

**Parliamentary Joint Committee on Intelligence and Security**  
**Inquiry into the impact of the exercise of law enforcement and intelligence**  
**powers on the freedom of the press**

**Joint Submission from WikiLeaks and the Australian Assange Campaign**

***Section One***

**Introduction and Summary**

We welcome the opportunity afforded by the Parliamentary Joint Committee on Intelligence and Security ('the Committee') to provide a submission on the critical issues concerning journalistic freedom in our democracy.

Australia is one of the world's most successful democracies, with a strong commitment to core values of freedom of speech, association, and the press. It is a country with a strong reputation in the world as an exemplar of these values, and our success sends important messages both in our immediate neighbourhood and globally.

Simply put, the eyes of the world are upon us as we tackle the balance of freedom and national security.

Thus, we have the opportunity if we can strike the right balance, to provide a model for other democracies across the globe.

It is evident that over the years since 2001 many security laws have been passed- at the federal level over 70 pieces of legislation - and we have an obligation to examine their combined impacts on civil society, including on the media.

Often such measures were passed with insufficient robust debate around consequences for the health of our democracy so this Inquiry clearly provides an overdue review.

In that context, we would urge the Committee ensure public hearings and the publication of all submissions.

The idea of an inquiry on press freedom being held *in camera* is clearly a contradiction in terms.

The transparency of this process will be critical to enhancing public confidence and trust - which is increasingly under duress, at significant cost to our democratic system.

Further it is evident that the creation of the Department of Home Affairs has created conflicted lines of authority and pressure, as well as mission creep - indeed mission leap.

The intervention of substantive judicial processes, including requiring warrants to be issued by a senior judicial officer following contested hearings which include the media with the capacity to rebut, will be a crucial reform to add critical checks and balances to an otherwise opaque and unaccountable system.

Further the Attorney General should report to Parliament each quarter on the broad number of warrants issued, and this basic information should not, in and of itself, impinge on national security.

Without substantial reforms, the case of Mr Julian Assange which is outlined in this submission is the future, if not the present reality, facing Australian journalists, editors and publishers.

**Our key recommendations are:**

1. Urgent intervention in relation to the case of Mr Julian Assange.
2. The Australian government substantially strengthen *Public Interest Disclosures Act* and other legislation protecting whistleblowers, journalists and media organisations that publish material *in the public interest*; specifically, evidence of war crimes, corruption and human rights violations.
3. National security legislation must amended to decriminalise regular journalistic activity (35P of the *ASIO Act*, Division 4C of the *Telecommunications Interception and Access*

*Act; Criminal Code Act, Part 5.2: Espionage and related offences; Part 5.6: Secrecy of information,*

section 119.7: Foreign incursions and recruitment; s 80.2C : Advocating terrorism;

*Crimes Act: s15HK and s15HL: Controlled operations, unauthorised disclosure of information.*

4. Applications for, and the circumstances of the execution of warrants must be contestable and independently monitored; *Crimes Act* s. 3ZZHA: Delayed notification search warrants, unauthorised disclosure of information
5. Classification of documents and the FOI system overhauled
6. A federal bill of rights be enacted by parliament in order to protect freedom of speech in Australia.
7. Hearings and submissions made to this inquiry are public and accessible.

We would urge the Committee to continue to bear in mind the key words of Amal Clooney and Boris Johnson:

*“The indictment against Julian Assange has alarmed journalists and newspapers around the world...because it criminalises common practices in journalism that have long served the public interest”*

*Amal Clooney, UK Special Envoy on Media Freedom<sup>1</sup>*

*“Media organisations should feel free to bring important facts into the public domain...There can be no conceivable case in my view for prosecuting newspapers or media organisations for publishing stuff like this, where there plainly isn’t any risk to national security...A prosecution on this basis would amount to an infringement on press freedom and have a chilling effect on public debate.”*

*Conservative Party candidate for Prime Minister of the UK Boris Johnson discussing the Darroch cables 13 July 2019<sup>2</sup>*

