

## NOTICE OF FILING

### Details of Filing

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### Important Information

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Form 59  
Rule 29.02(1)

**AFFIDAVIT**

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: NEW SOUTH WALES  
DIVISION: GENERAL**

**NO NSD OF 2024**

**ESAFETY COMMISSIONER**

Applicant

**X CORP**

Respondent

Affidavit of: Stephen Thomas Nutt  
Address: 110 Goulburn Street, Sydney, NSW 2000  
Occupation: Acting Assistant Commissioner Counter Terrorism and Special Investigations Australian Federal Police  
Date sworn: 22 April 2024

I, Stephen Thomas Nutt of 110 Goulburn Street, Sydney, NSW, 2000, Acting Assistant Commissioner Counter Terrorism and Special Investigations, Australian Federal Police (**AFP**), say on oath:

1. I am Acting Assistant Commissioner of the AFP and I am authorised to make this affidavit on its behalf.

**BACKGROUND**

**Policing Experience**

2. In February 2024, I commenced in my current role of Acting Assistant Commissioner Counter Terrorism and Special Investigations. I am responsible for all AFP espionage and foreign interference investigations, all AFP national and international counter terrorism investigations.
3. In this role, my duties include:

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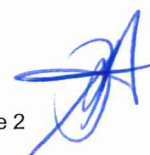
Filed on behalf of the Applicant, eSafety Commissioner  
Prepared by: Matthew Garey  
AGS lawyer within the meaning of s 551 of the *Judiciary Act*  
1903

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- a. advising and reporting to the Deputy Commissioner National Security, Commissioner, the Government, senior ministers and parliamentary committees on espionage, foreign interference and counter terrorism and national security matters;
  - b. meeting regularly with senior representatives of other law enforcement and intelligence agencies to assess and plan, current and future law enforcement and intelligence strategies in relation to national security and counter terrorism;
  - c. the criminal investigation of espionage and foreign interference undertaken by the AFP through the recently established Foreign Interference Taskforce; and
  - d. the criminal investigation of special investigations, which include sensitive unauthorised disclosure matters and war crimes allegations.
4. I am the most senior member of the AFP responsible for the specialised stream of counter terrorism policing directed at assessing and investigating enduring risk.
5. I make this affidavit on the basis of my own knowledge and belief, save where otherwise stated. Where I depose to any matter based on information provided to me, I believe it to be true. Where I express an opinion, it is based on my background and specialised police experience, as outlined below.
6. Since April 2020, I have held the substantive position of Commander of Special Investigations in the AFP. My responsibilities include operational oversight for all espionage and foreign interference matters involving the AFP as a part of a multi-agency taskforce. As part of that role:
- a. I am the senior AFP officer for the Counter Foreign Interference Task Force (**CFITF**), in which capacity I jointly oversee and am jointly responsible for all matters that are being considered by the CFITF for disruption activities with my counterpart in ASIO. In this capacity I have been operational Commander over numerous foreign interference investigations.
  - b. I have developed a publicly available fact sheet on foreign interference conduct targeting Culturally and Linguistically Diverse Communities in Australia. This fact sheet raises awareness of foreign interference as well as provide advice to community on how to report incidents to authorities.
  - c. I have also been the Commander responsible for the implementation of the outcomes of the Lawler review into the how the AFP conducts sensitive investigations. The review made recommendations for the effective management of sensitive investigations, including establishing the Sensitive Investigations Oversight Board (**SIOB**). As Commander Special Investigations, I am a standing advisor on the SIOB



and make recommendations to the SIOB on managing complex operational decisions and strategic risks of investigations subject to SIOB oversight.

- d. In November 2022, I established and chaired the AFP's Threat Information Review Committee. As chair of that Committee, I was responsible for the review of threat reporting received by the AFP and to work with relevant Commands in the AFP to ensure that appropriate actions are taken to mitigate threats reported to the AFP. I no longer chair the Committee, however I remain a member of the Committee.
7. From January 2019 to April 2020, I held the role of Detective Superintendent, Coordinator – Joint Counter Terrorism Team NSW (**NSW JCTT**). In that role, I delivered operational leadership and strategic engagement and oversight of the Joint Counter Terrorism team relationships in NSW. As part of that role:
- a. I oversaw three major operations disrupting planned domestic terrorist attacks (Operations Zellaer, Borgwal, and Templeogue);
  - b. I was the Senior Investigative Officer for Operation Diependael – the Australian investigation to the Christchurch terrorist attack working cooperatively with New Zealand Police.
  - c. In February 2020, I took part of a research project on behalf of the Australia New Zealand Counter Terrorism Committee (ANZCTC) and its Countering Violent Extremism Sub Committee (CVESC) to Assess Applicability of Pathway Preventative Extreme Right Wing (XRW) Approaches. I co-authored a report on the subject which accepted by CVESC later in 2020 and
  - d. I was the AFP representative on the ANZCTC Investigations Capability sub-committee which identified and addressed capability and training gaps.
8. From May 2016 to January 2019, I held the position of Detective Superintendent – Coordinator Intelligence and Specialist Operations Queensland. In that role:
- a. I led both Intelligence and Specialist Operations staff in Queensland and managed the AFP post of Thursday Island;
  - b. I developed and nationalised the AFP's model for the triage and assessment of National Security reporting;
  - c. I established the joint intelligence arrangements in Queensland including Joint Analyst Group, Joint Intelligence Group in North Queensland and Joint Money Laundering Group;

