

As the battle between the government and media organisations over press freedom continues, Attorney-General Christian Porter has ordered that any prosecution of a journalist for an offence relating to national security must have his approval.

He has issued a direction under the Commonwealth Director of Public Prosecutions Act that where the CDPP considers there is a public interest in prosecuting a journalist, “the consent of the attorney-general will also be required as a separate and additional safeguard”.

The media freedom issue burst into prominence with the police raids into the home of News Corp journalist Annika Smethurst (over a story about a proposal to change the remit of the Australian Signals Directorate) and the ABC (over reporting on alleged bad behaviour by Australian special forces in Afghanistan).

Both media organisations have launched legal challenges over the raids. The Australian Federal Police have not ruled out charging the journalists involved.

Porter did not refer to the current investigations, but his direction effectively indicates the journalists will be protected from prosecution. It also sends a message to the AFP (although it does not come under his ministerial authority) not to push for prosecutions.

He said it was appropriate to issue the direction “given the significance of a free press as a principle of democracy”.

Read more: [Media raids raise questions about AFP's power and weak protection for journalists and whistleblowers](#)

The new provision “will allow the most detailed and cautious consideration of how an allegation of a serious offence should be balanced with our commitment to freedom of the press,” Porter said.

“I have previously said that I would be seriously disinclined to approve prosecutions of journalists except in the most exceptional circumstances and would pay particular attention to whether a journalist was simply operating according to the generally accepted principles of public interest journalism.

“If such a request came before me, I would, as first law officer consider the evidence, and it would be inappropriate to form a view before this time.”

The direction refers to specific sections of various relevant acts – the Australian Security Intelligence Organisation Act, the Crimes Act, the Criminal Code, and the Defence Act.

In August Home Affairs Minister Peter Dutton gave a direction to the AFP – which comes under his ministerial umbrella - aimed at preventing repeats of the media raids when leaks are being investigated.

Dutton said his direction did not constrain police investigation of a leak. But “where consistent with operational imperatives, I expect the AFP to exhaust alternative investigative actions prior to considering whether involving a professional journalist or news media organisation is necessary.”

Read more: [Morrison and Albanese to discuss inquiry into press freedom](#)

The Law Council of Australia was immediately critical of the Porter move, saying it would not improve press freedom.

Council president Arthur Moses said he had “grave concerns that this sort of direction undermines the independence of the CDPP by requiring her to obtain the consent of the attorney-general before prosecuting an offence.

“What will enhance press freedoms in this country is a proper review of our laws to ensure that the actions of journalists doing their job as a watchdog of government are not criminalised and put at risk of prosecution.”

Moses said the new requirement was not only inconsistent with principles of the separation of powers and press freedom but put both an attorney-general and the media in a very difficult position.

“It puts the attorney-general – a politician – in the position of authorising prosecutions of journalists in situations where they may have written stories critical of his government.

“It creates an apprehension on the part of journalists that they will need to curry favour with the government in order to avoid prosecution. The media must be able to lawfully report on matters of public interest without fear or favour.”

The Law Council has urged improved safeguards for warrants authorising investigative action and a Public Interest Advocate to provide greater transparency and accountability for search warrants relating to journalists.

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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Any prosecution of journalists for national security offences to require attorney-general's approval

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