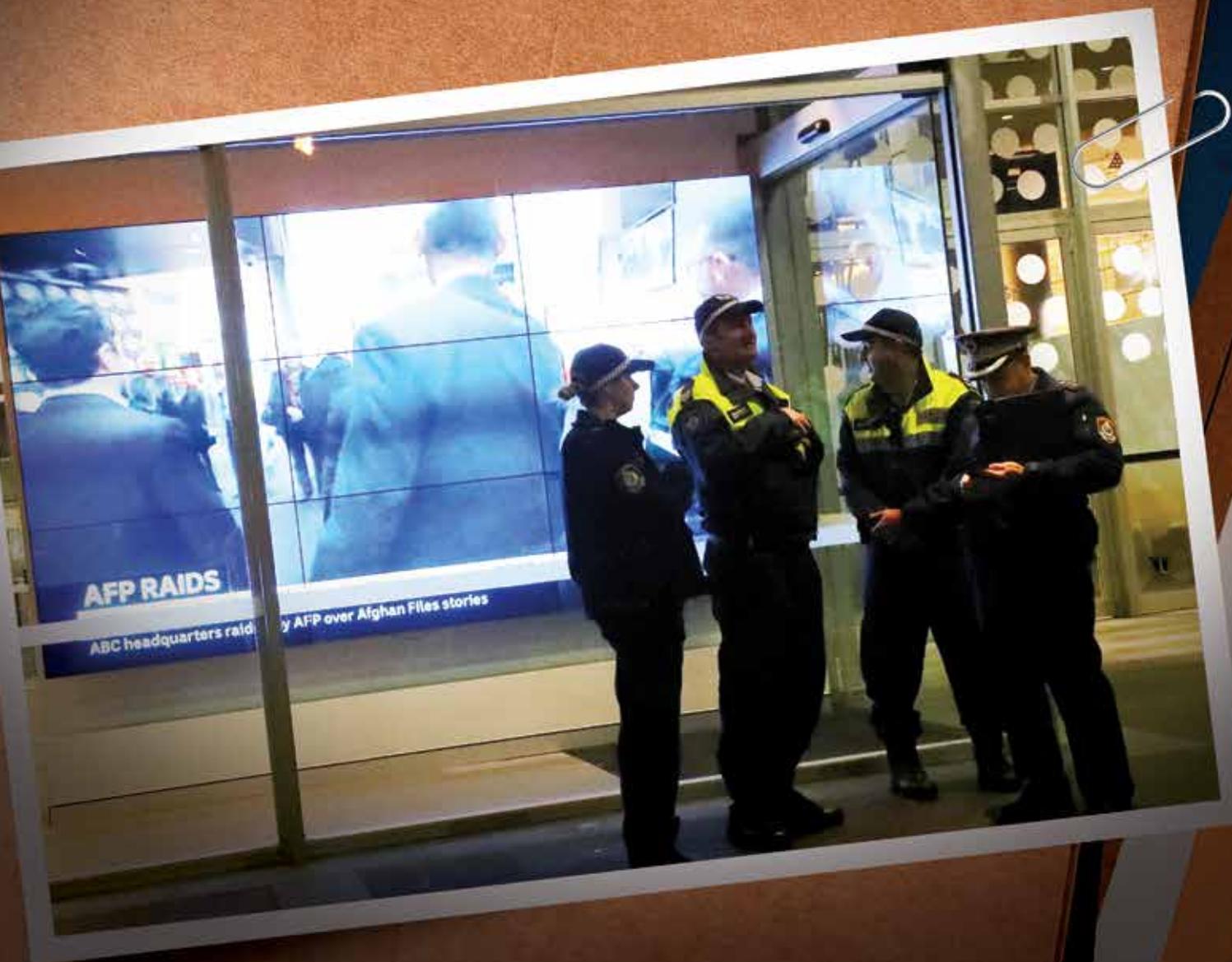


THE WAR ON JOURNALISM

THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2020





THE WAR ON JOURNALISM: THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2020

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FOREWORD

BY PAUL MURPHY, CHIEF EXECUTIVE, MEAA

Press freedom has clearly become a key issue for Australians. MEAA’s third annual press freedom survey has found that when asked if press freedom in Australia had got better or worse over the past decade, an overwhelming 98% of respondents said it had got worse, compared to 90.9% in 2019.

Those are the sort of numbers you would expect to see in a despotic police state not in a country that prides itself in being a liberal democracy that chides the failings in others.

Clearly, the raids on the home of a Canberra journalist and the offices of the ABC have shaken Australians and led them to question how it has come to this.

For almost 20 years the Australian parliament has granted governments

sweeping new powers aimed at protecting us during the so-called “war on terrorism”. Politicians have cited the need for “national security” to implement new laws and amendments to existing laws. Government agencies are now equipped with powers to reach into our homes and offices, into our phones and computers, and intrude into our lives in an effort to control the possession and flow of information.

