

An Update: Two CAMLA Seminars:

NATIONAL SECURITY: AT WHAT COST?"

Alexandra Morrissey provides an update on the CAMLA's National Security seminar series.

In April and May 2015, CAMLA and the International Institute of Communications (IIC) held a fascinating two part National Security seminar series which explored the way newly enacted national security legislation will impact personal communications, the media and civil liberties in Australia.

SEMINAR ONE "NATIONAL SECURITY: THE NEW LANDSCAPE"

Looked at the political, philosophical and legal framework in which national security legislation has been introduced.

Chaired by Patrick Fair, Partner of Baker & McKenzie, the panel included Dr Daniel Joyce, Faculty of Law, University of NSW and Dr Alana Maurushat, Faculty of Law, University of NSW.

Patrick set the scene by introducing the current features of Australia's national security landscape and summarising security sector reform, cyber security reviews by the Department of Prime Minister and Cabinet, Preventative Detention Orders, data retention laws and laws regarding unauthorised disclosure of 'special intelligence operations'.

He then posed the following questions: "Increased powers for law enforcement and national security have come with provisions that prohibit public reporting and therefore accountability - at what point do these rules go too far? How will we know when they have gone too far?"

Daniel spoke about the importance of free speech, freedom of the press and privacy.

He then asked "should the media be entitled to more freedom and protection? Should journalists be protected as a category, or should public interest disclosures be protected instead? How do we define what a journalist is?"

Finally, he discussed the importance of striking a balance that protects free speech noting that "free speech might be 'delicate' and privacy protection still developing, but both are remarkably resilient rhetorical concepts. Free speech, in particular, facilitates other significant rights and freedoms - it ought to be better protected and valued in our media law and more broadly."

Dr Alana Maurushat brought a fascinating 'insider' perspective to the discussion from a national security standpoint, having worked with security organisations internationally. In relation to the collection and use metadata, Dr Maurushat noted that identification and personal information were not always involved and instead metadata is often used to predict patterns.

Dr Maurushat noted the access to data was important and suggested an automated warrant system should be in place to access data, acknowledging that accessing data without a warrant was problematic but that the standard warrant system would not work in this context.

SEMINAR TWO "NATIONAL SECURITY - WHERE THE RUBBER HITS THE ROAD"

Focused on the practical consequences of the new national security regulatory landscape for journalism, intelligence and law enforcement, telecommunications and personal privacy.

Seminar chair, Dr Daniel Joyce of Faculty of Law, University of NSW, was joined by panellists Georgia-Kate Schubert of Australia's Right to Know Coalition, John Stanton, Chief Executive Officer, Communications Alliance, Professor Barbara McDonald, Faculty of Law, University of Sydney and Bret Walker SC, Barrister, Fifth Floor St James' Hall Chambers.

Georgia-Kate discussed press concerns regarding the new section 35P of the Australian Security Intelligence Organisation Act 1979 (Cth) which deals with the disclosure of information relating to 'special intelligence operations'. In particular she said that there are inadequate protections for whistle blowers and that laws like section 35P allow "source-hunting". This is a major concern for journalists as the ability to report news on matters of public interest is critical.

Bret noted that whistle blower laws and shield laws have to work together; otherwise they make each other redundant.

John then discussed some key concerns relating to the new data retention laws, including the potential for 'scope creep' in relation to both categories of data to be retained and agencies that can gain access to retained data.

As the former ALRC Commissioner for the inquiry into Serious Invasions of Privacy, Barbara McDonald also addressed some key concerns regarding privacy issues raised by the data retention laws, noting there was currently a patchwork of laws relating to privacy with real gaps in privacy protection.

Thanks to CAMLA and IIC and the speakers for making the seminars possible and members and guests for their interesting questions and comments.

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