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Editorial

DR AMANDA DAVIES

Editor, Interim Program Chair Policing and Security and Assistant Professor at the Rabdan Academy, Abu Dhabi



This publication is dedicated to placing the media criticisms, politician commentaries, AFP response into a helpful order to enable a level of clarity around what is reported to have occurred to date and why.

Welcome to the second edition for 2019. In the last edition we were alerted to early indications suggesting that 2019 was going to be a very interesting year, specifically on the legal landscape. In the last edition we explored client lawyer confidentiality, use of police informants and indications of the nexus between these areas in the Lawyer X revelations.

This edition is dedicated to recent events relating to the execution of search warrants by the Australian Federal Police in relation to two separate investigations into the alleged unauthorised disclosure of national security information and the subsequent criticism of police by politicians and the media.

In this edition we have the legislators, politicians, judiciary, law enforcement, media, civil liberty advocacies and interested parties trying to navigate through the conundrum between national security and media freedom in Australia.

This publication is dedicated to placing the media criticisms, politician commentaries, AFP response into a helpful order to enable a level of

clarity around what is reported to have occurred to date and why.

A brief professional view of the general circumstances which led to the political and media debate is provided by Mr Romi Gyergyak, Detective Superintendent (Rtd). It is a helpful starting point to then read the subsequent commentary which has been placed in chronological date order.

The media releases, media interviews of various senior politicians and the Acting AFP Commissioner demonstrate the immensity and volatility of the situation. Indeed, the World's media also entered into the domestic debate condemning the police raids on the ABC and the home of journalist Annika Smethurst as an attack on press freedom. One such commentary by Geoffrey Robertson QC on ABC radio suggested AFP Commissioner Andrew Colvin should be called to report to parliament on the events.

Whilst not available at this point, it is anticipated a wealth of scholarly articles debating the key issues of these events will emerge in the near future.

In this edition we provide an edited extract from a new book by Johan Lidberg and Denis Muller (eds), In the name of security: Secrecy, surveillance and journalism, published by Anthem Press. The book contains a number of scholarly articles in relation to the

increase in national security laws and the new and weighty ethical challenges for journalists - The book identifies that the ethical principles involved are universal among democracies - In addition to source-protection, these challenges include deciding how far, and in what circumstances, a journalist may ethically break the law in order to inform the public.

An additional article by Denis Muller identified four laws with potential for urgent change to protect both national security and press freedom.

At this preliminary stage, information in the public domain in consideration of this conundrum falls into two categories:

1. current legislation and legal argument; and
2. public commentary positive and negative towards all parties involved.

There are public calls for an inquiry into the actions of the AFP and the officers involved. If this occurs, there will be those in the media, legal fraternity, police and national security agencies who will discuss and debate the multitude of scenarios which could be considered in determining any recommendations.

Whilst we follow this evolving situation, it is hoped all remain vigilant not to lose sight of the continual commitment by our police officers in executing their lawful obligations and duties by enforcing the Rule of Law in this country.

POLICE BASHING

- HERE WE GO AGAIN

- POLITICAL POINT SCORING AT THE EXPENSE OF POLICE AND THE POLICING PROFESSION

ROMI GYERGYAK

Detective Superintendent (Rtd)

We wonder why we are seeing more violent physical attacks on police officers in Australia by youths, teenage gangs etc. But no one looks at the rhetoric attacking the police profession that is constantly being thrown around by politicians and the media, the first to gain political point scoring and the latter to increase profits for media moguls. Loss of respect for the rule of law and of the police officers that enforce it, is hardly surprising when public confidence in the laws and the policing profession is constantly eroded by those who have the power to influence.

We have seen the media, politicians and the legal fraternity attack the lawful and legitimate use of police informants in relation to the alleged "lawyer X" scandal. Notwithstanding a number of reviews clearing the officers involved of any criminal wrongdoing and notwithstanding that the Victoria Police sometime ago improved its internal policies in regards to police informants who by their profession may have access to privileged or confidential information, there is now an expensive Royal Commission into the Management of Police Informants conducting yet a further review.

In the Victoria Police situation the police were utilising a legal and legitimate investigative tool - the use of registered informants. Yet the media and the legal fraternity has been constantly attacking the policing profession over this legitimate investigative tool to the point that a Royal Commission has been established.

Recently we have seen the Australian Federal Police attacked by certain political leaders lighting the flame for a

full on assault of the AFP by the media and the legal fraternity. What was their crime? Executing lawfully obtained search warrants on the home and offices of certain journalists. The warrants were in relation to two separate investigations into the alleged unauthorised disclosure of highly classified national security information that was referred to the AFP by two Commonwealth agencies.

The AFP was also utilising a legal and legitimate investigative tool - Search Warrants. Again the politicians, the media and the legal fraternity has been attacking the police profession over this legitimate investigative tool and are calling for an Inquiry into the AFP and the use of search warrants on the media. Sounds familiar!

So the police officers are the 'piggys in the middle' so to speak. The policing profession is under attack once again when the police service and the police officers involved have only acted in accordance with the lawful powers given to them under legislation and the law.

Regarding the current Media Vs AFP Saga it is interesting to see how the new Labor Leader Anthony Albanese inflamed the situation for political mileage. The media then went into melt down criticising the actions of police. It is interesting to note that the Opposition Leader's rhetoric changed from attacking the police to attacking the government and then eventually when it was discovered that it was his own Shadow Attorney General that had originally called on the Government to investigate the unauthorised disclosure of the national security information of which one of

the warrants related too, that the Labor Opposition Leader suddenly stopped his rhetoric.

On the day of the execution of the warrant on the ABC on the 5 June 2019 the new Labor Leader Anthony Albanese on Radio 2GB with Chris Smith unequivocally stated in relation to journalist Annika Smethurst's case:

"She had seven police arrive at her home, go through every room in her house, for seven and a half hours. Quite frankly, that is over the top and there's got to be an explanation for why that occurred, and how any authority believes that such heavy handedness is appropriate."

As his rhetoric continued over a number of days Mr Albanese attempted to rewrite history claiming that he did not criticise the police authority or the actual police officers involved in the search warrant relating to the Annika Smethurst's case.

On 6 June 2019 shadow Attorney General Mark Dreyfus accused Prime Minister Scott Morrison of 'letting this happen' and said Mr Morrison did not believe in press freedom. 'they are mincing words, Mr Dreyfus told ABC radio. *'The government is responsible for this. These are government documents. This is government information. The government referred this to the Australian Federal Police.'*

The Shadow Attorney General Mr Dreyfus failed to mention that in 2018 he wrote to the then Prime Minister Malcolm Turnbull to urge him to convene an investigation into how secret government documents were leaked to senior News

Corp reporter Annika Smethurst. Whilst Mr Dreyfus did not specifically request a AFP investigation he said 'the damaging leak risked undermining Australia's national security and asked Mr Turnbull to order an investigation. *'I am sure I do not need to emphasise with you the gravity of such a security breach' he wrote. 'The document described in the media appear to be extremely sensitive and divulge information about one of Australia's key security agencies.. It is therefore incumbent upon you to establish an investigation into how sensitive information held by members of your government was able to find its way into the public domain... Ensuring this sort of breach cannot occur again is vital for securing the trust that Australians place in government on matters of national security'.*

Like the Opposition Leader Mr Albanese, the Shadow Attorney General have argued that Smethurst's reporting was in the national interest. Whilst Mr Dreyfuss argued in his 2018 letter that the leak was a national security matter, he now says it does not threaten national security. Once again, never let the truth get in the way of political point scoring.

Let us not forget the inherent Rule of Law considerations that underpin this great Country that reiterate that no one is beyond the law; a crime has been committed by those who provided the classified documents to the media; the media release of these documents are in themselves an unauthorised disclosure; the AFP exercised its rightful duty and responsibility; the independence of the Office of Commissioner was upheld; (which the media so often questions) and the search warrants were authorised by independent Officers of the Courts in two separate jurisdictions.

So why has the Opposition Leader and the media attacked the police for carrying out their lawful duty? Just another political and media beatup of police and the policing profession.

And of course, never let the truth get in the way of a good story! To call the execution of the Search Warrant by appointment at the ABC, negotiated over a number of months between legal representatives, as a police raid is once again a political and media beatup.

ABC Chair, Ms Buttrose, in her first public statement after the execution of the search warrant on the ABC said *"the public nature of the raid and the wide-*

ranging scope of the search warrant were clearly designed to intimidate the ABC and its journalists". This statement was clearly a "beat up" of police. The inflammatory rhetoric of Ms Buttrose is highly inappropriate for a person in her standing. She was aware that the execution of the warrant was by a planned appointment. It was only "public" in nature because the ABC ensured that ABC film crews were present to film the execution of the "warrant by appointment". - Hardly a Police Raid!

Ms Buttrose met with the Communication Minister Paul Fletcher to raise *"grave concerns"* about the federal police execution of the warrant on the ABC. Ms Buttrose publicly announced that she had met with the Communications Minister and had *"asked for his assurance the ABC would be spared from such raids in the future".*

Ms Buttrose, as head of the ABC, by all means complain to the Communications Minister and seek assurances that it won't happen again. Remember the Minister does not have any legitimate sway or say over the AFP. Nor should any member of the Executive dictate same. It's called Separation of Powers, Rule of Law! Indeed, what Ms Buttrose is seeking is indeed political interference of the independent office of Commissioner/Constable! Something, one would think, diminishes the Rule of Law, not strengthen it.

We are all equal under the law and to suggest that certain people or organisations should be untouchable should be of great concern to all Australians. If the media organisations and journalists are entitled to such privileged status should politicians be exempt, judges, lawyers, priests? It is a nonsensical argument. There are legitimate defences enshrined in legislation, particularly for journalists in relation to disclosure of national security information, but they are a defence once a criminal charge is before the Court. The proper and impartial investigation of criminal allegations, including the execution of search warrants, should not be fettered.

And why has the attacks on police and then the government by the Opposition Leader suddenly gone quiet? Simple. It was never about freedom of the press. It was about political point scoring. When the professional journalists started to do investigative journalism it did not

take long for the truth to be uncovered - that it was indeed the Labor Opposition that had sort from the Government a referral for a police investigation into the alleged leak of those same national security documents of which the Opposition Leader Anthony Albanese had been defending the unauthorised release and publication of by journalists. But the damage to the policing profession, the AFP's reputation and the reputation of the individual police officers involved executing the search warrants in question, has occurred with no apology from the Opposition Leader, the Shadow Attorney General, Shadow Minister for Home Affairs or any media outlet.

Interestingly, following the execution of search warrants, a media outlet published an article headed *"After the AFP raids its still possible for whistleblowers to speak out. Here's How?"*

The article advises not to use regular phone calls, texts or unencrypted emails and to avoiding use of devices that could be under surveillance. The article then outlines a number of electronic options such as 'SecureDrop'; the 'TOR internet Browser' setting up of 'PGP encryption' such as 'Mailvelope' and 'Proton Mail' or using message Apps like 'Signal' and 'Threema' to avoid detection thus hinder any police investigation. So much for media professionalism and media integrity!

I, like many Australians, respect and value the Rule of Law and the independent office of Constable. Let us not diminish either as a result of political and media influence and pressure.

I believe in the freedom of the press but not at the risk to the safety and security of Australian citizens. Press freedom is very important but it has never been an absolute or unconstrained right. It has always been subject to matters like defamation laws, law of subjudice and national security considerations.

Our nation's security and the security of peoples in other countries, does rely on certain matters being classified secret and not for 'open book' publication in the media. In our democracy the Australian parliament passes such national security legislation in the interest of all Australians. National security, the primacy of our laws, indeed the Rule of Law applies to everybody in this country and I am sure all Australians understand that no one should stand above them, whether they are politicians, journalists, editors or anyone else.



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Transcript of Radio Interview – 2GB, Chris Smith – Wednesday, 5 June 2019

SUBJECTS: AFP raids,

SMITH: Now can I ask you about something which is occurring as we speak? AFP raids on the ABC offices, the newsroom in Ultimo. We've had the home of a News Corp journalist raided yesterday morning about a separate investigation. I spoke with Chris Uhlmann a little earlier today and we were discussing the fact that it takes so long after these stories were published or went to air, for the AFP to try and find additional evidence. Not to say that we'd welcome what they're doing, but just to say hang on a second – why do you leave it two years until you try and sneak out some of the evidence after they've received a referral in 2017? This must concern you.

ALBANESE: Well, there's got to be an explanation for why, just after

an election, we have multiple raids on the media without appropriate explanation from Government Ministers, or appropriate explanations, frankly, from the AFP.

SMITH: But these aren't Government raids though, they've got nothing to do with Government.

ALBANESE: Well, it's interesting that it's just after the election, Chris. And the fact is that the Government does need to say whether it knew this was going to occur or not, and whether these raids were delayed, because it defies logic that you wait two years before you raided offices or asked for an explanation.

Look, we're a democratic country. Democratic countries rely upon freedom of the press. In Annika Smethurst's case, I know Annika well. I spoke to her this morning. She had seven police arrive at

her home, go through every room in her house, for seven and a half hours. Quite frankly that is over the top and there's got to be an explanation for why that occurred, and how any authority believes that such heavy handedness is appropriate. Annika Smethurst is a professional journalist who does her job. She wrote the story that is certainly of interest to Australians about documentation over whether people's privacy could be looked into in terms of phone calls, and information gathered between individuals without their knowledge, on not the recommendation of a judge or an authority, but simply on the basis of approval by Ministers in the Government. And that's why this is a relevant issue for the Government to come up with explanations on.

END

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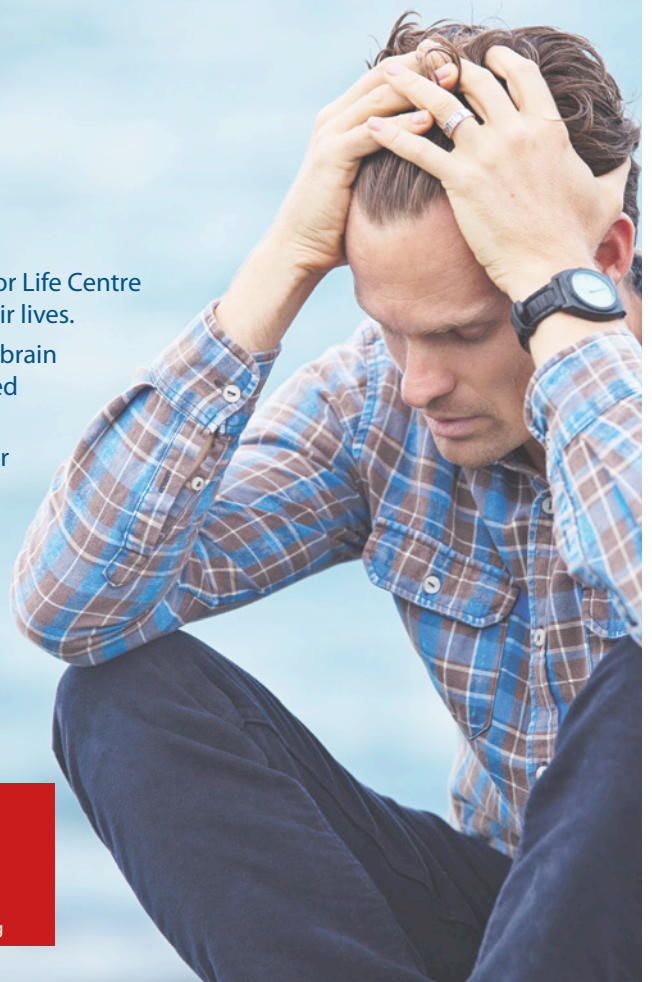
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Warring Against Sources: The Australian National Security State, Journalism and the Public Interest

BY DR. BINOY KAMPMARK

Global Research, June 05, 2019

“What’s gone on this morning sends clear and dangerous signals to journalists and newsrooms across Australia. This will chill public interest reporting.” — News Corp Australia spokesperson, The West Australian, June 4, 2019

These are dark times for journalists and publishers. It did not seem coincidental that **Annika Smethurst**, a News Corp journalist and political affairs editor, would be a target of an Australian Federal Police warrant. **Chelsea Manning**, courtesy of a ruling by **Judge Anthony Trenga**, remains in federal custody in the United States. **Julian Assange** is facing decline in the maximum security abode that is Belmarsh prison in the United Kingdom.

The story supposedly linked to the AFP warrant had been published by Smethurst on April 29, 2018. More than a year had elapsed, with little in the way of public murmurings. Australians have, for the most part, fallen under the anaesthetist’s spell regarding intrusive, unnecessary and dangerous national security laws. Another set of them would hardly matter.

But since the story, titled “Let Us Spy on Aussies” broke last year, the

security wallahs have been attempting to root out the source, mobilising the AFP in the process. The account detailed information on discussions between the Home Affairs and Defence departments on the possibility of granting the Australian Signals Directorate powers to monitor the emails, bank records and text messages of Australian citizens. Letters between **Secretary of Home Affairs Mike Pezzullo** and **Defence Secretary Greg Moriarty** featured.

