



Submission to the Senate Legal and Constitutional Affairs Legislation Committee

Inquiry into the Secrecy Provisions Amendment (Repealing Offences) Bill 2026

1. Introduction

- 1.1 The Alliance for Journalists' Freedom (**AJF**) appreciates the opportunity from the Senate Legal Constitutional Affairs Legislation Committee to contribute to the Inquiry into the Secrecy Provisions Amendment (Repealing Offences) Bill 2026 (**Bill**).
- 1.2 This submission has been prepared in collaboration between the AJF and Marque Lawyers.
- 1.3 The AJF refers to its submission to the Independent National Security Legislation Monitor's review of the secrecy offences in Part 5.6 of the Criminal Code (**Code**) dated 1 March 2024 (**2024 Submission**).
- 1.4 The AJF is a public not-for-profit company that promotes media freedom and the right for journalists to report the news freely and safely.
- 1.5 The AJF was established following the release of Australian journalist Peter Greste, currently the executive director of the AJF, from over 400 days' imprisonment in Egypt.
- 1.6 A main focus of the AJF's work is to consult with government bodies to ensure that legislation effectively promotes and supports media freedom. The AJF works tirelessly to campaign against the ongoing threat to journalism and for the public's right to know.
- 1.7 The AJF wants to express its gratitude for the incorporation of a number of its recommendations from the 2024 Submission into the Bill. The AJF appreciates the serious consideration given to its 2024 Submission and is delighted to see the major amendments in the Bill that will better protect the right for journalists to report freely and safely. However, the AJF

remains concerned about several troubling shortcomings which are detailed in the submission below.

- 1.8 The AJF is also concerned about the continued absence of reform to whistleblower and Freedom of Information legislation. Improvements to criminal laws are not a substitute for these equally important reform projects. The chilling effects on press freedom come from multiple angles.

2. Concerns raised in the 2024 Submission

2.1 The AJF raised seven main concerns in the 2024 Submission. These are as follows.

- (a) It is inappropriate to subject civil society members, including journalists, to “deemed harm” offences.
- (b) The system of classifying documents as “secret” or “top secret” does not set appropriate parameters for the serious criminal offences contained in section 122.4A.
- (c) The meanings of the terms “inherently harmful information” and “cause harm to Australia’s interests” in sections 122.1 and 122.2 are too broad and vague, and have a chilling effect on the ability of whistleblowers to come forward.
- (d) The meanings of the terms “damages”, “interferes with”, “prejudices” and “harms” in section 122.4A(1)(d) and (2)(d) are unclear.
- (e) The “dealing with” offences in section 122.4A(2) are too broad and create a real risk that civil society groups, journalists or others may commit an offence by merely receiving information.
- (f) By requiring the Attorney-General’s consent to commence proceedings against a person under Part 5.6, the decision as to whether to bring proceedings against a journalist could potentially be politicised.
- (g) The defence in section 122.5(6) is inadequate, as the reverse onus of proof is unnecessarily burdensome.

2.2 Alongside each of the seven concerns raised in the 2024 Submission, the AJF provides an additional recommendation for this Bill.

2.3 This submission will address the Bill's response to each recommendation.

3. It is inappropriate to subject civil society members, including journalists, to “deemed harm” offences

3.1 The AJF was concerned that not all offences in Part 5.6 of the Code contained a specific harm element. This was evident in sections 122.4A(1)(d)(i) and (2)(d)(i) which created a criminal offence without requiring actual harm to have occurred. It was sufficient for the relevant information to be considered “secret” or “top secret”.

3.2 The AJF was also concerned by the effect of the broad deemed harm provisions in sections 122.1 and 122.2 where Commonwealth officers face serious criminal sanctions, including a sentence of seven years, for communicating information that is “inherently harmful” (pursuant to section 122.1(1)) or “causes harm” or is likely to cause harm (pursuant to section 122.2(1)). The AJF will address these concerns at [5] below.

3.3 To address the concern at [3.1], the AJF recommended introducing a specific harm element so that a journalist or source may not be penalised for disclosing information that is protected from disclosure, unless the disclosure is damaging and made in the knowledge, or with reasonable cause to believe that it would be damaging.

