articulation of the human resources, skills, training, technology and facilities required</li> <li>c. Reformation of governance and business processes (including alternative mechanisms for referring entities beyond the AFP)</li> <li>d. Organisational structures</li> </ul> <p>In the conduct of this review I require you to draw upon a small review team that I will provide to you, to consult appropriately with relevant internal and external stakeholders within the Australian Government. I expect you to work, given time constraints with reference to the work being undertaken by Ernst and Young on the AFP's future operating model and, given the public interest aspects of this review, I require an annexure to be produced with the express intent for public release should I see fit. This review is to be completed no later than 20 January 2020 and I reserve the right to request an interim report if circumstances arise whereby the full report has not been finalised. Similarly, should you in the course of your review find an issue or issues of concern I require you to bring these to my immediate attention. .</p>
	<p>As part of the Commissioner Kershaw's appointment, an operating and structural review is to be performed. The objective of the review is to identify opportunities to improve the structure and operating model to better align with:</p> <p>AFP's purpose and priorities; and Stakeholder expectations.</p> <p>The scope will include:</p> <p><b>Desktop review</b> Documentation from across the AFP will be collected to develop an understanding of the current structure and op. model. This will include documentation that assists in the understanding of the AFP, including the headcount, location, roles &amp; responsibilities, capabilities and key outputs and outcomes of each function. Ways of working across the AFP, including governance, and key processes/ relationships within and external to the AFP.</p> <p><b>Stakeholder consultation</b> A series of 1:1 interviews (1hour) will be conducted with AFP SES Band 2 and 3 executive, relevant portfolio agencies and state and territory representatives. The interviews will inform both the understanding of the current state operating model, and identification of areas/ opportunities for improvement to be further analysed and explored with AFP executive.</p>



	<p><b>Analyses and prioritisation of improvement opportunities</b></p> <p>With an understanding of the current state and preliminary analyses completed an initial set of draft improvement hypotheses will be developed. A workshop will be conducted with AFP executive to determine the directional feasibility of the identified improvement opportunities and agree which should be further evaluated in the syntheses stage. An analysis of high-level cost and benefit of each improvement hypothesis will be undertaken to support AFP executive in prioritising the opportunities for implementation consideration.</p> <p>The review will culminate in a findings and recommendations confidential report to the Commissioner of the AFP.</p> <p>The report will consist of the following sections:</p> <ul style="list-style-type: none"> <li>• Executive summary</li> <li>• Background and context</li> <li>• Approach</li> <li>• Summary of findings and recommendations</li> <li>• Detailed findings</li> <li>• Next steps for implementation consideration</li> </ul> <p>The review will be executed over an 8-10 week period, over 4-stages:</p> <ul style="list-style-type: none"> <li>• Mobilise;</li> <li>• Discover;</li> <li>• Syntheses; and</li> <li>• Report.</li> </ul>
Background	<p><b>Background</b></p> <ul style="list-style-type: none"> <li>• Mr John Lawler AM APM is a 34 year career law enforcement officer. He served from 2009 to 2013 as the Chief Executive Officer of the Australian Crime Commission (ACC) - the Australian Government's national criminal intelligence agency, having previously served for 29 years with the Australian Federal Police (AFP) the Australian Government's primary law enforcement agency Mr Lawler retired from the Australian Public Service in October 2013.</li> <li>• Mr Lawler has extensive experience in a wide range of law enforcement disciplines performing roles at the local, national and international levels including Community Policing, Investigations, Protection, Intelligence, International Operations and Executive Services.</li> </ul>

