



**Media, Entertainment & Arts Alliance
(MEAA)**

**submission to the Senate Legal and
Constitutional Affairs Committee inquiry
into the**

***Independent National Security Legislation
Monitor (Improved Oversight and
Resourcing) Bill 2014***

January 29 2015

The Media, Entertainment & Arts Alliance (MEAA)

MEAA is the largest and most established union and industry advocate for Australia's creative professionals. Its membership includes journalists, artists, photographers, performers, symphony orchestra musicians and film, television and performing arts technicians. MEAA's Media section members are bound by the MEAA *Journalist Code of Ethics*.

Introduction

The Media, Entertainment & Arts Alliance (MEAA) is concerned that counter-terrorism and national security legislation introduced and passed by the Australian Parliament, particularly but not exclusively during 2014, as well as proposed legislation, contain extraordinary assaults on press freedom, freedom of expression, the right to privacy and the freedom of access to information.

Many of these laws have been rushed through the Parliament with haste, without sufficient time spent on detailed discussion and debate or allowance for widespread public consultation over the considerable changes that affect every Australian.

MEAA believes that many of these attacks on fundamental freedoms are at odds with Australia's international obligations.

MEAA is particularly concerned that the attacks on press freedom will have a chilling effect on the way journalism is practised in Australia. As such, Australia's national security laws are likely to have a disproportionate effect on human rights.

MEAA believes the office of the Independent National Security Legislation Monitor (INSLM) must be properly resourced to undertake a wholesale examination of Australia's national security law regime to ensure that this disproportionate effect on human rights does not trample on and undermine fundamental freedoms such as those outlined above.

The INSLM must be able to examine issues referred to it by the Senate Committee as well as the Australian Human Rights Commission and be resourced so that it can report back in a timely fashion. The INSLM must be able to examine proposed legislation and must ensure that any changes are proportionate to the national security requirement and that Australia's human rights obligations are observed and maintained.

The role of journalists and journalism in society

Journalists play a vital role in a healthy, functioning democracy. Journalists scrutinise the powerful and hold them to account, expose corruption, champion and campaign for important issues. To carry out these duties journalists must gain the trust of our audience and our sources.

At times, sources request anonymity – perhaps because they are in fear or could be subject to some form of violence, harassment or intimidation, particularly if they are a “whistleblower”.

A whistleblower can be defined as a person who exposes misconduct, alleged dishonest or illegal activity. The activity may be a violation of law, rule or regulation. Or it can be a threat to public interest including health and safety or corruption.

Journalists’ obligation to protect sources

As MEAA has explained before in numerous submissions about our concerns with Australia’s national security law regime, since 1944 all of MEAA’s members working as journalists have operated under MEAA’s *Journalist Code of Ethics*. To this day, all MEAA Media section members, currently some 6000 professional journalists, are bound by the code.

The code states:

“Respect for truth and the public's right to information are fundamental principles of journalism. Journalists describe society to itself. They convey information, ideas and opinions, a privileged role. They search, disclose, record, question, entertain, suggest and remember. They inform citizens and animate democracy. They give a practical form to freedom of expression. Many journalists work in private enterprise, but all have these public responsibilities. They scrutinise power, but also exercise it, and should be accountable. Accountability engenders trust. Without trust, journalists do not fulfil their public responsibilities. MEAA members engaged in journalism commit themselves to

Honesty
Fairness
Independence
Respect for the rights of others.”ⁱ

Clause 3 of MEAA’s *Journalist Code of Ethics* outlines the ethical obligations of journalists towards their sources. It details the principle of journalist privilege relating to the anonymity of a confidential source:

“3. Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. **Where confidences are accepted, respect them in all circumstances.”ⁱⁱ**

This key principle of confidentiality for sources who seek anonymity is a bedrock position for the craft of journalism in our society.

It is a principle, recognised, understood and acknowledged the world over. In short, journalists do not reveal the identity of a confidential source. Despite numerous legal proceedings, threats, fines and jail terms, journalists will always maintain this crucial ethical obligation and responsibility. To do otherwise is unthinkable, not least because it would destroy the reputation of the journalists and the

essential trust journalists must have with their sources, and with their audience but it would inevitably lead to sources of information drying up if they cannot be certain that their identity and the information they pass on to a journalist is to remain confidential. It would expose sources to immense danger.

It is a relationship that is also bound within certain human rights: the right to privacy, the right to freedom of expression, the right to access information.

