

Wednesday, 28 April 2021

Ombudsman finds AFP oversteps the mark

The following statement can be attributed to the President of the Law Council, Dr Jacoba Brasch QC.

“Today’s findings that a division of the AFP has been found to have breached statutory requirements regarding their ability to use intrusive powers to access telecommunications data is deeply troubling.

The report released by the Commonwealth Ombudsman, shows numerous and significant breaches occurred within the ACT Policing Division of the AFP, when accessing records of mobile phones and other telecommunications devices ‘pinging’ off mobile phone towers in a geographical area.

It also identified that staff within the AFP’s national headquarters had knowledge of these compliance issues but did not inform the Minister for Home Affairs or the Ombudsman until January 2020, while also finding significant inadequacies in the remedial action implemented by the AFP in 2020 to improve compliance.

Many of the 135 breaches identified by the Ombudsman from 2015 to 2020 concern failure to comply with essential statutory requirements and are more extensive than the problems identified in the AFP’s internal audit commissioned in 2020.

For instance, the Ombudsman found evidence that the AFP officers responsible for internally authorising access to such data had, in several instances, only spent minutes assessing requests, and in some cases had approved access without any evidence suggesting they had been given sufficient information about the case to satisfy the statutory issuing requirements.

The individual breaches identified by the Ombudsman, and their causes, are deeply troubling in isolation and appear to identify systemic failings in the exercise of a highly intrusive power and comes at a time with the government is moving to extend the powers of law enforcement and security agencies.

The Law Council agrees with the Ombudsman that these breaches, and their underlying causes, need to be considered in the context of major proposed expansions of the AFP’s intrusive electronic surveillance powers.

The Law Council has repeatedly called for stronger statutory safeguards to be applied to the major proposed expansions of the AFP’s intrusive electronic surveillance powers, including more rigorous issuing criteria and clear statutory limitations on the scope of powers, so that there is strong statutory guidance to officers.

It is disappointing that up until now, and as recently as last week, the Department of Home Affairs has publicly expressed opposition to nearly all of the Law Council’s recommendations.

It is hoped that in view of the Ombudsman’s findings, the prevailing approach of delegating extremely broad discretions to security agencies, including the AFP, will be re-considered.”

ENDS

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