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<sup>1</sup> From 29:32

[https://www.pscp.tv/w/b\\_Z2IDFKUktWXpvR2V2S1B8MXZBR1JXV2JkT2FKbFDFMQSHUM3tsUkPewbmmDU-Ppq1TCH5dgVIAKnx2HFfa?t=31m11s](https://www.pscp.tv/w/b_Z2IDFKUktWXpvR2V2S1B8MXZBR1JXV2JkT2FKbFDFMQSHUM3tsUkPewbmmDU-Ppq1TCH5dgVIAKnx2HFfa?t=31m11s)

## **Section Two**

***a) The experiences of journalists and media organisations that have, or could become, subject to the powers of law enforcement or intelligence agencies performing their functions, and the impact of the exercise of those powers on journalists' work, including informing the public. And, b) the reasons for which journalists and media organisations have, or could become, subject to those powers in the performance of the functions of law enforcement or intelligence agencies.***

The experience of WikiLeaks as a publishing organisation and its Australian founder and former Editor-in-Chief, Julian Assange, provides a profound example of the way in which the exercise of law enforcement and intelligence powers negatively impacts freedom of the press.

As an award-winning publishing organisation, WikiLeaks provides a means for individuals and organisations to anonymously provide information for publication in the public interest. WikiLeaks has published comprehensive accounts of serious human rights violations and revealed state involvement and/or complicity in war crimes perpetrated by governments across the globe, including Australia.<sup>3</sup> In 2010, WikiLeaks released an extensive cache of documents by Chelsea Manning, a former United States (US) Army intelligence analyst. These disclosures detailed war crimes and human rights abuses committed by the US government and their agents, including, the groundbreaking Collateral murder video, Iraq War Logs, Afghan War Diaries, Cablegate, and the Guantanamo Bay Detainee Manuals, published in 2010 and 2011.<sup>4</sup> These releases and the resultant stories published in newspapers, such as the *New York Times*, *The Guardian*, and *The Sydney Morning Herald*, have provided invaluable insights into the inner workings of government, the intelligence community and the military, and is the quintessential example of journalism in the public interest and exemplifies the role of the fourth estate.

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<sup>2</sup> <https://www.theguardian.com/politics/2019/jul/13/darroch-cables-george-osborne-accuses-met-of-flouting-press-freedom>

<sup>3</sup> <https://defend.wikileaks.org/wikileaks/>

<sup>4</sup> <https://wikileaks.org/+War-Military-+.html>

It should be uncontroversial that a robust democracy hinges on an informed, functioning, fearless and effective media, and the freedom of information.

In response to the Chelsea Manning disclosures, the US government charged WikiLeaks' publisher Assange with seventeen counts under the Espionage Act,<sup>5</sup> and one charge of conspiracy to commit unauthorised access to a government computer, a violation of the *US Computer Fraud and Abuse Act* (CFAA), which is classed as a terrorism offence.<sup>6</sup> The US currently seeks his extradition from the UK. This prosecution criminalises normal journalistic activity and is strenuously opposed by major media outlets and human rights organisations in part, and among other reasons, because of the extraterritorial effect of the Espionage Act and CFAA charge.<sup>7</sup>

The persecution of WikiLeaks founder Julian Assange is central to the experience of journalists in Australia for the following reasons.

1. Julian Assange is currently facing 175 years in the United States (life in prison) for allegedly carrying out regular journalistic activity, and these charges are being applied **extraterritorially**. The charges Mr Assange faces relate to **actions undertaken by journalists on a daily basis**, including providing ways for sources to protect their identities and procuring information.<sup>8</sup> Current legislation in Australia also criminalises journalistic practice, such as receiving information that is regarded as classified.<sup>9</sup> The prosecution of Mr Assange lends to the possibility that other Australian journalists and media outlets could be prosecuted extraterritorially under the same US legislation, because of the jurisdictional overreach, as well as here in Australia. This provides a chilling reality for all Australian journalists and a damning indictment of the Australian governments general attitude in relation to media freedom that, in our view, must be remedied.

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<sup>5</sup> [https://file.wikileaks.org/file/Assange\\_Indictment.pdf](https://file.wikileaks.org/file/Assange_Indictment.pdf)

<sup>6</sup> Following the US PATRIOT Act, the CFAA charge is classed as a terrorism offence.

<sup>7</sup> Including, Amnesty, Human Rights Watch, RSF, MEAA, IFJ.