When the archaic official secrets provisions of the *Crimes Act 1914 (Cth)* were repealed in June 29 2018, leaving way for new regulations dealing with national security information, those dealing with publishing such material felt slight relief. A public interest defence, lodged in the *National Security Legislation Amendment (Espionage and Foreign Interference Act 2018)*, had been introduced, protecting those “engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media”.

The content in question might cover what the Act designates to be “inherently harmful information”: security classified information; information obtained by, or made by or on behalf of, a domestic intelligence agency or a foreign intelligence agency in connection with the agency’s functions; or information on “the operations, capabilities or technologies of, or methods or sources used by, a domestic or foreign law enforcement agency.”

It always pays, when reading such sections, to consider the exceptions. Conduct deemed a contravention of provisions regarding intelligence sources (the publication of names or identity of staff, for instance), does not satisfy the test, nor conduct deemed to assist, directly or indirectly, “a foreign intelligence agency or a foreign military organisation.” Logical, you might say.

The ineffectual nature of those provisions is borne out by how narrow the protection is. The Law Council’s efforts to convince the federal government to extend the public interest defence to suppliers of the information was rejected, leaving the way open for such cases as Smethurst’s: spare the journalist but attack the source. According to Law Council president Arthur Moses, the protection is shabby, a mere “mirage because it does not cover a journalist’s source.”

The other unspoken and unscripted assumption is how anaemic public interest defences work in Australian law. Its operation starts from a reverse premise from US analogues, privileging the necessity of ignorance against the dangers of revelation. The government keeps you ignorant for your own good; material published might be inimical to the public interest, but that “interest” is always that of the state, not the general citizenry.

So we come to the morning of June 4, with Smethurst readying to leave for work, only to witness Australian Federal Police bearing down heavily with a warrant. A statement from the AFP subsequently confirmed that it had “executed a search warrant at a residence in the ACT suburb of Kingston today (4 June 2019)” on a matter relating “to an investigation into the alleged unauthorised disclosure of national security information that was referred to the AFP.” The AFP “will allege the unauthorised disclosure of these specific documents undermines Australia’s security.”

The gravity of the allegations was affirmed in an update:

“This warrant relates to the alleged publishing of information classified as an official secret, which is an extremely serious matter with the potential to undermine Australia’s national security.”

The incident in Canberra proved catching. Hours after the AFP’s move on Smethurst, radio 2GB Drive presenter and Sky News contributor Ben Fordham revealed that he had also been the subject of an investigation after discussing the attempt of six asylum seeker boats to reach Australia. The story piqued the interest of a Department of Home Affairs official, who proceeded to scold Fordham’s producer for discussing “highly confidential” material. “In other words,” explained the broadcaster bluntly, “we weren’t supposed to know about it.”

In the course of Wednesday morning, with no settling of dust in order, a second raid by the AFP was executed against the Sydney offices of the national broadcaster, the ABC. Those named in the warrant – investigative journalists Dan Oakes and Sam Clark, along with ABC director of news **Gaven Morris** – were linked to The Afghan Files, a set of ghoulis stories in 2017 revealing allegations of unlawful killings by Australian special forces in Afghanistan. Australia’s national security state has gotten very busy indeed.

Australian **Prime Minister Scott Morrison**, when pressed about Smethurst’s case, was untroubled. Having played the role of fatherly minder of the Australian nation, he was not going to let any alleged breach of security go by. Currently on a visit to the United Kingdom, he expressed little concern about the morning raid on a journalist’s home: “it never troubles me that our laws are being upheld.”

While News Corp has its demonic familiars (Rupert Murdoch’s influence hangs heavily), it was hard to disagree with the premise advanced by a spokesperson.

“This raid demonstrates a dangerous act of intimidation towards those committed to telling uncomfortable truths. The raid was outrageous and heavy handed.”

The Federal Parliamentary Press Gallery, voicing agreement, considered the police raid “an outrageous move that should concern all Australians who value their freedom in an open society.” With confidence, the statement asserted that it was “in the public interest for us to know of any plan for greater powers to monitor our messages.”

Chris Merritt, legal affairs editor of *The Australian*, saw the raid as an ominous signal to all investigative scribblers. “Welcome to modern Australia – a nation where police raid journalists in order to track down and punish the exposure of leaks inside the federal government”. But such an Australia was also chugging along merrily before the raid on Smethurst’s home. (Like the unsuspecting priest living in a dystopian surveillance state, the police finally came for them.)

Should Assange ever make a return to the country of his birth, he is unlikely to find peace in this US satellite state, with its flimsy public disclosure and whistleblowing laws, its mirage-like protections. Hunting publishers, journalists and their sources is de rigueur down under.

***Dr. Binoy Kampmark** was a Commonwealth Scholar at Selwyn College, Cambridge. He lectures at RMIT University, Melbourne. He is a frequent contributor to *Global Research and Asia-Pacific Research*.

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AFP statement on activity in Canberra and Sydney

PUBLISH DATE: WEDNESDAY, 5 JUNE 2019

Publish time: 4:32pm

The Australian Federal Police (AFP) can confirm there is no link between the execution of search warrants in the ACT suburb of Kingston yesterday (4 June 2019) and those on the Ultimo premises of the ABC today (5 June 2019). Both relate to separate allegations of publishing classified material, contrary to provisions of the *Crimes Act 1914*, which is an extremely serious matter that has the potential to undermine Australia's national security.

The AFP's actions have been independent and impartial at all times.

The AFP received two separate referrals from agency heads in relation to these serious matters.

The AFP's actions have been independent and impartial at all times. The AFP's role is to investigate breaches of Commonwealth criminal law. When the AFP receives referrals it assesses them for criminality and does not make value judgements on the issue. It identifies whether there have been any



contraventions of Commonwealth law, and evidence as to whether the offence has been committed or otherwise.

AFP investigators are required to assess all the relevant facts in every matter. This includes enquiries into the classification of the information concerned, how it was handled and who had access to it. The execution of search warrants is an important tool to enable our investigators to achieve this, but it is just one aspect of our work. There are many avenues of inquiry and tools available to the AFP in investigations such as this.

All AFP search warrants are authorised by a magistrate or an appropriate member of

the judiciary. This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed.

The AFP can confirm the Minister for Home Affairs was not notified prior to the execution of the warrants.

The search warrants related to secrecy offences in Part 6 and 7 of the Crimes Act 1914 (Cth).

The AFP was unable to rely on the revised secrecy offences inserted into the Criminal Code Act 1995 (Cth) by the National Security Legislation (Espionage and Foreign Interference) Act 2018 (Cth), as the alleged conduct occurred before the new offences commenced.

Why the raids on Australian media present a clear threat to democracy

REBECCA ANANIAN-WELSH SENIOR LECTURER, TC BEIRNE SCHOOL OF LAW, THE UNIVERSITY OF QUEENSLAND

June 5, 2019 5:42pm AEST



The Australian Federal Police has this week conducted two high-profile raids on journalists who have exposed government secrets and their sources.

On Tuesday, seven AFP officers spent several hours searching News Corp journalist Annika Smethurst's Canberra home, her mobile phone and computer. The AFP linked the raid to "the alleged publishing of information classified as an official secret".

This stemmed from Smethurst's 2018 article, which contained images of a "top secret" memo and reported that senior government officials were considering moves to empower the Australian Signals Directorate (ASD) to covertly monitor Australian citizens for the first time.

Soon after, 2GB Radio Presenter Ben Fordham revealed he had been notified by the Department of Home Affairs that he was the subject of a similar investigation, aimed at identifying the source of classified information he had reported regarding intercepted boat arrivals.

And then on Wednesday, the AFP raided the ABC's Sydney headquarters. This dramatic development was in connection with the 2017 "Afghan files" report based on "hundreds of pages of secret defence force documents leaked to the ABC". These documents revealed

disturbing allegations of misconduct by Australian special forces.

The reaction to the raids was immediate and widespread.

The New York Times quoted News Corp's description of the Smethurst raid as "a dangerous act of intimidation towards those committed to telling uncomfortable truths". The Prime Minister was quick to distance his government from the AFP's actions, while opposition leader Anthony Albanese condemned the raids.

But to those familiar with the ever-expanding field of Australian national security law, these developments were unlikely to surprise. In particular, enhanced data surveillance powers and a new suite of secrecy offences introduced in late 2018 had sparked widespread concern over the future of public interest journalism in Australia.

his sources of government information, Ben Fordham declared *The chances of me revealing my sources is zero. Not today, not tomorrow, next week or next month. There is not a hope in hell of that happening.*

Source confidentiality is one of journalists' most central ethical principles. It is recognised by the United Nations and is vital to a functioning democracy and free, independent, robust and effective media.

One of the greatest threats to source confidentiality is Australia's uniquely broad data surveillance framework. The 2015 metadata retention scheme requires that all metadata (that is, data about a device or communication but not, say, the communication itself) be retained for two years. It may then be covertly accessed by a wide array of government agencies without a warrant. Some reports

...enhanced data surveillance powers and a new suite of secrecy offences introduced in late 2018 had sparked widespread concern over the future of public interest journalism in Australia.

The crackdown of the past few days reveals that at least two of the core fears expressed by lawyers and the media industry were well-founded: first, the demise of source confidentiality and, secondly, a chilling effect on public interest journalism.

Source confidentiality

Upon finding out he was the subject of an investigation aimed at uncovering

suggest that by late 2018, some 350,000 requests for access to metadata were being received by telecommunications service providers each year.

The government was not blind to the potential impact of this scheme on source confidentiality. For example, obtaining metadata relating to a journalist's mobile phone could reveal where they go and who they contact and easily point to their sources.

This led to the introduction of the “Journalist Information Warrant” (JIW). This warrant is required if an agency wishes to access retained metadata for the direct purpose of identifying a professional journalist’s source.

So, access to a professional journalist’s metadata in order to identify a confidential source is permitted, provided the access has a particular criminal investigation or enforcement purpose and the agency can show it is in the public interest and therefore obtain a JIW.

This week’s raids suggest that either JIWs could not be obtained in relation to Smethurst, Fordham or the ABC Journalists, or the journalists’ metadata did not reveal their sources, or the AFP did not attempt to access their metadata.

Alternatively, if metadata had identified the journalists’ sources, it is less clear why these dramatic developments took place.

After 2015, journalists were advised to avoid using their mobile devices in source communications. They were also encouraged, wherever possible, to encrypt communications.

But in 2018, the government went some way to closing down this option when it introduced the complex and highly controversial Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018.

As well as expanding computer access and network access warrants, the Act provided a means for government agencies to co-opt those in the telecommunications industry to assist agencies with their investigations. This could include covertly installing weaknesses and vulnerabilities in specific devices, circumventing passwords or allowing encrypted communications to be decrypted. A warrant would then be required to access the device and communication data.

It is impossible to know whether Australian journalists have been targeted under the Act or had weaknesses or spyware installed on their personal devices. This week’s raids suggest the AFP would be prepared to target journalists under this framework in order to identify journalists’ confidential sources.

However, this could only be done for some purposes, including in the investigation of a secrecy offence.

Secrecy offences

In June 2018, the government introduced a suite of new espionage, foreign

This week’s raids reveal just how common it is for public interest journalism to rely on secret material and government sources.

interference and secrecy offences. This included an offence of current or former Commonwealth officers communicating information, obtained by virtue of their position, likely to cause harm to Australia’s interests. This offence is punishable by imprisonment for seven years. If the information is security classified or the person held a security classification, then they may have committed an “aggravated offence” and be subject to ten years’ imprisonment.

This week’s raids reveal just how common it is for public interest journalism to rely on secret material and government sources.

But the journalists themselves may also be facing criminal prosecution. The 2018 changes include a “general secrecy offence”, whereby it is an offence (punishable by imprisonment for five years) to communicate classified information obtained from a Commonwealth public servant. Fordham’s radio broadcast about intercepted boat arrivals was, for example, a clear communication of classified information.

Again, journalists are offered some protection. If prosecuted, a journalist can seek to rely on the “journalism defence” by proving that they dealt with the information as a journalist, and that they reasonably believed the communication to be in the public interest. The meaning of “public interest” is unclear and, in this context, untested. However, it will take into account the public interest in national security and government integrity secrecy concerns as well as openness and accountability.

Protecting media freedom

Australia has more national security laws than any other nation. It is also the only liberal democracy lacking a Charter of Human Rights that would protect media freedom through, for example, rights to free speech and privacy.

In this context, journalists are in a precarious position – particularly journalists engaged in public interest

journalism. This journalism is vital to government accountability and a vibrant democracy, but has a tense relationship with Australia’s national interests as conceived by government.

National security law has severely undercut source confidentiality by increasing and easing data surveillance. National security laws have also criminalised a wide array of conduct related to the handling of sensitive government information, both by government officers and the general public.

And these laws are just a few parts of a much larger national security framework that includes: control orders, preventative detention orders, ASIO questioning and detention warrants, secret evidence, and offences of espionage, foreign interference, advocating or supporting terrorism, and more.

JIWs, and the inclusion of a journalism defence to the secrecy offence, recognise the importance of a free press. However, each of these protections relies on a public interest test. When government claims of national security and the integrity of classifications is weighed into this balance, it is difficult to see how other interests might provide an effective counterbalance.

One of the most disturbing outcomes is not prosecutions or even the raids themselves, but the chilling of public interest journalism. Sources are less likely to come forward, facing risk to themselves and a high likelihood of identification by government agencies. And journalists are less likely to run stories, knowing the risks posed to their sources and perhaps even to themselves.

Against this background, the calls for a Media Freedom Act, such as by the Alliance for Journalists’ Freedom, have gained significant traction. It may take this kind of bold statement to cut across the complexities of individual laws and both recognise and protect the basic freedom of the press and the future of public interest journalism in Australia.

Police raid on ABC offices sparks firestorm over press freedom and national security

BY MICHAEL KOZIOL, FERGUS HUNTER AND LUCY CORMACK

June 5, 2019 — 7.05pm



Media Watch Presenter Paul Barry speaks to media as the Australian Federal Police raid the ABC. CREDIT: DOMINIC LORRIMER.



The ABC's Sydney studios have been targeted in a raid by the Australian Federal Police - over a story known as the Afghan Files.

A sensational federal police raid on the ABC's Sydney headquarters has sparked a political firestorm over national security and the freedom of the press which poses significant tests for the re-elected Morrison government and the Labor opposition.

Coming just a day after a separate raid on the home of a News Corp political journalist, the search warrants related to the publication of stories in 2017 that accused Australia's elite special forces in Afghanistan of killing unarmed men and children.

The Australian Federal Police stressed the raids were unrelated, while Home Affairs Minister Peter Dutton was forced to affirm the independence of the AFP from government after Labor queried the timing of the raids.

The ABC raid took place a week after a former Australian military lawyer was committed to stand trial in the ACT Supreme Court charged over the leaking of documents now known as the "Afghan Files" to the ABC.

The ABC raid took place a week after a former Australian military lawyer was committed to stand trial in the ACT Supreme Court charged over the leaking of documents now known as the "Afghan Files" ...

David William McBride, 55, was charged in March with a range of offences including theft, breaching the Defence Act and being a person who is a member of the Defence Force and communicating a plan, document or information.

It's understood the ABC and the AFP have been in talks about the search warrant since September, when it was first brought to the attention of the public broadcaster.

While both parties have been in discussions since then about a time at which to execute the warrant with minimal disruption to both parties, the negotiations inevitably culminated in the very public arrival of three AFP officers on Wednesday, which was the preference of the ABC.

AFP officers entered the ABC's Ultimo premises around 11.30am and spent the afternoon combing through nearly 10,000 documents projected on to a large screen.



AFP officers depart the ABC studios at about 8.20pm on Wednesday evening after taking documents. CREDIT: WOLTER PEETERS.



AFP officers arrive at the ABC offices, where they spent the afternoon sifting through thousands of documents related to an ABC investigation. CREDIT: KATE GERAGHTY.



Illustration: Matt Golding.

They left the building at about 8.20pm, taking some documents on USB sticks.

Three plain-clothes AFP officers and three digital forensics officers were accompanied by ABC lawyers and executive editor John Lyons, who live-tweeted the proceedings including photos of police sifting through the ABC's internal emails.

Mr Lyons said on Wednesday night the ABC and AFP had agreed on a two-week "hiatus" during which lawyers could challenge any documents seized under the warrant or the warrant itself.

A copy of the search warrant published by Mr Lyons showed it was signed off by a local court registrar, Martin Kane. It gave officers sweeping powers to access and seize notes, emails, footage, drafts, documents and other items related to the "Afghan Files" investigation.

The raid was swiftly condemned by the broadcaster's management, other media outlets, politicians, the National Press Club and unions. ABC managing director David Anderson called it "a serious development" that raised legitimate concerns about press freedom.