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## Executive Brief

### Investigating Journalists

Key Messages	<ul style="list-style-type: none"><li>Between January 2013 and June 2019, we received a total of 99 referrals relating to alleged Commonwealth unauthorised disclosure offences were received.</li><li>The AFP does not keep a register of journalists and we do not keep statistics on the number of investigations that may involve a person who happens to be employed as a journalist.</li><li>Journalists are also members of the public and are subject to all the same criminal laws.</li><li>The CDPP makes decisions to prosecute in accordance with the Prosecution Policy of the Commonwealth, which is a public document and applies to all Commonwealth prosecutions.</li></ul>									
Key Facts	<table><tr><th colspan="3">Unauthorised Disclosure Investigations between January 2013 – June 2019</th></tr><tr><th>News Corp</th><th>ABC</th><th>Other matter</th></tr><tr><td>5</td><td>1</td><td>3</td></tr></table> <ul style="list-style-type: none"><li>9 search warrants were issued involving journalist or news media organisations.</li><li>5 for News Corp and 1 for ABC</li><li>3 relates to another matter.</li></ul> <p>How many investigations into leaks / unauthorised disclosures have there been in the last 10 years?</p> <ul style="list-style-type: none"><li>We typically receive 12–15 referrals of unauthorised disclosure a year.<ul style="list-style-type: none"><li>Typically from Government agencies and Departments.</li></ul></li><li>We may look into the activities of journalists in order to obtain the full picture, but the focus is first and foremost on investigating the source of the unauthorised disclosure.</li></ul>	Unauthorised Disclosure Investigations between January 2013 – June 2019			News Corp	ABC	Other matter	5	1	3
Unauthorised Disclosure Investigations between January 2013 – June 2019										
News Corp	ABC	Other matter								
5	1	3								
Background	<p>How common are investigations/warrants for leaks / unauthorised disclosures?</p> <ul style="list-style-type: none"><li>The focus and priority of unauthorised disclosure investigations is first and foremost on investigating the Commonwealth officer.</li></ul>									



**How many investigations into journalists have there been in the last 10 years?**

- The AFP does not keep a register of journalists and we do not keep statistics on the number of investigations that may involve a person who happens to be employed as a journalist.
- There are a number of offences in Cth and State legislation that relate to the work of journalists and the media.
  - Offences for breaching court issued suppression and non-publication orders.
  - State offences against covert recording of private conversations.
  - Criminal defamation offences in State law.
  - Offences under the *Broadcasting Services Act*.
  - The new abhorrent violent material offences.
    - E.g. publication of the Christchurch attack on a public website.

(Not all of these offences are within the AFP's responsibility to investigate.)

Of course journalists can also be investigated for criminal offences that are totally unrelated to their work as journalists.

**Would you agree there are certain types of information that are clearly in the public interest to be released?**

- Commonwealth Government entities, including the AFP, operate under the Protective Security Policy Framework (PSPF) which sets clear parameters around classification, use and storage of material.
  - Those parameters relate to the protection of information and assets, national interests, and the safety of individuals.
  - Commonwealth officials are *not* authorised to apply a security classification to prevent embarrassment to an individual or organisation.
- When a classified document is released there are always concerns about the impact and consequences such a release may have.
  - AFP investigators also liaise with the referring agency to get a clear picture of the possible risks and consequences, and the probability of them occurring.
  - Those risks and consequences may not be obvious to the public or a journalist, or even to an individual Commonwealth official.
- I want to be clear, press freedom is *just one consideration* in public interest. National security, enforcement of the criminal law and risks to human safety are also public interests.



**Who makes the decision to prosecute?**

- The AFP often consults the office of the CDPP before laying charges.
- The CDPP Prosecution Policy provides a two-stage test that must be satisfied before a prosecution is commenced:
  - There must be **sufficient evidence** to prosecute the case; and
  - It must be evident from the facts of the case, and all the surrounding circumstances, that the prosecution would be in the **public interest**.
- A small number of offences include a statutory requirement to obtain Attorney-General consent to prosecute.
  - For example, the new secrecy offences in the Criminal Code.
- The Attorney-General has also issued a Direction to the CDPP which requires the CDPP to obtain the Attorney-General's consent before prosecuting certain offences.
  - This **Direction reaffirms** the importance of the AFP conducting exhaustive investigations to ensure the CDPP and the Attorney-General are able to make informed decisions based on all available evidence.
- Further questions in relation to the decision to prosecute should be directed to the CDPP.

