

**ARTK RESPONSE TO QUESTIONS ON NOTICE TO PJCS**  
**4 OCTOBER 2019**

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**Mr Maley:** I think you're misinterpreting our position slightly, with respect.

**Senator FAWCETT:** I apologise if I'm verballing you. That was not my intent.

**Mr Maley:** My understanding is that we're not asking for an exemption for whistleblowers; we're asking for a defence for whistleblowers, which is an important difference. If it can be established that a whistleblower hasn't gone through the proper processes, has got bad motivation or whatever—I'm sure there will be situations where good defences don't stack up, and then the law comes into effect. I don't think we're asking for an exemption. The difference between an exemption and a defence for whistleblowers is, I think, quite a significant one. We're not arguing that there should be no secrecy in the defence department or that there should be no secrecy in intelligence services. Obviously, there's a necessity for secrecy; I think we recognise that. I don't think we're suggesting an exemption. There obviously is a need for secrecy in the defence department, and it's something which needs to be respected. A blanket exemption for people giving top-secret information to anybody willynilly, media or otherwise, is obviously not a sustainable system. But that's not what we're arguing for; we're arguing for a circumstance where, when the systems haven't worked and where the public interest is genuine and sufficient, there should be a defence and consideration for the whistleblower as well—that the whistleblower mustn't be in a situation where he or she has gone through the processes, has tried to do the wrong thing, believes that there is still an injustice or a wrong that has been committed and goes public. That is a criminal offence with virtually no defences. In a situation like that, a whistleblower, in our view, should have a defence.

**Senator FAWCETT:** Could I ask you to have a look at the Ombudsman's agency guide, April 2016, version 2, and tell me where you think the gaps in that are, because, as I read through it, it's a pretty comprehensive document which actually addresses pretty much everything you've just outlined.

ARTK Response:

Australia's Right to Know coalition of media companies has recommended that public sector whistle-blowers be adequately protected, and that the current law needs to change to do this. To achieve this we recommend that a review of the *Public Interest Disclosure Act 2013* be undertaken. We note that it has been reported that the Attorney-General is planning to undertake a review of the Act.<sup>1</sup> Specifically:

*Mr Porter said the planned overhaul of the Public Interest Disclosure Act would take account of recent criticism of the scheme by Federal Court judge John Griffiths and would also consider the findings of a 2016 report that found whistleblowers and government agencies were dissatisfied with the scheme.*

*In a judgment handed down on April 18, Judge Griffiths said: "The legislation might more accurately be described as technical, obtuse and intractable. This may reflect the multiple compromises which have been struck in weighing the competing public and private interests."*

*The 2016 report on the scheme, by independent reviewer Philip Moss, said its recommendations were intended "to encourage and instil a pro-disclosure culture".*

*It said few whistleblowers believed they had been supported after using the scheme to reveal wrongdoing and many said they had experienced reprisals.*

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<sup>1</sup> <https://www.theaustralian.com.au/business/legal-affairs/porter-flags-plan-to-protect-sources-behind-public-service-leaks/news-story/ebf86d51ecd912dedd8628e6a0382e02>

**Mr DREYFUS:** I just want to confirm that you're going to have a look at, collectively, the responses of the Attorney-General's Department and the home affairs department to your suggestions. Could you take that on notice, as it were, and let us know, particularly as to the technical matters —

**Mr Reid:** Yes, thank you.

**Mr DREYFUS:** and whether there are any aspects of that response that give you concern?

**Mr Reid:** Yes.

ARTK response:

Regarding the question put by Mr Dreyfus regarding the material put to the Committee by the Attorney-General's Depart and the Home Affairs Department regarding Australia's Right to Know law reform proposals we will make a further detailed submission to the Committee regarding these matters.

**ARTK was also previously asked the following Questions on Notice by the Committee:**

While these questions are being circulated to the Right to Know Coalition, the Committee would be assisted by members of that Coalition providing separate responses (to the extent there is any disagreement between different members).