George Williams, Dean of Law at the University of New South Wales, says that since the 9/11 terror attacks in 2001, the Parliament has passed at least 82 national security laws¹ – one new national security law every three months. The laws were passed by the parliament with what Williams calls “convenient bipartisanship”.²

These laws allow governments to hide information from public view and punish those who reveal that

information. There is no need for government to explain or even justify why the information is cloaked in secrecy – all you need to know is that the government has deemed it so.

This cloak is also being used to shield the governments from embarrassment. Sometimes the embarrassment leaks out, particularly when a whistleblower seeks to reveal instances of wrongdoing. For whistleblowers, exposing wrongdoing by telling the truth can be frustrating and dangerous. Frustrating because often internal systems fail to act on their concerns; dangerous because too often there is a threat of retaliation for the embarrassment they have caused.

If a whistleblower has the courage to continue seeking a way to tell the truth, they sometimes turn to a journalist to tell the story.

The powers that the Australian parliament has granted governments have also been steadily ramping up the punishments for whistleblowers and journalists. Laws first enacted more than a century ago have been augmented with new significant jail terms of 20 years or more for “recklessly” telling the truth. Public interest journalism has become a criminal offence.

The extraordinary assaults on journalists and their journalism that took place over four days in June last year mark the lowest point for the state of press freedom in Australia. What began with a Department of Home Affairs official telling a journalist they were being investigated over a “leak” from inside the department was soon eclipsed by the early morning Australian Federal Police raid on the Canberra home of a News Corporation journalist the next day. That raid in response to a news story published more than year earlier. The raid lasted seven hours as Australian Federal Police trawled through the journalist’s home, searching through her books, her clothing, even her oven.

The next day, it happened again. Armed AFP officers raided the ABC’s Ultimo, Sydney building. They came with a warrant of enormous scope and power to “add, copy, delete or alter” material in the ABC’s computers. The raid was investigating a news story that had been



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published almost two years earlier. The day after that, the AFP had intended to mount yet another raid, this time on the Sydney offices of News Corporation. That raid was abandoned – most likely because of the local and global outcry over the actions of the previous days.

Four press freedom assaults, actual and intended, in four days.

What were those wielding this enormous power thinking? What did they think such overt use of power would signify to Australians?

This series of assaults on press freedom are a highly dangerous and dramatic escalation of the assault on the public's right to know what our governments are doing in our name. This was evidence of how Australian government agencies demonstrated they will go after whistleblowers and journalists who tell stories that embarrass the government.

These stories, by any reckoning, were true. They were based on leaks from within the government.

The public has a right to know these stories. But increasingly they have been locked away from view, hidden by a cloak of secrecy – for reasons that are unjustifiable. Why is so much government information locked away? Why do whistleblowers face such a struggle to tell their stories and are threatened if they do so? Why are journalists criminalised for carrying out their duties?

Almost a year after the raids, the three journalists involved are still waiting to hear if they will be charged. Despite ministerial directions from the Minister for Home Affairs and the Attorney-General, there is still no certainty that these journalists will not face trial for reporting the truth.

There is a sign that some things may change. After the national and global outcry, parliament responded with two inquiries into press freedom that focussed on what had gone wrong. Media outlets including MEAA submitted that the web of national security laws that had been created over the past two decades now needed to be unravelled. There was also a strong response

from the media in a public campaign highlighting the steady erosion of the public's right to know. In a remarkable display of joint concern and action, rivals in Australia's media came together to campaign for six key reforms to make sure journalists and their sources can expose wrongdoing without fear of reprisal.

Through the media industry lobbying group, Australia's Right To Know (which includes MEAA) the reforms aim to restore the balance of freedom of information and expression versus the needs of national security. The reforms are:

- The right to contest the application for warrants for journalists and media organisations;
- Exemptions for journalists from laws that would put them in jail for doing their jobs, including security laws enacted over the last seven years;
- Public sector whistleblowers must be adequately protected – the current law needs to change;
- A new regime that limits which documents can be stamped secret;
- A properly functioning freedom of information (FOI) regime; and
- Defamation law reform.

The outcome of the parliamentary inquiries will be known in coming months but there has been strong opposition to these reforms by government agencies.

However, the reforms proposed by Australia's journalists and media organisations are an important path to a future where democracy and the public's right to know are not just protected but promoted and encouraged.

These reforms draw Australia back from a descent into a country where police state powers are used to having a chilling effect on public interest journalism, and threaten journalists with jail for doing their job. Journalists are not above the law but bad laws must be reformed if freedom of expression, and press freedom, is to be upheld.

At stake is not just Australia's reputation but also our ability to function as a healthy democracy that respects the human rights of its people.

Politicians have a tendency to make motherhood statements about how much they support press freedom. "Of course I believe in press freedom," they assert.

Since 2001 bipartisan support for national security measures in the Australian parliament has led to the passage of 82 new or amended laws in response to the threat of terrorism.³ George Williams, Dean of Law at the University of NSW, said: "... our parliament has passed so many laws that stifle freedom of speech and of the press. We have developed a reputation for enacting security laws more suited to an authoritarian state than a liberal democracy."

