

## **State of secrecy in Australia a scandal for a modern democracy**

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Who believes a free and open press is a fundamental pillar of our democracy? According to submissions to the federal parliamentary inquiry into the impact of the exercise of law enforcement and intelligence powers on freedom of the press, everyone. Australian Federal Police: tick. Australian Signals Directorate: tick. Office of National Intelligence: tick. Department of Home Affairs: tick. Attorney-General's Department: tick. ASIO? Classified. Of course. The problem, however, is that in recent years many legal provisions that undermine and threaten the public's right to know have been passed by parliament under the guise of national security concerns and national security legislation. Since 2001, for instance, 75 pieces of counter-terrorism legislation have been enacted. Australia's Right to Know coalition, including our publisher News Corp Australia, argues that with each new law, "the tide of secrecy rises". It threatens to drown us in ignorance.

The June AFP raids on the home of News Corp's Annika Smethurst and the ABC's Sydney headquarters were the catalyst for the inquiry. The raids, over stories published and broadcast in April last year and July 2017, respectively, were intimidatory. The aim of current laws is to stop journalists doing their jobs, telling stories, by threatening them with criminal charges and jail. The justification is national security or counter-terrorism, but the reality is very few instances involve public safety. Instead, as the media coalition argues, the threats exist to stop reporting of "uncomfortable or unpleasant realities". The laws have everything to do with the exercise of power and the avoidance of scrutiny — usually simply to save public servants and politicians from embarrassing disclosures.

We often hear about a balancing act between the public's right to know and the control of government information. But as the laws stand — and there are many beyond the narrow scope of the Joint Committee on Intelligence and Security inquiry — there is no balance or proper accountability. Unlike the US and Britain, we have no explicit rights to free speech, a free media and access to information. As University of NSW dean of law George Williams wrote yesterday, a stronger counterbalance is required, with the parliament enacting clear, positive protection for freedom of speech and freedom of the press that ensures national security and other laws are applied to respect these freedoms — not as an afterthought but as an active consideration at the start of the process of making new laws. In the meantime, there is a lot of work to do to repair existing laws that are defective in promoting the public's right to know.

In its submission, the coalition — which includes Nine Entertainment Co and the ABC — calls for quick and decisive action in six areas. First, the right for journalists and media outlets to contest the application for warrants. Second, adequate protection for public sector whistleblowers. Third, a new regime that limits which documents can be classified as secret. Fourth, a properly functioning Freedom of Information system. Fifth, exemptions for journalists from legislation, including recent anti-terrorism and security laws, that would put them in jail for doing their jobs. Sixth, defamation law reform, including standardisation between jurisdictions, upgrades to cover digital news reports and social media posts, and effective summary dismissal procedures.

The inquiry cannot address the breadth of concerns at play. We hope the Morrison government is not merely paying lip service to these issues, ultimately invoking the bogey of national security to stymie urgent reform. As we have argued in this space at length, this is not an issue

about journalists' anxiety, media profitability or giving reporters a status to break laws that other citizens must obey. The laws are flawed and we are the targets — unwitting, some would say, but we are in the reality business — and this has a chilling effect on the free flow of information. News Corp Australasia executive chairman Michael Miller told the inquiry yesterday the many laws criminalising journalism are “creating a secret society that most Australians would not recognise as ours”. “We may not be living in a police state but we are living in an ever-increasing state of secrecy,” he said. These provisions stop us from knowing what governments are doing in our name, with our money. For all the official sentiments about freedom, these laws are eroding our democracy.