**Would the AFP have investigated the journalists under the new offences (EFI amendments)?**

- I am not going to comment on the specifics of those investigations.
- What I will say is, there may still be instances where police need to collect information about journalists.
- I say that for 2 reasons:
  1. Police may need to investigate a matter, including the activities of journalists to determine whether an offence has been committed, and regarding the activities of a journalist, if a defence to the possible commission of an offence applies
    - The defence for journalists under these new offences, is not a blanket defence for journalists. For the defence to apply the journalist must have reasonably believed their conduct was in the public interest.
    - Police need to collect information in order to determine those facts.
  2. It may be necessary to conduct an investigation to determine the identity of the source that has made the unauthorised disclosure.

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- In some instances, collecting information about a journalist will be the only way for investigators to identify the source of the disclosure, such as a Commonwealth official.

**Would the AFP support maintaining records in relation to occupation types?**

- No – the AFP does not support maintaining records of occupation types.
- In general occupation types are not a clear indicator of likelihood of engagement in criminal activity.
- The community expects the AFP to safeguard the privacy of individuals and the recording of occupation types may be viewed as either profiling or selectively identifying individuals.
- This has the potential to undermine the confidence of the Australian community in the AFP. There would also be a significant impost to the AFP to develop a system to accurately record, maintain and retrieve the records.
- Criminal offences do not generally distinguish criminality based on a person's occupation. In many cases making this distinction could be inappropriate, and could invite criticism regarding the selective application of the law.
- However the AFP acknowledges that some public interests, such as the freedom of the press, are important, and is happy to consider maintaining records – if that would assist in assuring the public the AFP's conduct is appropriate.

**Would the AFP support expanding the defence to all whistle-blowers acting in the public interest?**

- This is ultimately a matter for Government.
- The AFP would have concerns about the impact this would have on AFP operations and the work of our partner agencies, both domestically and offshore.
- I will reiterate the risks in releasing classified information to the public may not be obvious to the source of the unauthorized disclosure, a journalist or the public.
- So a regime that endorsed whistle-blowers taking sensitive material out of secure environments (by going straight to the media or to the public) would be very concerning to security agencies.

**Would AFP support expansion of the definition of journalist in the defence?**

- This is ultimately a matter for Government.

**Would AFP support expanding the journalist defence to other offences (or all offences)?**

- There are many offences that journalists and media organisation need to be cognisant of when going about their work. It is a matter for Government whether



	<p>these offences should continue to apply, and whether journalists should be exempt. For example:</p> <ul style="list-style-type: none"> <li>○ Advocating terrorism/genocide/crime etc.</li> <li>○ Offences relating to a breach of suppression or non-publication orders.</li> <li>○ Offences against covert recording of private conversations.</li> <li>○ Criminal defamation offences in state law.</li> <li>○ Offences under the <i>Broadcasting Services Act</i>.</li> <li>○ The new abhorrent violent material offences.</li> </ul> <p><b>Does AFP consider unauthorised disclosure of Commonwealth information as theft?</b></p> <ul style="list-style-type: none"> <li>• The application of a theft offence in the context of an alleged unauthorised disclosure of information is very dependent upon the circumstances of each individual case.</li> <li>• The AFP's role is to impartially investigate an allegation and form an initial view as to what criminality, if any, is revealed by the evidence gathered in the investigation.</li> <li>• In a particular factual setting, two or more offences may have a degree of overlap, but this is not uncommon in the criminal law.</li> <li>• The selection of charges is a matter for the CDPP. <ul style="list-style-type: none"> <li>○ The prosecutor's role includes careful consideration of the most appropriate charge (or charges) if the alleged conduct may involve more than one type of offence.</li> </ul> </li> </ul>
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## Executive Brief

