

6th October 2023

Statement from Dr Michael Douglas University of Western Australia Law School:

1. Are you able to provide any expert view on what laws the WA Police may be using and what the penalty for non-compliance is?

Questions 1-2: you should ask ABC's in-house lawyers.

But regarding question 1:

My guess is that the Police are utilising section 52 of the *Criminal Investigations Act 2006* (WA) and have obtained as 'order to produce'.

See http://www5.austlii.edu.au/au/legis/wa/consol_act/cia2006243/s52.html

2. Is there a public interest defence in relation to this matter, if the ABC does not comply?

An order is not a request. The ABC must comply.

If the ABC lacks a 'reasonable excuse' for not complying, it could be fined. If a human person lacks the same, they could be fined or imprisoned. See section 55.
http://www5.austlii.edu.au/au/legis/wa/consol_act/cia2006243/s55.html

Is the public interest a reasonable excuse? That's a question for your favourite criminal lawyer. My guess is 'no'.

3. Is it a criminal matter and what court would be involved if any charges are laid against ABC staff?

An order to produce is not made unless a police officer or public officer suspects a criminal offence has been committed: section 52(3)(b).

But this does not necessarily mean they suspect an offence has been committed by the ABC. You need to look at the actual document to see who is the suspected offender.

4. What is your view of WA Police pursuing the ABC for raw footage of protestors meeting prior to actual protests?

There is a distinction between a journalist having a confidential source and a media organisation recording video footage intended to be aired in the public domain. The law will protect the confidentiality of sources through what are known as 'Shield laws'. But the footage is different: it sounds like it was never intended to be confidential. Otherwise, why would they have let the media film?

On the one hand, the Police are just doing their job. I want to give them the benefit of the doubt.

But on the other, going after peaceful protestors with a criminal investigation seems like an overreaction. This sort of thing may fly in New South Wales and I am sad it seems to be OK over here, too.

The public interest would be better served if the police left these guys alone.

The real villains here are not the police, but Woodside and its thin-skinned CEO, Meg O'Neill. She leads a massive fossil fuel company that is contributing to the destruction of our climate, and is upset that hippies want to give her a hard time? Puh-lease. It is part of the job. She signed up for this.

5. Do you have any concerns about how WA authorities are using the law, in relation to pursuing climate protestors and the media?

The cops should not be carrying on like the private security for Perth's fossil fuel oligarchs. They should be serving the public interest. And that interest is better served by letting the ABC conduct public interest journalism relatively unimpeded.