1. In the public hearing on 13 August 2019, the Right to Know Coalition were asked whether “the media did enough to scrutinise the laws that we’re looking at here today or that your submissions are about”. Ms Bridget Fair responded by saying that “we don’t accept that we haven’t done enough” and cited the fact that the Right to Know Coalition (and others in the media) have appeared before the Committee on previous occasions and raised concerns about various legislative proposals.
  - a. Does the Right to Know Coalition believe that the media has generally done enough – *outside of the Committee process* – to scrutinise, and fully inform the public about, proposed counter-terrorism and national security laws? If not, what more could have been done and what more could be done in the future?
  - b. Does the Right to Know Coalition believe that media commentary / reporting about proposed counter-terrorism and national security laws has generally been informed and informative? If not, what more could be done to ensure that journalists and media organisations are better informed and that coverage is more informative?
  - c. Does the Right to Know Coalition believe the public debate around national security issues is healthy? If not:
    - i. Why not?
    - ii. Do the media bear any responsibility for this?
    - iii. How could the quality of the public debate be improved?
2. *The Australian* published a story on 3 December 2018 entitled “Shorten ‘happy to let terrorists plot’” by Simon Benson and Greg Brown. In that story, Mr Benson and Mr Brown quoted the Prime Minister as saying that “Labor are quite happy for terrorists and organised criminals to chat on WhatsApp, leaving our security agencies in the dark”.
  - a. At the time of the story’s publication, did the Right to Know Coalition agree with the submission that was made by the MEAA to this Committee’s inquiry into the Assistance and Access Bill, which stated that:
    - i. the bill was “neither reasonable nor proportionate”;
    - ii. the bill “carries too few safeguards and exceeds the threats it seeks to manage”;

- iii. under the bill, “warrants and orders may be issued in cases where matters of public interest have been reported through the provision of information by confidential sources which attract penalties under the Commonwealth Crimes Act”; and
- iv. the bill should be set aside to enable a proper period of consultation to occur?
- b. If so, does the Right to Know Coalition believe that those concerns were appropriately reflected, and reported, in newspapers, on television and on radio prior to the passage of the Assistance and Access Bill? Please provide examples.
- c. Does the Right to Know Coalition believe that journalists have a role in analysing and explanation proposed bills, as distinct from merely quoting what parliamentarians say a particular bill does? If so, have journalists performed that role well over the last six years? Please provide examples.

3. At the Press Club on 26 June 2019, Katharine Murphy asked media executives the following: “[o]n the theme of responsibility, do you guys accept that we are, in part, in the situation that we are now currently with all of these tranches of national security legislation because as they were passed, tranche by tranche, this did not get a lot of media attention and focus? The media attention and focus it gleaned during the time these tranches were passed often were critical of dissenting voices in the Parliament who stood up, said that this isn't on, tried to amend it? Often those people were presented in various media outlets as being soft on national security.”

Media executives responded by saying that the criticism was “fair” and that “[i]t does feel ... a bit like we’ve boiled the frog here”.

- a. Were there particular examples of debates, or particular bills, that Mr Marks, Mr Miller and Mr Anderson had in mind when they acknowledged the reasonableness of Ms Murphy’s criticism?
- b. Was the debate around, and the reporting of, the encryption bill one such as example?
- c. What steps have members of the Right to Know Coalition taken since the raids of the ABC and Annika Smethurst’s home to improve the quality of national security reporting?

4. On 4 July 2019, barely a week after the event at the Press Club, *The Australian* published a story by Geoff Chambers and Ben Packham entitled “Security bills test Albanese’s mettle”. The story begins by saying that “Home Affairs Minister Peter Dutton will introduce up to six national security and immigration bills into parliament today, challenging Anthony Albanese’s resolve on border protection and counter-terrorism”.

- a. Does the Right to Know Coalition believe that this story is an example of responsible reporting about national security and counter-terrorism laws? If so, why? If not, how could the story have been improved?
- b. Does the Right to Know Coalition think it’s responsible for journalists to write that six national security and immigration bills will challenge Anthony Albanese’s “resolve on border protection and counter-terrorism”, even before the bills have even been introduced into the Parliament (and thus even before the journalists have been seen the bills)?
- c. Does the Right to Know Coalition think that a decision to oppose, or express concern about aspects of, a national security or immigration bill, is invariably a sign of weakness on national security or border protection?
- d. Is it responsible for a journalist to characterise a national security bill (let alone a national security bill that hasn’t been introduced into the parliament) as a “test” of a particular politician’s or political party’s “resolve on border protection and counter-terrorism”?

5. Could the Right to Know Coalition please provide the Committee with examples of:

- a. what it regards as a “best practice” example of reporting on national security bills; and

- b. what it regards as particularly poor examples of reporting on national security bills?

ARTK response:

The issues raised by Australia's Right to Know Coalition of media companies are long-standing and well-known and understood. We have made submissions and provided evidence at many parliamentary committees, inquires and hearings. Notwithstanding some tweaks and amendments the core issues raised over many years remain outstanding, and require change to various laws.