3.4 The AJF acknowledges that the Bill repeals section 122.4A(1)(d)(i), being the “secret” and “top secret” provision, and substitutes them with the requirement for serious damage to have occurred to security, defence or an intelligence agency.

3.5 The AJF acknowledges that the Bill repeals section 122.4A(2).

3.6 The AJF commends the Bill's proposal to repeal these sections to remove the highly subjective “secret” or “top secret” classification and introducing a serious damage element.

3.7 The AJF has no further comments or recommendations.



4. The system of classifying documents as “secret” or “top secret” does not set appropriate parameters for the serious criminal offences contained in section 122.4A.

- 4.1 The AJF was concerned that the arbitrary classification of documents as “secret” or “top secret” relied on the Protective Security Policy Framework, published by the Department of Home Affairs, which was highly subjective.
- 4.2 In the 2024 Submission, the AJF recommended abandoning the use of security classifications to determine the harm inherent in disclosing sensitive information and instead, replacing it with a clearly defined list of information that would be inherently harmful if published. The AJF further recommended (similar to above at [3.3]) that there should be a requirement to show harm or intent to harm.
- 4.3 The AJF acknowledges that the Bill repeals sections 122.4(1)(d)(i) and (ii) and substitutes them with the requirement for serious damage to have occurred to security, defence or an intelligence agency.
- 4.4 The AJF acknowledges that the Bill repeals section 122.4A(2).
- 4.5 The AJF commends the Bill's proposal to repeal these sections to remove the highly subjective “secret” or “top secret” classification and introducing a serious damage element.
- 4.6 The AJF has no further comments or recommendations.

5. The meanings of the terms “inherently harmful information” and “cause harm to Australia's interests” in sections 122.1 and 122.2 are too broad and vague, and have a chilling effect on the ability of whistleblowers to come forward

- 5.1 The AJF was concerned that the terms “inherently harmful information” and “cause harm to Australia's interests” in sections 122.1 and 122.2 were too broad and the lack of exemptions that allowed for the disclosure of general information was not strategically sensitive. The AJF was further concerned that the definition of these terms was not necessary or proportionate to current security risks and had an unjustifiable chilling

effect on the ability of whistleblowers to make disclosures in public interest.

- 5.2 In the 2024 Submission, the AJF recommended amending the definitions of “inherently harmful information”, “cause harm to Australia’s interests” and “security or defence of Australia” to exclude information that does not expressly relate to a security agency’s intelligence functions.
- 5.3 The AJF acknowledges that the Bill repeals section 121.1(1) definition of “inherently harmful information”.
- 5.4 The AJF acknowledges that the Bill amends the section 121.1(1) definition of “cause harm to Australia’s interests”, which includes repealing “harm or prejudice the security or defence of Australia” and substituting this with “prejudice security” or “prejudice the defence of Australia”.
- 5.5 The AJF commends the Bill for repealing the definition of “inherently harmful information” and amending the definition of “cause harm to Australia’s interest” to narrow its scope and ensure that it does not apply to all information in connection with an agency’s functions.
- 5.6 The AJF has no further comments or recommendations.

6. The meanings of the terms “damages”, “interferes with”, “prejudices” and “harms” in section 122.4A(1)(d) and (2)(d) are unclear

- 6.1 The AJF was concerned that pursuant to sections 122.4A(1)(d)(ii) to (iv) and 122.4A(2)(d)(ii) to (iv) it is an offence when a non-Commonwealth officer deals with information obtained from a Commonwealth officer if the communicating or dealing with the information:
 - (a) *damages* the security or defence of Australia
 - (b) *interferes with or prejudices* the prevention, detection, investigation, prosecution of a criminal offence or
 - (c) *harms or prejudices* the health and safety of the Australian public or a section of the Australian public.
- 6.2 The AJF was concerned that the distinction between the above terms is unclear and liable to cause confusion.

