

Government tells police to lay off journalists in investigating leaks

Written by Michelle Grattan, Professorial Fellow, University of Canberra

The government has given a new direction to the Australian Federal Police to prevent repeats of the recent raids on the media when leaks are being investigated.

The number of investigations will also be cut back, because departments referring leaks of official material to the police will have to outline the harm the disclosure poses to national security.

The changes, announced by Home Affairs Minister Peter Dutton late on Friday, follow a backlash against the government after the Australian Federal Police raided News Corp journalist Annika Smethurst and the ABC over separate leaks.

The direction applies to both current and prospective investigations, so would likely mean the police will drop off their pursuit of the media in these instances, although the ultimate decision rests with the AFP.

Smethurst's story revealed confidential correspondence about a proposed change in the remit of the Australian Signals Directorate. The ABC reported confidential documents relating to the behaviour of Australian special forces in Afghanistan.

After the raids the AFP refused to rule out prosecuting the journalists. The media organisations launched court action challenging the validity and use of the search warrants.

Dutton said he had issued a "ministerial direction" to the AFP Commissioner.

This set out the government's "expectations" for the police when a journalist or media organisation had a leak from a serving or former Commonwealth official.

Dutton said the directive did not constrain investigation by the AFP of an unauthorised

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disclosure. “A key function of the AFP is the enforcement of the criminal law, without exception,” he said.

But he said he expected the AFP “to take into account the importance of a free and open press in Australia’s democratic society and to consider broader public interest implications before undertaking investigative action involving a professional journalist or news media organisation” in relation to a leak.

“Where consistent with operational imperatives, I expect the AFP to exhaust alternative investigative actions prior to considering whether involving a professional journalist or news media organisation is necessary.”

Dutton said he expected the police to continue to seek voluntary assistance from the media.

He has also told the AFP “to strengthen its guidance and processes about the types and level of information required” from departments and agencies when referring leaks.

Departments “will need to provide a harm statement indicating the extent to which the disclosure is expected to significantly compromise Australia’s national security”.

The upshot is that rather than departments routinely referring leaks to the police, disclosures that do not carry national security implications will not be sent.

Sources pointed out this would not stop a department using its own internal processes to find out who had leaked and taking disciplinary action against them.

The opposition declared the changes just “window dressing”.

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Shadow minister for Home Affairs Kristina Keneally said Dutton had announced what he “expects” of the police when the media and the public had demanded guarantees from the government.

She pointed out the announcement had come just days before the Parliamentary Joint Committee on Intelligence and Security held public hearings into press freedoms.

“This is a cowardly act,” Keneally said. “It’s taken Mr Dutton too long to speak out and there are still many unanswered questions”, she said.

“Can the Morrison government confirm they will not charge or prosecute any Australian journalist – such as those at the ABC – for doing their job and reporting in the public interest?”

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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