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OCOM 2022/101

Senator Sarah Henderson  
C/O Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator

**Warrant execution in Bundaberg, Queensland**

The Senate Legal and Constitutional Affairs Committee and the Senate Select Committee on Job Security have both inquired into the execution of a warrant in Bundaberg, Queensland under section 487ZC of the *Migration Act 1958*. I write to assist the Senate with additional information and to make some consequent corrections to evidence given.

**Review of action and material identified**

Following the hearings of the Legal and Constitutional Affairs Committee on 14 February 2022, I directed the Australian Border Force to review the execution of the warrant, particularly, for the handling of material held by the Australian Border Force to identify the processes undertaken and people who searched for and accessed any of that material.

During the execution of the warrant, material was seized from a mobile phone. The review outlined the process undertaken for that seizure:

- The person of interest's phone was connected to an ABF Digital Forensic laptop and a search conducted for terms in the second condition in the warrant;
- Two officers examined the results to confirm that material on the phone satisfied the warrant conditions as follows: Condition 1: Phone. Condition 2: Eden Farm. Condition 3: Number of workers required;
- The whole of the data on the phone was not examined. The officers review only the returns from keyword searches and identify only information that is of evidentiary value;
- A data extraction of the phone was made to a digital forensics system, after which the laptop was wiped and a DVD created for evidentiary purposes. The DVD was placed in and remains in a sealed evidence bag contained in a secure evidence room.

The review identified two documents which have a connection to the High Commissioner for Vanuatu, His Excellency Mr Samson Vilvil Fare. These documents did not come to light

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previously because they are of no evidentiary value. Prompted by the review, an officer recalled them:

- Keyword searches of the material returned a text message from a third party to the subject of the warrant, Mr Smith. The officer recalls that the message had been forwarded by Mr Smith to the High Commissioner. The text was not identified as having evidentiary value and the data has been quarantined;
- During the execution of the warrant, the officer located and took a photograph of an email which satisfied the second condition to the warrant because it contained the letterhead of a farm and a list of workers names. That email appears to be an email chain of three emails between the subject of the warrant, the High Commissioner and a third party. The original document was left at the warrant premises. The photo of the document was stored on the Australia Border Force's secure file management system. As a result of the review, the officer recalled this photo which has been quarantined, pending data disposal at the conclusion of the investigation.

Following the review, advice has been given by the Australian Government Solicitor about whether there has been a breach of the *Diplomatic Immunities and Privileges Act 1967*. I am satisfied that the execution of the warrant, including the seizure and handling of the two documents mentioned above, has not breached the *Diplomatic Immunities and Privileges Act 1967*.

#### **Legal and Constitutional Affairs Legislation Committee Estimates on 14 February 2022**

On 14 February 2022, Assistant Commissioner Brezzo gave evidence at the Senate Legal and Constitutional Affairs Committee. As a result of the information now known, I make the following corrections to that evidence.

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**Senator SHELDON:** The officers check the messages between Mr Smith and Mr Fare, and don't relate to the third condition of the warrant without seizing them and reading them?

**Mr Brezzo:** I am advised that no communications involving Mr Fare met all three conditions of the warrant and, therefore, have not been considered as part of the investigation.

**Senator SHELDON:** The first condition was met and the second condition was met. Consideration was given and material was viewed that had Mr Fare and Mr Smith and key words looked at; is that correct?

**Mr Brezzo:** No, that's not correct. My understanding is that nothing from the initial search involved Mr Fare. That's not to say that on the phone of Mr Smith there may have been communications with Mr Fare; there may well have been. But they didn't come up with search parameters they weren't considered by investigators.

**Senator SHELDON:** I want to make sure I'm getting this clear. We have confirmed the first and the second condition of the warrant applied then there was consideration as to whether the third condition applied for the warrant and whether that would then be exercised. So there was consideration by officers?

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**Mr Brezzo:** In this instance, the advice I have received is that Mr Fare didn't come up for consideration by officers.

**Senator SHELDON:** To be really clear, you're saying that they didn't look at the messages?

**Mr Brezzo:** I'm certainly saying that there was identification of any messages within those three parameters.

**Senator SHELDON:** No. I'm asking you very clearly regarding search warrant conditions 1 and 2. In relation to those two conditions, did officers look at the messages between Mr Fare and others, including Mr Smith?

**Mr Brezzo:** Not to my knowledge. The investigators would then have a sense of what met all three warrants. I understand what you're saying but, no, not to my knowledge.

**Correction:** The ABF is now aware that it holds a text message which was forwarded to the High Commissioner, and email correspondence between the subject of the warrant, a third party and the High Commissioner.

Yours sincerely

**Michael Outram APM**  
Commissioner

29<sup>th</sup>  
March 2022