These laws include multiple assaults on press freedom and the public's right to know what our governments do in our name. These are laws that have been passed by the parliament thanks to what Williams calls "convenient bipartisanship".⁴

Williams said: "We have enacted laws for the prosecution and jailing of journalists and whistleblowers, and we alone have failed to provide positive protection for freedom of speech.

"It appears that our leaders simply are not interested in providing the protection needed. Instead, they have been ready to invoke national security and other interests to undermine the work of the media and the free speech of citizens more generally.

"The result has been a sustained assault on democratic freedoms in Australia... Our parliament continues to enact law after law that redefine the powers of our institutions and the relationship between citizens and the state. The rights of Australian citizens are one casualty, as is freedom of the press. We must escape the cycle by which laws are enacted in the name of national security, only to undermine the values they are meant to preserve and protect," Williams said.⁵

The many laws that operate to harm press freedom provide powers that have allowed successive governments to:

- Criminalise legitimate public interest journalism,
- Introduce or markedly increase jail terms for journalists;



AFP officers scan the contents of ABC computers during their raid on the national public broadcaster | John Lyons ABC via Twitter

HOW IT CAME TO THIS

- Increase penalties for whistleblowers who tell the truth;
- Create a special Journalist Information Warrant to allow at least 22 government agencies to secretly access journalists' telecommunications data for the defined purpose of identifying their confidential sources;
- Hinder, deny or refuse freedom of information applications.

The Australian parliament has allowed these powers to operate in Australia. "National security" has been the catchall phrase that allows the parliament to demonstrate its "convenient bipartisanship" that ensures these laws are passed and these powers are enabled.

As a result, the parliament has allowed democracy in Australia to be weakened in the name of national security.

That is why it is so damning to hear politicians declaim that, of course, they support press freedom while their voting records in the Parliament are evidence that have they done very little to defend it from their own assaults.

A HISTORY OF PRESS FREEDOM ASSAULTS

Most recently, the battery of laws that attack press freedom have been given attention due to the raids on the home of a journalist and the offices of a media outlet. But for almost 20 years, laws have been enacted that increase government powers to harass and intimidate journalists, criminalise their journalism, and identify and punish their whistleblower confidential sources.

The scope of these attacks on press freedom indicate a wholesale disregard for the public's right to know and the role of the fourth estate in providing the necessary scrutiny of government in order to maintain a healthy, functioning democracy.

Lawyer Richard Ackland noted: "The most significant laws that have an adverse impact on journalism and how it functions can be divided into those that block access to information; those that criminalise dealing with and publishing information about the state; and those that enable the state to track and monitor the work of journalists.

"What we find is a maze of enactments, dizzying in their complexity and

uncertainty. The definition of national security is unsettled, the defences few and in most instances worthless, while the penalties for transgression are severe."⁶

MEAA has been cataloguing attacks on press freedom in Australia in its annual press freedom reports since 2001. Below are edited excerpts from those reports.

2002

The Senate Privileges Committee investigated the leaking of a Senate committee's report to Annabel Crabb, a journalist working for *The Age*. It was argued that publication of the report's information before it was tabled interfered with the Senate committee's work, constituting contempt of the Senate. The Committee did not find the journalist or the publication in contempt.

Journalists were harassed by Australian Protective Services (APS) officers while reporting on asylum seeker detention at the Woomera detention centre. For a week, the media contingent had been reporting from a designated area, 800 metres from the centre. The media obliged when asked by lawyers for the detainees to move behind a hessian

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Former Attorney General Phillip Ruddock
| Penny Bradfield, *The Sydney Morning Herald*

lined fence. APS officers then moved the media another 300 metres farther away. An ABC Radio journalist, refused to move behind the third perimeter and was arrested by the APS and charged with trespass on Commonwealth land – the first time the legislation has been used against a journalist in Australia. All charges were subsequently dropped.⁷

2003

The *Criminal Code Amendment (Terrorist Organisations) Act 2003* prohibited association with a terrorist organisation, and had the potential to be used to impede journalists reporting on terror groups.

The *ASIO Legislation Amendment Act* set out two offences for disclosing broadly defined “operational information” relating to the enforcement of an ASIO warrant. There was no specific public interest defence, effectively making ASIO immune to any scrutiny of its activities, which could include errors or improper actions, once a warrant was issued. The penalty for journalists was a five-year prison term.

On March 22 ABC camera operator Paul Moran was killed by a car bomb while reporting on the war in northern Iraq. Iraqi terrorist group Ansar al Islam



A protest at Woomera Detention Centre | Peter Mathew, *The Age*

claimed responsibility for the attack. The group’s founder, Najmuddin Faraj Ahmad, also known as Mullah Krekar, allegedly ordered the attack that killed Moran. Over several years, MEAA has been frustrated by the lack of effort by Australia to bring Krekar to justice.⁸

An undercover Federal agent posed as a freelance journalist in order to arrest a terror suspect. The agent’s tactics could have had a highly damaging effect on

investigative journalists who rely on the good faith of the public for access to sources and their stories.