<sup>8</sup> Prosecutors assert Assange "aided, abetted, counseled, induced, procured, and willfully caused [Chelsea] Manning, who had lawful possession of, access to, and control over documents relating to the national defense" to "communicate, deliver, and transmit the documents" to WikiLeaks. <https://defend.wikileaks.org/2019/05/23/julian-assange-charged-under-espionage-act-in-unprecedented-attack-on-first-amendment/>

<sup>9</sup> [www.legislation.gov.au/Details/C2019C00024](http://www.legislation.gov.au/Details/C2019C00024)

2. More importantly, because the Australian government is taking an ‘active bystander’ approach, i.e. seemingly complicit with US authorities in dealing with Mr Assange, it sends a strong message to other journalists and publishers that they could possibly be targeted if they publish material that is seen as embarrassing or viewed by Australian government officials as contrary to Australian and US government interests. This is particularly the case in relation to military related activity that may include evidence of torture and other crimes against humanity, and the involvement of the US military or intelligence. The Australian government has taken the US lead in passing the legislation that would fall within the scope of regular journalistic activity. The US and Australia have a ‘special relationship’ and form part of the Five Eyes intelligence sharing operations. In essence, the US and Australia are enmeshed which provides for a potentially dangerous situation for journalists who wish to report human rights violations, or anything related to the expansion of intelligence operations that curtail human rights. The experience of Julian Assange and WikiLeaks demonstrates that Australian journalists too can be targeted by intelligence and law enforcement.
  
3. Current legislation and intelligence operations mean that journalists are potentially under surveillance for carrying out **regular journalistic activity**, and are subsequently under threat of prosecution. This has a clear chilling effect in relation to the nature of the stories journalists are willing to research and media organisations are willing to publish. The broad metadata legislation, for example, provides a means for authorities to track websites accessed by individual journalists.<sup>10</sup> Encryption laws passed in December allow for the Australian government to compel telcos or wi-fi providers to surveil users.<sup>11</sup> This places sources at risk. Recently, the experience of Australian Broadcasting Authority (ABC) journalist Dan Oakes who was researching material in relation to the ‘Afghan files’ that detailed allegations of war crimes carried out by Australian Special Forces, demonstrated that metadata was accessed, and his private travel itineraries were obtained by the Australian Federal Police (AFP), thereby placing

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<sup>10</sup> <https://www.abc.net.au/news/2019-07-09/afp-access-journalist-metadata-60-times-in-12-months/11290888>

<sup>11</sup> <https://www.smh.com.au/national/australia-leads-the-western-world-on-media-restrictions-un-rapporteur-20190712-p526ko.html>

his sources at risk.<sup>12</sup> The raids of both the ABC studios and the private home of News Ltd. journalist Annika Smethurst, also demonstrate the draconian responses from law enforcement bodies who are targeting journalists that publish material the government would prefer remained out of the public realm.<sup>13</sup> These responses from intelligence and law enforcement can be viewed as harsh and punitive, particularly if charges result from these raids.<sup>14</sup>

4. The law enforcement and intelligence operations targeting journalists appear to be deployed in a quixotic manner, for example when material has leaked that is seen as helpful to Australian government interests (Medevac legislation), no prosecution ensues. This can only undermine public confidence that the security rules are being enacted for genuine security purposes.<sup>15</sup> The political nature of the charges against Mr Assange were highlighted by the UN Special Rapporteur on Torture, and he called on the collective persecution of Mr Assange to end.<sup>16</sup> Punitive responses to the publishing of material challenging government malpractice or state overreach provide a further chilling effect in relation to the activities of journalists and publishing organisations.
5. Furthermore, Australian legislation under the *Australian Security Intelligence Organisation Act 1979*, contains clauses that criminalise the disclosure of material classed as a 'special intelligence operation' (SIO),<sup>17</sup> and "disclosures by any person, including participants in an SIO, other persons to whom information about an SIO has been communicated in an official capacity, and persons who are the recipients of an unauthorised disclosure of information, should they engage in any subsequent

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<sup>12</sup> The metadata was not limited to the workplace, but also included home internet and telecommunications devices: <https://www.theage.com.au/national/federal-police-forced-qantas-to-hand-over-the-private-travel-records-of-an-abc-journalist-20190707-p524xu.html>

<sup>13</sup> Annika Smethurst published an article examining potential new powers for ASIO to spy on the public: <https://www.theguardian.com/australia-news/2019/jun/04/federal-police-raid-home-of-news-corp-journalist-annika-smethurst>

<sup>14</sup> They also equate to human rights violations in relation to the privacy of the journalists involved.