"The ABC stands by its journalists, will protect its sources and continue to report without fear or favour on national security and intelligence issues when there is a clear public interest," he said.

Mr Lyons said it was a "really serious escalation of the attack on the free media" which had significant consequences for Australian citizens.

"It's not just about the media - it's about any person out there who wants to tell the media about a bad hospital, or a school that's not working, or a corrupt local council," he said.

The ABC's news director Gaven Morris was named in the warrant alongside journalists Dan Oakes and Sam Clark.

The ABC stands by its journalists, will protect its sources and continue to report without fear or favour on national security...

In public statements, ABC editorial director Craig McMurtrie and Media Watch presenter Paul Barry said the police were pursuing an alleged breach of section 79 of the Crimes Act, which at the time of the article's publication related to the communication of official secrets.

That legislation did not contain exemptions for journalists, which meant it was "conceivable an ABC journalist could be charged," Barry said.

However, the AFP said both raids related to Part 6 of the Crimes Act, or section 70, which at the time only dealt with the disclosure of information by public officials. That suggested the individual journalists would not be pursued.

Labor's home affairs spokeswoman Kristina Keneally has asked for a briefing on why the raids were deemed necessary.

"Protecting our national security is complex work, but it always must have the right checks and balances," she said. "[Mr] Dutton must explain what he knew about these two raids."

Mr Dutton said he had no involvement in the AFP's investigations and was only informed of the raids after they had taken place. The AFP echoed that statement.

"Like all Australians, I believe in the freedom of the press," Mr Dutton said. "We have clear rules and protections for that freedom of the press and we also have clear rules and laws protecting Australia's national security."

Meanwhile the Greens have called for an inquiry into "declining press freedom", with media spokeswoman Sarah Hanson-Young calling the raid "a very worrying sign".

Global news outlets also voiced their concern about the raids, including the BBC's head of newsgathering Jonathan Munro, who said the development was "deeply worrying".

"Warrant appears to give sweeping powers to seize anything - completely contrary to free media," Mr Munro said.

News Corp Australasia executive chairman Michael Miller expressed solidarity with the ABC and said national security and defence matters must be subject to proper public scrutiny.

The "Afghan Files" investigation relied on documents marked AUSTEO - "Australian Eyes Only" - many of which detailed "at least 10 incidents between 2009-2013 in which special forces troops shot dead insurgents, but also unarmed men and children".

The story was published in July 2017. It was not clear why the raid was executed nearly two years later, but Attorney-General Christian Porter said in relation to the News Corp raid: "There might be any number of reasons why things in an investigation happen some time after the investigation was commenced - that is not at all unusual".

DOORSTOP INTERVIEW, PORTSMOUTH, UK

TRANSCRIPT 05 Jun 2019

PRIME MINISTER: It's a great honour and a privilege to attend today's commemoration here as a guest of the British Prime Minister and of course to join Her Majesty and other world leaders who are here today.

It was very moving and I think a very personal ceremony in telling the personal stories, and to be able to afterwards go and speak to veterans, who were there on the day; 19-year-olds, 21-year-olds, on ships and planes and landing craft. Those memories of that day are still very vivid in their minds.

It's a great privilege to speak to any veteran, but on this particular day of historical significance, and for Australia to be represented here as forming part of that allied force that set out from here and secured peace and generations of prosperity, building international institutions that secured that peace and prosperity over so many years. It's important that we reflect on that, understanding the causes of the forces that brought the world to that point at that time to make sure that in today's world, as we were just discussing at a meeting with leaders who were here today, that we ensure those lessons are never lost.

JOURNALIST: Prime Minister, the ABC raid [inaudible].

PRIME MINISTER: Well first of all, let me say that my government is absolutely committed to freedom of the press. Secondly these are matters that were being pursued by the AFP operationally at complete arm's length from the government, not in the knowledge of the government, not at the instigation of government ministers.

These were matters that have been referred to the federal police some time ago, last year, proceeding even my time as coming to be Prime Minister. They were referred by department heads, not by Ministers. And then it is a matter for the federal police to make judgments about how they proceed.

Matters are referred to police on a regular basis and it's only the federal police that ultimately then makes

...I believe firmly in the freedom of the press, I believe firmly in our laws and our laws being upheld and no one is above the law.

decisions about how they proceed with those investigations and it would be entirely inappropriate for the government of the day to be interfering in those.

And that has led to the raids that have taken place on two very separate issues, unrelated. And of course for raids to take place there needs to be warrants. And they were obtained in the normal process, there are checks and balances around that. So look I can understand why these issues can cause great anxiety, particularly for members of the press, but more broadly.

And it's important I have been in discussion with editors today, and others, and they have expressed their concerns to me on these issues. And I think it's important we just pause and as these issues are worked through in the days ahead that if there are any issues that we have to address then I am open to discussing those. But at the moment what we are dealing with is two separate investigations following a normal process and any suggestion that these were done with the knowledge of or with the instigation of government ministers is completely untrue.

JOURNALIST: Do you believe that we should reconsider the laws that have led to this scenario?

PRIME MINISTER: I think it would be premature to be drawing those conclusions at this point.

JOURNALIST: Prime Minister, you seem very relaxed about the fact that we seem to be taking tips on media freedom from China?

PRIME MINISTER: Well I don't understand the point you are making, maybe you should be a bit clearer.

JOURNALIST: Well do you believe that this is an Australia you are happy to

be Prime Minister of, where the press is treated like this?

PRIME MINISTER: Well as I said, I believe firmly in the freedom of the press, I believe firmly in our laws and our laws being upheld and no one is above the law. No one is above the law. And it's important that law enforcement authorities conduct themselves in accordance with the rules that govern their behaviour.

As the Prime Minister that is something I will always seek to ensure is done. If there are issues regarding particular laws they will be raised in the normal way that they should be in a democracy, and they are matters I am always open to discuss as any Prime Minister would be.

But I think it's important to understand what is occurring here and this is a process of investigations being pursued by an independent law enforcement agency and they are acting in accordance with the laws that govern their behaviour. And that is done at arm's length from the Government. This is not a matter that has been directed or in any way involves government ministers and it would be inappropriate if it did.

JOURNALIST: Were you made aware of the raid?

PRIME MINISTER: After they had taken place.

JOURNALIST: Prime Minister, how do you reconcile with the fact that you want freedom of the press but the current laws don't allow that?

PRIME MINISTER: Well I think that is a very strong statement to be made on the back of two raids and which the consequences of and what is learned from those and the application for the laws is still undetermined.

JOURNALIST: Would you agree that two raids in two days is not a great look for press freedom?

PRIME MINISTER: I can only make the observation that the raids that took place occurred in accordance with Australia's laws and in accordance with the Australian Federal Police that acts independently of government ministers doing their job.

So whether it's the police investigating potential acts in other areas of criminality or in this area, that's the job of our police forces.

What we are seeing here is the working out of an investigatory process and the gathering of evidence on a particular matter that they are pursuing. The nature of their investigation and the nature of their inquiries, at an operational level, and I am not obviously privy to that and nor should I be.

JOURNALIST: Is it at all uncomfortable for you on a day celebrating freedom of democracy to have these stunning images in Australian newsrooms and beamed across the world? It does seem like quite an unusual juxtaposition.

PRIME MINISTER: I can only refer you to what I've just said, and Australia is a place where the rule of law stands and no one is above it, and the way that our laws are enforced and upheld is by the actions of independent law enforcement agencies acting in accordance with the statutes that govern them. That's what happens in democracies and that's what's happening in Australia.

JOURNALIST: Do you believe we need to change those laws?

PRIME MINISTER: Well I've already commented on that, I'm open to having discussions about concerns that have been raised and we would consider that in relation to any issues that are raised with us.

JOURNALIST: Do you believe that journalists have the right to protect their sources and that whistle-blowers have a right to protection?

PRIME MINISTER: I believe in freedom of the press...

JOURNALIST: Prime Minister, when there are sensitive raids, such as on the ABC, it's not unknown that the relevant Minister would be advised ahead of time. Did that happen?

PRIME MINISTER: I refer you to Mr Dutton's statement. And I refer to the AFP's statement which makes it very clear that Mr Dutton was not advised in that timetable that you've suggested and nor was I.

JOURNALIST: Do you think he should have been?

PRIME MINISTER: Why?

JOURNALIST: What about these Department Heads?

PRIME MINISTER: You're putting the position to me. So I'm wondering why you think he would be?

JOURNALIST: Well, there's a discretion in these cases. And there are important principles at stake here. You yourself have said that you believe in the freedom of the press.

PRIME MINISTER: Are you suggesting the government should be interfering with police investigations?

JOURNALIST: I am suggesting that perhaps this whole incident could have been managed better.

conducted or how they've handled these matters, and if there are any complaints to be made, then those complaints should be raised with us and we could look at those.

JOURNALIST: Do you support whistle-blowers coming forward if there is someone who is in a position that feels they need to be compelled to get something out?

PRIME MINISTER: Australia's a free country and that freedom was hard won, and not least by the events we were here to commemorate today. But part of that freedom ensures that we all operate according to the rule of law. And that rule of law and its enforcement and its management are all part of those processes and it's our job to ensure that they're upheld. I do appreciate why there is great anxiety, the Opposition has

...the AFP are pursuing an investigation independently under their authorities created by statute and it's their job to do that consistent with that statute.

PRIME MINISTER: What you're suggesting is that ministers should be involved in operational issues in police investigations. I don't think that's a very good idea.

JOURNALIST: Can you see how raids would have been intimidating to journalists or their sources?

PRIME MINISTER: That's what I said earlier. I can understand, particularly for the journalists involved, this would have been very upsetting and a very anxious and concerning event – of course it would be.

JOURNALIST: What about their sources? Journalists have thick skins. Do you think this is about intimidating them from coming forward?

PRIME MINISTER: That's a suggestion you're making. All I know is that the AFP are pursuing an investigation independently under their authorities created by statute and it's their job to do that consistent with that statute. And they are conducting investigations each and every day, all the time, and they have their standards and rules for conducting those investigations, and I'd expect them to uphold those. And so where there are any concerns about how anything has been

sought briefings on these matters and they've been provided immediately.

The Opposition has sought briefings on these matters and they've been provided immediately and those issues have been addressed with the Opposition.

And so we will continue to manage this issue sensitively.

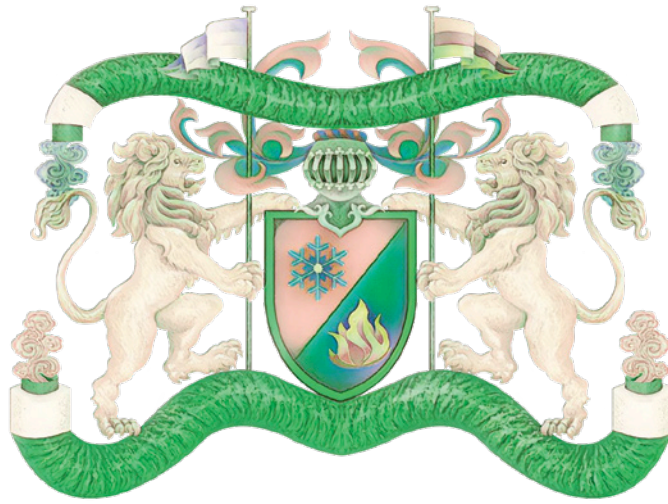
But at the end of the day it's important that I think Australians understand that this is not a matter that has been pursued by the government's ministers.

This is a matter that has been pursued at arm's length by an independent law enforcement agency.

It was not referred by government ministers or at their direction. It was referred by departmental secretaries.

And that is the process that departmental secretaries follow where they believe that there have been potential breaches. And that's why the AFP is the agency that then investigates those and they are the ones who decide how they carry matters forward.

And for government ministers to be placed in the middle of that, I think would be very troubling, and that is what has not occurred here...



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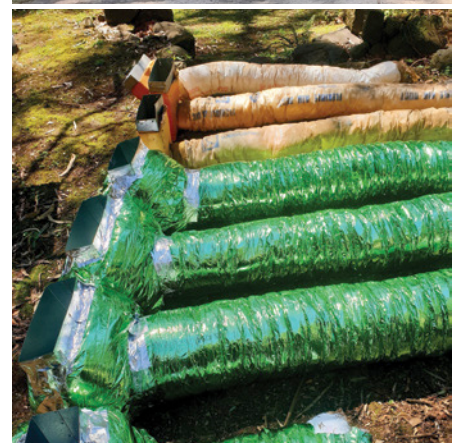
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Morrison opens door to security law review after controversial raids

BY NICK MILLER

June 6, 2019 — 3.34am

Portsmouth: Prime Minister Scott Morrison has suggested national security laws could be reviewed after police raids on the ABC and a News Corp journalist sparked a fierce national and international backlash over press freedom and the public's right to know.

Morrison, speaking from Portsmouth in the UK at an event commemorating D-Day and the liberation of Europe from the Nazis, said his government was "absolutely committed to freedom of the press".

He insisted his government had been "operationally at complete arm's length" from the police investigation.

The Australian Federal Police raid on the ABC's Sydney headquarters on Wednesday was in relation to stories in 2017 that accused Australia's elite special forces in Afghanistan of killing unarmed men and children.

It came a day after police raided the home of News Corp journalist Annika Smethurst over a report on a top secret government proposal to give Australia's cyber spies unprecedented powers.

The raids attracted international attention, with the UK BBC calling it "an attack on press freedom which we at the BBC find deeply troubling".

"At a time when the media is becoming less free across the world, it is highly worrying if a public broadcaster is being targeted for doing its job of reporting in the public interest," the broadcaster said in a statement.

Morrison said it was only for the federal police to make decisions about how their investigations should proceed.

"It would be entirely inappropriate for the government of the day to be interfering in those," he said.



Prime Minister Scott Morrison attended an event to mark the 75th anniversary of D-Day in Portsmouth, England. CREDIT: AP.

"This is not a matter that has been directed or in any way involves government ministers and it would be inappropriate if it did.

"It was not referred by government ministers or at their direction; it was referred by departmental secretaries.

"And that is the process that departmental secretaries follow where they believe that there have been potential breaches [of the law].

"And for government ministers to be placed in the middle of that I think would be very troubling and that is what has not occurred here."

He said Australia was a "free country and that freedom was hard won... but part of that freedom ensures that we all operate according to the rule of law".

Asked if the laws being enforced should be changed, Morrison said it would be premature to draw any conclusions but he was "open to having discussions about concerns that have been raised and we would consider that".

"If there are issues regarding particular laws then they will be raised in the normal way that they should be in a democracy, and they are matters that I am always open to discuss as any prime minister would be."



Questions raised over timing of AFP raids

The Morrison Government is facing uproar over an effort to target journalists and their sources after its election win.

MALCOLM FARR

JUNE 6, 2019 7:58AM

The Morrison Government now has to contend with uproar over what appears to be a post-election get-square against informants of journalists who have annoyed security agencies.

And mixed into this will be questions as to how much the Government supports freedom of the press.

The spectacle of a squad of police spending seven hours yesterday violating the privacy of a Canberra-based journalist's home is a disturbing single episode.

The second act, an AFP search through the digital warrens of the ABC in Sydney the next day, is either rotten timing or the emergence of a pattern.

Either way, the timing is the critical element.

The journalists and their news organisations are not being accused of crimes — at least not so far. But there has been a delayed reaction hunt for their sources.

Annika Smethurst's home was turned over about 14 months after the story

that upset those security agencies was published. That's a long time to decide it was necessary to hit a private residence.

The ABC report at the centre of that raid was first broadcast almost two years ago in July, 2017. Again, that's a long time to decide whether a search warrant should be used against the HQ of the national broadcaster.

The Government is not offering a solid response on the timing matters and the vacant territory is being filled by damaging theories.

There is now a real apprehension that the police action was postponed so as not to pollute the May 18 election campaign. The allegation will be that it was held back for political reasons, a question the Government must address.

The most extreme assessment will be that whoever ordered the raids didn't want to harm the Coalition's re-election chances, or after a Coalition victory felt more confident of conducting them than if Labor had won.

There is no evidence this is what happened, but the limited Government

response to the intrusions on journalists will only encourage the wilder brand of speculation.

The Federal Police officers are not to be pilloried for these operations. They are under orders.

Home Affairs Minister Peter Dutton's office says it wasn't him. Which means new Defence Minister Linda Reynolds has to explain whether or not it was her mob.

Whoever sent in the police has not done the Government a service.

They have added to fears held by whistleblowers and the journalists who report their information for the public good.

The thought of an AFP boot kicking in your front door — even if just figuratively — could be enough to dissuade sources, reporters and editors from exposing what the government wants kept hidden.

However, freedom of the press is not something that can be stitched off when it causes discomfort to authorities, a point which this Government would do well to remind itself.

