

12 November 2019

Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Mr Palethorpe,

I write in regard to the Australian Broadcasting Corporation's evidence to the public hearing of Senate Environment and Communications References Committee inquiry into Press Freedom, held in Canberra on 18 October 2019.

During the course of that hearing, the ABC gave evidence that the Corporation had provided Minister Dutton with an annotated document setting out potential changes to existing legislation that would support greater media freedom to report on public interest matters.

I can confirm that while the ABC did write to Minister Dutton on 5 July this year, the annotated document was not included in that correspondence.

On behalf of the ABC I apologise to the Committee for this error. I enclose both the correspondence with Minister Dutton and the annotated document for the Committee's information.

Yours sincerely,

Kevin McAlinden
A/Head, Public Affairs



Friday 5 July 2019

The Hon Peter Dutton MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

By email: |

Dear Minister,

I write regarding the fate of two ABC journalists who have been targeted by the Australian Federal Police through a wide-ranging and controversial investigation into a series of stories broadcast in 2018.

In September 2018, the AFP wrote to Dan Oakes and Sam Clark, naming them as suspects in their investigation into the so called Afghan Files and alleging offences under the Crimes and Defence Acts. As part of the investigation, the AFP raided the ABC's Ultimo premises a month ago and seized documents.

The ABC has challenged the legality of the raid and the targeting of its journalists. The Corporation believes the stories published by Oakes and Clark were clearly in the public interest and they should not be facing the risk of criminal charges and possible imprisonment for simply doing their jobs. Similar concerns have been expressed by News Corp Australia over an AFP raid on the home of journalist Annika Smethurst in the same week as the execution of the Ultimo warrants.

The raids have served as a rallying point for the Australian media over concerns that the absence of adequate protections for journalists and whistle blowers is compromising the public's access to information and, by extension, Australian democracy.

You would be aware that on 3 July, executives from the ABC, Nine, FreeTV, Seven West Media, SBS and News Corp met the Attorney General, Christian Porter, and

the Minister for Communications, Cyber Safety and the Arts, Paul Fletcher, to press their demands for immediate and tangible reforms to promote media and public freedom.

Our primary request was for the Attorney-General to exercise his powers to halt the actions against the ABC journalists and Ms Smethurst. Unfortunately, this request was not met. Nor was it clear what the timetable was for AFP progression of these matters.

The Attorney-General strongly urged us to write to you on both points as the relevant Minister for the AFP. He has asked to be copied on the correspondence.

I therefore repeat the request made to the two Ministers at the 3 July meeting at Parliament House. Can you provide a clear commitment that the journalists will not be charged? And failing that, can you outline the process for resolution of these matters.

The physical and mental well-being of our journalists is paramount. It is intolerable that they should be used as personal pawns in a broader political game over secrecy and access. At the very least, they deserve to know when and how their fates will be determined.

I understand that the CEO of News Corp Australia, Michael Miller, will be writing to you in similar terms regarding Ms Smethurst. We look forward to a quick reply.

Yours sincerely,

David Anderson
Managing Director

cc: The Hon Christian Porter, Attorney-General
By email:

1. DECRIMINALISE JOURNALISM

Criminal Code Act 1995 (Cth)

Part 5.6—Secrecy of information

Division 122—Secrecy of information

122.4A Communicating and dealing with information by non Commonwealth officers etc.

Communication of information

- (1) A person commits an offence if:
- (a) the person communicates information; and
 - (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (d) any one or more of the following applies:
 - (i) the information has a security classification of secret or top secret;
 - (ii) the communication of the information damages the security or defence of Australia;
 - (iii) the communication of the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth;
 - (iv) the communication of the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.



Note 1: For exceptions to the offences in this section, see section 122.5.

Note 2: The fault elements for this offence are intention for paragraph (1)(a) and recklessness for paragraphs (1)(b) to (d) (see section 5.6).


Penalty: Imprisonment for 5 years.

Other dealings with information

- (2) A person commits an offence if:
- (a) the person deals with information (other than by communicating it); and
 - (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and

Summary of Comments on Press Freedom Reform - annotated legalisation (2).pdf

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Introduce a public interest element

(c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and

(d) any one or more of the following applies:

- (i) the information has a security classification of secret or top secret;
- (ii) the dealing with the information damages the security or defence of Australia;
- (iii) the dealing with the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth;
- (iv) the dealing with the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.