<sup>15</sup> <https://thenewdaily.com.au/news/national/2019/06/08/medevac-leak/>

<sup>16</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24665&LangID=E>

<sup>17</sup> This legislation provides immunity from prosecution for ASIO but prevents the reporting of anything classed as a Special intelligence operation under section 35 P.

<https://www.legislation.gov.au/Details/C2019C00024>;

<https://www.theguardian.com/world/2014/jul/16/journalists-face-jail-leaks-security-laws>

disclosure”.<sup>18</sup> **The scope of this legislation is overtly broad and subjective, and therefore would target the activity of Julian Assange, Edward Snowden and the work of WikiLeaks.** The classification of an SIO is also problematic, due to the fact that ASIO can designate SIOs in secret.<sup>19</sup> SIOs are fraught with covertness, and because of the nature of these activities, and the immunity the legislation provides to individuals undertaking SIOs, it is possible that they could inadvertently hide commission of offences that there is a public interest in disclosing. In addition, given the historical involvement of Australian military and intelligence in US led operations that have resulted in crimes against humanity, the public interest should be paramount.<sup>20</sup> This legislation also impacts on the ability of human rights organisations and publishers to expose crimes such as torture, cruel, inhuman and degrading treatment or punishment, due to fear of prosecution. The effect of this legislation can therefore only be described as political and punitive, and an attempt to prevent information from being disclosed that would expose government malfeasance.

6. Journalism that exposes government malpractice and military involvement in war crimes should not be regarded as a national security threat. The conflation of reporting human right violations that expose alleged or actual crimes involving Australian or US military abroad with aiding and abetting terrorism is a serious issue that must be addressed. This has occurred in relation to the work of Mr Assange and WikiLeaks and has a trickle-down effect in relation to the broader nature of journalism in Australia. The prosecution of Australian military official David McBride, and investigation of the ABC journalists who published the Afghan files exemplifies this.
7. The situation of Mr Assange and the recent raids on the ABC and Annika Smethurst, place Australia’s international standing as a liberal democratic state that respects human rights and freedom of the press under threat globally, and particularly in the

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<sup>18</sup> <https://www.theguardian.com/world/2014/jul/16/journalists-face-jail-leaks-security-laws>

<sup>19</sup> Section 35 (B) 1 provides that “the Director-General, a senior position-holder or an ASIO employee may apply to the Attorney-General for an authority to conduct a special intelligence operation on behalf of the Organisation.”

<sup>20</sup> For example, Australia is one of the 54 countries that was involved in the CIA extraordinary rendition programme. This operation would most likely have been classed as an SIO if it were occurring today. [https://www.washingtonpost.com/news/worldviews/wp/2013/02/05/a-staggering-map-of-the-54-countries-that-reportedly-participated-in-the-cias-rendition-program/?noredirect=on&utm\\_term=.4ea46748d4c5](https://www.washingtonpost.com/news/worldviews/wp/2013/02/05/a-staggering-map-of-the-54-countries-that-reportedly-participated-in-the-cias-rendition-program/?noredirect=on&utm_term=.4ea46748d4c5)



Asia-Pacific region. The pursuance of journalists who expose material deemed contrary to government interests presents a wide opening for repressive regimes elsewhere to use the 'national security threat' mantra to curtail free speech. This supports the rise of authoritarianism. **Any threat to media freedom means risking a closed state that does not submit itself to the scrutiny of the public; this cannot and must not happen.**