The Government attempted to prevent the media from reporting the arrival of a boatload of Vietnamese asylum seekers at Port Hedland in July. The Department of Immigration, Multicultural and Indigenous Affairs (DIMIA) sent a letter to editors and producers demanding they respect “the privacy” of the

Vietnamese. Later that year, a boatload of Kurds arrived in Melville Island. The media were prevented from covering the event: the air space over the island was shut down, the airport closed and journalists were warned they'd be thrown off the island if they asked any questions.⁹

2004

The *Telecommunications (Interception) Amendment (Stored Communications) Act 2004*, allowed for the Government to obtain a warrant to access stored communications, including SMS and MMS, email and voicemail messages, posing a serious threat to the anonymity of journalists' sources.

Five Australian Federal police officers raided the *National Indigenous Times* with a warrant to seize two leaked cabinet-in-confidence documents about an Aboriginal welfare plan.¹⁰

2005

Melbourne radio station 3CR was raided by the Australian Federal Police with a warrant to seize a pre-recorded interview.¹¹

The *Anti-Terrorism (No.2) Act 2005* threatened severe fines and jail sentences in order to prevent journalists from reporting details of detention orders and investigating possible miscarriages of justice. Police powers were increased to seize documents and information relating to "serious crimes" – which threatened the anonymity of journalists' confidential sources.

Reporting on preventative detention orders could cost a journalist five years in prison. Any reporting of unlawfully disclosed information – that a person has been detained, the length of the detention or any other information relating to the order – could be punished with five years imprisonment. There is no defence of public interest where a journalist reports miscarriages of justice.

The legislation also gave police increased power to obtain documents that relate to a terrorism offence, or serious offence, with no protection for a journalist's professional privilege. Notice to Produce provisions allow the Australian Federal Police to force a journalist to hand over information, including information pertaining to the identity of a confidential source. The

fine for refusing to comply is \$3300. A journalist, who disclosed that they had received a notice, or the contents of it, would incur an additional fine of \$13,200 or two years imprisonment or both. Sedition provisions could block criticism or scrutiny of the government, without any benefit to the national security.¹²

2006

As mentioned above, under the *Australian Security Intelligence Organisation Act 1979* the disclosure of information about ASIO warrant provisions, nothing can be said to anyone for 28 days in the case of arbitrary arrests or maltreatment at the hands of ASIO officers. Similar to the *Anti-Terrorism Act*, the subject of the warrant and their legal representatives are vulnerable to five-year jail terms for unauthorised disclosures of ASIO information. But the legislation also opens up liability to anybody who discloses the information "recklessly". There is nothing in the Act to suggest that publishing "operational information" that is in the public interest is defensible against the definition of "reckless" disclosure.

The legislation contains safeguards designed to keep a check on ASIO officers: an ASIO official who knowingly contravenes a condition or restriction of the warrant faces a two-year jail term. If a journalist publishes information on this abuse of power they risk a five-year jail term.¹³

Schedule 2 (B-party interception) of the *Telecommunications (Interception) Amendment Act 2006* allows spies, police and other security agencies to tap the phones of third parties to suspected terrorist plots. Other agencies such as the Australian Taxation Office (ATO), the Australian Customs Service (ACS) and the Australian Securities & Investments Commission (ASIC), have the power to access stored communications such as e-mails and SMS. Journalists must assume their conversations with sources will be intercepted. If journalists have contact with a terror suspect for a story, they may have their phone tapped, giving authorities access not only to conversations with the suspect but those of other innocent sources.¹⁴

In June, Attorney-General Ruddock tabled the report of the Security Legislation Review Committee's

review of the 2002 and 2003 terrorism amendments to the *Criminal Code*. His department had submitted that a section of the code should be omitted. However the Committee's final report described the section as "an essential protection of fundamental rights such as the right of free speech", and labelled its possible omission "unthinkable".¹⁵

Australian Federal Police (AFP) questioned *Australian Financial Review* journalist Marcus Priest about the source of a briefing from within the Department of Workplace Relations, which was critical of Employment and Workplace Relations Minister Kevin Andrews' use of the building and construction code.

