

Wednesday, 27 May 2020

Law Council President's response to AFP decision not to charge Annika Smethurst

All comments to be attributed to Law Council of Australia President, Ms Pauline Wright.

While the decision by the Australian Federal Police (AFP) not to bring charges against journalist Annika Smethurst is to be applauded, the Law Council of Australia continues to be concerned about the ongoing vulnerability of public interest journalism.

The law continues to leave journalists and media organisations exposed to possible police investigation and prosecution.

The Law Council firmly believes that journalists should not be exposed to law enforcement investigations and potential criminal liability, simply for doing their jobs.

However, the execution of search warrants against Ms Smethurst and other members of the Australian media, and the exposure of those people to protracted investigative processes, has shone a spotlight on the extent to which the powers of law enforcement and intelligence agencies can encroach on the right to freedom of expression, as espoused through a free, independent and robust press.

The Law Council remains concerned that Australian secrecy laws, particularly those conferring powers on law enforcement and intelligence agencies, do not contain adequate safeguards for journalists to report on matters of importance to the Australian public, and may go further than is reasonable and necessary to protect legitimate national security interests.

The Law Council has actively participated in the current inquiry of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) into the impact of the exercise of law enforcement and intelligence powers on press freedom in Australia and has made numerous recommendations.

These include supporting amendments to provisions authorising the issue of warrants regarding the investigative actions of journalists or media organisations, the introduction of a legislative public interest test, the appointment of superior court judges as issuing authorities, amongst others.

We look forward to the forthcoming release of that inquiry report, and the opportunity it will provide to carefully reconsider the ways in which secrecy legislation and related provisions can operate to keep Australians safe while also protecting and respecting the role of a free press.

Today's announcement, and the anticipated release of the PJCIS report on its inquiry into press freedoms, provides an important opportunity to reflect on limitations in the existing legal protections for members of the media, and to commit to improving existing laws and practices so that recent events are not repeated.

The Law Council will continue to call for stronger protections for public interest journalism, to provide an essential balance in the face of the extensive powers Australia has given our law enforcement and security agencies.

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