

## **Parliamentary Joint Committee on Intelligence and Security inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press.**

**Submission by Jacinta Carroll, National Security College, Australian National University**

### **Author Background**

Jacinta Carroll is Senior Research Fellow in Counter-Terrorism and Social Cohesion and previously Director National Security Policy at the National Security College, Australian National University, where she has worked since August 2017. Jacinta joined the College from the Australian Strategic Policy Institute, where she established the Counter Terrorism Policy Centre to enhance dialogue on counter-terrorism and other national security issues and provide innovative approaches to national security policy. Prior to this, her career experience with the Commonwealth Government included appointments working on national security, defence, strategic policy, international policy, information management and border security.

### **Executive summary**

1. The recent public debate on the matter of ‘press freedom’ in relation to national security matters has been presented in an overwhelmingly simplistic manner, calling for an ‘unimpeded media’ and suggesting—incorrectly—that, in Australia, this is the only way to protect whistleblowers and to ensure public scrutiny. This underscores the importance of the Parliamentary Joint Committee on Intelligence and Security’s (PJCIS) work through this Inquiry to inform and educate the public, the media, and government on the complexities and nuances at play in this important issue. The media has an important role in supporting an informed public, but in a mature liberal democracy such as Australia there are many ways to ensure accountability, including legally and ethically protecting classified and sensitive information.
2. Australia faces a significant and unprecedented espionage and foreign interference threat. Hostile foreign actors are actively seeking access to security classified information in order to benefit their interests, including through the media. Changing existing laws to make it easier for the media to access classified security information would likely risk it being used by foreign entities to obtain sensitive information on Australia’s national interests. Australia’s media is also at threat of foreign influence and manipulation.
3. Australia’s public sector agencies and individuals are responsible to government to appropriately manage the resources and information required to exercise their roles for the people of Australia – this includes managing security classified information in an appropriate manner and not according to personal preference. Individuals with access to security classified information are educated on their responsibilities to manage this information appropriately and formally acknowledge these responsibilities. Should they have concerns about the legality or ethics of any matters, or have a conflict of interest in working on any matter, there are a range of avenues available to safely raise concerns without compromising security and the national interest, or breaking the law.
4. The reasons for classifying information are complex, and the authority for determining classification resides with a range of authorities. Similarly, the authority to declassify

documents will depend upon the range of information held in a document, the origin of that information, and current circumstances. Neither the individuals allegedly responsible for unlawfully removing the documents nor the media organisations that allegedly received them had the knowledge, expertise or authority to judge it appropriate to publicly release this information.

5. The nature of ‘the press’ continues to evolve, with much of Australia’s media consolidated into major media corporations, some of which are foreign owned, and the emergence of ‘new media’ such as Wikileaks which aims to publish classified data, along with syndicated news and social media changes the definition of journalism and media.

6. It would be useful for the Inquiry to explore how media organisations educate and train their staff on national security and defence matters—including in particular those staff who only occasionally work on such matters—and the editorial policy and practice for reporting on these matters while not compromising national security.

7. Australia remains one of the few countries in the world that has a free press, and one of an even smaller number of ‘full’ democracies. One of the challenges for liberal democracies is to ensure a balance between collective security and individual freedom. As with all liberal democracies, Australia has recognised throughout its history the need for some issues of national interest to be kept secret, and laws to support this have existed since the inception of the *Crimes Act 1914*. As a liberal democracy, however, Australia ensures accountability through other means for classified activities; the adequacy of these oversight arrangements should continue to be subject to regular review. There is also the opportunity for government to enhance public communication on national security and defence matters.

8. In relation to the two matters that led to this Inquiry, media reporting indicates that the following may have occurred:

- a. Officials who held security clearances providing them with privileged access to security classified information and who understood their responsibilities for handling classified information allegedly knowingly elected to break the law by illegally removing classified information and passing to third parties with no legal authority to access this information, and with a view to the information being unlawfully published.
- b. These officials lacked the authority, expertise and current knowledge to determine whether this information could be publicly released.
- c. The official involved in ‘The Afghan Files’ states he had earlier attempted to raise some concerns internally, although the details around this are not yet public. It is not clear whether those allegedly responsible for the Australian Signals Directorate (ASD) leak attempted to raise concerns through other means that would protect them as whistleblowers while not compromising national security.
- d. The media organisations that allegedly accepted these documents did not have the authority to receive and handle them, and by publishing security classified information may have broken longstanding laws on protecting official secrets.

