

SUBMISSION

To: Senate Environment and Communications Reference Committee (Press Freedom)

From: Andrew Fowler, former reporter, ABC Four Corners

There is an urgent need in Australia for strong laws that protect journalists from prosecution under the variety of surveillance and security laws which exist in this country. The failure to introduce these shield laws, I believe, puts Australia on a dangerous trajectory where the government of the day, and only the government of the day, will provide information to the public on matters of grave public importance.

Anti-terrorism and surveillance laws are having a chilling effect on revelatory journalism. It is questionable whether Andrew Wilkie would have been able to blow the whistle on the Iraq War on national television – given the nature of the new laws.

To anyone interested in protecting and encouraging the work of journalists, my view is that tinkering with laws that govern how security agencies operate might be worthwhile in part – and provide some safeguards- but overall they produce limited benefits.

The main focus should be to protect journalists – and give them the right to publish/broadcast material which clearly has a public benefit. This has a dual benefit. It assists the source by blocking the more obvious route to find them, and at the same time protects journalists from surveillance or intrusion – except in the most extreme cases where national security is truly threatened.

Australian journalists are among the least protected among the Five-Eyes intelligence sharing nations. The US has the First Amendment which to a certain extent protects journalists. In the UK, the European Court of Human Rights and decisions by the European Court protect many journalist activities, particularly when dealing with sources. Unfortunately Australia has embraced

many elements of the extreme surveillance and security laws passed by the UK and the US, but has provided its citizens with few of protections. Australia has the worst of both worlds.

A clear and concise definition of 'national security' would be greatly beneficial in this debate.

The last 4 Corners program I reported was about national security.

We spoke to a number of people and it was clear ASIO was keen to demonstrate that Australia was threatened by foreign nations, keen to steal our intellectual property. There had recently been a report in the United States which provided evidence that China had been behind a series of cyber attacks against large US corporations.

We decided to examine if this kind of activity was mirrored in Australia. Many people in the security business told us it was and we were encouraged to produce a report which would prod Australian businesses into taking serious action against this threat.

Yet providing examples of companies which had been affected proved difficult. No one wanted to admit that they had been hit and the companies were under no obligation to reveal their intellectual property might have been compromised. Since this kind of attack might affect the share price if it was made public, it was certainly in share-holders interests to know – and by extension the general public.

As we carried out our investigation we discovered that it wasn't just Australian companies – and government departments - which had been hit by overseas cyber-attacks, stealing material for example from BlueScope Steel and a telecommunications company in South Australia (see attached 4Corners transcript) but ASIO itself had lost control of the blue print of its new headquarters. It had been found on a server in China.

We believed it was certainly in the public interest that Australian companies were made aware of the level of threat posed to them. It was also important that they knew that even the organization charged with their cyber safety had also been compromised.

Shortly after the program went to air the AFP launched an investigation.

<https://www.abc.net.au/4corners/hacked/4717206>

The AFP wrote to the ABC demanding our source material, including travel documents and unedited tapes etc. They threatened a warrant under S3E of the Crimes Act (1914) . The ABC's legal department put up a spirited defence and in the end the investigation went away.

It was never clear who demanded the investigation, but the Prime Minister of the day Julia Gillard had denied the veracity of the story in Parliament – only to have her argument undercut by Senator George Brandis. After being briefed by ASIO , Senator Brandis broke with convention not to comment on intelligence matters, and confirmed the 4 Corners report

<https://www.abc.net.au/news/2013-05-29/brandis-briefed-by-asio-on-china-hacking-claims/4719886>

It wasn't clear to me then, and it is no clearer now, whose interests were served by this attack on the ABC and 4 Corners. What I do know is that the government misled the Australian people. Without robust action to protect journalists, there will almost certainly be more of the same. How many journalists will be prepared to expose government wrong-doing and failure in areas of surveillance and security and risk jail for doing their job?

