



Introduction

The Alliance for Journalists' Freedom (AJF) welcomes the opportunity to provide a brief submission on the Review of the Criminal Code Amendment (State Sponsors of Terrorism) Bill 2025.

The Alliance for Journalists' Freedom is an advocacy group established in 2017 to support press freedom in Australia and the Asia Pacific region. In 2019, we published a White Paper on Press Freedom in Australia, updated in 2024, which argued that a slew of national security legislation passed since 9/11 had undermined the ability of journalists to perform their democratic role as watchdogs monitoring state institutions. The AJF advocates for a Media Freedom Act that would establish the principles of press freedom in a similar way to a constitutional amendment. We believe this would create a positive obligation for investigating agencies and the courts to recognise the public interest in the work of legitimate journalism, including protecting sources, alongside the established public interest in prosecuting the sources of leaked information.

This submission addresses one issue in particular. Laws dealing with state-sponsored terrorism or foreign interference must not capture legitimate journalism. Reporting that serves the public interest should never be treated as an offence.

The role of journalism

Reporting on or investigating the activities of states, organisations or individuals linked to terrorism is an essential public service. It enables accountability and helps the public understand complex global events. Journalists often need to engage with people or entities that governments



consider hostile. That engagement does not amount to support or endorsement.

The purpose of journalism is to inform the public, not to promote or assist any party. This distinction should be recognised in the drafting of legislation. Intent is critical. Laws that fail to distinguish between the purpose of reporting and the purpose of collaboration risk creating uncertainty and discouraging legitimate investigation.

Risk of overreach

Since 9/11, Australia has passed almost 100 pieces of national security legislation. The broadening of national security and secrecy legislation has had a chilling effect on public-interest reporting. The 2019 AFP searches of journalists' homes and workplaces, and the introduction of broad secrecy offences under the Criminal Code, have made sources more reluctant to come forward and journalists more cautious about investigating sensitive matters.

If laws addressing state-sponsored terrorism are not carefully defined, there is a real risk that journalists be forced to self-censor to avoid running afoul of overbearing intelligence agencies. Vague terms such as "support", "benefit" or "association" could be interpreted to include routine journalistic activities such as interviewing representatives of proscribed groups, receiving leaked material, or publishing documents.



Recommendation: clear protection for journalism

To protect legitimate reporting, the AJF recommends that any legislation dealing with state-sponsored terrorism or foreign interference include a specific exemption for journalism undertaken in the public interest. For example:

“This Act does not apply to the publication or communication of material by a person engaged in journalism, where the publication or communication is carried out in the public interest.”

This approach already exists in certain laws across the country such as the Victorian Evidence Act.

The AJF argues that a complete exemption is necessary. Narrowly framed defences have failed to protect those they are ostensibly designed to defend¹. They also still assume journalists who might legitimately seek to explore and report on state sponsored terrorism are criminals, who must bear the evidentiary burden to defend their actions. This is likely to have an unnecessarily corrosive chilling effect on legitimate reporting. However, if an exemption is not adopted, the AJF recommends introducing a broad statutory public-interest defence. This would allow journalists to demonstrate that their conduct was undertaken in good faith and for the purpose of informing the public.

We further recommend defining ‘journalism’ as a process accountable to a recognised code of conduct, rather than ‘journalist’ as a particular class of individual. This is the approach we have used in our Media Freedom Act, because it avoids the problem of an individual acting as a journalist to avoid

¹ See the prosecutions of whistleblowers David McBride and Richard Boyle where public interest defences were insufficient to protect them from prosecution despite no evidence of intent to cause harm and the information exposed was genuinely in the public interest.



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prosecution for otherwise criminal activities. This is consistent with the latest approaches in S14R of the Queensland Evidence Act (1977), for example.

The definition we use in our MFA is:

*(1) For the purposes of this Act, a person is **engaging in journalism** if, for the purpose of disseminating, communicating or publishing reports, commentary, opinion or analysis to the public or a section of the public in a news medium:*

(a) the person gathers, collects, photographs, films, records, investigates, analyses, researches, assesses, verifies or otherwise deals with things or information for the purpose of writing, preparing, editing or otherwise presenting such reports, commentary, opinion or analysis; and

(b) the reports, commentary, opinion or analysis relate to local, national or international events or other matters of public interest.

(2) In determining whether a person is engaging in journalism, consideration may be given to the following matters:

(a) whether the person regularly engages in some or all of the activities mentioned in subsection (1); and

(b) whether the person complies with a recognised professional standard or code of practice in carrying out the activities; and

(c) whether the publisher of the news medium complies with a recognised professional standard or code of practice in publishing information in the news medium; and

(d) any other matter considered relevant.



Consultation

The AJF also recommends that the Government and this Committee establish a process for ongoing consultation with media organisations, journalists and legal experts when developing or reviewing national security legislation. Early and informed engagement will help ensure that new laws are effective in addressing security concerns while maintaining the public's right to know.

Conclusion

Australia's national security and counter-terrorism laws must protect the country without undermining its democratic foundations. A clear distinction between journalism and unlawful activity is essential.

Protecting the ability of journalists to report freely is not inconsistent with national security. It strengthens public trust, supports accountability and upholds the democratic values that Australia seeks to defend.

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