Journalists in the firing line after AFP changes statement on media raids

BY MICHAEL KOZIOL

June 6, 2019 — 11.17am

The Australian Federal Police has corrected a statement on its raids against media outlets in such a way that opens up the possibility of journalists being prosecuted.

In a statement issued on Wednesday evening, the AFP said search warrants executed on News Corp journalist Annika Smethurst and the ABC - which relate to separate matters - were conducted as part of investigations into alleged breaches of Part 6 of the Crimes Act.

At the time of the respective publications, Part 6 of the act related only to unauthorised disclosure of information by Commonwealth officers - public servants - not the journalists and editors involved in publication.

But the ABC had said it was being pursued in relation to alleged breaches of section 79 of the act, which fell under Part 7 and related to "official secrets".

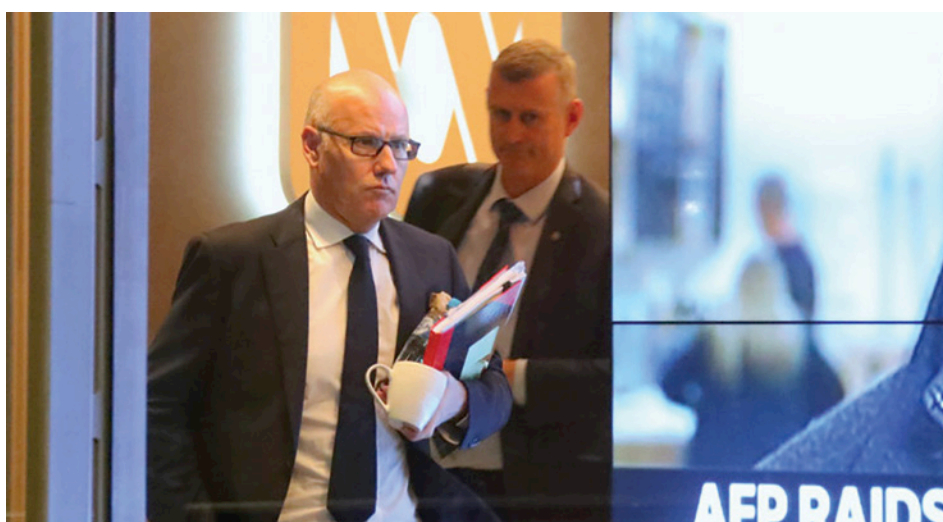
Under that section, any person who receives or communicates a secret document without permission has committed an indictable offence and faces up to seven years imprisonment.

The AFP has now changed its statement to say the search warrants against Smethurst and the ABC "related to secrecy offences in Part 6 and 7 of the Crimes Act 1914".

It was not clear exactly when the AFP altered its statement, which appears on the agency's website.

It is the second time in two days the AFP has updated a statement in relation to the media raids. The agency changed its initial statement on the Smethurst search warrant to clarify the search related to "alleged publishing of information classified as an official secret".

Both those sections of the Crimes Act have now been repealed, with the



offences becoming part of the Criminal Code - but the AFP is pursuing the alleged breaches under the law as it stood at the time of publication.

In an interview on Wednesday morning prior to the ABC raids, Attorney-General Christian Porter said he understood the AFP's investigation in the Smethurst case related to the unauthorised disclosure of information by a government official.

"The investigation is, as I understand it, under the very long-standing provision of the Crimes Act that relates to the official misuse of unauthorised or information, so an unauthorised disclosure of the information by an official to a third party," he told ABC radio.

"So the investigation, if I can summarise in broad terms, is not about the journalist per se, it's about someone who may or may not have made an unauthorised disclosure against the terms of a very well-known provision of the Crimes Act to a third party."

The ABC's editorial director Craig McMurtrie expressed concern on

Wednesday afternoon that there was no public interest defence in the section of the Crimes Act under which the ABC was being pursued.

ABC Media Watch presenter Paul Barry said the raids were "a scandal" and that under the law it was "conceivable an ABC journalist could be charged".

Mr Porter's office has been contacted for further comment and clarification.

The government has said the AFP conducted the raids as part of investigations into alleged breaches of national security laws referred to the AFP by senior public servants.

But on Thursday shadow attorney-general Mark Dreyfus accused Prime Minister Scott Morrison of "letting this happen" and said Mr Morrison did not believe in press freedom.

"They are mincing their words," Mr Dreyfus told ABC radio. "The government is responsible for this. These are government documents. This is government information. The government referred this to the Australian Federal Police."

World's media condemns police raids of the ABC and Annika Smethurst's home as 'attack on press freedom'

Anger over Federal Police searches of the ABC and a journalist's home is spreading, with global media attacking the intimidation tactics.

SHANNON MOLLOY

JUNE 6, 2019 11:56AM

Anger over the unprecedented raids by Federal Police on the ABC and a high-profile journalist's home is spreading, with global media organisations condemning the "attack on press freedom".

The BBC led a chorus of fury overnight as the AFP stepped up its actions against journalists who published leaked information.

Australian news organisations, the union and a flood of press freedom groups have described the raids — including yesterday's extraordinarily broad search warrant that led to almost 10,000 items being reviewed by officers — as heavy-handed intimidation.

"This police raid against our partners at ABC is an attack on press freedom which we at the BBC find deeply troubling," the British Broadcasting Corporation said in a statement.

"At a time when the media is becoming less free across the world, it is highly worrying if a public broadcaster is being targeted for doing its job of reporting in the public interest."

It echoed the concerns expressed by Reporters Without Borders, which compared scenes of six AFP officers poring over countless documents at the ABC to an authoritarian state.

"Persecuting a media outlet in this way because of a report that was clearly in the public interest is intolerable," Daniel Bastard, the group's Asia Pacific head, told SBS.

This kind of intimidation of reporters and their sources can have devastating consequences for journalistic freedom and independent news reporting

"This kind of intimidation of reporters and their sources can have devastating consequences for journalistic freedom and independent news reporting."

The International Federation of Journalists said the two raids showed a "disturbing new pattern" of attacks on press freedom and attempts to intimidate reporters who are acting in the public interest.

"I strongly condemn the repeated harassment of journalists in Australia as infringements of press freedom," IFJ president Philippe Leruth said.

"The IFJ strongly calls the Australian authorities to ensure press freedom and the Australian judicial and police authorities to respect the fundamental rights of journalists."

Ben Stelter, chief media reporter for CNN, said the power given to the AFP yesterday was shocking.

"We almost never see this in a democratic country like Australia," Stelter

said. "Something very troubling (is) happening on multiple fronts in Australia."

The Telegraph newspaper in the United Kingdom reported the actions had "led opposition MPs and media figures to query whether the recently re-elected centre-right Liberal Party was engaging in a campaign to muzzle press freedom".

The global condemnation comes as a leading human rights barrister said AFP Commissioner Andrew Colvin should explain himself, and if he can't, then he should be dismissed.

"He should be called before parliament to explain and, if necessary, sacked," Geoffrey Robertson QC told ABC Radio.

"Either for the delay (in executing the raids) or for, more importantly, undermining Australian democracy by authorising these raids."

The Media, Entertainment and Arts Alliance — the union for journalists in Australia — said the raids, as well

as threatened action by the AFP and Department of Home Affairs against broadcaster Ben Fordham over a third story, was clearly about intimidating journalists.

"A second day of raids by the Australian Federal Police sets a disturbing pattern of assaults on Australian press freedom," MEAA media section president Marcus Strom said.

"This is nothing short of an attack on the public's right to know. These raids are about intimidating journalists and media organisations because of their truth-telling.

"They are about more than hunting down whistleblowers that reveal what governments are secretly doing in our name but also preventing the media from shining a light on the actions of government."

The ABC raid was sparked by 2017 reports, based on leaked top-secret Defence documents, that highlighted serious allegations of war crimes by Australian soldiers in Afghanistan.

The warrant obtained by the AFP gave it wide-reaching authority to view, seize, edit and destroy virtually any documents it saw fit.

It came just a day after the Canberra home of Annika Smethurst, political editor for News Corp Australia's Sunday newspapers, was raided by seven police for seven hours.

During that search, Smethurst's kitchen was rifled through — including cookbooks and her oven and bin — and officers went through her underwear drawer.

"This is a really chilling example of what happens when government thinks they aren't going to be held to account," Claire Harvey, The Sunday Telegraph's deputy editor, told the ABC.

"Seven Federal Police officers spent several hours going through every drawer in (Smethurst's) home, the kitchen drawers and underwear drawer. Her cookbooks, they went through every page.

"It's interesting they haven't searched Annika's office. All media organisations should be concerned about who's going to be next."

Harvey said she expected further raids in coming days and weeks, noting there were a number of stories she could think of the Government might want to target next.

The Australian newspaper reports further raids were planned for today but were put on hold.

The extended search of Smethurst's house was prompted by an April 2018 report about a secret plan to allow the cyber spy agency to snoop on Australian citizens.

Her report included confidential correspondence between the bosses of the Department of Home Affairs and Department of Defence.

Serious questions have been asked about the timing of the raids, the level of involvement from key government ministers and the way they were carried out.

Prime Minister Scott Morrison, who's currently in the UK, has attempted to distance himself from the raids.

Speaking to reporters in Portsmouth in England's south, Mr Morrison claimed the action was "pursued by the AFP operationally at complete arm's length from the Government, not in the knowledge of the Government, not at the instigation of government ministers".



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ABC News Transcript

ABC NEWS AT NOON

06/06/2019

KIRSTEN AIKEN: We're going back to Canberra for that AFP press conference.

[Live cross]

NEIL GAUGHAN: Firstly, I want to start by assuring the public that the AFP actions over the last two days have been independent and impartial at all times. The AFP has been investigating these matters since July 2017 and April 2018 respectively. The matters primarily relate to secrecy offences under Part 6 and Part 7 of the Crimes Act 1914.

The AFP's role, as I'm sure everyone is aware, is to investigate breaches of Commonwealth criminal law. We investigate laws passed by the Parliament using powers granted to us by the Parliament. Our investigations are an objective search for the truth. It involves the discovery and presentation of evidence in an exhaustive, comprehensive, and organised manner, and this often includes the execution of search warrants.

No sector of the community should be immune for this type of activity or evidence collection more broadly. This includes law enforcement itself, the media, or indeed, even politicians.

There are criminal allegations being investigated and we cannot ignore them. We are duty bound to conduct these investigations impartially and thoroughly. Not to do so would be a breach of our oath of office as police officers. These search warrants were authorised by an appropriate member of the judiciary. This is result of supporting documentation being presented to the court which provides sufficient suspicion that a criminal offence has been committed and evidentiary material is likely to be found at certain locations.

The execution of these search warrants and the timing of these search warrants was a considered decision aimed at lawfully locating evidence and seizing that evidence in a manner which will withstand the scrutiny of a court of law. The collection of evidence and investigation process undertaken by my staff, and police more broadly in the AFP and indeed, across the state and territory jurisdictions, when



conducting investigations, must be done in accordance with the law.

Throughout the execution of the search warrants in collaboration with the people affected, the AFP, in these particular matters, took additional care to protect the confidentiality of other personal or professional information that was not subjected to the warrant.

Both of these investigations relate to national security information, how it was handled, and who had access to it. The material subject of these investigations and search warrants relates to documents classified as both Top Secret and Secret. The compromise of such material could cause exceptionally grave damage or serious damage to the national interest, organisations, or indeed, individuals.

The point of difference with these two particular investigations, or the most particular point of difference, is parts of the document were actually published. I need to emphasise in the strongest possible terms that not the Government nor any minister has directed the actions of these investigations.

As is standard practice, the AFP notified the Minister's office it was investigating these matters at the time these matters were referred to the AFP. We did not provide regular updates on operational activities, nor did we tell them we had obtained search warrants

and planned to execute these warrants. Notification of the search warrants being executed occurred after the activity had commenced. This was an operational decision and in accordance with our governance and standard practice.

These investigations are typically complex and lengthy. The timing of these investigations or these activities was influenced only by the progress of the investigation to date and sufficient information being available to support the application of a search warrant.

Any inference that suggests our decisions were influenced by anyone else outside the organisation is strongly refuted. I reject the claim over the last few days that we are trying to intimidate journalists or conduct a campaign against the media. The AFP is a strong supporter of press freedom. The media plays an important role in today's society in keeping the Australian community informed.

And finally, and probably as importantly as anything else I've said, I'd like to state that my members, over the last few days, have been subjected to unprecedented scrutiny in relation to these particular matters. They have my strongest support for their actions and their activities. They have acted professionally and respectfully under challenging circumstances. And I'm happy to take any questions.

QUESTION: Acting Commissioner...

NEIL GAUGHAN: Andrew.

QUESTION: Can you confirm that by adding the words: add, copy, delete, alter in warrants, including the one that was executed on the ABC, it gives the AFP the capacity to hack computers, sometimes remotely, without people knowing and then removing that capacity later.

NEIL GAUGHAN: No, it doesn't.

And I'll explain why that's actually been added, I think it's a very good question - certainly one that I think is worth of some discussion, noting that it has been discussed at length in the media today.

Obviously we operate now in a very technological savvy environment. Every time we execute search warrants, we are doing so because people have iPhones and the like. If we access a document, say, on your phone, as soon as we access that, by the very nature of accessing it, we have altered it. If we copy it and we move it somewhere else, we have altered it, we've altered the metadata.

The reason why that particular clause has been added to the legislation is so that when we seize the document it is altered, it is altered. But the inference that we can remotely

alter documentation or that we can change the way things are presented in their real sense is totally refuted.

And I might add that particularly in relation to these particular search warrants, we have seized documentation that is currently locked down. That being that it is in the hands of the investigators and we have signed an undertaking with the lawyers of both the ABC and News Corp that we will not talk about those matters, we will not look at those particular files or those documentation until such time as the lawyers from those relevant agencies and the lawyers from the AFP have gone through and looked at the privilege issue.

And clearly at that stage, if there is any inference that there's been alteration of documents, that will be disclosed at that time. But I really refute the fact that the legislation has enabled us to do that. I think I've explained why the legislation's been changed. We're operating in an extremely complex environment and I think that we need- the legislation sometimes needs to keep pace with it and we'll do our best in relation to ensuring that.

QUESTION: Were you planning other raids and have they been put on hold?

NEIL GAUGHAN: Look, I'm not going to give a blow by blow description in relation to where the investigation is at and I think, in fairness, nor would you expect me to. The investigation is complex, it is ongoing. Potentially yes, we may do more search warrants, but again, as I said earlier, the legislation we are operating on here is extremely complex and as such, we're required to examine what we're doing in a very thoughtful way, and if we determine it appropriate to execute more search warrants in relation to this investigation we will do so without fear or favour.

Chris.

QUESTION: Thank you, Commissioner. Who is the subject of your investigation? Who could be liable for prosecution? Could the organisations or journalists be liable for prosecution?

NEIL GAUGHAN: Well, again, I think it's important to say at this phase that we are in the evidence collection phase of the investigation. Now, clearly we've got a long way to go, but certainly in relation to who is- we've got a person before the court already, it's in the public domain, in relation to what's being referred to as the Afghan Files matter - that matter's ongoing. I'm not going to rule in or rule out anyone being subjected to further charges; I think that's inappropriate.

QUESTION: Just a clarification of it - it can be a crime to publish this material, can't it?

NEIL GAUGHAN: Look, it can be, but I think we also need to, Chris - here in relation to this particular issue - we need to look at the public interest issue and I think I'm going to raise that because I'm sure you people are going to at some stage.

Public interest is something that we look at in relation to our investigations from the outset and it's something that we will consider in the course of producing our brief of evidence. But I might also add that it's in the Commonwealth Director of Public Prosecutions' guideline in relation to whether or not they commence a prosecution based on public interest.

So we've got two fairly in depth things that we need to overcome before we go down that path. But I think- you guys have read the legislation, you guys understand exactly

the potential possibility. But it is an offence to actually have that particular material still on websites - yes, it is.

QUESTION: Acting Commissioner, can I just [indistinct] - you've chosen to reveal to us a couple of instances where there was contact with the Executive Government, specifically at the outset of the investigations. Given you can reveal that much, can you tell us how much, if any, contact there has been with members of the Executive on these two investigations over the intervening period - up to two years? Or are you saying today there was no other contact with the Executive before those warrants were issued?

NEIL GAUGHAN: That's exactly what I'm saying. There was- and look, this is not unusual in relation to these type of investigations. We are required, under our national guideline, to inform the Minister when we receive investigations of this nature. We undertook that. But it's also important to note that sensitive investigations such as this, we utilise a fair amount of discretion not to brief the Minister or the Minister's Office, I should say, and this is- that's the undertaking in this particular instance.

QUESTION: So from the outset of the investigation, no member of the Executive or their staff was briefed or updated in any way on either investigation?

NEIL GAUGHAN: That's correct.