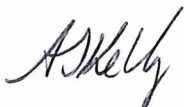


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- d. I established and led the AFP's intelligence effort in support of the Commonwealth Games in Queensland; and
  - e. I established and led the AFP's intelligence effort in support of the APEC meetings in Papua New Guinea.
9. From May 2010 to January 2015, I was Senior Liaison Officer Beirut and Acting Superintendent. I was responsible for all aspects of international police liaison across 14 countries in the Middle East during a period of significant regional instability. In that role:
- a. I was the Police Forward Commander for Project Dawn, managing the Special Event Planning team and protection deployments to Gallipoli Peninsula involving high-level engagement with Australian and New Zealand agencies and Turkish authorities; and
  - b. I led the AFP offshore disruption of Australian foreign fighters travelling to Syria. I successfully expanded the AFP network in the region with the establishment of the Ankara, Turkey post. I also negotiated a Memorandum of Understanding with the Turkish National Police and Lebanese Internal Security Forces, resulting in a higher level of engagement and dialogue on counter-terrorism.
10. Between May 1994 and May 2010, I held a number of roles in the AFP, including Team Leader roles relating to general operations, finance and financial investigations, and counter terrorism activities.
11. In my roles described above, I have had extensive experience with identifying and dealing with domestic threats and threats from foreign actors. This experience has included leading law enforcement operations to target terrorism, espionage and foreign interference activities in collaboration with other Commonwealth agencies and briefing senior police on the threat environment and disruption actions taken against specific threats.

#### **Awards and commendations**

12. I have received the following awards:
- e. Commissioner's group citation for conspicuous conduct (Operation Borgwal) – 2023;
  - f. Commissioner group citation for Innovation – 2023;
  - g. Australian Federal Police Service Medal – 25 years clasp – 2019;
  - h. Commissioner's Certificate for Excellence (National Security Indicators) – 2019;
  - i. 2018 Commonwealth Games Citation – 2019;



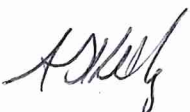
- j. National Police Service Medal – 2016;
- k. AFP Commissioner's Medal for Excellence (Operation Havanese) – 2010;
- l. Operations Medal (Operation Neath) – 2014; and
- m. Commissioner's group citation for conspicuous conduct (Operation Wahoo) – 2007.

**CONFIDENTIAL ANNEXURE TAD-2**

- 13. I have personally reviewed and viewed Confidential Annexure TAD-2.
- 14. Confidential Annexure TAD-2 is a video that captures part of an incident that took place on 15 April 2024 in the suburb of Wakeley in Sydney, New South Wales (**Wakeley Incident**).
- 15. As a result of the Wakeley Incident, the NSW JCTT commenced an operation to investigate relevant criminal offences connected to this incident. The NSW JCTT comprises members of the AFP, New South Wales Police, NSW Crime Commission and the Australian Security Intelligence Organisation (ASIO). As Acting Assistant Commissioner, I am a member of the Joint Management Committee for the NSW JCTT overseeing the NSW JCTT response to the Wakeley incident.
- 16. I am aware from my experience as Acting Assistant Commissioner and from my time as Detective Superintendent of the NSW JCTT that the AFP Counter Terrorism command has from time to time provided evidence in:
  - a) post sentence applications made under division 105A of the Criminal Code; and
  - b) control order applications made under division 104 of the Criminal Code.
- 17. Both applications are generally made in relation to convicted terrorist offenders who are being released into the community following a term of imprisonment.
- 18. I have experience in:
  - a) reviewing the history of an offender, and the behaviour that contributed to their offending;
  - b) assessing the conditions that should be imposed on an offender when released, to mitigate the risk of further terrorism offending and otherwise protect the public from a terror attack; and
  - c) the conduct of counter-terrorism investigations relating to ideological, religious or politically motivated violent extremism.