- e. In the case of 'The Afghan Files', the documents released related to an ongoing internal investigation, which means that the appropriate authority was already looking into the matters of concern.
- f. In relation to the documents on the ASD, this appears to reflect discussions between agency heads on options for the future role of the new agency, which appears to be within the remit of agency heads.

## **Introduction**

9. This submission is made in response to the invitation by the PJCIS to comment on its Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press, specifically,

- a. The experiences of journalists and media organisations that have, or could become, subject to the powers of law enforcement or intelligence agencies performing their functions, and the impact of the exercise of those powers on journalists' work, including informing the public.
- b. The reasons for which journalists and media organisations have, or could become, subject to those powers in the performance of the functions of law enforcement or intelligence agencies.
- c. Whether any and if so, what changes could be made to procedures and thresholds for the exercise of those powers in relation to journalists and media organisations to better balance the need for press freedom with the need for law enforcement and intelligence agencies to investigate serious offending and obtain intelligence on security threats.
- d. Without limiting the other matters that the Committee may consider, two issues for specific inquiry are:
  - i. whether and in what circumstances there could be contested hearings in relation to warrants authorising investigative action in relation to journalists and media organisations.
  - ii. The appropriateness of current thresholds for law enforcement and intelligence agencies to access electronic data on devices used by journalists and media organisations.

10. The purpose of this submission is to provide advice on issues relevant to the terms of reference including:

- a. Australia's security environment
- b. the management of security sensitive official information in Australia; and

- c. the interaction between the media and national security matters in Australia, with reference to norms of liberal democracies, the role and nature of the modern media environment and press freedom.

11. This advice is provided with reference to my experience and expertise working in the national security and defence sector, as well as in national security policy and public advice roles in the thinktank and university sector, including experience working with media and publishing on national security matters.

### **Focussing matters**

12. The public debate regarding the appropriateness of the Australian Federal Police (AFP) executing search warrants on premises of media organisations and employees in relation to two investigations into the alleged theft and publication of security-classified information highlights a number of significant issues for public discussion. These include:

- a. maintaining ongoing awareness of the importance of freedom of opinion and expression in a liberal democracy.
- b. ensuring an informed and educated public, including through the media.
- c. increasing public and media awareness of the role of the press in a liberal democracy, what constitutes the press and media, and what is meant by ‘press freedom’.
- d. increasing public and media awareness of national security provisions including:
  - i. the responsibility of public agencies and officials entrusted with accessing and managing security-classified information in the course of their duties, and the avenues available for officials to raise legal or ethical concerns lawfully and without compromising national security, privacy or other in-confidence matters.
  - ii. the lawful accountability and oversight arrangements in place to ensure appropriate, lawful and ethical management of national security matters.
  - iii. that secrecy provisions have existed in some form in Australian Commonwealth law for more than a century and are not a recent phenomenon, and that these also operate appropriately in all other liberal democracies.

These may be useful matters for the Committee to consider in your Inquiry.

13. The matters under consideration by the Committee in this Inquiry are complex. The public debate on the matter of ‘press freedom’ following the AFP’s executed search warrants has, however, presented as overwhelmingly simplistic, calling for an ‘unimpeded media’ and suggesting—incorrectly—that, in Australia, this is the only way to protect whistleblowers

and to ensure public scrutiny<sup>1</sup>. This underscores the importance of the Committee's work in informing and educating the public, the media, and government on the complexities and nuances at play in this important issue. The media has an important role in supporting an informed public, but in a mature liberal democracy such as Australia there are many ways to ensure accountability, including legally and ethically protecting classified and sensitive information.

## **Background**

### ***Australia's security environment***

14. Australia faces a significant espionage and foreign interference threat. This is affecting the country in ways that are relevant to this Inquiry. Notably, hostile foreign actors are actively seeking access to security classified information in order to benefit their interests. The history of espionage and foreign interference demonstrates that such actors will use what avenues are available to them to obtain this information. While clandestine means may be used, hostile actors may also use less clandestine means such as freedom of information processes, legal cases and open source information including media. Australia's media is also at threat of manipulation and influence by hostile foreign actors.

