

A stylized map of Australia is centered on the page. The map is light gray and has the words "AUSTRALIAN PRESS COUNCIL" overlaid on it in a bold, black, serif font. The text is arranged in three lines: "AUSTRALIAN" on the top line, "PRESS" on the middle line, and "COUNCIL" on the bottom line. The map is partially obscured by two solid black horizontal bars, one above and one below the text.

**AUSTRALIAN  
PRESS  
COUNCIL**

A small, light gray map of the state of Victoria is positioned in the bottom right corner of a solid black horizontal bar.

**SUBMISSION**

**4 April 2005**

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Professor Ken McKinnon

**Executive Secretary**  
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Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
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April 5, 2005

Dear Sir or Madam,

Re **Inquiry into the provisions of the  
*National Security Information Legislation Amendment Bill 2005***

Thank you for inviting the Australian Press Council to express its views with respect to proposed amendments to the *National Security Information (Criminal Proceedings) Act 2004*.

I have attached, for the consideration of the Legal and Constitutional Committee, the Press Council's submission in response to your invitation. The Council would be grateful if the Committee would include this submission in its deliberations.

I would be happy to appear before the Committee to comment upon issues raised in the Council's submission. On behalf of the Press Council, I express our gratitude for the opportunity to participate in the Committee's review of the proposed amendments to the Act.

Yours faithfully,

A handwritten signature in black ink that reads "Ken McKinnon". The signature is written in a cursive, slightly slanted style.

Professor Ken McKinnon  
Chairman  
Australian Press Council

# **Australian Press Council Submission to the Australian Senate Legal and Constitutional Committee Inquiry into the *National Security Information Legislation Bill 2005***

## **Executive summary**

The *National Security Information (Criminal Proceedings) Act 2004* presents a threat to freedom of the press in Australia. The *National Security Information Legislation Bill 2005* would extend that threat. The Australian Press Council is of the view that the Senate should amend this bill so as to reduce the potential of the Act to limit freedom of speech.

- The definition of national security is too broad and should be narrowed.
- It should be an offence to issue certificates under the Act for an improper purpose.
- The media should be given standing to make representations to the court as to whether a hearing should proceed in camera.
- A sunset clause should be inserted into the Act.
- There should be no extension of the power to make regulations without the scrutiny of parliament.

**Australian Press Council Submission to the Australian Senate  
Legal and Constitutional Committee Inquiry into the  
*National Security Information Legislation* Bill 2005**

In principle, the Australian Press Council has no objection to the inclusion of civil proceedings within the ambit of the *National Security Information (Criminal Proceedings) Act* 2004. However, the Australian Press Council is concerned that the legislation poses a significant threat to free speech.

The definition of “national security” in the *National Security Information (Criminal Proceedings) Act* remains too broad. As we stated in our previous submission, this definition extends to include Australia’s economic and political relations with other countries and has the potential to include within its scope a broad range of types of information which not only relate to matters of public interest but are themselves proper matters for public debate. This definition should be formulated so as to restrict the scope of the legislation to matters of defence, including terrorism and its prevention.

The Australian Press Council reiterates its concern that certificates could be issued under the legislation for an improper purpose, such as the concealing of incompetence or misconduct or to avoid disclosure under freedom of information legislation. A clause should be included in the legislation which would make it an offence to issue a certificate for an improper purpose. Such a clause would deter potential abuse of the procedure. If a certificate has been issued improperly, that should be the basis of a defence to any prosecution for disclosing information contrary to the Act.

In our previous submission to the committee the Council proposed that the media be given standing under the Act to make representations at hearings held to determine whether information should be disclosed or whether proceedings should be held in camera. Clause 38I(2) of the *National Security Information Legislation Bill* 2005 provides that the only persons entitled to be present at such hearings would be the presiding judicial officer, court officials, the parties and their legal representatives, the Attorney-General and any witnesses. That is, the media would be specifically excluded under this provision, regardless of whether or not they held security clearances. Members of the media should not automatically be excluded. The Council also reiterates its view that the media should have standing to address the court as to whether proceedings should be held in camera. When the court is deliberating whether to hold proceedings in camera, the court should be required to balance any risk to security against the public interest in having information in the public domain. A matter should only proceed in camera where the public interest is demonstrably outweighed by any risk to security.

The Australian Press Council also notes that clause 38C(1) of the *National Security Information Legislation Bill* 2005 would permit the regulations (which are issued by the Governor General under s 49 of the Act) to prescribe the way in which documents subject to the Act may be accessed. It is a concern that this provision would allow the government, via the Governor General, to issue regulations which could potentially have the effect of restricting public access to documents. The Australian Press Council believes that any mechanism which holds the potential to restrict access to information should only come into existence if it has the direct scrutiny of parliament.

Any mechanism which bypasses parliamentary scrutiny should be strictly limited in scope. There should be no extension of the existing power to make regulations.

The Press Council recognizes that the *National Security Information (Criminal Proceedings) Act* was passed in an atmosphere of increased threat to Australia's security. However, given the long-term potentially oppressive nature of the legislation we urge the parliament to insert a sunset clause into the Act which requiring that it lapse in 2007 and, if still needed, be renewed, but only after full parliamentary debate and limited to three year terms on each occasion.