



New South Wales
Council for
Civil Liberties

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HIGH COURT DECISION - LIMITED WIN FOR JOURNALIST ANNIKA SMETHURST

PUBLIC STATEMENT

Today the [High Court unanimously found](#) the AFP warrant to enter journalist Annika Smethurst's home in search of information relating to the publication of classified information, was invalid on a technical ground:

"that it misstated the substance of s 79(3) of the Crimes Act, as it stood on 29 April 2018, and failed to state the offence to which the warrant related with sufficient precision. The entry, search and seizure which occurred on 4 June 2019 were therefore unlawful"

NSWCCL welcomes this limited victory for Annika Smethurst today - but we remain deeply concerned that freedom of the press and effective investigative journalism continues to be under serious threat in Australia. This decision does nothing to alleviate those concerns.

The unprecedented raids on both Smethurst and the ABC offices occurred in the context of widespread community concern about the proliferation of draconian secrecy laws and the impact of these laws on the free press and investigative journalism in Australia - especially in relation to reporting on national security matters.

The motive for the raids was clearly to warn off journalists and whistle-blowers. The publications posed no threat to national security and the revelation of the information was in the public interest.

The High Court finding that the warrant lacked 'sufficient precision' identifies an apparent lack of competence in the AFP's drafting, but has no wider implications for any protections for investigative journalism or freedom of the press in Australia.

The AFP -with the agreement of the Minister – is still able to press charges against Annika Smethurst.

Surprisingly - even though the "entry, search and seizure" were declared unlawful – a majority of the High Court Justices refused the application for the return of the information including that copied from the journalist's mobile phone onto a USB stick.

This was a particularly disappointing majority decision. A key agenda for the raids was the identification of the journalist's sources which this information is likely to enable.

Whistle-blowers underpin much investigative journalism. If journalists are no longer able to guarantee their informant's anonymity, investigative journalism and an effective free press will be greatly weakened.

The one application by the plaintiffs which may have had significant legal and constitutional implications was that:

the warrant was invalid on the ground that s 79(3) of the Crimes Act, as it stood on 29 April 2018, infringed the implied freedom of political communication.

This matter was not addressed by the High Court as it was not necessary given their decision that the warrant was invalid on technical reasons.

The huge issue relating to the encroachment of draconian secrecy laws on the freedom of the media in Australia will have to wait for further attention in the pending [report of the Parliamentary Joint Committee on Intelligence and Security](#) on this broad issue.

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