15. The real and current threat from espionage and foreign interference is regularly advised by Australia's security authority, the Australian Security Intelligence Organisation (ASIO). In the most recent ASIO Annual Report and in a statement to the Senate Legal and Constitutional Affairs Committee Estimates hearing, Duncan Lewis, the Director-General of Security and head of ASIO referred directly to efforts by hostile actors to access security information and to influence the media,

*Espionage and foreign interference represent a serious threat to Australia's sovereignty and security and the integrity of our national institutions. Foreign actors are aggressively seeking access to privileged and classified information on Australia's alliances and partnerships; position on international diplomatic, economic and military issues; energy and mineral resources; and innovations in science and technology. They are also attempting to clandestinely influence the opinions of members of the Australian public and media, Australian Government officials, and members of Australia-based diaspora communities.<sup>2</sup>*

16. More recently, in July 2019 Lewis stated that Australia was facing a constant and 'unprecedented' high level of espionage attack, although this was not visible to most Australians<sup>3</sup>.

17. Changing existing laws to make it easier for journalists and media to access classified security information would likely risk the media being used by hostile actors to obtain sensitive information on Australia's national interest.

### ***Public policy and Australia's protective security arrangements***

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<sup>1</sup> Anderson, D. Transcript of speech to the National Press Club 26 June 2019, accessed at <http://www.adnews.com.au/opinion/abc-the-afp-raids-on-journalists-have-been-a-wake-up-call>

<sup>2</sup> Commonwealth of Australia, *ASIO Annual Report to Parliament 2017-2018*, 2018

<sup>3</sup> Benson, S. 'Espionage threats unprecedented, says spy boss Duncan Lewis', *The Australian*, 27 July 2019, <https://www.theaustralian.com.au/nation/defence/espionage-threats-unprecedented-says-spy-boss-duncan-lewis/news-story/e90c51bb103ffd1d536ae7b691671891>

18. The public sector in Australia is responsible to government to appropriately manage the resources and information required to exercise its role for the people of Australia.

19. The foundation principle for the governance and management of these resources is that the agencies and individuals in the public sector, or work in partnership with it, have privileged access to resources and information in order to undertake their duties in delivering policy and services on behalf of the Australian people, through their elected representatives. This is a fundamental element of responsible government in a democracy.

20. In the Commonwealth Government, the foundation legislation for agencies and officials to exercise this responsibility and accountability over public resources is the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which is defined as ‘an Act about the governance, performance and accountability of, and the use and management of public resources by, the Commonwealth, Commonwealth entities and Commonwealth companies, and for related purposes. This includes clear guidance on governance and accountability for information.

21. By law, Commonwealth officials are required to exercise their powers, functions and duties duty in managing public resources and information:

- a. Professionally, with care, diligence and impartiality
- b. To act honestly, in good faith and for a proper purpose
- c. Place public interest over personal interest and not improperly use their position to benefit themselves or others or to the detriment of the Commonwealth
- d. To enable appropriate public scrutiny.

22. In addition, similar legislative guidelines, codes of conduct and employment conditions apply to public servants (included in section 12 of the *Public Service Act 1999*)<sup>4</sup>, members of the military (the *Defence Force Discipline Act 1982*) and police, and parliamentary officers (*Parliamentary Services Act 1999*).

23. While the PGPA Act provides broad guidance on appropriate management of public resources and information by agencies and officials, there is additional legislative and policy guidance on information management, including management of security classified information and other sensitive information.

- a. For example, agencies may appropriately hold various sensitive information on individuals such as health, legal and financial records, which are required to manage the individual’s interaction with various government agencies. Government officials may access this information in order to carry out their roles, but it would be inappropriate for an official to access this information for personal reasons or to pass it to third parties for other than a proper purpose.

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<sup>4</sup> Australian Public Service Commission, *APS Code of Conduct*, <https://www.apsc.gov.au/code-conduct>

24. Security-related information and resources are managed in accordance with the *Australian Government Protective Security Policy Framework (PSPF)*<sup>5</sup>. This outlines requirements for managing security across areas including information security and physical security, including the responsibilities and accountabilities for managing access by individuals.

25. One of the requirements for managing security-classified information is that individuals with a demonstrated need to access information in order to undertake their duties need to have a security clearance to do so. Holding a security clearance is akin to holding a license—it can only be issued when certain requirements are met, including the individual acknowledging their responsibilities as a clearance holder, and it can and should be withdrawn if there is no longer a need to hold the clearance. In addition to holding an appropriate security clearance, the ‘need to know’ principle requires that agencies and officials can only access information where it is directly relevant to their current role. This relates to the overarching public policy principle of using public resources and accessing public information only for a ‘proper purpose’.

