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Public interest journalism deserves legislative protection

The Law Council of Australia believes today's announcement that the AFP will not prosecute ABC journalist Dan Oakes for reporting on serious allegations of wrongdoing by Australian special forces in Afghanistan, highlights the need for urgent law reform to protect public interest journalism.

While the Law Council is relieved by the decision of the Commonwealth Director of Public Prosecutions (CDPP) that it would not be in the public interest to prosecute Mr Oakes, this is a case of the right result but the wrong process.

Law Council President, Pauline Wright, said that this decision reflects the weakness of the legislative protections, relying on the exercise of discretion rather than a properly designed system.

"On this occasion, one Commonwealth official has taken a sensible view about the public interest, but this is not an adequate safeguard against faulty laws," Ms Wright said.

"The rule of law requires that offence provisions should not be so broadly drafted that they inadvertently capture a wide range of benign conduct.

"It is critical that the Australian Parliament and Government implement, as bare minimum, the recommendations of the Parliamentary Joint Committee on Intelligence and Security (PJCIS) in its review of the impact of the exercise of law enforcement and intelligence powers on the freedom of the press.

"As found by the PJCIS, Australia's national security laws, including secrecy offences and related investigatory powers, do not adequately protect legitimate public interest journalism, and require urgent reform," Ms Wright said.

The Law Council has long called for special procedures for the issuing of warrants to investigate journalists, the issuing of those warrants by superior court judges, and the appointment of public interest advocates (who are retired judges or senior counsel) to contest applications for those warrants.

"The Law Council looks forward to the timely release of the government's response to the PJCIS review, inquiry, including amending legislation to faithfully implement the recommended reform," Ms Wright said.

"Today's announcement simply highlights that the capacity for rigorous, public interest journalism in Australia is currently at the mercy of discretionary decisions of a single Commonwealth law official or the Attorney-General."

"This is repugnant to the rule of law and diminishes Australia's credibility as a supporter of the right to freedom of expression and the critical role of a free and informed media in liberal democracy," Ms Wright said.

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