

Australia is a world-beater in the secrecy Olympics

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It comes as no surprise that the Australian Federal Police has begun to raid journalists. The events of last week are the culmination of nearly two decades of lawmaking by our national parliament. Our elected representatives have armed the police and intelligence agencies with formidable powers that can be used against the media. They have simply begun to use them.

Our politicians have sold these laws on the basis that they are needed to protect the community from terrorism and foreign interference. Strong laws are needed in these areas, but they do not justify absolute government secrecy. Nor are they a reason for jailing journalists who report in the public interest. In fact, the converse is true. The greater the power conferred on government, the greater the need for a strong media.

Australia leads the world in enacting national security and counter-terrorism laws. About 75 have been passed by our federal parliament since September 11, 2001. This far exceeds the number of similar laws passed by Britain and the US. Our laws also differ because they go further in heightening government secrecy. They represent an assault on freedom of the press unique to Australia.

Australia has a statute book littered with laws that enable sources to be identified, whistleblowers to be shut down and journalists to be jailed. Time after time when politicians were questioned about these laws, they said that they would not be used against the media.

They said these laws were about combating terrorism, and that our leaders could be trusted to ensure that over-broad powers were not used to damage our democracy. Basing freedom of the press on trusting those who have the most to gain from muzzling the media was never a wise idea.

The focus over recent days has been on laws that permit the police to seize data and documents from journalists in aid of prosecuting people who reveal government secrets. Many laws now permit this. For example, section 35P of the ASIO Act makes it a criminal offence to disclose information about special intelligence operations in which ASIO officers are granted immunity from civil and criminal liability.

A person can be jailed for up to five years merely for disclosing information about such an operation. There is no exception for reporting in the public interest.

Of even greater concern are laws that undermine media freedom in secret. One example is the ability of enforcement agencies to access the metadata of journalists, including things like mobile phone records. This information can be accessed to identify the source of a media story without notifying the journalist. The information can then be used to prosecute people who have supplied information to the journalist.

Another example is the power held by ASIO allowing it to compel any person, including journalists, to answer questions for the purpose of gathering intelligence. A person may even be detained in secret for up to a week. A journalist will face jail for up to five years if they fail to answer every question put to them. Any person who writes or tweets about the use of this power faces another five years.

I could go on with other examples, many of which were forgotten once the debate over each law died down. Yet these laws remain in force, and can be used at the discretion of the authorities.

Put together, their impact and scope is shocking in showing how far media freedom has deteriorated. They are the sorts of laws one might expect in a police state rather than a democracy like Australia.

We can thank our politicians for these laws. They have used the fear of terrorism and threats to community safety to enact laws that shield government from scrutiny. Our liberties have had too few defenders. Each of the laws that restrict media freedom and freedom of speech has been passed with bipartisan support. Parliament has long ceased to be the protector of our democratic rights.

Australia's legal landscape has made this possible. We are the only democratic nation without strong national protection for freedom of speech and of the press.

The best we have is an implied freedom of political communication derived from our Constitution. But this has been applied rarely by the High Court, and is likely to be of limited value where national security and the media are concerned.

We lack anything like the first amendment to the US constitution, which states in unequivocal terms that "congress shall make no law ... abridging the freedom of speech, or of the press". Nor do we possess the protections of free speech found in Britain's Human Rights Act 1998, the Canadian Charter of Rights and Freedoms 1982 or the New Zealand Bill of Rights Act 1990.

Laws such as these make a difference. They counterbalance the desire of governments to keep embarrassing and damaging material secret. They also provide legal backing to the media in reporting such information.

If we want to avoid more raids and the further erosion of media freedom, we must convince parliament to enact long overdue protection for freedom of speech and of the press.

George Williams is dean of law at the University of NSW.