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High Court decision highlights ongoing vulnerability

All comments to be attributed to Law Council of Australia President, Ms Pauline Wright.

While the Australian Federal Police raid on News Corporation journalist Annika Smethurst was found to be unlawful by the High Court, the judgment highlights the Law Council's continued concerns about the ongoing vulnerability of public interest journalism.

As the decision turned upon the validity of the warrant used to conduct the search of Ms Smethurst's property, there was no requirement for the High Court to engage with broader questions of the adequacy of public interest considerations within Australia's national security legal framework and whether the power under which the warrant was issued breached the implied freedom of political communication.

The Law Council remains concerned about the adequacy of public interest protections where warrants authorise investigative action involving journalists and media organisations, whether they are suspected of having committed an offence or whether they are simply third parties who may be in possession of information.

The law continues to leave journalists and media organisations exposed to possible police investigation and prosecution.

The Law Council believes that any similar case in the future could be avoided through law reform measures to protect and recognise the importance of public interest journalism and to incorporate greater accountability mechanisms. Protections might include contested hearings, the involvement of a Public Interest Advocate to test the warrant process and a requirement that warrants may only be issued by a judge of a superior court of record.

Australia's media is critical to holding government and its agencies accountable for their actions and scrutinising the exercise of power. Transparency and accountability lead to better decision-making and a stronger democracy that protects rights and freedoms and upholds the rule of law. This case is a reminder of the ongoing vulnerability of public interest journalism within the current legal framework.

We will continue to call for stronger protections to provide an essential balance in the face of the extensive powers Australia has given our law enforcement and security agencies.

Contact: Dr Fiona Wade, P. 0419 097 896, E. Fiona.Wade@lawcouncil.asn.au