8. This issue was raised by the UK Special Envoy on Media Freedom, Ms Amal Clooney, in the recent Defend Media Freedom conference held in the UK. Ms Clooney stated "What happens in a country like Australia, or the UK or the US will be looked at by every other leader in the world and potentially used as an excuse to clamp down even further on journalists...I think journalists all over the world are less safe if the rhetoric or even policies or laws in states that are supposed to be free are actually a threat to journalism in that country."<sup>21</sup> These questions are at the heart of the matter for Australia. At present, Australia retains a seat on the UN Human Rights Council, yet a federally enshrined bill of rights is nationally absent. The lack of freedom of speech protections also has a negative impact on the practice of journalism and therefore informing the public. It is only appropriate that steps are taken to ensure that freedom of speech and the press is protected through nationally enshrined legislative protections if Australia is to be an example to our Asia Pacific neighbours, and not be used as a catalyst by repressive regimes to carry out war crimes and corruption in secret.
9. The protection of whistleblowers at the Commonwealth, and indeed the state and territory levels, is insufficient, and the broad overreach of law enforcement and the intelligence community in Australia and abroad means that sources are placed at risk. It is clear that whistleblower protections are insufficient in Australia. The means of surveillance and the collection of personal data places all sources at risk. The effect of this is a heightened sense of danger in revealing misconduct or even activities as serious as war crimes and human rights violations. This presents another barrier to a robust democracy and the protection of the public's right to know and be informed.

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<sup>21</sup> <https://www.smh.com.au/world/europe/be-better-than-north-korea-amal-clooney-warns-australia-on-press-freedom-20190711-p5264e.html>

## **The personal impact on Julian Assange**

The personal experience of Mr Assange is important to understand the impact of law enforcement and intelligence powers on freedom of the press, not only in the Australian context, but also internationally. Because of Mr Assange's journalistic activities,<sup>22</sup> he is regarded as a 'targeted person' by intelligence agencies, including ASIO.<sup>23</sup> On 19 June 2012, Mr Assange was forced to seek and was subsequently granted asylum in the Ecuadorean embassy. One of the grounds for asylum was the fact that the Australian government would not protect Mr Assange from extradition to the US should he return to Australia, he was targeted by intelligence agencies because of his work,<sup>24</sup> and he had a well founded fear of persecution. A UN Working group on Arbitrary Detention ruled that Mr Assange was being held arbitrarily in the Ecuadorean embassy.<sup>25</sup> Mr Assange has lived with threats to his person and his family, including calls for his assassination. **Mr Assange now faces the rest of his life in prison for essentially carrying out journalism and exposing war crimes and human rights violations in the public interest.** This personal cost to Mr Assange and his family is immense and the collective persecution of the several governments involved is designed send a clear message to journalists all over the world that if you publish embarrassing and illegal government activity, you will be prosecuted and persecuted. This should not become the norm in a democracy such as Australia.

In short, the Australian government and all Australian legislators should be deeply concerned about the attempt by the United States to prosecute an Australian citizen in circumstances where that citizen faces 173 years imprisonment for revealing serious war crimes.

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<sup>22</sup> Whether it is accepted Mr Assange is a journalist is irrelevant as he is being prosecuted for undertaking activities that journalists carry out as part of their work.

<sup>23</sup> <https://www.sbs.com.au/news/why-the-trump-administration-stepped-up-pursuit-of-julian-assange>; <https://www.smh.com.au/national/asio-eye-on-wikileaks-20110522-1eyyt.html>

<sup>24</sup> Mr Assange is classed as a national security threat due to his journalistic work.

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[https://www.ohchr.org/Documents/Issues/Detention/Opinions2015AUV/Opinion%202015%2054\\_Sweden\\_UK\\_Assange\\_AUV.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions2015AUV/Opinion%202015%2054_Sweden_UK_Assange_AUV.pdf)

### **Section Three**

***Balancing potential security threats and the role of the media - A comment on procedures and thresholds as per (c) Whether any and if so, what changes could be made to procedures and thresholds for the exercise of those powers in relation to journalists and media organisations to better balance the need for press freedom with the need for law enforcement and intelligence agencies to investigate serious offending and obtain intelligence on security threats.***

Whilst protecting Australia from ‘security threats’ remains an ongoing issue in the current political climate, evidence suggests that the current statutory powers are being used to target journalists who are exposing crimes, government misconduct, or material that is potentially embarrassing to authorities. This impedes the ability of journalists to carry out their work in a fearless manner if working under surveillance, and subsequently under the threat of prosecution. History tells us that repressive regimes use the excuse of protecting national security in order to prevent details of crimes, corruption and malfeasance from coming to light in the public realm. Australia already had sufficient legislation in place to curtail threats to national security that do not impede the ability of journalists and media outlets to report human rights abuses. This has changed over the past decade.

