



media, entertainment & arts alliance

the people who inform and entertain

The Hon Robert Borsak MLC
Chair
Select Committee on the conduct and progress
of the Ombudsman's inquiry "Operation Prospect"
Legislative Council
NSW Parliament House
Macquarie Street
Sydney NSW 2000
operationsprospect@parliament.nsw.gov.au

4 February 2015

Dear Mr Borsak

The Media, Entertainment & Arts Alliance (MEAA) is the union and industry advocate for Australia's journalists. MEAA is deeply disturbed at reports emerging from your select committee's current inquiry into Operation Prospect that journalists have been approached to reveal documents and sources of information for news stories that are reporting on matters related to the operation.

Mr Neil Mercer, a journalist, in his submission to the inquiry, reveals that he was summonsed to appear, in secret, before the Ombudsman and that he was repeatedly asked to reveal the source of documents, which documents he had seen and which documents were in his possession. Mr Mercer believes his phone records had also been searched and cross-referenced.

Mr Steve Barrett, also a journalist, in the submission produced by his lawyers, states that a warrant naming him was sought for the use of a listening device. Barrett believes the use of the device was to intimidate him in an effort to curtail his and others reporting on various matters.

MEAA believes that these instances of spying on journalists and pressuring them to reveal their sources (done in secret using star chamber-type powers) are appalling attacks on press freedom. The aim appears to have been to use journalists to find out what they know and who the source of the information was. The second example, according to the journalist, was a clumsy threat aimed at intimidating the journalist by bugging his conversations and undermining his ability to work with sources confidentially.

MEAA welcomes the move by legal jurisdictions, including NSW, to embrace the concept of journalist privilege by legislating to create a "shield law" that aims to protect the journalist from breaching their code of ethics and identifying a confidential source. However, MEAA is appalled that NSW continues to embrace the principle of journalist privilege only to deny the principles when it comes to the star-chamber-type powers exercised by the state's investigatory and anti-corruption bodies.

The NSW *Evidence Act 1995* is clear that a journalist, having made the promise of confidentiality, cannot be compelled to answer any question or produce any document that would disclose the identity or enable that identity to be ascertained. As such, the NSW Act replicates the Commonwealth's *Evidence Act 1995*. This principle generally applies to all proceedings in a NSW court. That the principle is not acknowledged by the state's Ombudsman and that listening devices can be used to spy on journalists and their communications with confidential sources is an outrageous undermining of press freedom in New South Wales.

MEAA calls on the committee to take steps to ensure that press freedoms are preserved and respected by every government agency in New South Wales and that the principles of journalist privilege enshrined in NSW law are entrenched so that no agency can misuse star chamber-type powers to try to spy on or muzzle reporting in the public interest. The vital work of whistleblowers and the fourth estate in holding government, government agents and the powerful up to legitimate scrutiny must not be undermined by the misuse of power.

Yours sincerely,

Christopher Warren
Federal secretary