### Overview of the ABC Investigations

Key Messages	<p>Afghan Files disclosure investigation (ABC – Op KLASIES)</p> <ul style="list-style-type: none"><li>• The matter was referred to the AFP on <b>11 July 2017</b>.</li><li>• The AFP made a decision to investigate this matter on <b>19 July 2017</b>.</li><li>• The Department of Defence undertook their own initial enquiries to determine the classification and ownership of the documents.</li><li>• At no point has the AFP been directed to investigate by the Government or any Minister.</li><li>• The timing of the search warrants had nothing to do with the election.</li><li>• The validity of the warrants in relation to the ABC investigation were recently challenged in the Federal court on <b>28 and 29 October 2019</b>. We are still waiting for the findings to be delivered.</li></ul>									
Key Facts	<table><tr><th colspan="3">Total cost of the investigation as at 8 November 2019</th></tr><tr><th>Time Attribution</th><th>Supplier</th><th>Total</th></tr><tr><td>\$162,563</td><td>\$3,330.30</td><td>\$165,893.30</td></tr></table> <ul style="list-style-type: none"><li>• Minister Dutton’s office was made aware of the operational activity on <b>4 June 2019</b>.</li><li>• All investigations have varying timeframes and the timing is based on having sufficient suspicion a criminal offence has been committed and evidentiary material is likely to be found at a certain premises.</li></ul>	Total cost of the investigation as at 8 November 2019			Time Attribution	Supplier	Total	\$162,563	\$3,330.30	\$165,893.30
Total cost of the investigation as at 8 November 2019										
Time Attribution	Supplier	Total								
\$162,563	\$3,330.30	\$165,893.30								
Background	<p><b><i>Had the AFP previously approached the ABC or its journalists seeking their cooperation?</i></b></p> <ul style="list-style-type: none"><li>• The AFP has been in discussion with the ABC and its legal representatives regarding this matter since <b>13 September 2018</b>.</li><li>• Consistent with long-standing practice, the AFP does not comment on activities it may or may not undertake during an investigation.</li><li>• As this investigation remains ongoing, it is not appropriate to comment further.</li></ul> <p><b><i>Why was the warrant obtained from a registrar in Queanbeyan?</i></b></p> <ul style="list-style-type: none"><li>• All AFP search warrants are authorised by an issuing officer, which depending on the relevant state law, is a magistrate or registrar.</li></ul>									

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- Under the terms of the search warrant, AFP investigators can seize evidential material (electronic and hard copy) that is within the scope of the warrant.
- The warrants were being executed in the state of NSW and the *Crimes Act 1914* (Cth) (section 3E(11)) only allows an issuing officer to issue a warrant in relation to a person or premises in another state or territory if the issuing officer is satisfied special circumstances exist.
  - Our officers did not consider there were special circumstances to justify the issuing of the warrant out of State, and did not seek to have the warrant issued in the ACT.
- In this instance, our officers attended Queanbeyan Local Court in NSW and obtained the warrant from the registrar.
- Investigators contact the closest court that has an appropriate person available to issue the warrant.

***If asked about the qualifications of Martin Kane***

- I am not going to discuss the merits of the individual who issued these warrants. This is highly inappropriate.

***How many AFP officers are/were involved?***

- There were six members of the AFP involved, including three digital forensics experts.

***Were the officers armed and why?***

- Yes, all qualified AFP sworn members are required to wear full accoutrements (be armed) under Commissioner's Order 3 when executing their duties.
- During this search warrant, AFP members behaved appropriately and in accordance with their responsibilities and legal obligations.
- The attendance of armed officers at the warrant should not be inferred to mean there was any threat posed at the warrant location.
- AFP members carry accoutrements because they are expected to act immediately to protect the community (and themselves) if they encounter any threat while on duty. This is the same as any other state police in Australia.

***Why are journalists being targeted if you are looking for the source of the leak?***

- The search warrant on 5 June 2019 was conducted in relation to the alleged theft and subsequent unlawful receipt of classified material.
  - This is an extremely serious allegation and has the potential to undermine Australia's national security.

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- Under the terms of the search warrant, AFP investigators can seize material (electronic and hard copy) that is within the scope of the warrant.
- The AFP will not seek to identify people who have contacted the ABC or journalists involved on matters that are not directly related to these allegations. Additionally, such information will not be collected as intelligence to inform other investigations at a later date.

