



12 February 2018

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

By email: pjcis@aph.gov.au

Dear Committee Secretary,

The Joint Media Organisations appreciate the opportunity to make this supplementary submission to the Parliamentary Joint Committee on Intelligence and Security regarding the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* (the Bill).

Our previous submission which detailed our concerns with the Bill is published at submission number 9 of the relevant PJCIS webpage.

We make this submission following media reports that the Attorney-General has instructed his department to amend Schedule 2 of the Bill to:

- Improve the clarity of offences that apply to Commonwealth officers, most particularly by narrowing the definition of ‘conduct that would cause harm to Australia’s interests’ and the definition of ‘inherently harmful information’ – which are the two definitions that would give rise to a Commonwealth officers’ liability;
- Separate out the offence that would apply to non-Commonwealth officers including journalists and ensure that the offence to apply to non-Commonwealth officers is appropriately narrowed in scope to only apply to the most serious and dangerous conduct; and
- Strengthening the defence for journalists by removing any requirement for journalists to demonstrate that their reporting was ‘fair and accurate’, ensuring that the defence is available where a journalist reasonably believes that their conduct was in the public interest, and clarifying that the defence is available for editorial and support staff as well as journalists themselves.

The Attorney-General's comments are an encouraging sign that the Government is willing to examine the Bill – and the others in the package – more closely.

However at this time we make no comments on the proposed amendments. Given our initial submission on the Bill it is clear that there are serious flaws in the drafting and the Bill significantly overreaches. We note that other submitters have raised serious concerns with the Bill.

Note the Law Council of Australia's media release following reports of the Attorney-General's directions to amend the Bill:

'Although these amendments do not allay all of the Law Council's concerns and more work certainly is needed, these initial amendments all appear positive...we still have a considerable way to go and look forward to continuing to work closely with Government and parliament to get these important measures right.'

To that end we would like to raise a process and consultation matter with the Committee. Specifically, we are interested to understand how the amendments directed by the Attorney-General fit into the PJCIS process – and the ability to comment on a revised Bill.

We are concerned that the Attorney's directed amendments could constitute, or at least be part of, the final Government response to the as-yet not completed PJCIS process, and could therefore form the Government response without further consultation on the detail. We are sure that is not the intention, but it is not clear the interaction and intersection between the two processes and how this will be managed.

We expect that the re-drafted Bill – containing the Attorney-General's changes – will be available for further public consultation shortly. At a detailed level, it would be useful for these to be available in both mark-up and clean versions.

This could be achieved by removing the Bill from the PJCIS process – in other words ceasing the PJCIS review of the current Bill; have the Department re-draft the provisions as per the Attorney-General's direction, and release an updated Bill as an Exposure Draft for consultation or begin a fresh PJCIS consultation on the updated Bill.

Another option could be to remove Schedule 2 from the Bill, undertake re-drafting, and release an updated Schedule 2 as an Exposure Draft for consultation or begin a fresh PJCIS consultation on Schedule 2.

We note the importance that members of the PJCIS have placed on working collaboratively on national security issues. We look forward to this continuing regarding the soon-to-be updated version of this Bill.