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Senator Nita Green
Committee Chair
Legal and Constitutional Affairs Committee

Via email: legcon.sen@aph.gov.au

Dear Senator Green

I have become aware of the need to correct the evidence provided by the Australian Federal Police (AFP) at the Budget Estimates hearing before the Senate Legal and Constitutional Affairs Committee on Tuesday 8 November 2022. As you are aware the AFP was asked about a broad range of topics, and since receiving the transcript on Friday 11 November 2022 have identified the need to clarify the following issues.

During the hearing, the AFP provided the following response to questions from Senator O'Neill about the Australia-US CLOUD Act agreement (page 10 Hansard):

Senator O'NEILL: You'd need legislation, though, to make this smooth transfer of information in the information age. The vehicle to establish it was established in 2018 in the US, it was delivered in the UK in 2019, and here we are in 2022 and that critical access to information to prevent crime around the world, and your interaction with it, was not delivered in that period. Is that the fact of the matter?

Mr Kershaw: I think the fact of the matter for us is that we have it now, we're able to use it, we're using it regularly and that's a good thing.

I provide the following correction of evidence:

"The Australia/US CLOUD Act Agreement was signed in December 2021, however, is not yet in force, pending implementation of necessary governance arrangements. In the interim, the AFP continues to use existing processes to progress investigations involving data held in the United States."

During the hearing, the AFP provided the following response to Senator Shoebridge in relation to Operation Nambung (page 21 Hansard):

Senator SHOEBRIDGE: Telling us how many AFP employers have been charged with offences in relation to this is not going to prejudice ACLEI's investigation in any way. So I'm asking you: how many AFP employees have been charged in relation to Operation Nambung?

OFFICIAL: Sensitive

Ms Gale: I can answer that question. I can tell you that between 1 July 2021 and 30 June 2022 there were three AFP appointees charged with offences. From 1 July 2022 to 30 September 2022 there were two AFP appointees charged with offences.

I would like to clarify that the figures provided during the hearing were the total number of AFP appointees charged with offences during these periods. I provide the following correction of evidence:

“One AFP appointee has been charged with offences under Operation Nambung.”

I appreciate the opportunity to provide this clarification, to ensure that correct information is on the public record.

Yours sincerely

Reece P Kershaw APM
Commissioner