***Has anyone been charged in relation to this (ABC) investigation? (David McBride)***

- Yes. On Wednesday 5 September 2018, a 54-year-old male (David McBride) was arrested and charged by AFP officers for the alleged theft of Commonwealth property.
  - The man was arrested at Sydney International Airport and appeared before a Sydney court in September 2018.
- He subsequently appeared before the ACT Supreme Court (on 7 March 2019 and 30 May 2019) for charges of Theft (Cth), *Defence Act* offences, and unauthorised disclosure of classified material. His next court appearance is scheduled for 25 October 2019.
  - As this investigation remains ongoing and matters are before the court, it is not appropriate for the AFP to comment further. This matter has now been committed to the Supreme Court and the *National Security Information Act* has been invoked.
- IF PRESSED: It would be inappropriate for me to comment further as this matter is currently before the courts.

***What offences are being investigated?***

- Section 73A(1) and (2) of the Defence Act 1903 – Unlawfully giving or obtaining information as to defences
- Section 131.1(1) of the Criminal Code - Theft
- Section 132.1 of the Criminal Code – Receiving (stolen property)
- Section 70(1) of the Crimes Act 1914 - Disclosure of information by Commonwealth officers

***Investigation chronology – ABC***

Date	Chronology
10 July 2017	<ul style="list-style-type: none"> <li>• The ABC posted promotional videos citing a “secret inquiry” into an Afghan boy’s death.</li> <li>• ABC’s 7.30 program features a story on “a defence force insider” discussing ADF activities in Afghanistan.</li> </ul>

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	11 July 2017	<ul style="list-style-type: none"> <li>The ABC published a seven-part report called discussing the role and activities of Australian Special Forces in Afghanistan. The articles cite "hundreds of pages of secret defence force documents".</li> </ul>
	13 July 2017	<ul style="list-style-type: none"> <li>CDF and Acting Secretary of Defence (Sargent) referred an 11 July 2017 ABC report called '<i>The Afghan Files</i>' and a 10 July 2017 7.30 story on ADF activities in Afghanistan to the AFP.</li> </ul>
	14 July 2017 19 July 2017	<ul style="list-style-type: none"> <li>Acting Secretary of Defence (Sargent) and CDF advised MINDEF (via noting brief) that they had referred the matter to the AFP.</li> <li>The AFP accepted the 13 July referral for investigation</li> </ul>
	July 2017 – June 2019	<ul style="list-style-type: none"> <li>The AFP conducted investigations, consulting relevant agencies and engaging persons of interest.</li> <li>On 5 September 2018, a 54-year-old male was arrested at the Sydney International Airport.</li> <li>On 18 September 2018, the male appeared before the ACT Magistrates Court and was charged with theft of Commonwealth property, contrary to section 131.1(1) of the Criminal Code Act 1995.</li> <li>On 7 March 2019, the male was subsequently fresh charged in the ACT Magistrates Court with disclosing Commonwealth information, contrary to section 70(1) of the Crimes Act 1914, and 3 counts of unlawfully giving information as to defences, contrary to section 73A(1) of the Defence Act 1903.</li> <li>On 30 May 2019, the male was committed to the ACT Supreme Court for a trial date to be determined.</li> <li>As this matter is before the court, it would be inappropriate to comment further.</li> </ul>
	24 January 2019 to 4 June 2019	<ul style="list-style-type: none"> <li>The AFP engaged the ABC and entered into negotiations in relation to requesting assistance to obtain material via the execution of a search warrant.</li> <li>On 4 June 2019, the AFP informed the ABC that it would execute a search warrant by appointment relating to the 'Afghan Files' story the following day (5 June 2019).</li> </ul>