QUESTION: You saw the warrant for the ABC actioned through a Court Registrar in Nowra. Why would you seek the warrant through a Court Registrar in Nowra instead of a Magistrate or a Judge in Sydney or Canberra?

NEIL GAUGHAN: Look, important question and I think that it's one that I'm happy to answer. Now, in the ACT we certainly obtained the warrant from the magistrate, which is in accordance with the judicial process that exists within the Australian Capital Territory.

In New South Wales, the judicial process is different in that the warrants are issued by court registrars. So in this instance, we actually attended Queanbeyan Local Court in New South Wales and we obtained the warrant from the registrar there, who also acts in a capacity in Nowra.

QUESTION: What's the alleged harm to national security in these cases and why doesn't the Australian public have a right to know about, you know, plans to increase spying or alleged unlawful killing?

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NEIL GAUGHAN: Well, what we're investigating is the fact that code worded and Top Secret and Secret information was disclosed to the Australian community. The substance of that is, to our investigation process, somewhat irrelevant. The issue of whether or not the public has a right to know is really not an issue that comes into our investigation process. We're given a complaint in these instances by secretaries of other departments, we look at the criminality, and then we investigate that.

Now, we're not going to make a judgment and nor should we make a judgment, and indeed nor can we make a judgment in relation to whether a referral is a good referral or a bad referral. But in this particular instance, it was deemed that a likelihood of an offence being committed had been done so, and therefore we commenced an investigation.

QUESTION: On that point, picking up [indistinct], you mentioned in your opening remarks about how these documents had been published, the actual-

NEIL GAUGHAN: [Interrupts] Yes.

QUESTION: Can you explain why that is so different? If these documents actually hadn't been published in the papers and on websites, would that perhaps suggest that these cases may not have gone ahead?

NEIL GAUGHAN: No, I didn't say that. I think what's important to note that what sets these two, if you like, above others, is the fact the information was published online, or in the newspaper, as the case may be. It doesn't take away from the fact that it was still a breach of the National Security Guidelines in that Top Secret and Secret information had been released by a member of Commonwealth employment to a member of the media.

QUESTION: You mentioned that these investigations can be lengthy, but surely waiting so long before conducting a raid would increase the probability that the evidence is misplaced or destroyed, wouldn't it?

NEIL GAUGHAN: I think one thing I will say at the outset is they're search warrants, not raids; and even if we look at the Macquarie Dictionary, we'll see that raid has a certain connotation which I find, in relation to these particular issues, not quite right.

But in relation to- the gathering of a search warrant takes a fair amount of time. It's not a simple matter of just deciding to do a search warrant. There's a fairly lengthy evidence collection phase before we go to the fact of executing a search warrant. And I will say that the execution of a search warrant in itself isn't necessarily the finalisation of the investigation; there are other things that we will continue to do. So, if you like, it's a continuum that may change. Sometimes the search warrant will be very early, sometimes it will be in the middle of the investigation, and indeed sometimes the execution of the search warrant will be at the end.

So, the timing of the execution of the search warrant is really irrelevant. The fact of the matter is the evidence that we obtained during the execution of the search warrants was also electronic, and electronic footprint is much more difficult to remove than a piece of paper.

QUESTION: Can I just take you back to something you said [indistinct] earlier because you were finishing when you said: it is an offence to have this material on websites. So can I take you back to that again. So a crime, therefore, has been committed by the media organisations. Is it your intention to prosecute the journalists?

NEIL GAUGHAN: We haven't made a decision one way or the other.

QUESTION: But is it your- a crime has been committed. In your view, that crime of having that material on a website has been committed.

NEIL GAUGHAN: We would need to go through the process of proving the elements of the offence. One of the critical issues for us is who's responsible for the uploading of that document on the computer, when it was done, et cetera, et cetera. So there's a fairly significant process.

But it also goes- I did speak about public interest. And the fact of the matter is, regardless of where our investigation leads us to, there's a number of other steps that need to take place before we get to the phase that we're actually putting someone before the court, and I think that's being lost. The search warrant is a part of the process. It's a very minute part of the process, but indeed it's a public part of the process.

So whilst the collection of information is still ongoing, we can't lose sight of the fact that we've got a long way to go.

QUESTION: The Attorney-General yesterday said Annika Smethurst was not the subject of an investigation per se. Based on your answers to press, are you saying that she could still face criminal prosecution? Was the Attorney-General wrong to say that yesterday?

NEIL GAUGHAN: No, because the way that the search warrants were crafted under the old legislation is indeed the Attorney-General is correct. The new legislation, which was put in place towards the end of last year, means that the publication of those things is an offence. We're probably not going to look at that particular offence in this instance.

QUESTION: One of these cases is two years old, the other is 14 months old, and you served these warrants on two successive days, three weeks after a federal election. Are you asking us to take that as entirely coincidental?

NEIL GAUGHAN: Well, the execution of the search warrants on two consecutive days is not coincidental. That was planned. Let's be very clear on that.

QUESTION: Why?

NEIL GAUGHAN: I'll get to that. The timing of the search warrants is irrelevant. I think that we would be having this press conference in relation to this particular activity whether we executed the search warrants before the election, during the election campaign, or indeed after, what we are now. The reason it was done consecutively, it was simply a matter of resourcing. I needed a number of investigators for both search warrants. And more importantly, I needed digital forensics capability.

Now obviously, the AFP is a complex organisation. We do large-scale investigations. Obviously, this is part of it, but we also do counter-terrorism investigations, child protection, serious and organised crime. And to crowd (*) those resources for two full days - four people, four digital forensic people - is quite difficult.

I'm still going, thank you. The issue for me was- this operation has taken a number of months to get to the phase where we are today. And the suggestion that we, you know, the timing, from my perspective, is irrelevant. I honestly believe we would be having this discussion regardless of when I executed the warrants.

QUESTION: [Indistinct] Sorry, just to follow that question: can you please tell us, did you or the AFP, any of your

officers, take into account the timing of the federal election in deciding when to apply and execute the search warrants? And just a second to that: you say your officers took extra care in executing these warrants. How does rifling through the underwear drawer of a female reporter constitute taking extra care?

NEIL GAUGHAN: Okay, I will try to answer both of those, and if I fail, please pick me up and I'll come back to it. The timing, as I said- I understand why people are saying that the timing is suspicious, or fishy, or whatever the term is. But for me the timing was about quarantining those resources to ensure we were able to do the execution of the search warrants in a way, in an expedient manner, to ensure that the integrity of the investigation wasn't lost. As I said, the ability for us to get the digital forensics resources ready to go was not an easy one, noting the fact that my resources are also being used on national security investigations such as terrorism, organised crime, etcetera.

In relation to the conduct of the search warrant in Ms Smethurst's house, we were looking for USBs. USBs by their nature are quite small and quite easy to conceal in different locations. That's why the search was conducted in accordance with our standard procedure, in that we would always search those particular locations. Now we ensured, due to her privacy, et cetera, that when that search or that particular location in her house was undertaken, it was done by two female officers. One reason why the search warrant took so long, both at her house and also at the ABC, is we were very, very careful in relation to the execution of the search warrant that we ensured that we were only targeting the information that was relevant to the search warrant. Only relevant to the search warrant. Now you could- same with all your phones and all your tablets, I'm sure there's other very sensitive information on there that you would not like in the public domain. The reason why it took us so long is the fact we made it very clear, with her assistance and her lawyer's assistance, to ensure we only targeted bits relevant to the warrant, and the rest of the information we haven't [indistinct].

Andrew?

QUESTION: Can you confirm that before you executed the search warrant, you also executed journalists warrants to

This kind of intimidation of reporters and their sources can have devastating consequences for journalistic freedom and independent news reporting

access metadata from either/or Annika Smethurst and the ABC journalists?

NEIL GAUGHAN: Look, I asked that question this morning, and I was advised we did not. But if that is incorrect we will correct the record, but my advice this morning was we did not use journalist warrants in relation to this matter.

QUESTION: Further on the ABC: you've already said that you've been investigating this for many, many months. Why didn't you continue your legal letters with the ABC, and seek to resolve this by subpoena rather than through the theatre and optics of a raid, or to use your terminology, execution of a search warrant?

NEIL GAUGHAN: It's a good question. I'm glad you raised it. We've been in negotiation, we were in negotiation with the ABC for a considerable period of time in relation to the execution of the search warrant on their location. We received advice from their legal counsel in March of this year that they were of the view that they were no longer going to assist us, and we were at loggerheads. We were of the view, based on the fact that we didn't see a way forward, that the only way to continue the investigation was to execute the search warrant as we did yesterday. I might add that the only way it was turned into a public display was based on what the ABC did when we arrived yesterday. Now, they knew we were coming. It was a warrant by consent, for want of a better term. Agreed time for my officers to attend the location and undertake the search warrant, which they did. The ABC filmed it, which is their right, and they continued to Tweet during the execution of the search warrant, which again is their right. I think that goes to show the fact that, you know, the fact that was allowed to occur, without any hindrance whatsoever, does show the AFP supports freedom of the press.

QUESTION: [Indistinct] claims the rationale behind starting your ABC search

warrants at head offices, as opposed to with Annika Smethurst, turning her apartment upside down?

NEIL GAUGHAN: Look, that goes into the methodology- sorry, that goes into the sequence of the investigation. The investigations are slightly different. I'm not going to give you a song and dance in relation to why we do things in a certain order, but there, as I said, there are other strategies at play here in relation to these particular matters that dictated the order in which we do things. And as I said, we believe through a thorough investigation, through a very strong investigation plan which put in place in relation to these matters, that that was the appropriate course of conduct on this instance.

QUESTION: Can you confirm that even receipt these documents would be a crime, and how can we have freedom of the press ...

NEIL GAUGHAN: Sorry, can you ask- I missed the first part.

QUESTION: Can you confirm that even receiving these documents would be a crime, and how can we have freedom of the press if that's the case?

NEIL GAUGHAN: Well it's not a crime in itself, depending on the circumstances of [indistinct] each took place. And I might add- it's not directly relevant but it is relevant to some extent: there is a public interest disclosure regime which exists across the Commonwealth, the public service and indeed any members of the public that may wish to prevail themselves of that. We've investigated many similar matters over the course of the last few years where people have availed themselves of the Public Interest Disclosure Act, and as such, the AFP has not proceeded with any action.

The two persons involved in this investigation who are alleged - and I do use the word alleged strongly - were involved in the disclosure of the material

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to journalists did not avail themselves of the PID. Now, that is still a matter for people to [indistinct] whistle-blower activity for the utilisation of the PID. But I think it's incumbent upon me also to say that it's important that people realise the reason why we are so strongly in our view of- or certainly protecting top secret and secret information is that the Australian Government, or particularly the Australian law enforcement intelligence communities, rely on secret and top secret information from our international partners, particularly Five Eyes partners, to ensure the fact that we keep the Australian community safe.

Now, if we can't be seen to protect our- only internal information, we are concerned that the information flow to us dries up. And that's the factor [indistinct] ...

QUESTION: In regards to the ABC, if you knew the source of the information already in regards to David McBride, why did you need to go into the ABC to determine that source, and is that not just a show of force designed to intimidate the media and stop other whistle-blowers from coming forward?

NEIL GAUGHAN: Look, I disagree with the premise, but I understand where you're coming from. I mean, I'm sympathetic to the views of the journalists in relation to this particular issue but we're in a different prism here. I'm trusted as a senior official of the law enforcement agency to execute lawful execution of powers. Now, if it's an issue in relation to the law and we think the law's inappropriate, well then we need to change the law. But as the law stands at the moment, we have to execute it. Now, as far as executing the search warrant with a number of police officers all dressed in plain clothes by appointment; I don't think that's intimidation.

QUESTION: [Indistinct] whether they're wearing plain clothes or not. It was a show of force to go in and do what you were doing, was it not?

NEIL GAUGHAN: No, I disagree. I think the fact is, is that it was done through appointment; they knew we were coming; I don't agree it's a use of force.

QUESTION: [Indistinct] people wearing plain clothes and intimidating?

NEIL GAUGHAN: Well, we're going agree to disagree.

QUESTION: How many leak investigation of leaks to the media in

the last three years have been referred to the AFP? And given your point about resources and things like counter-terrorism - we're in a [indistinct] environment - is it really the police's best use of time to conduct these sorts of [indistinct]?

NEIL GAUGHAN: Look, we get numerous leak referrals to us, and to be honest, we get too many. But as I said, the premise of us investigating these matters is to ensure that the international community knows that we take the leaking of sensitive information seriously. Because if we don't take it seriously it closes down an avenue of people providing the Australian intelligence and law enforcement agencies very sensitive information which ultimately does save lives. I can't stress that enough.

QUESTION: Have you advised Annika Smethurst, Samuel Clark or Daniel Oakes that there could criminal prosecution as a result of your investigations going forward?

NEIL GAUGHAN: Look, I don't know what the investigators said during the course of the search warrant, so it would be inappropriate for me to make that comment.

QUESTION: [Indistinct] up on you earlier answer to the question about the timing: I appreciate what you've said about resourcing and specialist skills being available at the right time, but can you please say whether the timing of the election was ever a factor in your decision on the timing of seeking and executing the warrants? And you said to Tim earlier that the AFP never updated the Government or anyone in the executive about the investigation. Can you tell us: did anyone from the Government or any Department head contact the AFP seeking an update?

NEIL GAUGHAN: Certainly, the timing is- I made the decision of timing. That was my decision in my [indistinct] position.

QUESTION: Did you factor in the election?

NEIL GAUGHAN: No I did not. I did not factor in the election. In relation to notifications of Government: I can assure you, there were no updates. I relation to updates of secretaries of Government agencies, to the best of my- certainly I did not update them, but I'd have to be careful here because I would be surprised if our investigators at some stage did not have some conversations with the referring agencies, as I would expect.

QUESTION: Acting Commissioner, can I just ask you: it strikes me that a story about the behaviour of our SAS troops abroad that might have involved the murder of innocents and a discussion of whether one of our agencies might be re-tasked to spy on Australian citizens are of prime public importance. Are you saying that the public interest would have been better served had those two pieces of journalism not appeared?

NEIL GAUGHAN: No, I've never said that. What I'm saying is, we have investigated a criminal offence. And I think I said it at the outset, and correct me if I didn't, that we're investigating the criminality. Now, the issue of public interest is a matter that we do consider and I have said that - that we consider that at various phases through the investigation. I will also say that, in relation to one of those matters in particular, there is also some very sensitive personal information that has found its way into the hands of people who probably shouldn't have it, and I'm concerned about that, as are those individual members. So we've got to take into consideration, as I said as well, individual privacy here is paramount as well.

QUESTION: So where will the merit of these stories be factored in, Assistant Commissioner, and how? Where and how will the merit of the public merit of the stories [indistinct]?

NEIL GAUGHAN: Look, it's a good question, and I think the public, as I've said, is part of the consideration that we do during the course of our investigation. If we determine there is sufficient evidence to run a prosecution, and with a long way to go before we get there, it is then a consideration of the Commonwealth Director of Public Prosecution before they determine whether or not it's in the public interest to prosecute. And ultimately, if they decide it is then it's a matter for the judiciary. So there is a three step process. We investigate many crimes in the AFP where we know there could be a defence immediately. I use the example as common assault. When we investigate a common assault, we know in the back of our mind immediately that a thing such as self-defence is immediately could be proven or could be weighed. It doesn't stop us from investigating that. What I'm trying to get my point across here is that we're in the process of investigation;

we're in the process of discovery; we're in the process of evidence collection. We've got a long way to go before we get to the stage of a prosecution or a brief of evidence.

Andrew.

QUESTION: Are you still investigating a curious leak of some ASIO advice, Cabinet-level ASIO advice, to The Australian newspaper earlier this year?

NEIL GAUGHAN: I honestly don't have the answer to that question.

Last question.

QUESTION: Do you agree that it's peculiar that no people holding public office - or politicians, sorry - have been the subject of search warrants in relation to the previous Cabinet leaks?

NEIL GAUGHAN: No. I mean, as I said, we follow an investigative process. And in those particular instances during the course of the investigation we deemed it wasn't necessary to undertake search warrants.

QUESTION: [Indistinct] McBride has sort of openly convinced that he has hand of documents to the ABC journalists named on the warrant yesterday. Why did the AFP feel it necessary to go into the ABC and do that? What sort of link are you establishing there, whether the accused person who's been committed to trial says: yes, there is a link, it was me?

NEIL GAUGHAN: Well I think in relation to that one we still have to follow the evidence trail. We still need to ensure that just because someone says they did something doesn't mean they actually did. So there's still a fair way-

QUESTION: [Interrupts] But why [indistinct] to a crime?

NEIL GAUGHAN: Surprisingly, people actually do it quite regularly.

UNIDENTIFIED SPEAKER: Thanks everyone.

QUESTION: How much did it cost to carry out the search warrant?

NEIL GAUGHAN: That's too early for us to tell. The investigation is still ongoing so we've still got a way to go before we can cost it.

