

Submission to the inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press

We welcome the opportunity to make a submission to this inquiry. Our submission primarily relates to terms of reference (a), (c) and (d), and is offered in our personal capacity.

Background

1. Australia's most pressing security challenges – including malign foreign interference, cyber security, violent extremism and an increasingly assertive China – require whole-of-society responses. Public interest and investigative journalism are an important part of Australia's capability to address these challenges. Additionally, a media sector that is, and is seen to be, free and independent, can help Australia to act with credibility and influence in the increasingly contested Indo-Pacific region.

Impact of enforcement and intelligence powers on journalists' work

2. In considering term of reference (a), we urge the Committee to give due regard to the significant role that public interest and investigative journalism play in protecting Australia's national interest.
3. In particular, an independent and free media is one of a democracy's most important bulwarks against malign foreign interference.
 - a. Investigative reporting by the Australian Broadcasting Corporation and Fairfax Media played a formative role in Australia's public debate about foreign interference, which ultimately resulted in Australia's foreign interference laws.¹
 - b. One of four pillars of Australia's counter foreign interference strategy is to shine 'sunlight' on corruption, interference and coercion.² However, it is neither feasible nor appropriate for security agencies to monitor, identify and publicly expose all instances of malign foreign interference. In many cases, the media will be a more responsive and credible agent for exposing this behaviour.
4. The inevitable corollary of robust journalism on national security issues is that reporting will occasionally expose material that is embarrassing, even damaging, to security agencies. However, it is imperative that enforcement and intelligence powers are calibrated not only with this risk in contemplation, but also account for the more systemic, long-term risk of a chilling effect on national security reporting. For example, if media organisations and journalists perceive these powers are being, or could be used, in a manner that is unpredictable or heavy-handed, they may avoid reporting on national security matters or developing national security expertise. This could have serious unintended consequences for Australia's counter foreign interference capability.

¹ Rory Medcalf (2019), "Australia and China: Understanding the Reality Check," *Australian Journal of International Affairs*, 73:2, 109-118, available [online](#).

² Malcolm Turnbull (2017), *Speech Introducing the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*, available [online](#).

Balancing competing security interests

5. In relation to terms of reference (c) and (d) we submit that enforcement and intelligence powers should only be used in relation to media organisations and journalists in the most exceptional cases (and then, only with stringent oversight). Contrary to the implication in term of reference (c), that ‘security’ and media ‘freedom’ are competing interests to be balanced, a media sector that is in fact – and is perceived to be – free and independent can be a national security asset.
 - a. As the Government has made clear, Australia’s foreign policy is undergirded by support for liberal values and freedoms.³ A perception – even if erroneous – that Australian journalists face undue government pressure risks diluting the credibility of Australia’s advocacy for liberal values and its legitimacy as an influential power in the Indo-Pacific, including in the context of the Pacific ‘Step Up’ initiative.
 - b. Other players in the Indo-Pacific, most notably China, have heavily invested in and successfully expanded the footprint of state-controlled traditional and social media across the region. It is imperative that Australian media is able to counter-balance the rise of state-controlled propaganda and information manipulation by being a source of trusted news and reporting. Research suggests that media outlets which are perceived as independent can better attract and maintain audiences.⁴
 - c. Across the world’s democracies, trust in government institutions is increasingly fragile and often contested by authoritarian governments. This is a troubling trend for national security agencies – whose social licence to operate effectively depends on public trust and confidence. Given the necessary secrecy and confidentiality attached to much national security work, public trust is most likely to be maintained if the public believes that legislation and government powers are appropriately calibrated, so that journalists are able to expose wrongdoing should the need arise.
6. In sum, as the Committee considers its response to this inquiry, we urge members to ensure that enforcement and intelligence powers are appropriately calibrated – given that maintaining a free and independent media, in fact and perception, is critical to Australia’s national interest.
7. We are available to provide further information or assistance to the Committee as required.

Yours sincerely

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³ See, for example, Department of Foreign Affairs and Trade, Foreign Policy White Paper, 2017; Scott Morrison, *Remarks: USS Ronald Reagan*, 12 July 2019, available [online](#).

⁴ See, for example, Annmaree O’Keeffe and Alex Oliver, *International Broadcasting and its Contribution to Public Diplomacy*, Lowy Institute, 9 September 2010, available [online](#).