26. A key element of the PSPF is its guidelines on how to appropriately classify sensitive information. This includes clear guidance for the authorised officer or originator of the document to determine appropriate classification. While the overall classification of a document or asset is determined through assessing the likely harm of releasing the information, additional factors that must be taken into consideration include classification and protective markings already assigned by originators of information included in the document. Classified information that has been shared by foreign partners is of particular importance, as a condition of sharing this information with the Australian government is that it is appropriately managed and protected. Any contemplated change to how Australia manages classified information would need to be considered in terms of its impact on future access to classified information from partners, including the Five Eyes intelligence sharing arrangement, which is a vital element of Australia’s defence and security.

## Issues

27. **Rights, freedoms and responsibilities in a liberal democracy.** Liberal democracies are fundamentally based on recognition of human and civil rights, and a formal relationship of responsible government between citizens and their elected representatives, including the public agencies and officials carrying out government policy and services. Responsible government consists of a combination of formal checks and balances along with political engagement by an informed public; the government has a responsibility to inform the electorate and the media plays an important role in informing and educating the public in this regard. Freedom of expression and opinion are important elements of liberalism, but in a democracy these rights are balanced with shared responsibilities, with some aspects of rights given up or curtailed in the common interest.

28. **The place of secrecy in a liberal democracy.** Liberal democracies recognise that it is appropriate for some matters to remain secret, although the principle of responsible

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<sup>5</sup> Australian Government, *Protective Security Policy Framework*,  
<https://www.protectivesecurity.gov.au/Pages/default.aspx>

government means that they must nevertheless be governed by accountability measures. The place of secrecy in liberal democracy can be described as friction between confidentiality or secrecy on one side and openness or ‘publicity’ on the other. In general, there are two areas where secrecy in liberal democratic government is considered appropriate: in relation to individual privacy, and for matters in the national interest that, if made public, might harm the nation. Privacy and secrecy provisions are found across liberal democracies; in Australia, the protection of information in the national interest—and criminal punishment for those who reveal secrets—was first recognised in the original *Crimes Act 1914*, and is reflected in other legislation, policy and practice. Key challenges for liberal democracies include maintaining the balance between secrecy and openness, while also ensuring the public is fully aware of, and comfortable with, this balance and the accompanying accountability mechanisms.

29. The type of information that may be considered sensitive in terms of national interest and thereby requiring classification covers a wide range of issues and may include matters such as, but not limited to:

- a. Planned strategies for trade negotiations
- b. Military capabilities, operational effects and strategy
- c. Cyber defence capabilities
- d. Intelligence coverage of hostile actors
- e. Detailed assessment of threats to Australia and Australian interests
- f. Investigative capabilities and details of current investigations and sources
- g. Classified information provided by a partner nation as part of information-sharing arrangements which include maintaining classification and protections.

30. Based on media reporting around ‘The Afghan Files’ and ASD that led to this Inquiry, it appears that the documents in these cases might have included, *inter alia*, classified information on military capabilities and operational effects, cyber capabilities, intelligence coverage, information of investigative capabilities and current investigations, and classified information provided by partner nations.

31. In Australia, access to and management of public resources and information by agencies and officials is managed by law and policy, including the requirement that these are accessed and used only for a ‘proper purpose’, in accordance with the individual’s role and duties, and not for the personal benefit of themselves or others, or to the detriment of the Commonwealth. As noted above, management of security-classified information is covered by the PSPF, which provides guidelines for, amongst other things, classification and declassification of information, and access to classified information, including management of security clearances.

32. With these provisions for securing certain information comes the requirement for accountability to be assured. At the national level, this includes separation of powers through the independent judiciary, as well as shared powers under Australia’s federal system. Specific



oversight of agencies is provided through various bodies including the Inspector-General of Intelligence and Security, and the Commonwealth Ombudsman. In response to the increased array of national security legislation in the post-9/11 period and concerns about oversight, the Commonwealth government also established in 2010 an Independent National Security Legislation Monitor, complementing the legislative inquiry, oversight and review of your Committee. Notably, with little exception, new national security legislation is immediately referred to the PJCIS for review and the inquiries typically include public hearings.