Thanks everybody.

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AFP chief insists raids on ABC and Annika Smethurst were not initiated by Federal Government

Thu 6 Jun 2019, 9:58pm

The Australian Federal Police was not trying to intimidate journalists when it raided the ABC's Sydney headquarters and the Canberra home of a News Corp reporter, according to its top officer.

Key points:

- AFP rejects claims it's trying to intimidate journalists with raids at the ABC and Annika Smethurst's home
- Acting Commissioner Neil Gaughan says the raids were carried out independent of the Federal Government
- He's not ruling out the prospect of laying further charges, including against journalists

AFP Acting Commissioner Neil Gaughan insisted officers undertook the raids of their own volition, and that they had not been initiated by the Federal Government.

The raids on Annika Smethurst's home on Tuesday and the ABC on Wednesday have drawn criticism from rights groups, who say it is a clear attack on press freedom.

Commissioner Gaughan said the raids were part of an investigation and alleged there had been an unauthorised leak of national security information to journalists.

"I reject the claim we are trying to intimidate journalists," he said.

"The AFP is a strong supporter of press freedom."

The AFP spent eight hours inside the ABC offices during the raid, which was sparked by a series of 2017 stories known as the Afghan Files.

The stories, by ABC investigative journalists Dan Oakes and Sam Clark,

revealed allegations of unlawful killings and misconduct by Australian special forces in Afghanistan and were based on hundreds of pages of secret Defence documents leaked to the ABC.

Officers spent a similar amount of time in Smethurst's home over a story she authored 14 months ago, detailing purported secret government considerations to give agencies greater powers to spy on Australians.

"I need to emphasise in the strongest possible terms that neither the Government nor any minister has directed the actions of these investigations," Commissioner Gaughan said.

Labor has repeatedly blamed Prime Minister Scott Morrison and Home Affairs Peter Dutton for the raids.

But Mr Morrison, speaking from London, rejected that and distanced himself and his ministers from the AFP raids.

He said AFP operations were carried out "at complete arm's length" from the Government.

The Afghan Files

Commissioner Gaughan refused to rule out charges being laid, including against journalists.

"I'm not going to rule in or rule out anyone subject to further charges," he said.

ABC managing director David Anderson said AFP officers left the



Six AFP officers spent several hours going through almost 10,000 documents seized during a wide-ranging raid. Picture: John Lyons Source:Twitter.

Sydney offices with about 100 documents on two USBs.

He said the documents would remain sealed for two weeks while the ABC assessed its legal options.

Media outlets around the world have raised the concerns about the raids being an attack on press freedoms.

But Commissioner Gaughan was adamant no-one should be above the law.

"No sector of the community should be immune to this type of activity or evidence collection more broadly," he said.

"This includes law enforcement itself, the media or, indeed, even politicians.

"There are criminal allegations being investigated and we cannot ignore them. We are duty bound to conduct these investigations impartially and thoroughly."

Transcript of Doorstop interview Opposition Leader Anthony Albanese

Sydney – Friday, 7 June 2019

SUBJECTS: AFP raids;

JOURNALIST: Mr Albanese, the AFP says the Government is not involved in the raids on the ABC. What does Labor think about that?

ALBANESE: We live in a democracy and in a democracy it is the elected representatives who are responsible and accountable for what happens in that democracy. What we have here is an issue that is fundamental to democracy: freedom of the press. Mr Morrison and Mr Dutton have to say exactly what their position is on freedom of the press. At the moment they are silent about it. They pretend it has nothing to do with them and there is nothing to see here. I think that democracy is too important and freedom of the press is an essential component of our democracy and needs to be defended. I will defend it even if the Government won't.

JOURNALIST: Do you see there should be any changes to the legislation regarding press freedom?

ALBANESE: Look, it would be a start if the Prime Minister of Australia acknowledged that there is an issue here. There is an issue here which is disturbing,

What we have here is an issue that is fundamental to democracy: freedom of the press.

there is an issue here. I have said that Annika Smethurst is a professional journalist who, to go back to basics, who told Australians that there were proposals being considered that would cause concern for all those worried about the privacy of Australian citizens. Now, Annika Smethurst reported that. I think it is a good thing that that was reported, frankly. Australians do have a right to know what is going on in a democracy. That is the role of the media. Now, Annika Smethurst, I am sure won't give up her sources. Ben Fordham, won't give up his sources. The ABC, won't give up their sources. So what we have here is an issue that will be ongoing and the Government, the Prime Minister and the Minister can't continue to say it is nothing to do with them.

JOURNALIST: Mr Albanese, just going back on the raids; are you concerned that journalists would face jail time?

ALBANESE: I am concerned. I support freedom of the press. I support the right of journalists to do their jobs. The police have a job to do, so do journalists have a job to do. The job of government is to set the framework within our democracy operates. At the moment, Scott Morrison as the Prime Minister is pretending that he has no role in the setting up of the framework that defends our democracy. I want someone in the Government to defend freedom of press. I am waiting. I have been waiting for days. It is about time someone did.

Thank you.

Transcript of Television Interview Home Affairs Minister Peter Dutton, Opposition Leader Anthony Albanese – Today Show – Friday, 7 June 2019

SUBJECTS: AFP raids

DEB KNIGHT: Joining me now from Arana Hills in Queensland is the Government's Peter Dutton and Labor's Anthony Albanese in the studio with us. Good morning to you both.

ANTHONY ALBANESE, LEADER OF THE AUSTRALIAN LABOR PARTY: Good morning.

PETER DUTTON, MINISTER FOR HOME AFFAIRS: Good morning Deb, good morning Albo.

KNIGHT: Peter Dutton it has been claimed that journalism is being criminalised in Australia. Are you comfortable with the prospect of journalists and whistleblowers ending up behind bars?

DUTTON: Well, Deb if we strip it down, we're talking about highly classified documents. Now the laws that apply today are the same laws that apply under the Shorten Government or the Rudd Government or the Howard Government in relation to the leaking of documents. And if you're talking about highly classified top secret documents, an argument that Albo or I could leak those documents and that there would be no penalty or that a journalist could have possession of those documents might be against our national interest to publish them. That there should be no penalty or consequence for that would go against tradition in our country that spans back many, many decades and the same case in other democracies around the world.

KNIGHT: Okay but protecting national security is one thing. But shining a light on possible war crimes for soldiers in Afghanistan or reporting on a push for new powers to spy on Australians which is what these two reports that are at the

Do the public have a right to know if it is being considered that the Government, two departments, are engaged in a debate to increase spying powers against Australian citizens.

centre of the raids were revealing, how is that a risk to national security?

DUTTON: Well Deb if you have a look the referral, the referral has been made by the Secretary of the Defence Department and the Director General of the Australian Signals Directorate as I understand it, they made the referral to the Australian Federal Police. The Federal Police have an obligation to investigate that matter if it has been referred to them. They've got equally an obligation under law to conduct their inquiries independently. Nobody would accept me as Minister or Albo as Minister directing how an investigation should take place or who should be raided or who should be subject to inquiry. We have laws that operate in this country and the Federal Police who have been criticised by people including Albo which I think has been quite unfair to target those officers individually, I think that is quite wrong.

ALBANESE: I'm targeting you, you're the Government.

DUTTON: I heard your words.

ALBANESE: You're the Government.

DUTTON: I heard your words, you were criticising the individual police officers. I think even the Police Union ...

ALBANESE: That's not true, I don't even know who they are mate.

DUTTON: ... has been horrified at the words you said.

ALBANESE: I don't even know who they are. I'm onto you, you're the Government.

DUTTON: You said you were horrified by their actions.

ALBANESE: You're the Government, you're the Government.

DUTTON: Stand by your words Albo.

ALBANESE: And it is outrageous, I have said it is outrageous that Annika Smethurst's house was raided by seven police for seven and a half hours. That's an outrage.

DUTTON: You're criticising the police Albo.

ALBANESE: No I'm not.

DUTTON: That is an investigation ...

ALBANESE: I am criticising the Government and I am calling for the Government to explain what it knew about these circumstances. Let's strip it back here. Do the public have a right to know if it is being considered that the Government, two departments, are engaged in a debate to increase spying powers against Australian citizens. Is that in

the public interest? The media have a role in a democracy. And what we are seeing here is no one in the Government being prepared to defend the role that media has in our democracy which is essential.

DUTTON: You know that that's not true though.

KNIGHT: Albo, Labor helped passed their laws as they stand?

ALBANESE: No, actually, the laws. We have had briefings, that's not right in terms of Peter is right that these are old laws that have been in place for a very long period of time. Peter is right.

KNIGHT: So do you want the laws as they stand to be changed?

ALBANESE: It is also correct that what we need to do is to have a mature debate, a mature debate about what the role of the media is in our society and their capacity to actually provide appropriate scrutiny of Government and of Opposition.

KNIGHT: Well Peter Dutton, if we can all agree that a strong media is good for democracy and should be protected, will the Government review the laws as they stand? Because in countries like the US, journalists have protections for whistleblowers enshrined in law. Should that be the case here?

DUTTON: Well Deb we do have protections enshrined in law and we value a very health fourth estate, there's no question of that.

KNIGHT: But are you concerned that the journalist could be facing gaol time?

DUTTON: I'm concerned that if people are leaking top secret documents that that can affect our national security. Now, nobody is saying that there

legislation that had been put forward. That's the appropriate time for there to be scrutiny around whatever the proposal might be. But the leaking or publishing of top secret documents which have been classified by the Defence Department or by the Australian Signals Directorate, there are good reasons and long standing reasons why a country like us or the United Kingdom or New Zealand would classify documents in such a way. And the point is that the Federal Police have an obligation to investigate a matter that has been referred

And the point is that the Federal Police have an obligation to investigate a matter that has been referred to them, they have an obligation under law to do it independently.

to them, they have an obligation under law to do it independently. Not with the direction of the Government directing who should be investigated etc, that would be an absurd proposition. And therefore, the criticism that Albo and others has levelled against the individual offices has just been completely unjust.

ALBANESE: I don't even know who the officers are, Peter. So the idea that individual officers ...

DUTTON: Albo go to your own words.

The real issue here is that Australians are concerned that media's capacity to scrutinise Government is under threat.

shouldn't be a debate about what a Government is or isn't proposing that there is no proposal incidentally in relation to this extra powers, that's the way it was wrongly reported – but that's a separate issue. But in relation to the media scrutiny or somebody having a say about what a Government was proposing to do or

ALBANESE: Which individual officers have I criticised? Which ones?

DUTTON: The ones that attended the raids.

ALBANESE: Which ones? Who were they?

DUTTON: The seven officers, in your own words Albo!

ALBANESE: Seriously.

DUTTON: I can't correct the record for you.

ALBANESE: You are trying to distract from the real issue here.

DUTTON: Not at all.

ALBANESE: The real issue here is that Australians are concerned that media's capacity to scrutinise Government is under threat. That's a concern that Australians have, it's a simple one. It's one which you as part of a Government, you consistently have been trying to avoid scrutiny in all

of the portfolios you've had. So I'm not surprised that that's your approach.

DUTTON: You're joking aren't you? Just apologise mate and move on.

ALBANESE: Not at all. I won't be apologising to you Peter Dutton.

DUTTON: No to the police officers.

ALBANESE: You characterise the sort of secrecy and lack of scrutiny that embodies your entire political career.

DUTTON: You're digging deeper ...

ALBANESE: You stand there and say ...

DUTTON: You're digging deeper mate ...

ALBANESE: Not right.

KNIGHT: Alright we are unfortunately out of time.

DUTTON: Just apologise, just apologise.

KNIGHT: Apologise for? What should he be apologising for?

DUTTON: For attacking the police officers involved. Attack the Government that's fine, that's his job.

ALBANESE: I'm onto you Peter, I'm onto you.

DUTTON: Seriously, Albo.

KNIGHT: Gentleman we thank you for your time this morning, unfortunately time is against us. We've got lots of other issues to discuss but we look forward to having you back on the program as often as we can.

END



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ABC chair Ita Buttrose raises 'grave concerns' with minister over 'unprecedented' raids

BY MICHAEL KOZIOL

June 7, 2019 — 10.58am

ABC chairwoman Ita Buttrose has raised "grave concerns" about this week's federal police raid of the public broadcaster in what she described as a "frank" conversation with the Morrison government's new communications minister.

In her first public statement since Wednesday's events, Ms Buttrose said the public nature of the raid and the wide-ranging scope of the search warrant were "clearly designed to intimidate" the ABC and its journalists.

She said she had a "frank" phone call with Paul Fletcher, the communications minister, on Thursday in which she asked for his assurance the ABC would be spared from such raids in the future - which he declined.

"The raid is unprecedented - both to the ABC and to me," Ms Buttrose said.

"An untrammelled media is important to the public discourse and to democracy. It is the way in which Australian citizens are kept informed about the world and its impact on their daily lives."

Ms Buttrose - who was picked by Prime Minister Scott Morrison to chair the ABC earlier this year after a lifelong career in journalism and publishing - also called for changes that would dramatically rebalance the law in favour of public interest journalism.

"In my view, legitimate journalistic endeavours that expose flawed decision-making or matters that policy makers and public servants would simply prefer were secret, should not automatically and conveniently be classed as issues of national security," she said.

"The onus must always be on the public's right to know. If that is not reflected sufficiently in current law, then it must be corrected.

"Public interest is best served by the ABC doing its job, asking difficult

questions and dealing with genuine whistle-blowers who risk their livelihoods and reputations to bring matters of grave import to the surface. Neither the journalists nor their sources should be treated as criminals."

The ABC raid related to stories the broadcaster aired in 2017 exposing allegations of severe misconduct by the Australian Defence Force in Afghanistan, based on secret documents.

It took place just 24 hours after the Australian Federal Police also raided the home of News Corp journalist Annika Smethurst regarding a story she authored last year revealing plans to expand the remit of the Australian Signals Directorate to monitor some Australian citizens.

"It is impossible to ignore the seismic nature of this week's events," Ms Buttrose wrote.

"Raids on two separate media outfits on consecutive days is a blunt signal of adverse consequences for news organisations who make life uncomfortable for policy makers and regulators by shining lights in dark corners and holding the powerful to account."

The ABC has secured a two-week legal "stay" in which police have agreed not to access documents seized from the broadcaster's Ultimo headquarters on Wednesday.

Ms Buttrose vowed to use her position to "fight any attempts to muzzle the national broadcaster or interfere with its obligations to the Australian public".

"Independence is not exercised by degrees. It is absolute," she said.



ABC chairwoman Ita Buttrose: "Independence is not exercised by degrees. It is absolute." CREDIT: JESSICA HROMAS.

At a press conference on Thursday, acting AFP commissioner Neil Gaughan said the ABC raid would not have been so public if the ABC had not filmed it and broadcast the footage.

"The only way it was turned into a public display was based on what the ABC did when we arrived yesterday," he said.

"The ABC filmed it, which is their right, and they continued to tweet during the execution, which again is their right.

"The fact that was allowed to occur, without any hindrance whatsoever, does show the AFP supports freedom of the press."

Mr Gaughan also indicated the AFP was open to recommending prosecution of journalists as part of the investigations. "We haven't decided one way or the other," he said.

He rejected claims the police were trying to intimidate journalists or "conduct a campaign against the media".

"The AFP is a strong supporter of press freedom," Mr Gaughan said. "The media plays an important role in today's society in keeping the Australian community informed."

Transcript of Doorstop Opposition Leader Anthony Albanese, Shadow Minister for Home Affairs Kristina Keneally— Sydney – Saturday, 8 June 2019

SUBJECTS: AFP raids;

**ANTHONY ALBANESE, LEADER OF
THE AUSTRALIAN LABOR PARTY: ...**

And of course Kristina Keneally who this week of all weeks has held the Government to account over the issues of Home Affairs and our national security issues.

This week we've seen I think quite extraordinary circumstances whereby we've had raids on Annika Smethurst's home for seven and a half hours, raids on the ABC, questions asked of Ben Fordham at 2GB...

JOURNALIST: Just on the raids that we saw this week, in April last year after the Annika Smethurst story, Mark Dreyfus wrote to the Prime Minister calling for an investigation. That's exactly what the AFP has now done, it seems to contradict your comments this week?

ALBANESE: Not at all. Well what we saw this week was a considerable length of time, a delay. And it compares with the announcement late last night of a closure of an investigation. So after a long period of delay, my concern is that you've had a series of events this week that happened to have occurred just after a federal election has happened. And so Ben Fordham, questioned, Annika Smethurst's home raided by seven offices of the AFP for seven and a half hours. When questioned about why they went through Annika Smethurst's underwear drawer, the advice is that USBs are very small, and that's one of the things they were looking for.