- 6.3 In the 2024 Submission, the AJF recommended amending sections 122.4A(1)(d)(ii) to (iv) and 122.4A(2)(d)(ii) to (iv) to remove the term “interferes with”, and clarify or remove the terms “harms”, “damages”, and “prejudices”.
- 6.4 The AJF acknowledges that the Bill repeals section 122.4A(1)(d)(ii) to remove the term “damages” and substitute it with a threshold of “serious damage”.¹ The AJF commends the Bill for repealing this definition.
- 6.5 The AJF acknowledges that the Bill repeals section 122.4A(2) and commends the Bill for repealing this section.
- 6.6 The Bill does not propose to repeal the term “interferes with” in section 122.4A(1)(d)(iii). As discussed in the 2024 Submission, to “interfere” ordinarily means to “involve yourself in a situation when your involvement is not wanted or is not helpful”.² Interfere is likely not directed to the outcome of the non-Commonwealth officer’s conduct, but merely to the fact of the conduct ever having happened. “Interference” can therefore be interpreted as occurring at a much lower threshold and potentially extend to innocuous conduct. The AJF maintains the recommendation to repeal the term “interferes with” from section 122.4A(1)(d)(iii).
- 6.7 The Bill does not propose to amend the term “prejudices” in sections 122.4A(d)(iii) and 122.4A(d)(iv). As discussed in the 2024 Submission, “prejudice” ordinarily means to “unfairly influence a person or matter so that an unreasonable opinion or decision results”³ but remains undefined in the Code. The AJF refers to the Law Council’s recommendation for a threshold of “seriously prejudices” or “impedes” or alternatively providing a separate definition. Considering this, the AJF maintains their recommendation to repeal or clarify the term “prejudice”.
- 6.8 The Bill does not propose to amend the term “harms” in section 122.4A(d)(iv). The AJF refers to the position Law Council took requiring further specification for “harms” and their recommendation to amend to “serious harm” to the health and safety of the Australian public or a section of the Australian public. The AJF maintains its recommendation to

¹ Sch 4 cl 23

² Interfere”, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/interfere> (accessed 20 April 2026)

³ “Prejudice”, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/prejudice> (accessed 20 April 2026).

repeal or clarify the term “harm”.

7. The “dealing with” offences in section 122.4A(2) are too broad and create a real risk that civil society groups, journalists or others may commit an offence by merely receiving information

- 7.1 The AJF was concerned with the “dealing with” offences in section 122.4A(2) due to the breadth of the offence and potential of a two-year imprisonment for a non-Commonwealth officer who simply receives restricted information (even if they did not do anything with it).
- 7.2 In the 2024 Submission, the AJF recommended amending section 122.4A(2) to clarify that to “deal with” does not include the receipt of information by a non-Commonwealth officer.
- 7.3 The AJF acknowledges that the Bill repealed section 122.4A(2) being the “dealing with” offences.
- 7.4 The AJF commends the Bill for repealing section 122.4A(2).
- 7.5 The AJF has no further comments or recommendations.

8. By requiring the Attorney-General's consent to commence proceedings against a person under Part 5.6, the decision as to whether to bring proceedings against a journalist could potentially be politicised

- 8.1 The AJF was concerned that requiring the Attorney-General's consent to commence proceedings against a person is not an effective safeguard and exposes the Attorney-General to allegations of political bias in deciding whether or not to commence proceedings.
- 8.2 In the 2024 Submission, the AJF recommended removing the requirement that the Attorney-General provide their consent to prosecutions under Part 5.6 and instead enshrine exemptions from prosecution in legislation rather than relying on an individual's discretion
- 8.3 The AJF acknowledges the Bill repeals section 123.5(1) and the new insertion that removes the requirement for the Attorney-General to

provide a certification that the relevant information had a security classification (which is now inapplicable as the “secret” and “top secret” provisions have been removed) but maintains the requirement for the Attorney-General’s consent before commencing proceedings.

- 8.4 The AJF acknowledges the insertion of section 123.6 which sets out the requirement for the Attorney-General to consent before commencing proceedings against journalists. This section uses the reasonable person test to determine if the accused committed the alleged offence in their professional journalistic capacity, or their capacity as an administrative staff of a news media company.
- 8.5 The Bill’s amended section 123.5(1) and new section 123.6 is not an effective safeguard for journalists as it maintains the requirement of the Attorney-General’s consent. The AJF maintains the recommendation to remove this requirement for the following reasons:
- (a) the inherent role of the Attorney-General as a politician;
 - (b) the creation of actual or perceived conflicts of interest;
 - (c) the potential for circumstances to arise where the Attorney-General is familiar with a person being prosecuted. Were the Attorney-General to refuse to consent to the prosecution, they could be accused of bias because of their personal connection with the accused; and
 - (d) the Attorney-General could be accused of bias were they to authorise the prosecution of a journalist who had previously written articles that were critical of the government, or the Attorney-General themselves.
- 8.6 The AJF maintains the recommendation to enshrine exemptions from prosecution in legislation rather than relying on an individual’s discretion.