Note: The fault elements for this offence are intention for paragraph (2)(a) and recklessness for paragraphs (2)(b) to (d) (see section 5.6).

Penalty: Imprisonment for 2 years.

Proof of identity not required

(3) In proceedings for an offence against this section, the prosecution is not required to prove the identity of the other person referred to in paragraph (1)(c) or (2)(c).

122.5 Defences

Information communicated etc. by persons engaged in business of reporting news etc.

(6) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information in the person's capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media, and:

(a) at that time, the person reasonably believed that engaging in that conduct was in the public interest (see subsection (7)); or

(b) the person:

(i) was, at that time, a member of the administrative staff of an entity that was engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media; and

(ii) acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who reasonably believed that engaging in that conduct was in the public interest (see subsection (7)).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

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Defence Act 1903 (Cth)

73A Unlawfully giving or obtaining information as to defences

(1) A person who is a member of the Defence Force or a person appointed or engaged under the *Public Service Act 1999* commits an offence if:



- (a) the person communicates to any other person any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or to any defences of the Commonwealth, or to any factory, or air force aerodrome or establishment or any other naval, military or air force information; and
- (b) the communication is not in the course of the first-mentioned person's official duty.

(2) A person commits an offence if:



- (a) the person obtains any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or air force aerodrome or establishment, or to any of the defences of the Commonwealth or any other naval, military or air force information; and
- (b) that conduct is unlawful.

Criminal Code 1995 (Cth)

Division 132—Other property offences

132.1 Receiving



(1) A person commits an offence if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

Penalty: Imprisonment for 10 years.

(2) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of receiving.

(2A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew or believed that the property belonged to a Commonwealth entity.

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Introduce a "serious harm" element into this offence

Number: 2 Author: ABC Date: 13/11/2019 9:30:13 AM
Introduce a "serious harm" element into this offence

Number: 3 Author: ABC Date: 13/11/2019 9:30:17 AM
Introduce a public interest element to this offence

2. DECRIMINALISE PUBLIC INTEREST WHISTLE BLOWING

Criminal Code Act 1995 (Cth)

Part 5.6—Secrecy of information

122.1 Communication and other dealings with inherently harmful information by current and former Commonwealth officers etc.

Communication of inherently harmful information

- 1 (1) A person commits an offence if:
- (a) the person communicates information; and
 - (b) the information is inherently harmful information; and
 - (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note 1: For exceptions to the offences in this section, see section 122.5.

Note 2: The fault elements for this offence are intention for paragraph (1)(a) and recklessness for paragraphs (1)(b) and (c) (see section 5.6).

Penalty: Imprisonment for 7 years.

Other dealings with inherently harmful information

- 2 (2) A person commits an offence if:
- (a) the person deals with information (other than by communicating it); and
 - (b) the information is inherently harmful information; and
 - (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note: The fault elements for this offence are intention for paragraph (2)(a) and recklessness for paragraphs (2)(b) and (c) (see section 5.6).

Penalty: Imprisonment for 3 years.

Information removed from, or held outside, proper place of custody

- (3) A person commits an offence if:
- (a) the person:
 - (i) removes information from a proper place of custody for the information; or
 - (ii) holds information outside a proper place of custody for the information; and
 - (b) the information is inherently harmful information; and

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Introduce a public interest element into this offence

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Introduce a public interest element into this offence

- (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note: The fault elements for this offence are intention for paragraph (3)(a) and recklessness for paragraphs (3)(b) and (c) (see section 5.6).

Penalty: Imprisonment for 3 years.

Failure to comply with direction regarding information

- 1 (4) A person commits an offence if:
 - (a) the person is given a direction; and
 - (b) the direction is a lawful direction regarding the retention, use or disposal of information; and
 - (c) the person fails to comply with the direction; and
 - (ca) the failure to comply with the direction results in a risk to the security of the information; and
 - (d) the information is inherently harmful information; and
 - (e) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note: The fault elements for this offence are intention for paragraph (4)(c) and recklessness for paragraphs (4)(a), (b), (ca), (d) and (e) (see section 5.6).