19. I have observed, that in the majority of terrorism-related convictions that offenders will have accessed, produced and/or distributed videos of terrorist attacks for a variety of purposes including:
- a) furthering their own radicalisation and desensitisation;
  - b) promoting their visions, goals, and narratives by spreading messages to potential supporters in areas that they want to expand or influence and
  - c) recruiting and encouraging others to commit acts of terrorism.
20. I have observed terrorist organisations producing recruitment videos which comprise scenes of terrorist attacks to encourage others to commit further acts of terrorism. A terrorist organisation who sees the video contained in Confidential Annexure TAD-2 might use it to encourage others to commit further acts of terrorism.
21. In the vast majority of terrorism investigations, I have observed that accessing extremist videos is a significant risk factor contributing to an offender's radicalisation and putting the offender on a path to the commission of a terrorist attack. An offender who sees the video contained in Confidential Annexure TAD-2 might be encouraged to explore extremist views and/or to commit further acts of violence.
22. I am aware of at least four examples which demonstrate the risks that I consider are associated with the publication and dissemination of extremist videos.
23. The first example related to a terror attack in Christchurch, New Zealand in 2019. I am aware of this example because of my knowledge and experience on the AFP Counter Terrorism command and as the Senior Investigation Officer (**SIO**) for Operational Diependael.
- a) Brenton Harrison Tarrant (**Tarrant**) perpetrated an attack on the Al-Noor and Linwood Mosques in Christchurch on 15 March 2019 (**Christchurch Terror Attacks**).
  - b) Tarrant murdered 51 people and injured 40 people in the Christchurch Terror Attacks. The attacks were motivated by an XRW, or 'extreme right-wing', ideology. Tarrant recorded and broadcasted live his attack on the Facebook social media platform. I am aware that footage from that broadcast on Facebook continues to be distributed online.
  - c) In a number of subsequent terrorism investigations in Australia, I am aware that the AFP has identified footage of the Christchurch Terror Attacks being distributed and positively endorsed by offenders.
  - d) For example, I am aware that Joshua Lucas (**Lucas**) was convicted of one count of advocating terrorism. I am aware that during the period of his offending, Mr Lucas



shared the Christchurch Terror Attacks video on various online applications and platforms; saved a screenshot to his device of a Facebook comment from a redacted user who had shared two images from the Christchurch Terror Attacks video; saved to his phone a still image from the Christchurch Terror Attacks video with an overlaid headline to resemble a live news broadcast reading "Man Disarms 49 Bombs"; and saved to his phone a 48 second video of the Christchurch Terror Attacks video.

24. The second example that I am aware of related to propaganda videos shared by the terrorist group, ISIS. I am aware of this example because of my knowledge and experience on the AFP Counter Terrorism command.

- a) I am aware that the AFP has reviewed a significant volume of propaganda videos produced by terrorist organisations, including videos produced by the Al Hayat Media Centre, the media arm of the terrorist organisation ISIS.
- b) I am aware that these videos often include footage of terrorist acts and extreme violence including the beheading executions of James Foley, Steven Sotloff and David Haines in 2014.
- c) I am aware that that it is part of the ISIS methodology to stream or record the commission of terrorist attacks, for the purpose of producing these propaganda videos and recruiting members and encouraging the commission of further attacks.
- d) I am aware that the AFP has also identified Australia terrorist plots to commit and record a terrorist act, for the purpose of pledging allegiance to ISIS.
- e) For example, I am informed by A/Superintendent Jeremy Staunton that in Operation Appleby, a number of Australians were convicted of terrorism offences stemming from their support of the terrorist organisation, ISIS. I am informed by A/Superintendent Jeremy Staunton that during Operation Appleby the offender Omarjan Azari informed the Appleby Group that Mr Baryalei (an Australian who had joined ISIS overseas) had said Azari and others should kill "unbelievers", video record it, and then send the video to him (Mr Baryalei) to make their pledge of allegiance to ISIS.

25. The third example relates to a video released by Urwa al-Yamani, an ISIS aligned unit. I am informed by Emily Mackenzie Coughlan, AFP Intelligence Officer, that the video:

- a) Includes images from the Wakeley attack
- b) Includes an Arabic hastag, which translated states, "Pluck the Monks of the Cross" and
- c) Includes background audio of a 2016 speak delivered by an ISIS spokesperson calling for lone wolf attacks.





26. The fourth example relates to a statement released by the Wolves of Manhattan, an online magazine produced by a pro-Al Qaeda online extremist group. I am informed by Emily Mackenzie Coughlan, AFP Intelligence Officer, that an English translation of the statement has been prepared and the statement:

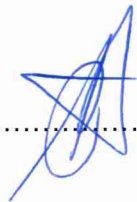
- a) Refers to the Wakeley attack and offers congratulations for the "Operation that Targeted Bishop Mar Emmanuel in Australia" and
- b) Praises the "16-year old hero from the Land of Sham" who conducted the attack.

27. On the basis of the experience set out above, I consider that there is a real risk that the video contained in Confidential Annexure TAD-2 will be accessed, downloaded, distributed and reproduced for the purpose of encouraging others in Australia to join a terrorist organisation, or undertake or support the commission of further terrorist attacks.

Sworn by the deponent


At Sydney in the State of New South

Wales on 22 April 2024

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Before me:

Signature of witness:

.....  


Name of witness:

.....  
ANDREW KELLY

Qualification of witness:

.....  
Solicitor