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	5 June 2019	<ul style="list-style-type: none"> <li>• At <b>approximately 11:15am</b> the AFP informed the Department of Defence that the AFP would be executing a search warrant at the ABC's Sydney offices.</li> <li>• At <b>11.29am</b>, Associate Secretary of Defence (Skinner) notified Secretary of Defence (Moriarty), CDF (Campbell) and VCDF (Johnston) via message that the AFP would be executing a search warrant at the ABC.</li> <li>• At <b>approximately 11.30am</b> the AFP executed the search warrant (concluding at approximately <b>8:10pm</b>). <ul style="list-style-type: none"> <li>• At <b>approximately 11.35am</b> the AFP (Assistant Commissioner Platz) notified Minister Dutton's office that the ABC search warrant had been executed.</li> <li>• At <b>approximately 11.50am</b> the AFP issued a media statement confirming that the search warrant was not linked to the 4 June 2019 search warrant executed in the ACT.</li> <li>• At <b>approximately 4.30pm</b> the AFP issued a second statement confirming that the "Minister for Home Affairs was not notified prior to the execution of the warrants".</li> </ul> </li> </ul>
	24 June 2019	<ul style="list-style-type: none"> <li>• On 24 June 2019 the ABC filed an application with the Federal Court challenging the validity of the warrant executed on 5 June 2019.</li> </ul>
	19 August 2019	<p>Justice Abraham ordered that:</p> <ul style="list-style-type: none"> <li>a) the applicant's application for leave to amend its originating application filed on 9 August 2019 be granted;</li> <li>b) the applicant's application to add three further grounds to its originating application filed on 16 August 2019 be refused;</li> <li>c) the applicant's notice to produce be set aside; and</li> <li>d) the applicant's application for discovery be refused.</li> </ul>
	2 September 2019	<p>The ABC applied for leave to appeal the orders described at paragraphs (b) – (d) above.</p>

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	18 October 2019	Justice Bromwich of the Federal Court refused the ABC application to appeal the interlocutory decision.  <b>The substantive matter - challenging the validity of the search warrant – was heard on 28 October 2019.</b>
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**AFP**  
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## Executive Brief

### Overview of the News Corp Investigation

Key Messages	<div>ASD disclosure investigation (Smethurst – Op WOOLF)</div> <ul style="list-style-type: none"><li>• The matter was referred to the AFP on <b>30 April 2018</b>.</li><li>• The AFP decided, based on a CCPM assessment, to investigate the matter on <b>8 May 2018</b>.</li><li>• The News Corp challenge to the warrants has been listed for hearing in the High Court on <b>12 and 13 November 2019</b>.</li><li>• This matter was heard before the High Court on <b>12 and 13 November 2019</b>. As you would be aware, the High Court <b>adjourned</b> the matter and we await further advice.</li></ul>									
Key Facts	<table><tr><th colspan="3">Total cost of the investigation as at 8 November 2019</th></tr><tr><th>Time Attribution</th><th>Supplier</th><th>Total</th></tr><tr><td>\$185,882</td><td>\$300.20</td><td>\$186,182.20</td></tr></table> <ul style="list-style-type: none"><li>• Minister Dutton’s office was made aware of the operational activity on <b>4 June 2019</b>.</li><li>• All investigations have varying timeframes and the timing is based on having sufficient suspicion a criminal offence has been committed and evidentiary material is likely to be found at a certain premises.</li></ul>	Total cost of the investigation as at 8 November 2019			Time Attribution	Supplier	Total	\$185,882	\$300.20	\$186,182.20
Total cost of the investigation as at 8 November 2019										
Time Attribution	Supplier	Total								
\$185,882	\$300.20	\$186,182.20								
Background	<p><b>Has anyone been charged in relation to this investigation?</b></p> <ul style="list-style-type: none"><li>• No one has been charged or arrested as a result of the search warrant activity in the ACT suburb of Kingston on <b>4 June 2019</b>.</li></ul> <p><b>Has the AFP previously approached the journalist or the News Corp seeking their cooperation?</b></p> <ul style="list-style-type: none"><li>• The matter is currently before the High Court. Therefore, it would be inappropriate to provide further comments which may have an impact on these proceedings.</li></ul> <p><b>Why didn’t the AFP search the journalist’s office in the press gallery?</b></p> <ul style="list-style-type: none"><li>• The matter is currently before the High Court. Therefore, it would be inappropriate to provide further comments which may have an impact on these proceedings.</li></ul>									