33. While the existence of these bodies alone does not ensure accountability, all demonstrate high levels of activity in considering and reviewing various elements of national security, and provide a mix of classified and public reports on their work. This has even seen some instances of concurrent or proximate inquiries by different bodies on the same matters, such as the series of reviews into control orders undertaken in 2016-2018. An issue that might be of interest to this Inquiry is how the adequacy of existing oversight arrangements is considered.

34. **The responsibilities of individuals with access to security classified information.** Authorised access to classified information is managed through a regime combining individuals being assessed for suitability to access the information through having a security clearance, and limiting access to those with a legitimate and current ‘need to know’ in relation to their roles. All individuals who are granted security clearances are informed of and acknowledge their responsibilities for appropriately accessing and handling classified information; they are also required to advise any conflict of interest in holding a security clearance or working on issues they disagree with. In the two cases that led to this inquiry, it appears that individuals with Australian government security clearances—who would have been aware of their responsibilities for appropriately accessing and handling these documents—consciously elected to break the law and policy, including codes of conduct, by allegedly electing to access and unlawfully remove classified information and to pass it to third parties for publication.

35. ***What if they’re concerned that something wrong is happening?*** There’s a reasonable expectation within the broader Australian public as well as amongst public officials that actions by the Australian government should be lawful and ethical. But there may be real or perceived obstacles to speaking out. In order to ensure any concerns may be raised without harm to either the individual raising concerns or to national security, the *Public Interest Disclosure Act 2013* (PID Act) provides a mechanism for concerns to be raised outside the direct supervisory line, with assurance that the matter will be looked at and the individual protected from any repercussions<sup>6</sup>. The fallout from Wikileaks, in particular the Snowden and Manning cases, highlighted the need to ensure individuals dealing with classified matters had easily accessible and safe ways to raise any concerns, without compromising security. Wikileaks also highlighted the need for additional scrutiny of and support for those individuals with access to classified information to mitigate the risk of leaks.

36. In the two cases of leaks that led to this inquiry, it’s not clear whether and how the officials with access to classified information sought to raise concerns through the PID or

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<sup>6</sup> Commonwealth Ombudsman, *Public Interest Disclosure*, <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>

other processes and, if so, how these concerns were subsequently managed. The official involved in 'The Afghan Files' has confirmed that he sought to raise issues both within the Department of Defence and the AFP<sup>7</sup>. Of note, consistent with the 'need to know' principle and other forms of alerts and tip-offs, for PID and other inquiries, the complainant is to be advised whether or not action is being taken, but consistent with their duties and roles, typically has no particular right to be advised of the details of further investigations and inquiries.

37. **Keeping the public informed.** A key element of responsible government is keeping the electorate informed and up to date on their activities. There is an array of mechanisms to ensure this, including the various parliamentary procedures of which your Committee is a key part, regular reports by agencies such as annual reports and accompanying appearances at Senate and other Committees, engagement with the media, and providing other public communications and information. Ensuring that such information is easily accessible and available, and up-to-date, is critical to ensuring the public is informed as well as that the public perceives it is well informed.

38. National and international security and defence matters are typically less well understood by the public and broader media than other public policy matters; this is for various reasons including limited direct impact on or exposure to these issues for most individuals by comparison to, for example, domestic health, welfare and economic matters, as well as the confidentiality provisions around some of these issues. While there is a need for secrecy around much of the information, capabilities and work of intelligence and defence agencies, there is also an opportunity for many other unclassified elements of this work to be openly discussed and explained. Enhancing public communications on security and defence is an area where government agencies could improve.

39. For example, a useful development in this area is the updating of the Commonwealth Government's national security website, [nationalecurity.gov.au](http://nationalecurity.gov.au)<sup>8</sup>. Until recently, the 'newsroom' section of the website and the list of Australia's national security laws had not been updated for more than a year, making it challenging for media, researchers and members of the public to find authoritative and up-to-date information on national security. This site now holds media releases for 2019 as well as updated references to legislation and official publications.

40. This could be enhanced with the addition of plain language factsheets summarising what Australia is doing in relation to terrorism and countering violent extremism overall, including advice on the checks and balances in play for national security legislation, Australia's current threat environment and the progress of arrests and prosecutions.

41. It might be useful for the Committee to engage with government agencies, media representatives and researchers through the course of the Inquiry to examine accessibility and effective communication of information about security and defence in the open environment to see whether this might be enhanced.