They had a quite extraordinary warrant issued to the ABC premises. An extensive number of officers going through material at the ABC. And we need to take this back a little bit, just step back. What is this information about with regard to the raid on Annika Smethurst's home? It was that there

...there was debate taking place in the Government over whether there should be increased spying powers on Australians, undertaken without their knowledge. Is that in the public interest?

was debate taking place in the Government over whether there should be increased spying powers on Australians, undertaken without their knowledge. Is that in the public interest? I think it is, that it is in the public interest that Australians find out what's being considered by their Government.

JOURNALIST: Then why did Mr Dreyfus write to the Prime Minister? He seemed to then link it to political chaos in the Government, but it was very clear that he wanted investigations, so why did he do that? Was it just political point scoring?

ALBANESE: The fact is, that we need to wind it back to what the issue is here. I've just done that. No, the issue here is firstly, is it in the public interest for there to be as there is throughout the Western world, whistleblower legislation – there's protection available on the basis of public interest. The issue secondly is what happened with the delay and the timing of any investigation. There were investigations into leaks – that happens. What we have here is an extensive delay and then the Government this week refusing, refusing to say that they supported freedom of the press. We had Scott Morrison as the Prime Minister essentially say "nothing to see here. This

is business as usual." That was his initial response. I don't think that's acceptable.

JOURNALIST: So would you have been happy if the raids had taken place just after that story?

ALBANESE: I've stated my position ...

JOURNALIST: Would you have been happy ...

ALBANESE: No I've stated my position. You mightn't like the answer, but I've stated my position. My position is very clearly that freedom of the press is absolutely critical.

JOURNALIST: So do you agree with Mark Dreyfus then and think that that leak should have been investigated?

KENEALLY: We have been utterly clear this week that there are some matters that government does need to keep secret in order to ensure that people are kept safe and secure. That needs to be balanced with the tension in a democracy to a free press and for the citizen's right to question the Government's actions. And when there is an unauthorised disclosure of classified information the Government should investigate it. But the Government is the one that needs to answer questions about how they are addressing that

tension. I want to make a couple of points in response to your questions...

When it comes to freedom of the press and national security legislation, Labor has at every juncture, stood up and made amendments, moved amendments, made improvements to legislation brought before the Government – brought before the Parliament by the Government. For example, the foreign interference and espionage legislation – it was Labor that moved against the Government's initial wishes to have a public interest defence for journalists in that legislation. When it comes to encryption laws, it was Labor that threw the PJCIS moved many amendments, made 17 recommendations through that bipartisan committee. The Government has not taken those up.

So the onus here rests upon the Government to explain how they are managing this tension. It is not a question of whether or not leaks should be investigated. It is a question about how the Government is managing that...

JOURNALIST: Ms Keneally are you saying that the leak from the News Corp Smethurst story should be investigated but it shouldn't involve the journalist?

It is not a question of whether or not leaks should be investigated. It is a question about how the Government is managing that...

KENEALLY: What I am saying is it is appropriate for the Government, it is in fact incumbent upon the Government to take seriously the unauthorised disclosure of national security information. But it is also incumbent upon the Government to manage that tension of the balancing citizen's right to know and a free press with that type of investigation. Here's the deal, we had an election three weeks ago. The Morrison Government won and with that victory comes the responsibility in a democracy of keeping the balance right between the investigation of national security information unauthorised disclosures and balancing the freedom of the press.

Now I would say that I'm not alone. Many Australians this week have looked

with increasing concern. Around the globe people have looked with create increasing concern and alarm. People like Ita Buttrose and Michael Miller, ABC and Newscorp, have looked with increasing alarm about these raids and these investigations and the way they have been carried out by the Government.

Whether anyone is charged, whether any journalist is charged, it is inarguable that these raids will have a chilling effect on public conversation and on the media. It is incumbent upon the Government, Scott Morrison as Prime Minister, to make clear his position on that balance between national security information – keeping it secure and press freedom in this country...

END



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Correspondence shows Labor demanded an investigation into classified Annika Smethurst leak

BY BEVAN SHIELDS

June 8, 2019 — 10.49am

Labor demanded an investigation into the leaking of "highly classified national security information" to the journalist whose home was this week raided by the Australian Federal Police, in a revelation that could blunt the opposition's assault on the government over press freedom.

Correspondence obtained by *The Sydney Morning Herald* and *The Age* shows shadow attorney-general Mark Dreyfus wrote to Malcolm Turnbull in 2018 to urge the then prime minister to convene an investigation into how secret government documents were leaked to senior News Corp reporter Annika Smethurst.

Labor has argued the Coalition government is responsible for the raid on Smethurst's Canberra home because the secretary of the Department of Defence referred the leak to the Australian Federal Police.

Smethurst reported on confidential correspondence between the heads of the Department of Home Affairs and Defence Department about how some of the spy powers of the Australian Signals Directorate could be expanded to home soil.

While Mr Dreyfus did not specifically request a federal police probe, he said the "damaging leak" risked undermining Australia's national security and asked Mr Turnbull to order an investigation.

"I am sure I do not need to emphasise with you the gravity of such a security breach," Mr Dreyfus wrote.

"The documents described in the media appear to be extremely sensitive and divulge information about one of Australia's key security agencies.

"It is therefore incumbent on you to establish an investigation into how such sensitive information held by members of your government was able to find its way into the public domain.



Shadow attorney-general Mark Dreyfus at Parliament House in Canberra. CREDIT: FAIRFAX.

"Ensuring this sort of breach cannot occur again is vital for securing the trust that Australians place in governments on matters of national security."

Mr Dreyfus has since argued that Smethurst's reporting was in the national interest, as has Labor leader Anthony Albanese.

"I think it is a good thing that that was reported, frankly," Mr Albanese said this week. "Australians do have a right to know what is going on in a democracy."

While Mr Dreyfus argued in his letter that the leak was a national security matter, he this week said Smethurst's April 2018 report did not threaten national security.

On Thursday, he told ABC radio: "What is it about Australia's national security – this is the question the government has to answer – what is it about Australia's national security that is so threatened by a public discussion of a proposal to allow the Australian Signals Directorate for the first time to spy on Australians?"

In a separate interview on the same day, he said: "I don't accept that there is some national security reason there for not discussing it."

If found and convicted, the source of the leak faces a jail sentence of up to two years.

In a statement on Saturday, Mr Dreyfus said: "I have never disputed that this leak was of a very serious nature, nor that it should have been looked into. My concern has entirely centred around the raiding of a journalists' home and the government's abdication of its responsibility to uphold the principle of press freedom.

"My concern at the time was that the internal chaos of the Turnbull government could compromise the proper functioning of government, as expressed in the letter."

Mr Dreyfus' letter suggested tensions inside the government over Peter Dutton's newly created Home Affairs super portfolio may have been behind the leak to Smethurst.

"The chaos inside government cannot be allowed to interfere with the vital work of our security agencies, or indeed any other arm of the public service engaged with national security," Mr Dreyfus wrote.

"As the government of the day you are the custodian of our nation's safety. At present your ability to carry out that duty is in question."

In a meeting of the national security committee of cabinet in the days after Smethurst's story, Mr Turnbull swiftly put to bed any thoughts of using the international spy agency to monitor Australians.

Government officials have long been adamant there was never a plan to spy on Australians. Rather, the potential expansion of the ASD's role involved using the agency's capabilities to disrupt in the systems of cyber-enabled criminals such as paedophile rings and organised crime gangs in Australia.

But the change would nonetheless have meant the ASD was carrying out domestic activities in ways it had not been previously.

As the government of the day you are the custodian of our nation's safety. At present your ability to carry out that duty is in question.

Home Affairs secretary Michael Pezzullo has previously said that department heads "are obliged" to refer unauthorised disclosures of classified advice to the police investigation.

The AFP is also examining the disclosure of highly classified material to the ABC, which it raided this week in addition to Smethurst's home. The ABC's stories used leaked Defence information to accuse Australia's elite special forces in Afghanistan of killing unarmed men and children.

While the AFP is investigating the leaks to Smethurst and the ABC, is has

abandoned any inquiry into who leaked classified national security advice at the height of a major political dispute over border protection.

The leak, which Australia's top spy decried as "seriously damaging" and Labor claimed was orchestrated by the Morrison government to discredit proposed laws to fast track asylum seeker medical transfers, was referred to police by Mr Pezzullo earlier this year.

Federal police officers evaluated the referral but opted against launching a full investigation "due to the limited prospects of identifying a suspect".



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After the AFP raids it's still possible for whistleblowers to speak out. Here's how

Whistleblowing is critical to a healthy democracy.

Thankfully, there are reliable ways to preserve anonymity

CHRISTOPHER KNAUS

Tue 11 Jun 2019 12:45 AEST

Last week's federal police raids sent a clear and unambiguous message to would-be whistleblowers. Revealing government wrongdoing can be a dangerous game.

But, as the Transparency International Australia chief executive, Serena Lillywhite, notes, whistleblowing remains critical to the functioning of a healthy democracy.

"A healthy democracy depends on the ability to hold decision-makers to account, and for that we need transparency," she said. "The media and whistleblowers play a crucial role in shining a light on what our government does in our name."

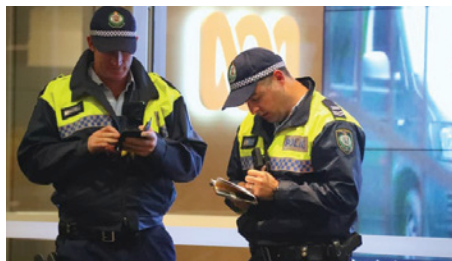
So is it still possible for whistleblowers to make revelations of government wrongdoing without repercussion? The short answer is yes.

Thankfully, there are still reliable ways to preserve your anonymity and to keep material confidential. The Guardian takes great care to protect its sources from the threat of reprisal and permanently keeps open secure channels of communication.

Whistleblowers should also take great care themselves to understand the legal protections available under current law.

How can I keep my communications with reporters away from prying eyes?

Maintaining a secure, confidential line of communication, from beginning to end, is critical to protecting the identity of whistleblowers. Generally speaking, that means not using regular phone calls, texts or unencrypted emails, and avoiding the use of devices that could be under surveillance.



AFP raids have sent a clear and unambiguous message to would-be whistleblowers, but there are options to protect anonymity and confidential material. Photograph: David Gray/AAP.

The Guardian has published an exhaustive guide highlighting the best options for whistleblowers wanting to protect their anonymity and the confidentiality of material.

Of these options, SecureDrop is by far the best. It allows whistleblowers to communicate and share documents without being tracked, though only a small number of outlets, including the Guardian, make it available. SecureDrop makes no record of where material has come from, ensuring anonymity is preserved. It automatically encrypts documents, making it difficult for outside eyes to view the material. The Guardian will only ever access SecureDrop material from computers that are offline, lessening any risk of anonymity being compromised from this end. All the Guardian sees through SecureDrop is the shared material and a codename allowing replies to be sent to the whistleblower. Whistleblowers will need to find a computer that is not being watched, download the TOR internet browser, and go to <https://www.theguardian.com/securedrop> for next steps.

If SecureDrop is not possible, encrypted email is another way to



Contact the Guardian securely.

prevent outsiders monitoring your communications with the media. Creating a new email account and setting up PGP encryption, if done properly, will maintain confidentiality. But the process requires some technical know-how. Users need a PGP tool (Mailvelope is popular), the public key of the journalist they wish to contact, the TOR browser and a newly created email address.

If you're finding PGP difficult, ProtonMail is a secure, easy-to-use email service. ProtonMail is end-to-end encrypted but is as simple as most major email services, like Gmail. ProtonMail aims to eliminate any chance of your message being intercepted. Emails are stored on its servers in an encrypted format, and are transmitted between ProtonMail servers and devices in a similarly encrypted fashion. ProtonMail is set up in a way that makes your data inaccessible even to the company itself.

End-to-end encrypted messaging apps like Signal and Threema are also a good way to keep material confidential. The apps are as simple to use as text messaging, but keep the content of

messages hidden from anyone but the sender and recipient. The apps, however, are not great for ensuring anonymity. Signal, for example, will generally display phone numbers. Using a temporary burner phone can help avoid this problem, if anonymity is critical.

Regular snail mail can otherwise help to ensure whistleblowers leave no digital trace. It's generally unlikely mail will be intercepted, unless scans detect dangerous objects. But a risk remains that the sender's location can be traced, either by identifying where the item was mailed from, or through the packaging. There is also the risk of items being lost or delayed in the mail.

People keep talking about the government's new national security powers. How do they threaten my ability to talk to journalists?

Three things are relevant here: metadata retention laws, new powers designed to circumvent encryption and new secrecy offences.

The metadata laws introduced by the Abbott government allow the government to obtain warrantless access to information about a person's communications. They apply to phone calls, texts, emails and internet activity. Metadata refers to basic information about a particular communication, not the actual content of the information itself. For a call, that might be the time of the call, the number dialled and the call's duration. The law requires telcos to store such metadata for at least two years.

The risk here is obvious. It could allow the government to easily identify a journalist's sources. After an outcry, the government made specific protections for journalists. Law enforcement must require a special journalist warrant before accessing a journalist's metadata. Federal police have already failed to do that on one occasion. The metadata laws make it even more critical that whistleblowers avoid standard phone and text messages, and ensure they use safe, encrypted forms of communication like SecureDrop.

Australia last year also introduced a hugely experimental scheme that gives government the power to co-opt technology companies, device manufacturers and service providers to help it circumvent encrypted communications. Law enforcement agencies can now issue notices compelling companies to help them or build a new capability in their systems

to monitor criminal suspects. The government said it only wanted to use the powers to investigate terrorism or child sex offences, but they can also be used for other crimes punishable by three years or more in prison.

Also last year, the government passed new espionage offences making it a crime punishable by seven years imprisonment for a current or former public servant to communicate information that "is likely to cause harm to Australia's interests". A second offence, punishable by five years behind bars, exists barring public servants from "communicating and dealing with information by non-commonwealth officers".

What laws exist to protect me as a government whistleblower?

In Australia, protections for government whistleblowers are available through the public interest disclosure act 2013. The laws are designed to shield government whistleblowers from retaliation and encourage agencies to investigate allegations of wrongdoing. The protections are supposed to protect whistleblowers from criminal prosecution or civil action, or other recriminations. The laws are frequently criticised as weak, confusing and particularly bad at protecting disclosures to media.

They have failed to protect whistleblowers like Richard Boyle, who is facing a lengthy jail term for revealing the heavy-handed debt collection tactics of the Australian taxation office.

The protections are available to all current or former public servants, contractors, statutory office holders, staff at government-owned companies, and temporary public sector employees recruited through agencies. Individuals are only given protection if they blow the whistle on specific types of conduct, and make their disclosures to authorised persons, usually within their agency or to official government watchdogs.

Protection will only be given for the disclosure of certain types of conduct, including illegal conduct, maladministration, corruption, abuse of public trust, financial waste, perverting the course of justice, or conduct that endangers health or environmental safety.

The current scheme makes it difficult to go to the media and retain whistleblower protection, but it is possible.

First, whistleblowers must speak up internally first. To remain protected, whistleblowers can only make disclosures to authorised internal recipients, including

their supervisor or manager. Protection is also extended to whistleblowers who speak to the commonwealth ombudsman, or, for intelligence cases, the inspector general of intelligence and security (IGIS).

In limited circumstances – and only once these internal steps are taken – whistleblowers can maintain legal protections if they take their concerns to the media, police or their lawyer. Whistleblowers can go public if they're dissatisfied with the way their complaint has been handled internally, but only if the external disclosure is on balance not "contrary to the public interest".

They must wait 90 days after going to the ombudsman or IGIS. Even then, whistleblowers can only give the external party the absolute bare minimum of information needed to show the misconduct.

Protections are not extended for whistleblowers going public about intelligence and sensitive law enforcement information.

I have information about corporate misconduct, will I still be protected?

Traditionally protections for corporate whistleblowers in

Australia have been weak. The protections – contained in the corporations act 2001 – made it hard for corporate whistleblowers to speak to the media, even if the company and corporate regulator failed to act.

But parliament this year passed new reforms to significantly strengthen corporate whistleblowing protections.

Whistleblowers can now go to a journalist or parliamentarian to make "emergency" or "public interest" disclosures once 90 days has passed since they last blew the whistle, either internally or to a regulator.

A broader range of people can obtain such protection, including the family of current or former employees. Previously, protections were only available for revealing conduct that breached the corporations act.

Now protection can be obtained for disclosing a much wider range of misconduct, including fraud, bribery, corporate corruption and money laundering.

In some respects, Australia's corporate whistleblowing regime will be world-leading.

There is now an onus on large companies to spell out how they will protect whistleblowers before they start experiencing reprisals, instead of waiting until the retribution begins to take start.

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Australian media owners and journalists unite to call for laws to protect a free press

BY MARIAM CHEIK-HUSSEIN

14 June 2019

Media owners have united in an open letter to Prime Minister Scott Morrison asking him to defend press freedom in Australia.

The "Journalism is not a Crime" letter was published in News Corp Australia newspapers, including The Australian, and Nine newspapers, including The Sydney Morning Herald.