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**Why didn't the AFP use a journalist information warrant (JIW) in this investigation?**

- The AFP uses the appropriate instrument at the appropriate time. A journalist information warrant only authorises the AFP to obtain certain metadata from a carriage service provider. This would not be the relevant warrant where investigators suspect there to be evidence located at physical premises.
  - There are criminal offences for discussing the existence or otherwise of a journalist information warrant. As such, I cannot comment further.

**How many AFP officers were involved?**

- Seven AFP members were involved in the search warrant activity on 4 June 2019 in Kingston. This included two digital forensics members.

**Were the officers armed and why?**

- Yes, under Commissioner's Order 3 all qualified sworn members are required to wear full accoutrements (be armed) when on duty.
- During this search warrant, AFP members behaved appropriately and in accordance with their responsibilities and legal obligations.
- The fact that police were armed should not be inferred to mean any threat existed at the warrant location.
- AFP members carry accoutrements because they are expected to act immediately to protect the community if they encounter any threat while on duty. This is the same as any other police in Australia.

**Why did you have to be at the locations for such a long period of time?**

- Search warrants take time. Except in emergencies, a warrant must be executed in one continuous period.
- A search warrant involves the discovery and collection of relevant evidence in an exhaustive, comprehensive and organised manner.
- AFP officers were at each location for no-longer than was required to execute the search warrant and conducted themselves professionally and respectfully.

**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 the warrant in Kingston, only female officers conducted searches of

Ms Smethurst's bedroom and bathroom.

**What offences are being investigated with regards to the ASD disclosure?**

- Official secrets – section 79(3) of the *Crimes act 1914*



<b>Investigation chronology – News Corp/Smethurst</b>	
<b>Date</b>	<b>Chronology</b>
29 April 2018	<ul style="list-style-type: none"> <li>An article appeared in the Sunday Telegraph, on an alleged proposal to expand the powers of the ASD, apparently quoting from a highly-classified Defence brief and publishing an alleged image of that brief.</li> </ul>
30 April 2018	<ul style="list-style-type: none"> <li>The Secretary of Defence referred NewsCorp reporting to the AFP for investigation, copying in the Secretary of Home Affairs.</li> <li>The AFP accepted that referral soon afterwards.</li> <li>The referral from Defence to the AFP was a matter of public knowledge as the ADF issued a media statement on 30 April stating the matter was being referred to the AFP.</li> </ul>
June 2018 to April 2019	<ul style="list-style-type: none"> <li>The AFP conducted investigations, consulting relevant agencies and engaging persons of interest.</li> </ul>
4 June 2019	<ul style="list-style-type: none"> <li>At approximately 9.20 am the AFP executed a search warrant at the home of Ms Annika Smethurst (National Politics Editor, <i>The Herald Sun</i>) in Kingston, ACT.</li> <li>At approximately 9.30am the AFP notified Minister Dutton's office that a search warrant was executed at the Smethurst home.</li> <li>At approximately 9.35am the AFP contacted the Director-General of ASD (DG ASD) and the Secretary of Home Affairs to advise of the execution of a search warrant.</li> <li>At 9.45am DG ASD notified the Minister for Defence (MINDEF).</li> <li>At 9.51am MINDEF attempted to contact the PMO. The PMO returned that call at 9.58am and was informed of the search warrant.</li> <li>At approximately 12.15pm the AFP issued a media statement noting that "the activity is in regard to an investigation into the alleged unauthorised disclosure of national security information that was referred to the AFP".</li> </ul>
26 June 2019	<ul style="list-style-type: none"> <li>On 26 June 2019 Annika Smethurst and Nationwide News Pty. Ltd. (NewsCorp) filed an application with the High Court challenging the validity of the warrant executed on 4 June 2019.</li> </ul>