9. The defence in section 122.5(6) is inadequate, as the reverse onus of proof is unnecessarily burdensome.

- 9.1 The AJF was concerned that the defence in section 122.5(6) was inadequate because:
- (a) it lacks an exemption for journalists acting in the public interest and who disclose information that causes no actual harm to society;

- (b) the reverse onus of proof is unnecessarily burdensome; and
 - (c) the definition of “journalist” was insufficient.
- 9.2 In the 2024 Submission, the AJF recommended exemptions from prosecution for journalists acting in the public interest, reversing the burden of proof to require prosecutors to show why a journalist is acting contrary to public interest, and amending the definition of “journalist” to adopt the approach taken in the Evidence Act 1977(Qld) (**Evidence Act**) including the standards test.
- 9.3 The AJF acknowledges that there has been no proposed amendment to section 122.5(6).
- 9.4 In response to the concern raised at [9.1(a)] the AJF acknowledges that the Bill proposes to remove provisions subjecting individuals to potential prosecution for disclosing information that causes no actual harm to society (see above at [3], [4] and [5]).
- 9.5 The AJF maintains its recommendation to amend the reverse evidential burden. The current provision under section 122.5(6) is contrary to the presumption of innocence which is a fundamental principle that underpins the legal system. The fact that a defendant may be better placed to prove a particular matter, which is really a question of convenience to the prosecutor, is not sufficient reason for this fundamental principle to be overturned. The AJF queries whether a journalist, even a media entity, is better placed to establish that they reasonably believed that their conduct was in the public interest in circumstances where the prosecutor in the proceedings is the Commonwealth. The current framing of this provision demonstrates a preference for secrecy rather than transparency and the continued failure to recognise the importance of media in upholding an open and accountable government.
- 9.6 The AJF maintains its recommendation to amend the definition of “journalist” to adopt the approach taken in the Evidence Act. Presently, the definition of “journalist” is unclear and risks being overly broad or excluding legitimate but unconventional journalists. The Evidence Act section 14Q defines a journalist as a person engaged and active in gathering and assessing information about matters of public interest; and preparing the information or providing comment or opinion on or analysis of the information, for publication in a news medium. The Evidence Act says that in determining whether a person is a journalist, a court may consider the following matters: (a) whether the person is regularly

engaged and active in the activities mentioned in subsection (1); (b) whether the person complies with a recognised professional standard or code of practice in carrying out the activities; (c) whether the publisher of the news medium complies with a recognised professional standard or code of practice in publishing information in the news medium; and (d) any other matter the court considers relevant.

10. Section 122.4 Amendments

- 10.1 The AJF did not include recommendations to section 122.4 in the 2024 Submission.
- 10.2 The AJF acknowledges the repeal and new insertion of section 122.4 in the Bill, specifically Schedule 1 Section 2(3) which maintains that the former section 122.4 of the Code will continue to apply to contraventions of provisions in eight Acts.
- 10.3 The AJF also acknowledges the repeal and substitution of a note in Schedule 1 Part 3 section 16 in the eight Acts that a current or previous worker 'might commit an offence' if they communicate information.
- 10.4 The AJF finds it unsatisfactory and unclear to criminalise conduct through an otherwise repealed law and provision of a 'note' in legislation. The AJF recommends the removal of Schedule 1 Section 2(3) from the Bill.

11. Conclusion

- 11.1 The AJF reiterates its gratitude for all the recommendations the Bill has accounted for and its acknowledgment of the need to better protect journalistic freedom.
- 11.2 However, there remain several recommendations that have either not been considered, and/or not incorporated into the Bill. In the interests of freedom of expression, freedom of political communication, and open and accountable government, the AJF strongly urges that these recommendations be taken into account during the final draft, and remains willing to assist the committee in considering these matters.