Penalty: Imprisonment for 3 years.

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122.4 Unauthorised disclosure of information by current and former Commonwealth officers etc.

- 2 (1) A person commits an offence if:
 - (a) the person communicates information; and
 - (b) the person made or obtained the information by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the person is under a duty not to disclose the information; and
 - (d) the duty arises under a law of the Commonwealth.

Penalty: Imprisonment for 2 years.

- 3 (2) Absolute liability applies in relation to paragraph (1)(d).

Sunset provision

- (3) This section does not apply in relation to any communication of information that occurs after the end of 5 years after this section commences.

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Introduce a public interest element into this offence

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Introduce a public interest element into this offence

ASIO Act 1979 (Cth)

Division 4—Special intelligence operations

35P Unauthorised disclosure of information

Disclosures by entrusted persons

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
 - (c) the person discloses the information; and
 - (d) the information relates to a special intelligence operation.

Penalty: Imprisonment for 5 years.

Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the *Criminal Code*.

- (1A) Strict liability applies to paragraph (1)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- ²(1B) A person commits an offence if:

- (a) the person is, or has been, an entrusted person; and
- (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
- (c) the person discloses the information; and
- (d) the information relates to a special intelligence operation; and
- (e) either or both of the following subparagraphs apply:
 - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation;
 - (ii) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.

Penalty: Imprisonment for 10 years.

Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the *Criminal Code*.

- (1C) Strict liability applies to paragraph (1B)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Other disclosures

- (2) A person commits an offence if:
- (a) the person discloses information; and
 - (b) the information relates to a special intelligence operation; and

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Introduce a public interest element into this offence

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Introduce a public interest element into this offence

- (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.

Penalty: Imprisonment for 5 years.

Note: Recklessness is the fault element for paragraphs (2)(b) and (c)—see section 5.6 of the *Criminal Code*.

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Australian Border Force Act 2015 (Cth)

Part 6—Secrecy and disclosure provisions

42 Secrecy

- 1** (1) A person commits an offence if:
 - (a) the person is, or has been, an entrusted person; and
 - (b) the person makes a record of, or discloses, information; and
 - (c) the information is Immigration and Border Protection information.

Penalty: Imprisonment for 2 years.

Intelligence Services Act 2001 (Cth)

Part 6—Miscellaneous

Division 1—Secrecy

39 Communication of certain information—ASIS

- (1) A person commits an offence if:
 - (a) the person communicates any information or matter that was acquired or prepared by or on behalf of ASIS in connection with its functions or relates to the performance by ASIS of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member or agent of ASIS; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASIS; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASIS; and

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- (c) the communication was not made:
 - (i) to the Director-General of ASIS or a staff member by the person in the course of the person's duties as a staff member; or

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Introduce a public interest element into this offence

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Introduce a public interest element into this offence

- (ii) to the Director-General of ASIS or a staff member by the person in accordance with a contract, agreement or arrangement; or
- (iii) by the person in the course of the person's duties as a staff member or agent, within the limits of authority conferred on the person by the Director-General of ASIS; or
- (iv) with the approval of the Director-General of ASIS or of a staff member having the authority of the Director-General of ASIS to give such an approval.

Penalty: Imprisonment for 10 years.

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39A Communication of certain information—AGO

- 1 (1) A person commits an offence if:
- (a) the person communicates any information or matter that was acquired or prepared by or on behalf of AGO in connection with its functions or relates to the performance by AGO of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of AGO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with AGO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with AGO; and
 - (c) the communication was not made:
 - (i) to the Director of AGO or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director of AGO or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director of AGO; or
 - (iv) with the approval of the Director of AGO or of a staff member having the authority of the Director of AGO to give such an approval.

Penalty: Imprisonment for 10 years.

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Introduce a public interest element into this offence

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Introduce a public interest element into this offence

40 Communication of certain information—ASD

- 1 (1) A person commits an offence if:
- (a) the person communicates any information or matter that was acquired or prepared by or on behalf of ASD in connection with its functions or relates to the performance by ASD of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of ASD; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASD; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and
 - (c) the communication was not made:
 - (i) to the Director-General of ASD or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director-General of ASD or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director-General of ASD; or
 - (iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General of ASD to give such an approval.

