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Journalists still face jail under Asio Act changes

The Media, Entertainment & Arts Alliance (MEAA), the trade union and industry advocate for Australia's journalists, says the recommendations by the Independent National Security Legislation Monitor for amendments to section 35P of the *Asio Act* still mean Australian journalists face jail terms for legitimate public interest journalism.

MEAA believes the findings of the report by Roger Gyles QC confirm that the spate of national security laws passed by the Parliament over the past 18 months have clearly been rushed without proper consideration of their implications. MEAA urges a complete rethink of these laws in light of their impact on freedom of expression and, in particular, press freedom.

MEAA CEO Paul Murphy says: "The Monitor's report, while welcome, has not changed the fundamental intent of section 35P which is to intimidate whistleblowers and journalists. Section 35P seeks to stifle or punish legitimate public interest journalism."

"What's worse is that the Monitor's recommendations create a 'game of chicken' for journalists," Murphy says. "The defence of 'prior publication' only operates once information in question has been published by a journalist. Any journalist seeking to be the first to publish a legitimate news story would face prosecution while any subsequent story written after that point would be defensible – but only if the second publication was 'not damaging' and the defendant was not involved in the original publication.

"The aim remains: to shoot the messenger. A journalist faces the full brunt of the law and a possible jail term for writing the first news story. That clearly has a chilling effect on legitimate investigative journalism," Murphy says.

MEAA also has concerns about the nature of determining what is a "special intelligence operation" and how journalists can publish legitimate news stories about such an operation not knowing that the activity is a designated SIO that falls under section 35P.

The Monitor has also decided to take no action on the definition of "journalist" which is outdated in terms of the way information that could be subject to section 35P could be published.

"The Monitor has shed light on the poor drafting and lack of proper consideration involved in the creation of the first tranche of national security laws. That reflects badly on the Parliament. Since then, another three tranches have passed and another, the Citizenship Bill, is still being considered. Clearly now is the time for a rethink of Australia's national security laws that have been passed without proper acknowledgement of the damage they do, the threats they pose to our democracy and the attacks on freedom of expression they contain," Murphy says.

"The Monitor's office should be properly resourced to conduct an immediate urgent review of all of Australia's national security laws so that a proper balance can be implemented that allows the intelligence and security services to do their job but not at the expense of Australian democracy or press freedom," he said.

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