News Ltd lodged an appeal to a Full Bench of the Federal Court, after the Administrative Appeals Tribunal accepted Treasurer Peter Costello's use of two conclusive certificates to block *The Australian* newspaper's FOI editor Michael McKinnon accessing Treasury documents under freedom of information. In a 2-1 split decision the Court dismissed the appeal, finding that the Government could block access to a FOI request by issuing a conclusive certificate, so long as a senior public servant could show the release of documents was against the public interest. The decision set a dangerous precedent, giving ministers who seek to protect politically damaging documents a get-out-of-FOI card.¹⁶

In September, the Australian Law Reform Commission issued its report on the federal sedition laws. The Commission issued 27 proposals for reforming the laws. On September 13 Attorney-General Philip Ruddock said he would carefully consider the recommendations. Five days later he said there would be no change to the legislation.¹⁷

2007

The report of the independent audit into the state of free speech in Australia, chaired by Irene Moss AO found that there were 335 separate state and Commonwealth laws containing secrecy clauses. They ranged from general secrecy provisions, such as the *Crimes Act (1914) (Cth)*, to taxation information, census and statistical information, defence and security information, electoral information and information.¹⁸

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Between September 11 2001 and the federal election of November 2007, the parliament passed 44 pieces of national security legislation.¹⁹

2012

Following media coverage of the Australian government's denial of media access to asylum seeker detention centres, the Department of Immigration and Citizenship (DIAC) responded by citing privacy issues for detainees and staff, possible legal complications because of pending claims for refuge, and safety risks for the asylum seekers' families back home. Freedom of Information searches found that DIAC also justified the tight restrictions on media access to manage "risks that during any media visits detainee clients would use the media's presence as an opportunity to protest their continuing detention".

Following media complaints, DIAC created a 19-page Deed of Agreement that journalists were required to sign before entering a centre. The Deed included media content restrictions and "subsequent editing requirements" that empowered DIAC staff to view the content and require edits including the pixelating, muting or deleting of material – failure to comply would constitute a breach of the deed."

MEAA's concerns about the Deed were ignored. MEAA said: "While the government says it wants to open up detention centres to public scrutiny, this policy will do the reverse. It will, instead, impose conditions on journalists that are tantamount to censorship – and that is unacceptable... Australian journalists have been required to hand over editorial control to an outside party. Conditions inside detention centres and the health and morale of detainees are subjects of enormous public interest. These restrictions will effectively prevent journalists from reporting these issues freely."²⁰

2013

Frustrations about media access to detention centres continued. Media organisations continued to complain about the deed of agreement that had been required for access. They were further frustrated due to the inability to access the Australian Government's detention centres operated in Nauru and on Manus Island in Papua New Guinea.

The department said media access could not be granted because it was still in negotiations with the governments of Nauru and Papua New Guinea.

In January, a DIAC spokesperson tweeted: "Give it a rest; you've been told nothing occurs fast in this environment. That's the answer. Nothing more; nada, rien."²¹

2014

MEAA warned of a growing gap between the intent of freedom of information law and the practical application of the law, both in terms of its enabling legislation and its operation across the various jurisdictions (federal, state and the territories). A common complaint is that FoI requests often become log-jammed in the office of the relevant minister.²²

The *Public Disclosure Act 2013* commenced on January 15 2014. The Act created a Commonwealth government public interest disclosure scheme to encourage public officials to report suspected wrongdoing in the Australian public sector. Reforms in the Act were welcome but MEAA warned that the Act was still seriously flawed with high thresholds for disclosures made to journalists, and exclusions from protections for disclosures against politicians about public policy plus the exclusion of intelligence and law enforcement agencies.

The Human Rights Law Centre said the Act: "seems to allow a Minister, the Speaker of the House of Representatives or the President of the Senate to effectively prevent external or public disclosures being made under the protection of the Act. A would-be whistleblower is deprived of the protection of the Act where any of these office-holders is 'taking action' in response to an internal disclosure. Urgent disclosures can only be made under the emergency disclosure provisions. Yet the emergency disclosure provisions only apply to disclosures that relate to 'substantial and imminent danger to the health or safety of one or more persons or to the environment' and it would be for the individual to assess whether their disclosure falls within those provisions – and if they're wrong they face jail."²³

MEAA again expressed concern at impediments confronting Australian journalists trying to report on asylum



seekers detained in Papua New Guinea and Nauru at Australian taxpayers' expense. MEAA was also concerned that, following the militarisation of Australia's customs and immigration responsibilities, a new protocol for announcing events involving asylum seeker boat arrivals in Australian waters was introduced.

MEAA said that both the federal government and the military commander of "Operation Sovereign Borders" had overstepped the need to limit information to a weekly briefing and their refusal to respond to questions by citing "operational reasons" and "on-water matters."²⁴

In the federal budget on May 13 2014, it was announced that the government would de-fund the Office of the Australian Information Commissioner, to be implemented as of 31 December 2014. Responding to the decision, the OAIC said: "The *FOI Act* will be administered jointly: by the Attorney-General's Department (advice, guidelines, annual reporting), the Administrative Appeals Tribunal (merits review) and the Commonwealth Ombudsman



Australia's customs and immigration policies became militarised and classified | Wolter Peeters, *The Sydney Morning Herald*

(complaints). The information policy advice function currently discharged by the OAIC will cease.” However, delays in passing the relevant legislation to bring these changes about, contained in the *Freedom of Information Amendment (New Arrangements) Bill 2014* meant that the OAIC remained operational, albeit it with transitional arrangements for FOI matters.

