



Electronic Frontiers
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2 August 2019

Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
Canberra ACT 2600

By Email: picis@aph.gov.au

Dear Secretary,

RE: FREEDOM OF PRESS AND THE EXERCISE OF LAW ENFORCEMENT POWERS

We appreciate this further opportunity to make submissions in relation to inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press. EFA's submission is contained in the following pages.

About EFA

Established in January 1994, EFA is a national, membership-based non-profit organisation representing Internet users concerned with digital freedoms and rights. EFA is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting civil liberties in the digital context. EFA members and supporters come from all parts of Australia and from diverse backgrounds.

Our major objectives are to protect and promote the civil liberties of users of digital communications systems (such as the Internet) and of those affected by their use and to educate the community at large about the social, political and civil liberties issues involved in the use of digital communications systems.

EFA thanks its Policy Committee for their assistance with the preparation of this submission. Information about EFA's Policy Committee is located here: <https://www.efa.org.au/our-work/policy-team/>

Yours sincerely,


Angus Murray
Chair of the Policy Committee
Electronic Frontiers Australia

INTRODUCTION

At the outset, EFA respectfully notes that the ambit of “journalist” and the context of a “media organisation” are complicated by the plethora of internet-based content providers. The evolving nature of journalism does not reconcile well with requirement that a particular person be “working in a professional capacity as a journalist” as contained in ss. 5, 180G and 180H of the *Telecommunications (Interception and Access) Act 1979* (“**the Act**”).

In this context, EFA principally submits that:

1. information warrants ought to be required for all persons; or
2. in the alternative, a broader definition of “professional capacity” ought to be formulated with industry consultation that incorporates a broader scope of journalism and further includes the legal profession and medical profession.

Furthermore, EFA’s long-standing recommendation that an enforceable human rights framework be introduced at the Federal level remains relevant to this inquiry. An enforceable human rights framework is clearly necessary safeguard Australian’s fundamental rights, including the right to privacy, freedom of speech and political opinion.

More specifically, we have provided submissions in response to the two (2) questions posed in the terms of reference in the following pages.

QUESTION ONE

Whether and in what circumstances there could be contested hearings in relation to warrants authorising investigative action in relation to journalists and media organisations.

Firstly, journalism serves an important public function to ensure that matters of public interest of able to be brought to the public’s attention.

It is unacceptable to suggest that journalists should be penalised or their sources scrutinized by law enforcement. In our view, the Courts provide an important check and balance to the application of law enforcement powers and, where those powers have the potential to stifle public interest reporting, adjudication by a Court of competent jurisdiction is absolutely necessary.

Indeed, recent information warrants have been found to be “well beyond [their] purpose] and “legally unreasonable” on review¹. Not only does this circumstance impact the trust and integrity of law enforcement, it sends a chilling message to the ability to freely and fairly report on matters of public interest

In our submission, all information warrants must be subjected to a contestable hearing and proper judicial scrutiny.

¹ <https://www.abc.net.au/news/2019-08-02/abc-police-raids-warrant-federal-court-hearing/11377016>.

QUESTION TWO

The appropriateness of current thresholds for law enforcement and intelligence agencies to access electronic data on devices used by journalists and media organisations.

We consider that the current thresholds for law enforcement and intelligence agencies to access electronic data on devices used by journalists and media organisations to be wholly inappropriate. Over the past decade, Australians have been subjected to rapid and radical increase in surveillance legislation that places government actions and activities behind a non-transparent wall and requires Australians, including journalists, to reveal sources, disclose information and be subjected to a pervasive surveillance culture.

This rapid degradation of Australian's human rights has occurred with blind abandon for the need of an enforceable human rights framework at the Federal level. While EFA does not propose to comment on the necessity of the "national security" justification for the powers now vested with law enforcement, EFA maintains its position that the power vested with law enforcement and intelligence agencies is manifestly disproportionate to the reasonable expectations of the Australian community.

In the interest of abundant clarity, this submission has been deliberately shortened to ensure that it is a succinct and blunt call for the introduction of an enforceable human rights framework as this is clearly necessary safeguard Australian's fundamental rights, including the right to privacy, freedom of speech and political opinion.

EFA appreciates the opportunity to make this submission and please do not hesitate to contact Mr Angus Murray should you require any further information or comment.