

**HOME AFFAIRS PORTFOLIO
AUSTRALIAN BORDER FORCE**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Select Committee on Job Security

2-3 February 2022

QoN Number: 12

Subject: Details of the meaning of "2nd Condition" on a Warrant

Asked by: Tony Sheldon

Question:

Mr Brezzo: I just need to be mindful of the fact that this matter relates to an ongoing investigation, so there's some detail that I can't go into. What I'd say is the Australian Border Force's role, in the context of this, is enforcement of the Migration Act. That includes adherence to conditions of any visas that noncitizens have been granted. In cases such as the one we're talking to, the conditions of the warrant—in particular, the second condition—don't, in any way, give an indication that an individual listed as a second condition is the subject of that investigation, nor a person of interest. I'm happy to go through the details as to what the second condition means if you like. Chair: Thanks. You may want to take that on notice, and I'm happy for you to send it over.

Answer:

The Commonwealth Director of Public Prosecutions (CDPP) provides guidance to Commonwealth agencies on the execution of search warrants under Commonwealth legislation. This includes the use of a 'three condition' search warrant to enable investigators to search for and seize evidence.

The First condition of a search warrant specifies the object or document being searched for (e.g. – a phone, invoice, contract etc.).

The Second condition of a search warrant identifies an entity (e.g. – a person, address, phone number, waybill number etc.) to which the item in the First condition must be related.

The Third condition refers to the existence of reasonable grounds for suspecting that the object or document being searched for will afford evidence as to the commission of an offence.

The identification of a person to which things must relate under the Second condition of the search warrant is not an indication that the individual is a subject of the investigation or a person of interest to the Australian Border Force investigation but rather, pursuant to the Third condition of the search warrant, there are reasonable grounds for suspecting that they will afford evidence as to the commission of work-related offences, and/or a contravention of a work related provision under the Act.

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2-3 February 2022

QoN Number: 13

Subject: Assessment that ABF had not Breached Vienna Convention

Asked by: Tony Sheldon

Question:

CHAIR: Who made the assessment that the ABF had not breached the Vienna convention?

Mr Brezzo: I need to be mindful of legal professional privilege, but I have received legal advice about what I said before, which was reaching the conclusion that we're satisfied that we haven't breached the convention or the Act.

CHAIR: I appreciate there may be some matters you want to redact from the legal advice, but is that able to be made available to the committee?

Mr Brezzo: I would have to take that on notice. I'd have to seek advice with regard to legal professional privilege.

Answer:

The government does not propose to disclose the content of the legal advice. The advice relates to investigations that are ongoing that may result in legal proceedings. Disclosure may prejudice those potential proceedings.

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PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Select Committee on Job Security

2-3 February 2022

QoN Number: 14

Subject: Was Magistrate Andrew Maloney made aware of the Vienna Convention and its requirements?

Asked by: Tony Sheldon

Question:

Chair – Back to the warrant. ABF in SE 21 410 – the magistrate who approved the warrant was Andrew Maloney. V HC's name was not listed. Did ABF or HA inform Maloney that he was listed.

Brezzo – Yes

Chair – Was he made aware of the Vienna Convention and its requirements?

Brezzo – I don't know if in the request for that warrant, a conversation took place with the magistrate in that detail. I'd have to take on notice.

Answer:

Mr Maloney was advised that Mr Fare is the High Commissioner of Vanuatu. The Australian Border Force did not specifically discuss the Vienna Convention on Diplomatic Relations with Mr Maloney.

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PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Select Committee on Job Security

2-3 February 2022

QoN Number: 15

Subject: Legal Advice Assessment

Asked by: Karen Grogan

Question:

S Grogan – Who provided the legal advice? Internal or external

Moy - DFAT

Grogan – Is there an assessment in that advice on where they landed in relation to the convention.

Moy - I have not viewed the advice. I can take that on notice.

Grogan – I assume we can't see that advice. Please let us know as soon as you can.

Answer:

The government does not propose to disclose the content of the legal advice. The advice relates to investigations that are ongoing that may result in legal proceedings. Disclosure may prejudice those potential proceedings.