On July 16 the Government introduced the *National Security Legislation Amendment Bill (No. 1) 2014*, the first of three tranches of major amendments to Australia's national security legislation. It was passed on October 1. Section 35P relating to “Unauthorised disclosure of information”. The section set out the penalties to be applied to a person disclosing information about a “special intelligence operation”. The penalties in the Bill are jail terms of between five and 10 years.

The offences in section 35P would apply to “disclosures by any person” and “persons who are recipients of unauthorised disclosure of information, should they engage in any subsequent disclosure”.

MEAA said the amendment would capture legitimate public interest journalism. In doing so, it would criminalise journalists and their journalism that performs a vital role in a healthy democracy of scrutinising government and its agencies.

On October 30, Attorney-General George Brandis admitted that 35P was written with the aim of targeting whistleblowers. “It was primarily, in fact, to deal with [an Edward] Snowden-type situation.” Snowden had worked with journalists to reveal that US government officials had routinely and deliberately broken the law through their access to, use of and sharing of individuals' and businesses' metadata, including with the agencies of other governments.

The *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* was introduced in the Senate on September 24. It was passed by the Parliament on October 30 2014. MEAA was concerned by the new offence of “advocating” for terrorism and believed that this new offence, coupled with a problematic definition of “terrorist act”

had the potential to infringe on freedom of expression and particularly the role of journalists who receive leaked documents.

“The definition of ‘advocacy’ could now be used to constrain free speech. For journalists, it could also capture reporting of legitimate news stories that reported on banned advocacy (the very offence for which Peter Grete has been jailed for in Egypt).”

A new offence of “promotion” could also capture journalists reporting on foreign powers using documents that have been leaked to them.²⁵

2015

In its annual press freedom report released on May 3, MEAA described the past year as a “dire 12 months for the state of press freedom in Australia – for journalists, for the communities we serve and for sources that trust us to tell their stories.”

The *Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014* was introduced in the House of Representatives on the same day the Foreign Fighters Bill was passed – October 30 2014. The Data Retention Bill was passed by the Parliament on March 26 2015. On March 19 2015, the Government and the ALP reached bipartisan agreement to implement a new, entirely secret, system of “journalist information warrants” and the creation of prime minister-appointed “public interest advocates”.

MEAA condemned the bipartisan deal because it still allowed secret and unchallengeable access to journalists' metadata while ignoring the key obligation of ethical journalism the world over: journalists cannot allow the identity of their confidential sources to be revealed.

MEAA noted: “Guardian Australia has reported that up to eight referrals to the AFP in 2014 related to news stories about asylum seeker issues by journalists at news.com.au, *The West Australian* and *Guardian Australia*. Are we to expect a judge would block every one of those referrals because the stories are in the public interest? Will the public ever learn how a list of security-cleared government-approved advocates and the judge who heard their argument came to determine what is

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Former Attorney-General
George Brandis | *Alex
Ellighausen, The Sydney
Morning Herald*



or is not in the public interest? When a whistleblower goes on trial will they lose the ability to argue that they acted in the public interest?”

On January 22, Guardian Australia revealed that eight journalists had been referred to the Australian Federal Police for investigation over the sources of information in stories they had written about asylum seekers. MEAA said: “In short, government agencies were urging the AFP to find sources of stories because the Australian government refused to be honest and open about its immigration activities. Government agencies were quite willing to see the AFP used to hunt down the journalists’ sources – using the AFP’s powers to trawl through the journalists’ records in order to find the source. Government efforts to control information had transformed into government efforts to prosecute those who revealed matters in the public interest. Government actions displayed a disregard for press freedom, journalist privilege and journalist shield laws. Open government had made way for near paranoia.” MEAA went on to say: “The secrecy that descended on Australia’s customs

and immigration activities when they were militarised as part of Operation Sovereign Borders and the refusal to discuss “on-water matters”... effectively denies the right of the Australian people to know what our government is doing in our name. That secrecy led to brave whistleblowers allegedly contacting journalists, seeking to expose what is being done by government agencies [that] repeatedly refused to comment on their activities by using a military cover for their operations.

“When whistleblowers are seen as the ‘enemy’, and the legislative weapons of counter-terrorism are unleashed upon them, democracy is the loser. Whistleblowers seek to expose misconduct, alleged dishonest or illegal activity, violations of the law and threats to the public interest. The failures within the *Public Interest Disclosure Act 2013* and the assault on whistleblowers in the past 18 months are not hallmarks of open government.”

On September 4 2015 MEAA was invited by the Attorney-General’s Department to help it draft regulations for Public Interest Advocates under the

Journalist Information Warrant scheme amendments to the *Telecommunications (Interception and Access Act 1979 (TIA Act)* passed by the parliament in March. MEAA refused to assist the government in its attack on press freedom, stating: “MEAA cannot co-operate in the development of any aspect of a scheme that represents such as egregious assault on press freedom in this country.”