The letter, also signed by some of the nation's most prominent journalists, including Karen Middleton, David Marr, Kathrine Murphy, Laurie Oaks and Malcolm Farr, calls for legislation to "recognise and enshrine a positive public interest protection for whistleblowers and for journalists".

It comes following the raids on Annika Smethurst, a News Corp journalist, and the ABC over two separate stories relating to the Afghan Files and alleged plans for government spying on Timor-Leste.

Currently, whistleblowers Richard Boyle, David McBride and Witness K are also facing jail time for stories relating to

the Australian Taxation Office, Afghan Files and alleged plans to spy on Timor-Leste.

"These are issues of public interest, of the public's right to know," the open letter says.

"Whistleblowers and the journalists who work with them are entitled to protection, not prosecution. Truth-telling is being punished."

Peter Miller, CEO of NewsMediaWorks, says the recent AFP raids have raised questions over free press in Australia.

"The two recent incursions by the AFP have shocked many and have prompted an important conversation about the present state of Freedom of the Press in Australia," Miller says.

"It's an important conversation. The community has received a stark and sharp reminder of the vital work of journalists in the public's interest."

"Our members are universally being very vocal, and NewsMediaWorks applauds its members for being outspoken on this big issue"



Open letter in the papers today.

Current members of NewsMediaWorks include News Corp Australia, Seven West Media, and Nine.

In the name of security - secrecy, surveillance and journalism

JOHAN LIDBERG & DENIS MULLER

November 5, 2018 3.27pm AEDT

Associate Professor, School of Media, Film and Journalism, Monash University, Senior Research Fellow in the Centre for Advancing Journalism, University of Melbourne

*The following is an edited extract from a new book by Johan Lidberg and Denis Muller (eds), **In the name of security: Secrecy, surveillance and journalism**, published by Anthem Press.*

The dramatic increase in national security laws has confronted journalism with threats and challenges so great as to weaken its fourth-estate capacity and unnecessarily curtail its ability to inform the public about the largest political issues of our time: terrorism, and what governments are doing in their people's names to respond.

These threats and challenges take many forms. The most ubiquitous and potentially harmful is the threat to the anonymity of confidential sources. Technological developments that facilitate surveillance by the state security apparatus make it increasingly difficult for journalists to protect confidential sources from agencies that may wish to prosecute them for breaches of laws criminalising specific disclosures of information. It also shows that the laws regulating surveillance in the Five Eyes countries – US, UK, Canada, Australia and New Zealand – lack adequate safeguards to protect journalists' sources.

The technological capacity to track individuals and their communications surpasses anything previously seen in human history. This, combined with the plethora of laws passed since 9/11 creates a suffocating blanket of surveillance backed by legal powers of suppression, some of which go so far as to obtrude on the principle of habeas corpus.

The seriousness of these consequences imposes new and weighty ethical challenges on journalists. The ethical principles involved are universal among democracies and so the challenges are the same for journalists in all the countries studied. In addition to source-protection, these challenges include deciding how far, and in what circumstances, a journalist may ethically break the law in order to inform the public. This is made especially



The election of Donald Trump as US president in 2016 has brought heated debate about AAP/EPA/Larry W. Smith.

acute by the fact that it is rare in any of the jurisdictions studied to have a public-interest test against which disclosure may be tested and excused.

A further ethical complication is that it is a central responsibility of journalists who are prepared to receive information from confidential sources to satisfy themselves, so far as possible, that the source is acting in good faith and not prosecuting a hidden agenda.

Secrecy surrounding security services and their operations is more entrenched in Australia and the UK than in the other countries studied, making it even more difficult for journalists in those countries to obtain information about what is being done by the security agencies in those countries' names.

Even though it is incontrovertible that there has been a dramatic shift towards protection of national security at the price of some encroachment on civil liberties, this is a price voters in those countries are prepared to pay in order that their sense of safety may be enhanced. This is clearly shown by an analysis of public opinion polls. The polls also show that voters only become concerned about impingements on privacy or civil liberties when they can see that they personally might get entangled in the security machine.

There are some differences between the Five Eyes countries in their responses to terrorism and in the constraints on government. In the US, the first amendment



Secrecy surrounding security services and their operations is more entrenched in Australia and the UK than in the other countries studied. AAP/Lukas Coch.

to the Constitution explicitly supporting a free press still provides protection for journalism when it comes to reporting security matters. Canada and New Zealand appear similar to the US in this respect.

The two real stand-outs among the Five Eyes are the UK and Australia. This can probably be explained by the UK Official Secrets Act and incorporation of the spirit of this act into Australian laws. This is most clearly manifest by the fact that access to information laws do not apply to security and intelligence agencies in these two countries.

Add to this the fact that the Australian parliament has passed more anti-terror laws than any other liberal democracy since 2001, and a continuum emerges where journalism in Canada and New Zealand appear least affected by the shift in the security and openness see-saw, with the US somewhere in the middle of the continuum and the UK and Australian journalism most affected by the rebalancing.

Journalism in the other countries of study, Brazil, India, South Africa, Denmark and Germany, appears to be less affected by legal changes and more troubled by the wide and unclear definitions of national security. This makes it possible for governments to classify large tranches of information under the wide umbrella of national security and block access to this information.

The relationship between journalism and national security in Brazil, India and

South Africa is examined by looking in particular at information-access regimes. The study shows that while in each country laws promoting open government are passed in a flush of idealism, gradually they get whittled down as governments find openness not so attractive in practice.

This is not so different from the life cycle of information-access regimes in more mature democracies. While the EU exerts a moderating influence on the secrecy inclinations of member states, Denmark and Germany both languish well below the mid-point on the 30-point Global Right to Information (RTI) index of openness.

Until recently, there was little international guidance on how to balance national security and access to information. However, in 2013 at Tshwane in South Africa, representatives from 70 countries reached agreement on 50 principles offering comprehensive guidance on how to strike the balance between national security and public access to information.

The principles most relevant to the issues canvassed in this book say:

- The public has a right of access to government information, including information from private entities that perform public functions or receive public funds (Principle 1).
- It is up to the government to prove the necessity of restrictions on the right to information (Principle 4).
- Governments may legitimately withhold information in narrowly defined areas, such as defence plans, weapons development, and the operations and sources used by intelligence services. Also, they may withhold confidential information supplied by foreign governments that is linked to national security matters (Principle 9).
- But governments should never withhold information concerning violations of international human rights and humanitarian law, including information about the circumstances and perpetrators of torture and crimes against humanity, and the location of secret prisons. This includes information about past abuses under previous regimes, and any information they hold regarding violations committed by their own agents or by others (Principle 10A).
- The public has a right to know about systems of surveillance, and the procedures for authorising them (Principle 10E).
- No government entity may be exempt from disclosure requirements—

including security sector and intelligence authorities. The public also has a right to know about the existence of all security sector entities, the laws and regulations that govern them, and their budgets (Principles 5 and 10C).

- Whistleblowers in the public sector should not face retaliation if the public interest in the information disclosed outweighs the public interest in secrecy. But they should have first made a reasonable effort to address the issue through official complaint mechanisms, provided that an effective mechanism exists (Principles 40, 41, and 43).
- Criminal action against those who leak information should be considered only if the information poses a real and identifiable risk of causing significant harm that overrides the public interest in disclosure (Principles 43 and 46).
- Journalists and others who do not work for the government should not be prosecuted for receiving, possessing or disclosing classified information to the public, or for conspiracy or other crimes based on their seeking or accessing classified information (Principle 47).
- Journalists and others who do not work for the government should not be forced to reveal a confidential source or other unpublished information in a leak investigation (Principle 48).
- Public access to judicial processes is essential: invocation of national security may not be relied upon to undermine the fundamental right of the public to access judicial processes. Media and the public should be permitted to challenge any limitation on public access to judicial processes (Principle 28).
- Governments should not be permitted to keep state secrets or other information confidential that prevents victims of human rights violations from seeking or obtaining a remedy for their violation (Principle 30).
- There should be independent oversight bodies for the security sector, and the bodies should be able to access all information needed for effective oversight (Principles 6, 31–33).
- Information should be classified only as long as necessary, and never indefinitely. Laws should govern the maximum permissible period of classification (Principle 16).
- There should be clear procedures for requesting declassification, with priority procedures for the declassification of information of public interest (Principle 17). The implementation of the Tshwane

principles has become more important than ever as the phenomenon of fake news has developed in the wake of the 2016 election of Donald Trump as president of the US. This is of course not a new occurrence. Disinformation has been used by security and intelligence agencies for many decades. What is new is the scope and scale, to a large extent magnified by social media.

What is also new is the extent to which professional media and investigative journalists struggle to get through to the public with their verified accounts, showing what was fake and what was real news. In this environment, access to raw information becomes more important than ever. This is made all the more complex by the fact that many intelligence agencies are active players in the misinformation and disinformation game. The above points make reporting security and intelligence issues more challenging than ever.

Democracies need to reassess their fundamental values and the price in civil liberties they are prepared to pay for national security. This confronts the citizens of those countries with a starkly uncomfortable question: At what point does the trade-off mean that the terrorists have won? If these powers, developed in times of emergency, are not rolled back in times of lower threat levels, they will increase from a higher level next time there is a real or perceived security emergency. This simply entrenches the erosion of civil liberties and the concomitant weakening of democratic principles.

The war on terror has no single identifiable enemy. Indeed, a lot of the real and perceived threats come from within nation-states, as well as from outside. In these circumstances, there is no single entity with whom governments can negotiate the terms of peace. That leaves the prospect of an open-ended period during which the state of exception increasingly becomes the state of normality, supported by ever-growing mass surveillance capabilities as described by whistleblowers interviewed in the BBC documentary *Weapons of Mass Surveillance*. The whistleblowers' testimonies point to a future where security agencies can record all digital traffic within a country in real time, store it and conduct retrospective searches of suspect activity.

Who do we entrust with these truly awesome surveillance powers? How will they be used by authoritarian regimes?

How far are we prepared to go in the name of security?

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Four laws that need urgent reform to protect both national security and press freedom

DENIS MULLER

June 19, 2019 6.00am AEST

Senior Research Fellow in the Centre for Advancing Journalism, University of Melbourne

In a perfect world, Australia would introduce constitutional protections for freedom of the press. But since the chances of that are next to zero, it might be more productive to look instead at what might be done to make the existing web of secrecy laws less repressive.

As a starting point, four laws in particular need reforming.

The secrecy of information law

Part 5.6 of the Criminal Code Act 1995 is headed "Secrecy of Information". It defines two general categories of information that are to be regarded as secret:

- inherently harmful information
- information likely to harm Australia's interests.

Inherently harmful information means any information that has a security classification attached to it, or belongs to one of the intelligence services, or relates to the operations of an intelligence service or a law-enforcement agency.

Information "likely to harm Australia's interests" is not defined. It is an open-

ended catch-all that is used to go after public servants who leak and the journalists who publish those leaks.

The effect is to leave it open for the government to decide what information can be used to form the basis of prosecutions. This means the law is vulnerable to abuse through arbitrary

The entire Part 5.6 of the Criminal Code Act needs to be rewritten, narrowing its scope to information that, if leaked, would present a clear, present and serious danger to the public good.

enforcement of the kind that the Australian Federal Police has come to specialise in.

Journalists' liability is set out in the same part of the Criminal Code as public servants' liability.

It states that anyone who receives, deals with or publishes the classes of information described in the law are also liable to be prosecuted, along with the leaker.

That is a clear attack on the freedom of the press. There is a defence of public interest, but how it works is very uncertain. The law says it is a defence if:

the defendant was acting in the capacity of a journalist reporting news, presenting current affairs or expressing editorial or other content in news media, and reasonably believed that receiving and publishing the information was in the public interest.

This looks all right on the surface, but there are several pitfalls in it.

First, who is a journalist? Everyone engaged in doing news journalism, including bloggers and citizen journalists? Or only those employed by big media organisations?

Second, what is in the public interest?

Third, what constitutes a "reasonable belief"?

Finally, the onus is on the journalist to prove his or her innocence beyond reasonable doubt. That is the reverse of the usual practice in criminal law where the onus is on the prosecution to prove guilt.

The entire Part 5.6 of the Criminal Code Act needs to be rewritten, narrowing its scope to information that, if leaked, would present a clear, present and serious danger to the public good.

The public interest needs to be defined; the act needs to make it clear that anyone doing journalism is presumed to be entitled to the public-interest defence. "Reasonable belief" needs to be

dropped, and the onus of proof should be laid on the prosecution.

National security laws

There is not space here even to scratch the surface of the repressions built into the 75 or so national security laws that Australia has enacted, the overwhelming bulk of them since the terrorist attacks of September 11 2001.

However, they need to be comprehensively reviewed against a set of principles concerning freedom of the press.

These principles should include, as a minimum:

- that the press is entitled to a public-interest defence in every case
- that the laws should be enforceable only in cases of clear, present and serious danger to national security

- that intention to harm national security should be the fault standard for any prosecution of the press, not mere accident or inadvertence
- that the onus of proof rests with the prosecution.

Metadata laws

These are a subset of the national security laws and are contained in the notorious Telecommunications (Interception and Access) Amendment (Data Retention) Act, which caused such a public outcry when it was enacted in May 2015.

The act requires internet service providers to retain everyone's metadata for two years, plus information about their telecommunications accounts and services.

Metadata tells anyone who looks at it who called whom, when, where, for how long and on what device.

The implications for journalists dealing with confidential sources are obvious.

Recognising this, parliament included in Division 4C of the act some window-dressing to give the impression there is some protection for journalists and their sources.

The protection applies to "a person working in a professional capacity as a journalist" or to an employer of such a person and their sources. Again, it is

There is no specific provision in the present law to protect a whistleblower who goes to the media, even after they have tried and failed to get the wrongdoing fixed by reporting it internally.

- that the term national security refers to the sovereignty and safety of the nation and – for the purposes of press freedom – not more than that
- that the performance of the security services should be just as much an object of public scrutiny as that of any other part of government.
- that judicial supervision of any warrant system used for pursuing journalists or their sources should be in the hands of a judge of a superior court and no one else

unclear if this includes bloggers and citizen journalists, and their sources.

The process for issuing a "journalist information warrant" is byzantine in its complexity.

In some circumstances, the director-general of security gets one through the minister in charge of the security services. If that minister cannot be reached, the director-general can try the prime minister, the foreign minister or the defence minister.

In an emergency, the director-general can issue a warrant to him- or herself.

In other circumstances, a law-enforcement agency can apply to a judge, magistrate, member of the Administrative Appeals Tribunal or a lawyer with five years' experience.

The warrant can remain in force for six months. That is a long time in journalism.

These arrangements make a mockery of the concept of press freedom and show up the protective mechanism for the sham it is.

Clearly, the warrant system has to be placed in the hands of a superior court judge if it is to have any meaningful judicial supervision.

The scope of the law also needs to be limited to national security, narrowly defined.

Whistleblower laws

The Public Interest Disclosure Act of 2013 is meant to provide protection for Commonwealth public servants who disclose wrongdoing by government agencies.

Professor A.J. Brown, a distinguished legal and public policy academic who

had a hand in drafting it, is reported to have called it "a dog".

That is true, but the original version of the bill that he and the then Labor attorney-general, Mark Dreyfus, worked up into the present law was a genuine mongrel. It contained no fewer than nine hurdles a public servant had to jump if disclosure to the public was to be protected.

There is no specific provision in the present law to protect a whistleblower who goes to the media, even after they have tried and failed to get the wrongdoing fixed by reporting it internally.

The consequences are being seen now in the prosecution of the Tax Office whistleblower, Richard Boyle, in Adelaide. He faces 66 charges and a possible 161 years in prison for revealing cruel and aggressive debt-collecting practices by the Tax Office.

And David McBride, a former Defence Department lawyer, is being prosecuted for revealing that some Australian troops in Afghanistan were alleged to have committed a war crime.

Justice John Griffiths of the Federal Court has reportedly described the law as "technical, obtuse and intractable".

No one pretends that whistleblowing laws cannot be abused by people with personal agendas or vendettas to pursue. But the law as it stands makes the whistleblower the victim of vendetta.

It is a question of prioritising the public interest over the private interests of the bureaucracy in protecting itself from scrutiny, and from the risk that occasionally a rogue whistleblower will cause trouble.

This involves amending the laws to give explicit protection to whistleblowers who go to the media after having tried in vain to have the wrongdoing fixed internally, as both Boyle and McBride tried to do.

Australia has been sleepwalking into its present position, lulled by the largely bipartisan approach of the Coalition and Labor, the latter not wishing to seem soft on national security despite harbouring manifold reservations about some of these laws.

To make matters worse, among the "Five Eyes" intelligence-sharing countries – the US, UK, Canada, Australia and New Zealand – Australia alone has no constitutional or equivalent protection for the freedom of the press.

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