During the AFP raids on the ABC earlier this year, the legislation enshrined under the *Telecommunications and Other Legislation Amendment (Assistance and Access) ACTI 2018*, allowed for the AFP to “add, copy, delete or alter” material on the ABC’s computers.<sup>26</sup> This presents a dangerous situation not only for sources and whistleblowers, but also clearly impinges on the right to know. One can add here, that the general view of the law is that to tamper with evidence is a serious breach of the criminal process and can amount to a crime and a contempt of court application.

These powers are broad in nature and impinge on the ability of journalists to inform the public. **In our view, Australian Government agents such as the AFP should not have the power to delete or alter material from the computers and servers of journalists or media organisations that is in the public interest.** The power to ‘alter’ material also

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<sup>26</sup> <https://www.legislation.gov.au/Details/C2018B00180>

calls into question the nature and purpose of the powers. The power to alter weakens the strength of the legislation to tackle serious and credible security threats due to the inevitable conclusion that the powers may be used to remove or alter evidence to the detriment of the individual being investigated and instead used as a means of targeting whistleblowers and preventing important information regarding abuse of power from reaching the public realm. Indeed, the mere existence of the legislation presents a chilling effect and self-censorship of journalists and media organisations. These powers represent many of the core problems enshrined under current Australian legislation and the overt powers of law enforcement and intelligence organisations.

There are also issues around the independence of the AFP. There is a conflation of the political mechanisms of the state and law enforcement bodies. The recent case of the AFP raids on the ABC highlight the political nature of the AFP insofar as Home Affairs Minister Hon Peter Dutton's involvement in enacting the initial investigation into the AFP journalists. In effect, the way the legislation is playing out means that if a politician or Australian government official is embarrassed by a leak, or is pressured by a foreign entity to investigate a leak, they send in the AFP to surveil and seek the prosecution of a journalist. In our view, it is problematic that the AFP and intelligence agencies have these broad powers considering the political enmeshment. Remember this, the AFP are not an impartial fact-finding body.

One cannot separate the provision of the current legislation with the political climate in which it was enacted. This is especially true given the nature of the material exposed by the Australian journalists in question and the timing of the legislation given the WikiLeaks releases and the legislative reforms undertaken in the US, such as the amendment to the PATRIOT Act which designates the charge *conspiracy to commit unauthorised access to a government computer*, a violation of the US Computer Fraud and Abuse Act (CFAA), a **terrorism offence**. Journalism does not equate to terrorism, and publishing material that exposes government corruption and criminal activity should not be regarded as 'aiding the enemy'. This rhetoric is dangerous.

The number of documents unnecessarily classified as 'secret' also plays a role in this. As a consequence of the heightened sense of fear post-9/11, the number of documents labelled as secret, or top secret also increased. The risk over over-classifying is

problematic on several levels, as it curtails public debate, increases secrecy and paves the way for a lack of scrutiny. Obtaining material under existing Freedom of Information legislation is difficult and fraught with bureaucratic complications given the amount of redactions on national security grounds. This is partially the case in relation to matters involving war crimes and human rights abuses, such as torture. Vast amounts of WikiLeaks releases demonstrated that many of the documents classified as 'secret', rather than 'top-secret' were actually classified in that manner to prevent public scrutiny or embarrassing material from being released, rather than a genuine need to protect the information from reaching those who may have malicious intentions. In effect, the broad utilisation of secrecy curtails public scrutiny, rather than actually performing the task of protecting national security. When thresholds of secrecy heighten, it limits the ability for the public to partake in rational, and robust political debate.

It should be noted that investigations undertaken by the Australian Defence Force found that WikiLeaks releases have not placed Australian interests or personnel at risk.<sup>27</sup> Despite this, Mr Assange was accused of conducting illegal activities by a former Prime Minister, and was therefore prejudiced in Australia. It is consequently important that more stringent oversight of investigative bodies is undertaken in order to ensure that these investigations and the monitoring of journalists is not undertaken for purely political purposes or to target whistleblowers.