The *Australian Border Force Bill 2016* passed both houses with bipartisan support on May 14. Section 42 of the legislation pertains to secrecy provisions that provide for a penalty of two years imprisonment if an “entrusted person” makes a record of, or discloses, protected information. An entrusted person is an employee or specified persons whose services are made available to Department of Immigration and Border Protection “(such as contractors, consultants, employees of State, Territory and other Commonwealth agencies and authorities), collectively known as Immigration and Border Protection (IBP) workers”. While section 48 of the Act does allow for disclosures where there is a

serious threat to the life and health of an individual, many health sector professionals were concerned that they face imprisonment if they speak out about conditions inside asylum seeker detention centres.

2016

Regarding the Australian Federal Police, MEAA observed a general lack of acknowledgement and understanding of the principles of press freedom in a variety of areas where the AFP was involved.

On April 14 the AFP issued a “fact check” after MEAA issued a statement regarding the disclosure that the AFP had secretly sought to identify a journalist’s confidential sources by trawling through a journalist’s metadata. The AFP’s fact check stated that its investigations “are not about targeting journalists”.

MEAA contended that the AFP had indeed been targeting journalists: it had already been found to have compiled a 200-page redacted dossier on a journalist in order to identify the confidential source relating to a legitimate news story on asylum seeker policy. Over the course of the investigation “an AFP officer logged more than 800 electronic updates on the investigation file”. It was subsequently revealed by the Privacy Commissioner that the AFP had conducted investigations into the journalist’s email plus other “subscriber checks” on the journalist – a subscriber check is a request to telecommunications companies for access to information they may hold on a particular person under the Telecommunications (Interception and Access) Act 1979.

The AFP also failed to bring to justice the murderers of Australian journalists. In 1975 six Australian journalists were murdered in East Timor. A coronial inquest was eventually held into the murder of five of the journalists known as the Balibo Five.

The inquest named a prominent Indonesian military officer as the alleged individual who had given the order for the five to be killed. Sometime later the AFP embarked on a war crimes investigation.

After five years, the AFP abandoned the investigation due to “insufficient

evidence”. The AFP had reached its conclusion despite admitting later that it had neither sought any co-operation from Indonesia nor interacted with the Indonesian National Police.

MEAA also raised the murder of journalist Roger East in East Timor in 1975 but noted: “Given the unwillingness to pursue the killers of the Balibo Five, MEAA does not hold out great hope that Australian authorities will put in the effort to investigate East’s death... Roger’s killers are getting away with murder.”

Regarding the murder of Paul Moran in northern Iraq in 2003, the AFP responded to a MEAA letter on April 15 2015 saying that there was insufficient information available to justify an investigation under section 115 of the *Criminal Code Act 1995 Harming Australians* and the AFP would not take further action. This was despite the individual most likely responsible for training and possibly directly ordering the attack that killed Moran being well known to authorities in Norway and subject to numerous legal cases including extradition proceedings relating directly to his alleged involvement in terrorism.²⁶

In May, in the second week of the federal election campaign, Australian Federal Police embarked on raids in pursuit of a whistleblower who was the source of sensitive documents leaked to the media. The offices and home of a Labor staffer in Melbourne were searched on the evening of May 19 as AFP officers executed warrants as part of an investigation into the source of leaks about the National Broadband Network that had recently been published. The news stories resulting from the leaks were in the public interest. But the danger for the leaker is significant.

Under section 70 of the *Commonwealth Crimes Act* a Commonwealth “officer” faces two years in prison if they publish or communicate, “without lawful authority or excuse (proof whereof shall lie upon him or her), any fact or document which came to his or her knowledge, or into his or her possession, by virtue of having been a Commonwealth officer, and which, at the time when he or she ceased to be a Commonwealth officer, it was his or her duty not to disclose. Then under section 79 of the *Commonwealth*

Crimes Act, which deals with the leaking of “official secrets”, the leaker faces imprisonment for two years if they are convicted of communicating a “a prescribed sketch, plan, photograph, model, cipher, note, document or article, or prescribed information, to a person, other than a person to whom he or she is authorised to communicate it; or a person to whom it is, in the interest of the Commonwealth or a part of the Queen’s dominions, his or her duty to communicate it”. (It’s a seven year prison term if it can be proved the leak prejudiced the defence or security of the Commonwealth.) For the journalist, the penalty is also two years because under section 79 they are deemed to have been “receiving” the information.²⁷

On July 14 2017 MEAA issued a statement expressing alarm at a government push to force tech companies to break encrypted communications. “The announcement seems to show scant understanding or consideration of how this might be achieved, or any concern for the potential consequences,” MEAA said.

MEAA added that it was particularly concerned that on past experience the government and its agencies had little regard for press freedom and there is every likelihood that the powers being sought by the government over encrypted communications will be misused – either to identify a whistleblower or pursue a journalist for a story the government does not like.

2017

On July 11 2017, the ABC’s 7.30 program aired an investigation, *The Afghan Files: incidents between 2009 and 2013* where special forces had allegedly shot dead insurgents and unarmed civilians, including children.²⁸ This news story would subsequently lead to the AFP raid on the offices of the ABC in early June 2019.