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<sup>7</sup> Maiden, S. 'Whistleblower at centre of ABC raid stands by Afghan leaks', *The New Daily*, 5 June 2019, <https://thenewdaily.com.au/news/national/2019/06/05/abc-raid-david-mcbride/>

<sup>8</sup> Commonwealth of Australia, Australia's National Security, <https://www.nationalecurity.gov.au/Pages/default.aspx>

42. **The role of investigative journalism.** Investigative journalism in Australia includes many examples of reports in the public interest that have made a significant contribution to public policy and the exercise of responsible government. And this should remain the case.

43. The importance of the media in supporting freedom and liberal democracy is shown in stark relief internationally, where two-thirds of the world's states are 'not free' or only 'partly free', according to *Freedom House*, with free opinion and expression limited<sup>9</sup>. Australia is amongst the one third of states considered to have free press; but this equates to only 13% of the world's population<sup>10</sup>. For 87% of the global population, therefore, freedom of expression and living in a true liberal democracy remains a cause to be fought for, and media plays an important role.

44. As a strong liberal democracy with a free press that is also facing serious security threats, it is important that Australia maintains a focus on responsible government, including the role of the media in support. Conducting a journalistic investigation into sensitive matters—including those relating to security—can support the public interest, but it is vital that nuance, balance and care is exercised to ensure that this does not subvert the lawful and ethical arrangements already in place to ensure accountability, or compromise security.

45. **Who decides what should be classified?** The procedures for declassifying material from within government demonstrate the complexities at play. For classified material to be released, such as for example through the regular release of declassified government material under the *Archives Act 1983* or in response to an inquiry or court matter, consultation is typically required with a range of authorities responsible for managing and understanding the current security sensitivity of each matter, as it is likely that no one area or individual has the full picture of the current security relevance of classified information.

46. This means that reviewing a classified document on, for example, an Australian military operation overseas for declassification or redaction may involve liaison with the Department of Foreign Affairs, intelligence agencies, overseas partners who may be involved in the operation or who may be the originator of some of the information in the document, defence capability and acquisition regarding sensitivities with any technology, and defence operations regarding protecting tactics, techniques and procedures, including protective arrangements.

47. The varied elements of expertise and knowledge to determine classification and declassification of security information within government demonstrate the complexity of understanding potential harm even for those who are within the government security establishment. Lacking this knowledge and expertise it is simply not possible for media—even those experienced in the field—to be able to make an informed and correct call on potential harm. While government officials who may elect to unlawfully remove this information and pass to journalists may have part of the security picture, even they will not have all of the knowledge and expertise—and current awareness—of the suitability of releasing the information.

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<sup>9</sup> Freedom House, 'Freedom and the media 2019', <https://freedomhouse.org/report/freedom-media/freedom-media-2019>

<sup>10</sup> *Ibid.* Data is from 2017 report.

48. **Given this, how can investigative journalists do their job?** While the two cases that led to this inquiry have seen media involved in police investigations in relation to unlawful release of security classified information, there are many examples of effective investigative journalism in this area that have not seen the same occur.

49. It might be useful for the Committee to explore the views of experienced investigative journalists, editors and media organisations on their views of how best to ensure informed reporting on matters in the public interest while not compromising national security. Of interest here could be exploring what, if any, training and education is provided to journalists and other media staff working primarily in the area, as well as those who only occasionally cover such matters, and the nature of editorial and legal oversight. Also of interest would be how media ownership and corporate priorities relate to the individual mastheads and stations' principles for dealing with matters of Australian national security.

50. **What is the 'press'?** A free press seeking to inform the public about matters of public policy is an important element of a vibrant democracy. But what constitutes the 'press' and media is a complex matter.

51. In Australia, most of the major traditional media outlets are businesses that are publicly listed corporations, reflecting the interests of their owners and stakeholders. And they are not necessarily Australian. While the major mastheads, TV and radio channels were originally Australian and distributed amongst various Australian individuals and organisations, ownership is now broadly consolidated within a small number of media corporations. This raises issues of business interest and motivation in the way that news is covered—including a demand for 24/7 news and the demise of investigative journalism—as well as concerns regarding the possible diminution of alternative news opinions. For example, Australia's largest media organisation is Nine Entertainment Corporation, which owns leading print media *The Sydney Morning Herald*, *The Age* and *The Financial Review*, as well as Nine TV stations and majority ownership in the radio Macquarie Network. This recent concentration of media ownership has led to Reporters Without Borders noting concern about press freedom in Australia in its latest press freedom report<sup>11</sup>. Australia's other major media group is News Corp Limited, which is wholly owned by the US Stock Exchange-listed News Corp company. News Corp owns leading print media including *The Australian* and the major capital city daily tabloids, as well as cable news channel Sky News and online news sites such as news.com.au. It is likely that ownership of these corporations, as well as various elements of their media brands, will continue to change hands. The drivers and ownership of media needs to be understood in the context of the industry.

