Home Affairs to revive ‘D-Notice Committee’ for press self-censorship

Australia’s state secrecy regime is set to expand yet again. The Parliamentary Joint Committee on Intelligence and Security’s (PJCIS) final report, on its “Inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press” is due 17 October. The inquiry was sparked by the 4 June Australian Federal Police raid on News Corp journalist Annika Smethurst, and on ABC News’s Sydney headquarters the next day. A submission to the inquiry by the Home Affairs and Attorney-General’s departments, and the testimony of Home Affairs Secretary Mike Pezzullo, reveal that the government is seeking to revive, and expand upon, the press self-censorship regime known as the ‘D-Notice’ system, under which media outlets agree to let government officials vet the publication of information pertaining to “national security”. Given its track record as a rubber stamp for the intelligence agencies it is supposed to oversee, the PJCIS—currently chaired by retired SAS captain and neoconservative ideologue Andrew Hastie MP—will almost certainly endorse the proposal, and the Labor “opposition” will wave it through as it always does. If so, Australia’s state secrecy regime will then outdo even the British one upon which it is modelled—because as independent legal experts have warned, of the “Five Eyes” intelligence alliance (whose other members are Canada, New Zealand, the USA and the UK) Australia alone has no constitutional nor legislative protection for freedom of speech or of the press, and virtually none for whistleblowers, especially from inside the intelligence services.

Introduced in Britain in 1912 during World War I, the “Defence Notice” system brought together War Office officials and representatives of the Press Association—a consortium of leading newspaper publishers—on a committee that decided what information could be revealed to the public without “endangering national security”. Originally this meant not alerting the enemy to military operations and capabilities; but it soon came to cover all official secrets, especially those related to the operations of Britain’s intelligence agencies—the more so after World War II with the creation of what would become the Five Eyes. The committee’s edicts (re-named “Defence Advisory Notices” in 1993 and “Defence and Security Media Advisory Notices” in 2015, but always known as DNotices for short) were and remain officially non-binding, but few editors have ever dared defy them. Australia had a similar system for 30 years, until Prime Minister Malcolm Fraser’s government scrapped it. “[B]etween 1952 and 1982, the Defence, Press and Broadcasting Committee operated the Defence Notice (D-Notice) system in Australia”, the Home Affairs/Attorney-General’s submission to the PJCIS inquiry reported. Said committee “consisted of politicians, representatives from Defence and the media”, and like Britain’s, “[the] system was voluntary and non-observance of a request carried no penalties”.

Pezzullo suggested to the committee that “in the spirit of constructive engagement … there probably needs to be a reconnection of the government sector with the media sector … [to] explain what different classifications mean, what harm might be caused when certain reports are published in terms of threats to life, capability, sources and methods. I think it is something for this committee to think about—how to re-establish those connections”. In response, Liberal Sen. David Fawcett floated the restoration of the D-Notice Committee, in all but name: “Is there a way”, he asked Pezzullo, “[that] we can make that an overt pathway so that … all media organisations would, by default, go, ‘Because of that provision in the law [criminalising the publication of secret information], we will, on every occurrence, go and speak to the agency and double-check that what we’re looking to publish won’t harm the national interest’?”

Worst in the ‘democratic’ world

The difference, as the Home Affairs/Attorney-General’s submission makes clear, is that the re-jigged D-Notice system would not be voluntary: “Journalists, like all Australians, are subject to the law. The freedom to publish has always been subject to other considerations…. The current legislative frameworks appropriately balance the importance of press freedom with the imperative to protect national security”. Which means, as Crikey.com.au political editor Bernard Keane wrote 15 August, that the government is proposing to “impose a *de facto* censorship scheme on all media, [be they] newspaper, broadcast, online, local blogger … any journalist and media outlet publishing leaked material would be prosecuted unless they gained an exemption by permitting the government to vet and censor what they intended to reveal.” And whistleblowers would be hunted down and prosecuted regardless since, as the *Australian Alert Service* has previously reported,[1] national security laws and amendments passed since 2016 have effectively excised the “public interest defence” where secret information is concerned.

As University of NSW law professor George Williams and Griffith University criminology lecturer Dr Keiran Hardy noted in a submission to the PJCIS, even Britain offers journalists— and by extension whistleblowers—some protection under the *Police and Criminal Evidence Act 1984*, which exempts any “material acquired or created for the purposes of journalism” from search and seizure without a special judicial order, which the journalist(s) and/or media organisation are able to contest in court. New Zealand has similar restraints in place, while Canada’s *Journalistic Sources Protection Act 2017* prioritises the protection of whistleblowers unless the state demonstrates that the public interest demands they be identified and prosecuted. And in the USA, “due to the First and Fourth amendments to the US Constitution, the starting point is that newsroom raids are unlawful”, albeit there are

exceptions related to the national defence and classified data, or to prevent death or serious injury. “Only one democratic nation fails to expressly protect freedom of speech in its Constitution or an enforceable national human rights instrument”, they wrote. “That nation is Australia.”

1. “AFP raids are a milestone on Australia’s road to totalitarianism”, AAS, 12 June 2019.

Australian Alert Service, 4 Sept. 2019