#### **Section Four**

***D) whether and in what circumstances there could be contested hearings in relation to warrants authorising investigative action in relation to journalists and media organisations. And, the appropriateness of current thresholds for law enforcement and intelligence agencies to access electronic data on devices used by journalists and media organisations.***

Journalistic activity should not be criminalised.

a) **Warrants:** We strongly believe that there should be contested hearings where it is reasonable to assume warrants may place sources in jeopardy, particularly when matters

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<sup>27</sup> [http://www.defence.gov.au/foi/docs/disclosures/321\\_1112\\_IR\\_Document\\_1.pdf](http://www.defence.gov.au/foi/docs/disclosures/321_1112_IR_Document_1.pdf)

involve unlawful activity of the government or its agents. **These hearings should be allowed to be accessed by the journalist or media organisations prior to the warrant being issued and adjudicated by Federal Court of Federal Circuit Courtjudges.** We also believe that there should be real-time reporting of these hearings and reporting to parliament. Closed court hearings and suppression orders must be the exception, and only permitted to the extent that any erosion of the principle of open courts is limited. Above we refer to matters involving unlawful activity and by this we mean those involving SIOs and any war crimes or human rights violations carried out in Australia or abroad. Whistleblowers must be protected, and those who report serious human rights violations must not be prosecuted for informing the public. We live in a liberal democracy, and journalists have an obligation to inform the public and keep the checks and balances in place in a way that does not place national security at risk.

There must be protections for journalists and publishing organisations. There should be a mechanism for appeal the decision of a judge and the warrants should not be issued without the ability for the journalist or media organisation to appeal the warrant on public interest grounds and be present during the hearing.

b) **Accessing electronic data:** Accessing electronic data of journalists and publishing organisations who investigate government malfeasance is inappropriate and has a chilling effect on the quality and nature of journalism in Australia. This is particularly the case in relation to private communications and private dwellings of journalists. This does not suggest that ordinary law enforcement should not occur when situations arise that include the perpetration of criminal activity, but there must be a threshold to protect the right to privacy of journalists and their sources, especially when investigating human rights abuses or government malpractice. Importantly, the nature of the investigations must not be politically based. To address this, any investigation must be confined to the realm of non-political offences.

## **Section Five - Recommendations**

The threat to freedom of the press and the values we hold dear as a liberal democracy have never been more at risk. Journalists and media outlets are under increased surveillance and under the threat of prosecution for carrying out basic journalism across the globe. The work of WikiLeaks and the experience of Julian Assange should come as a warning to all who care about democracy. Without publishing organisations like WikiLeaks, and robust and fearless journalism, we risk sliding into a tumultuous paradigm of authoritarianism.

We have an opportunity here in Australia. We live in a democracy - with a highly successful multicultural society, respect for the rule of law and basic freedoms - to create the potential worlds best practice model for us and other western democracies. We can stand at the forefront for other states to emphasise the benefits of democracy in regions where it is challenged, so this is an opportunity we should grasp.

*“Freedom of the Press, if it means anything at all, means the freedom to criticise and oppose”*  
*George Orwell.*

### **Recommendations:**

1. Urgent intervention in relation to the case of Mr Julian Assange.
2. The Australian government strengthen *Public Interest Disclosures Act* and other legislation protecting whistleblowers, journalists and media organisations that publish material *in the public interest*; specifically, evidence of war crimes, corruption and human rights violations.
3. National security legislation must amended to decriminalise regular journalistic activity (35P of the *ASIO Act*, Division 4C of the *Telecommunications Interception and Access Act*; *Criminal Code Act*, Part 5.2: Espionage and related offences; Part 5.6: Secrecy of information, section 119.7: Foreign incursions and recruitment; s 80.2C : Advocating terrorism; *Crimes Act*: s15HK and s15HL: Controlled operations, unauthorised disclosure of information.

4. Warrants contestable and independently monitored; *Crimes Act* s. 3ZZHA: Delayed notification search warrants, unauthorised disclosure of information
5. Classification of documents and the FOI system overhauled
6. A federal bill of rights be enacted by parliament in order to protect freedom of speech in Australia.
7. Hearings and submissions made to this inquiry are public and accessible.