In response to the legal pressures applied to journalists, seeking to compel them to reveal their confidential sources and break their ethical obligation, journalists and their unions have been lobbying for “shield laws” – laws that would allow journalists to be shielded from contempt of court proceedings if they are called upon to reveal a confidential source.

These shield laws are a recognition and an acknowledgement that journalists are ethically obliged to never reveal a confidential source and, despite threats of jail terms, fines and criminal convictions, they will continue to protect the identity of a source and will also protect the source’s information if that could identify the source were it to be revealed.

In Australia, shield laws have been enacted in most jurisdictions. The federal shield law is contained in the *Evidence Act (Journalist Privilege) 2011*. Only Queensland, South Australia and the Northern Territory currently do not have a shield law.

It is at odds that a Parliament that so recently acknowledged the need to shield journalists from a legal threat if they ethically maintain their obligations could now seek to persecute and prosecute journalists for doing their job and sources for whistleblowing about wrongdoing, dishonesty or illegal activity.

Powers used to bypass journalists who maintain their ethical obligations

Australia’s national security legislation regime is increasingly empowering government agencies including those engaged in law enforcement, defence, intelligence gathering and security to seek out and access Australians’ communications and information technology data.

Increasingly, journalists’ communication records and information are being sought so that these agencies can identify confidential sources.

By way of example, most recently the Guardian Australia reported that in 2014, there were at least eight instances of government agencies and department referring journalists to the Australian Federal Police over stories relating to Australia’s asylum seeker policies – the aim presumably being to find the source of those stories and, knowing that journalists will not willingly reveal the identity of confidential sources, presumably other means will be used to try to identify sourcesⁱⁱⁱ.

The scope and scale of Australia’s regime of national security law is empowering Australian government agencies, in an unprecedented way, to increasingly encroach on all Australians’ private communications and information, and to undermine freedom of expression and the freedom to access information. These powers increasingly threaten to expose the identity of sources and journalists as well as the communications between them and information they exchange.

These powers undermine the crucial ethical obligation of journalists to protect the identity and information of confidential sources – known as “journalist privilege”.

This erosion of journalist privilege will have a chilling effect on whistleblowers seeking to expose illegality, corruption or wrongdoing.

It will have a chilling effect on journalists, compelling them to utilise other techniques in order to try to secure even the most normal communications and contact with their sources.

Ultimately, the role of the fourth estate will be damaged, making it harder for important news and information to be communicated to the audiences served by journalists and journalism, and will therefore undermine the health of Australian democracy.

More dangerous still is that vital human rights have been eroded in a disproportionate response to perceived threats, a response that does more damage than good to Australian society.

The Bill

MEAA particularly supports the Bill's aims to strengthen and properly resource the INSLM with the aim of ensuring it meets with international best practice.

MEAA welcomes that the aim of the bill is to ensure the INSLM will also examine proposed legislation and that the office will also seek to ensure that Australia's national security legislation regime is a proportionate response while ensuring Australia's human rights obligations are not eroded.

MEAA believes that the amendments outlined in the Bill will allow for the concerns of MEAA and others in the community, to be raised about the erosion of human rights, particularly freedom of expression, the right to privacy and freedom to access information.

In particular, MEAA welcomes that matters may be referred to the INSLM by the Australian Human Rights Commission as well as the Senate Committee on Legal and Constitutional Affairs.

Summary

MEAA urges the Parliament and the Australian Government to take all steps to ensure that media rights and press freedoms are understood, protected and observed in all legislation it is considering relating to national security and counter-terror powers including intelligence gathering and surveillance.

MEAA has already recommended in a previous submission that the Independent National Security Legislation Monitor undertake an urgent review of the press freedom implications of Australia national security laws with a view to ensuring appropriate safeguards are in place to promote and protect press freedom.

MEAA believes that the Bill, if enacted, will help ensure Australia's national security regime is appropriate and proportionate to the needs of the Australian community and that Australia's human rights obligations, including those relating to freedom of expression, the right to privacy and freedom to access information, are met and observed.

ⁱ MEAA *Journalist Code of Ethics*) <http://www.alliance.org.au/code-of-ethics.html>

ⁱⁱ *Ibid* MEAA emphasis

ⁱⁱⁱ Paul Farrell, Guardian Australia January 22 2015 http://www.theguardian.com/australia-news/2015/jan/22/journalists-reporting-on-asylum-seekers-referred-to-australian-police?CMP=share_btn_tw