

July 2019

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

Submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press.

I note that the terms of reference for this enquiry state that:

The Committee is to inquire and report back to both Houses of Parliament on the following matters:

- 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:*
 - 1. whether and in what circumstances there could be contested hearings in relation to warrants authorising investigative action in relation to journalists and media organisations.*
 - 2. the appropriateness of current thresholds for law enforcement and intelligence agencies to access electronic data on devices used by journalists and media organisations.*

The Committee is to report back to both Houses of Parliament by 17 October 2019.

As I'm not a journalist, I'll focus primarily on items c) and d) in the terms of reference. Further, I'll take advantage of the wording of item d) in the terms of reference ("*Without limiting the other matters that the Committee may consider ...*") to recommend that the committee **not** restrict its report to the impacts of the powers of law enforcement or intelligence agencies only to journalists work.

It is my contention that journalists should not be "provided" special provisions in the legislation, and that the same laws (and special provisions) should apply to everyone. That contention in no way contradicts that I consider the recent actions of security and law enforcement agencies in Australia (with respect to the recent (ABC, News Corp) media raids and whistle-blower prosecutions (ATO, Witness K, ...)) to be unacceptable (or even reprehensible!) in an open and democratic society. I'll explain my reasoning below.

The committee must (in my opinion) consider the implications of the powers of law enforcement or intelligence agencies on any party disclosing information in the public interest (a whistle-blower) – whether or not that interest is national, regional, local, or even in the interests of minority groups. Carving out provisions only for journalists does not protect their sources from investigation or prosecution, and journalists must not become the only viable channel through which a whistle-blower can disclose information in the public interest. Other channels through which information could be disclosed in the public interest might include (but must not be limited to) an ombudsman,

politicians, police, labour unions, or environmental groups. Any individual or group that has an interest in exposing information in the public interest or prosecuting wrong-doing should be equally protected under legislation. It must be possible for individuals involved with such disclosures to remain anonymous should they choose to do so.

In relation to the terms of reference – point c):

It should never be acceptable that "wrongs" or information in the public interest can be hidden behind national, or for that matter, corporate security and secrecy provisions. The first test in any investigation of information disclosures must be whether the disclosure satisfies the conditions of public interest. Only if the disclosure fails that test should any investigation proceed further. Public interest should include any actions which would be judged to be illegal, corrupt, biased, or likely outrage community or society (eg. abuse of power, internal reports or actions which conflict with the public perception (think Tobacco industry, gas exploration, ...), communications or actions of subversive elements, ... (I'm not a lawyer, but I'm sure others could better define what would be in the public interest).

In relation to the terms of reference – point d) (other matters that the Committee may consider ...):

Australia (indeed, any democracy) needs strong "whistle blower" legislation so that any wrong-doing by any entity, or information in the public interest, can be brought into the light - to the attention of society and authorities. Protections should exist for those who make factual disclosures in the interest of Community, Society, Environment, or Nation. Any legislation to address this situation should not provide special case provisions (such as for journalists for example) - it should apply equally to anyone associated with the disclosure.

In relation to the terms of reference – point d) sub-point 2) (the appropriateness of current thresholds ...):

I commend the committee to (re)consider the numerous submissions to it's (3) previous reviews specifically targeting the legislation itself. I contend that significant parts of the legislation should be repealed, and that it does not provide appropriate protections and reporting provisions to limit the abuse of the extensive powers granted.

To *misquote* Edmund Burke (ref: <https://quoteinvestigator.com/2010/12/04/good-men-do/>) - "The Only Thing Necessary for the Triumph of Evil is that Good People Won't *or Cannot* Act", or to misquote Thomas Jefferson - "All tyranny needs to gain a foothold is for men of good conscience to be silent *or silenced.*" - *my emphasis.*

A fearful and timid public is a pre-requisite for a corruption and misconduct. The current legislation has demonstrably been applied to intimidate potential whistle blowers. Without strong whistle blower protections, this legislation will inevitably lead to corruption and criminal conduct because no-one will be able to safely expose such conduct. Legislation in a democracy should work towards transparency in its' intent and application.

A number of commentators have commented that our current legislative path is headed in the opposite direction – marching Australia towards a Police State. One respected international commentator asked "Is Australia the world's most secretive democracy" (New York Times, 5 Jun 2019: <https://www.nytimes.com/2019/06/05/world/australia/journalist-raids.html>). The former human rights commissioner Gillian Triggs said, Australia is now the least observant and the most repressive of the Western democracies. (PM, ABC Radio, 5 June, 2019) This is not the direction we should accept.

The government and the security agencies are fond of saying that "if you have nothing to hide, you have nothing to fear". Let us make sure that they also live by that motto.

Regards,
Peter Jardine