Penalty: Imprisonment for 10 years.

40B Communication of certain information—DIO

- (1) A person commits an offence if:
- (a) the person communicates any information or matter that was acquired or prepared by or on behalf of DIO in connection with its functions or relates to the performance by DIO of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of DIO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with DIO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DIO; and
 - (c) the communication was not made:
 - (i) to the Director of DIO or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director of DIO or a staff member by the person in accordance with a contract, agreement or arrangement; or

- (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director of DIO; or
- (iv) with the approval of the Director of DIO or of a staff member having the authority of the Director of DIO to give such an approval.

Penalty: Imprisonment for 10 years.

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40C Unauthorised dealing with records—ASIS

- 1 (1) A person commits an offence if:
- (a) the person engages in any of the following conduct (the *relevant conduct*):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member or agent of ASIS; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASIS; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASIS; and
 - (c) the record:
 - (i) was acquired or prepared by or on behalf of ASIS in connection with its functions; or
 - (ii) relates to the performance by ASIS of its functions; and
- 2 (d) the relevant conduct was not engaged in:
- (i) in the course of the person's duties as a staff member or agent; or
 - (ii) in accordance with a contract, agreement or arrangement with ASIS; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General of ASIS; or
 - (iv) with the approval of the Director-General of ASIS or of a staff member having the authority of the Director-General of ASIS to give such an approval.

Penalty: Imprisonment for 3 years.

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Introduce a public interest element into this offence

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Introduce a public interest element into this offence

40D Unauthorised recording of information or matter—ASIS

- 1 (1) A person commits an offence if:
- (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member or agent of ASIS; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASIS; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASIS; and
 - (c) the information or matter:
 - (i) was acquired or prepared by or on behalf of ASIS in connection with its functions; or
 - (ii) relates to the performance by ASIS of its functions; and
 - (d) the record was not made:
 - (i) in the course of the person's duties as a staff member or agent; or
 - (ii) in accordance with a contract, agreement or arrangement with ASIS; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General of ASIS; or
 - (iv) with the approval of the Director-General of ASIS or of a staff member having the authority of the Director-General of ASIS to give such an approval.

Penalty: Imprisonment for 3 years.

40E Unauthorised dealing with records—AGO

- (1) A person commits an offence if:
- (a) the person engages in any of the following conduct (the *relevant conduct*):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member of AGO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with AGO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with AGO; and
 - (c) the record:

- (i) was acquired or prepared by or on behalf of AGO in connection with its functions; or
- (ii) relates to the performance by AGO of its functions; and
- (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) by the person in accordance with a contract, agreement or arrangement with AGO; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of AGO; or
 - (iv) with the approval of the Director of AGO or of a staff member having the authority of the Director of AGO to give such an approval.

Penalty: Imprisonment for 3 years.

40F Unauthorised recording of information or matter—AGO

- 1 (1) A person commits an offence if:
 - (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of AGO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with AGO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with AGO; and
 - (c) the information or matter:
 - (i) was acquired or prepared by or on behalf of AGO in connection with its functions; or
 - (ii) relates to the performance by AGO of its functions; and
 - (d) the record was not made:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with AGO; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of AGO; or
 - (iv) with the approval of the Director of AGO or of a staff member having the authority of the Director of AGO to give such an approval.

Penalty: Imprisonment for 3 years.

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Introduce a public interest element into this offence

40G Unauthorised dealing with records—ASD

- 1 (1) A person commits an offence if:
- (a) the person engages in any of the following conduct (the *relevant conduct*):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member of ASD; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASD; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and
 - (c) the record:
 - (i) was acquired or prepared by or on behalf of ASD in connection with its functions; or
 - (ii) relates to the performance by ASD of its functions; and
 - (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with ASD; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General of ASD; or
 - (iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General of ASD to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—record lawfully available

(2)

40H Unauthorised recording of information or matter—ASD

- (1) A person commits an offence if:
- (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of ASD; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASD; or

- (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and
- (c) the information or matter:
 - (i) was acquired or prepared by or on behalf of ASD in connection with its functions; or
 - (ii) relates to the performance by ASD of its functions; and
- (d) the record was not made:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with ASD; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General of ASD; or
 - (iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General of ASD to give such an approval.