52. In addition to the commercial networks, public broadcasters ABC and SBS provide a range of news services on TV, radio and online.

53. While the traditional broadsheet papers as well as the public broadcasters have a strong tradition of investigative journalism, the majority of news content is derived from syndicated news content. The consolidation of media ownership and decreased resources available for investigative journalism has a potentially harmful impact on the media's ability to inform the public.

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<sup>11</sup> Reporters Without Borders, 'Australia', <https://rsf.org/en/australia>

54. In addition to traditional media, and the subset of investigative journalism, ‘new media’ is challenging our understanding of the press and media. Wikileaks, for example, describes itself as a media organisation, but focusses on the ‘publication of large datasets of censored or otherwise restricted official materials’ rather than what is understood as traditional investigative journalism<sup>12</sup>. Social media also plays an increasing role in broadcasting news.

55. **What is ‘press freedom’?** In light of the recent media debate in Australia on press freedom, it would be useful for the Committee to provide the opportunity for clear and easily communicated information on the nature of ‘press freedom’, noting in particular:

- a. The various forms of media, including so-called ‘new media’ such as Wikileaks that publishes documents provided to it and other online news fora, through to social media, mainstream print and electronic media, and traditional investigative news journalism.
- b. Media ownership in Australia.
- c. The ‘responsible government’ relationship between citizen and government in a liberal democracy.
- d. The relationship between the human right of freedom of expression and opinion and the operation of a responsible national press operating pursuant to supporting responsible government.
- e. Advice and information for media and officials explaining their shared rights and responsibilities in informing the Australian public while not compromising national security.

56. **The cases in point and the importance of case studies.** In order to provide useful bounds for the Inquiry, it might be useful for the Committee to focus on a small number of illustrative case studies including the two cases that led to the Inquiry—insomuch as these ongoing legal matters may be discussed—as well as comparative cases. These are important to illustrate and explain the complexities and nuances involved in this issue, including most importantly, that every case will be different. But it will be extremely important for the public, media and government to have a shared understanding of what these various cases mean in relation to protecting national interest and ensuring open debate.

57. In relation to the two cases in point, media reporting indicates that the following may have occurred:

- a. Officials who held security clearances providing them with privileged access to security classified information—and formally acknowledged their understanding of responsibilities for accessing and handling this information—allegedly knowingly elected to break the law by illegally removing classified information and passing to third parties with no legal authority to access this information, with a view to the information being unlawfully published.

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<sup>12</sup> Wikileaks, ‘What is Wikileaks?’, <https://wikileaks.org/What-is-WikiLeaks.html>

- b. These officials lacked the authority, expertise and current knowledge to determine whether this information could be publicly released.
- c. The official involved in 'The Afghan Files' had earlier attempted to raise some concerns internally and with the AFP, although the details around this remain to be clarified. It is not clear whether those allegedly responsible for the ASD leak attempted to raise concerns through other means that would protect them as whistleblowers while not compromising national security
- d. The media organisations that allegedly accepted these documents did not have the authority to receive and handle them, and by publishing security classified information may have broken longstanding Commonwealth laws on protecting official secrets.
- e. In the case of 'The Afghan Files', the documents released related to an ongoing internal investigation by the Australian Defence Force Investigative Service. This means that the appropriate authority was already looking into the matters of concern.
- f. In relation to the documents on the ASD, this appears to reflect discussions between agency heads on options for the future role of a new agency, as ASD was transitioning from being part of the Department of Defence to being a statutory authority as a 'genuinely national asset, playing a much broader role than that defined by its previously exclusive Defence focus' with 'strong and growing interdependencies between [it] and other intelligence agencies'<sup>13</sup>. In general, such discussions on future options are within the remit of agency heads.

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<sup>13</sup> Commonwealth of Australia, *2017 Independent Intelligence Review*, 2017, <https://www.pmc.gov.au/sites/default/files/publications/2017-Independent-Intelligence-Review.pdf>