Penalty: Imprisonment for 3 years.

40L Unauthorised dealing with records—DIO

- (1) A person commits an offence if:
 - (a) the person engages in any of the following conduct (the *relevant conduct*):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member of DIO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with DIO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DIO; and
 - (c) the record:
 - (i) was acquired or prepared by or on behalf of DIO in connection with its functions; or
 - (ii) relates to the performance by DIO of its functions; and
 - (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with DIO; or

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- (iii) by the person acting within the limits of authority conferred on the person by the Director of DIO; or
- (iv) with the approval of the Director of DIO or of a staff member having the authority of the Director of DIO to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—record lawfully available

40M Unauthorised recording of information or matter—DIO

- 1 (1) A person commits an offence if:
- (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of DIO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with DIO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DIO; and
 - (c) the information or matter:
 - (i) was acquired or prepared by or on behalf of DIO in connection with its functions; or
 - (ii) relates to the performance by DIO of its functions; and
- 2 (d) the record was not made:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with DIO; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of DIO; or
 - (iv) with the approval of the Director of DIO or of a staff member having the authority of the Director of DIO to give such an approval.

Penalty: Imprisonment for 3 years.

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Introduce a public interest element into this offence

Number: 2 Author: ABC Date: 2/07/2019 12:30:00 PM +10'00'
Introduce a public interest element into this offence

3. RAISE THE BAR FOR SEARCH WARRANTS & PROTECT CONFIDENTIAL SOURCES

Crimes Act 1914 - SECT 3E

When search warrants can be issued

(1) An issuing officer may issue a warrant to search premises if the officer is satisfied, by [information](#) on oath or affirmation, that there are reasonable grounds for [suspecting](#) that there is, or there will be within the next 72 hours, any evidential material at the premises.

EVIDENCE ACT 1995 – PART 3.10; DIVISION 1C

SECT 126J

Definitions

(1) In this Division:

"informant" means a person who gives information to a [journalist](#) in the normal course of the [journalist](#)'s work in the expectation that the information may be published in a [news medium](#).

"journalist" means a person who is engaged and active in the publication of news and who may be given information by an [informant](#) in the expectation that the information may be published in a [news medium](#).

"news medium" means any medium for the dissemination to the public or a section of the public of news and observations on news.

SECT 126K

Journalist privilege relating to identity of informant

(1) If a [journalist](#) has promised an [informant](#) not to disclose the [informant](#)'s identity, neither the [journalist](#) nor his or her employer is compellable to answer any question or produce any document that would disclose the identity of the [informant](#) or enable that identity to be ascertained.

(2) The court may, on the application of a [party](#), order that [subsection](#) (1) is not to apply if it is satisfied that, having regard to the issues to be determined in that proceeding, the public interest in the disclosure of evidence of the identity of the [informant](#) outweighs:

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Introduce a procedure by which journalists are notified in advance of an application; journalists can object to the application; the application is determined by a judge weighing public interest considerations; confidential source information is excluded

(a) any likely adverse effect of the disclosure on the [informant](#) or any other person; and

(b) the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

(3) An order under [subsection](#) (2) may be made subject to such terms and conditions (if any) as the court thinks fit.

Extended application of Division 1C

(1) This section applies if, in response to a disclosure requirement, a person claims that they are not compellable to answer any question or produce any document that would disclose the identity of the [informant](#) (within the meaning of [section 126K](#)) or enable that identity to be ascertained.

(1A) A [party](#) that seeks disclosure pursuant to a disclosure requirement may apply to the court for an order, under [section 126K](#), that [subsection 126K\(1\)](#) does not apply in relation to the information or document.

(2) In this section, *disclosure requirement* means a court process or court order that requires the disclosure of information or a document and includes the following:

- (a) a summons or subpoena to produce documents or give evidence;
- (b) pre-trial discovery;
- (c) non-party discovery;
- (d) interrogatories;
- (e) a notice to produce;
- (f) a request to produce a document under Division 1 of Part 4.6.

Strengthen the privilege to remove gaps in its application to journalism and to make it plain that it applies to search warrants