On February 28 2017 the director-general of ASIO told a Senate Estimates hearing that ASIO had been granted “a small number” of Journalist Information Warrants. ASIO doesn’t have to front a court or tribunal for a warrant; it can apply for a Journalist Information Warrant directly to the attorney-general.

On April 28 2017 it was revealed that an Australian Federal Police officer accessed



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a journalist's telecommunications data without a Journalists Information Warrant. In October an audit by the Commonwealth Ombudsman found that Australian Federal Police did not destroy all copies of the phone records it had obtained unlawfully for the purpose of identifying the journalist's source.²⁹

2018

Retired Australian Army major David McBride was arrested by Australian Federal Police on September 5. He was charged with theft over war crimes investigation files that were allegedly handed to journalists. His home was raided in February 2018 – the search warrant was seeking any information relating to ABC journalists, various military files and topics. It's alleged that classified Defence documents were provided to ABC journalists and then later publicly released on July 10 and 11 2017.

The *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017*, applied jail terms of up to 20 years for journalists reporting in the public interest. It was an offence to "deal with" any information that "relates to", is "connected with" or is "of interest or importance to" Australia's national security or political or economic relations with a foreign country.

The new penalty for "deals" with information includes anyone who receives, possesses, communicates or records the information.

In short, the law punished people for handling information as well as disclosing information in a news story.

It meant that journalists, as well as editorial, production and office support staff and even a media outlet's legal advisers would be at significant risk of jail time as a result of merely having certain information in their possession in the course of legitimate reporting matters in the public interest.

Even receipt of unsolicited information would put a person in automatic breach. Indeed, if the journalist did receive such information, how could they to know the material was in breach of the law without first possessing, communicating, and dealing with it? So broad was the law that a discussion of unsighted material might place a

journalist in breach even without being in possession of a document.

Under the proposed amendments the penalties were increased from the range of six months to seven years jail to a new maximum of 15 years jail for the communicating offence, and a maximum of five years for the dealing offence. But certain security classifications also carried an additional five-year penalty for each offence.³⁰

MEAA was disappointed that following a review of the Bill there was still no media exemption as had been recommended by an inquiry – only changes to a defence and one change that overly relied on the Attorney-General of the day agreeing to prosecute or not.³¹

After considerable uproar from media organisations including MEAA, on March 5 2018 Attorney-General Christian Porter introduced amendments to the Bill that would give journalists a defence for the offence of "dealing" with protected information where they "reasonably believe" it was in the public interest to do so. He also created separate offences for non-Commonwealth officers, such as journalists, decreasing the prison sentences for them to 10 years and three years (reduced from 15 years and five years).³²

Legal action was initiated in June 2018 against former spy turned whistleblower identified only as Witness K and his lawyer Bernard Collaery who are being prosecuted for their roles in revealing a 2004 covert Australian spy operation to bug the Timor-Leste government during sensitive oil and gas negotiations.

The case began only after prosecutors had sat on evidence for three years – the Australian Federal Police had begun its investigation in February 2014 and a year later had presented its brief of evidence to the Director of Public Prosecutions. Charges weren't filed until May 2018.

The charges claimed the pair illegally disclosed information in breach of section 39 of the *Intelligence Services Act*. Collaery was accused of unlawfully communicating intelligence secrets to journalists. Collaery and Witness K faced the possibility of jail if convicted. Australian Tax Office whistleblower Richard Boyle faced a staggering 161

years in prison for exposing misconduct by the ATO. He was charged with 66 offences and faced the prospect of six life sentences. His revelations about ATO directives to automatically seize funds from small business and individual accounts, blew the lid on alleged abuses by the ATO and prompted a joint investigation by *The Age*, *The Sydney Morning Herald* and the ABC.

The revelations also prompted the House Standing Committee on Tax and Revenue to make 37 recommendations including to "recommend a new Tax Office charter, an appeals group headed by a second independent commissioner, the transfer of debt-recovery functions into the ATO's compliance operations and a restructure of its compensation processes".

Boyle's home was raided in April 2018 by the Australian Federal Police accompanied by an ATO investigator.³³

The *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018 (Cth)* (the TOLA Act), introduced broad and intrusive new powers under which designated communications providers can be compelled to assist government agencies, including by decrypting information that is otherwise unintelligible.

Requests for technical assistance can be made in a broad range of circumstances, for example so long as the requesting authority is enforcing a law punishable by minimum three years imprisonment or is safeguarding national security. Whereas metadata laws allow law enforcement to see who journalists are speaking with, the TOLA Act allows agencies to also access the content of those communications.

The Australian Human Rights Commission said that "the effect of the TOLA Act is to permit inappropriately intrusive, covert and coercive powers, without effective safeguards to adequately protect the human rights of law enforcement targets and innocent third parties." These laws were designed to protect the community from terrorists, organised crime and child sex offenders. But without proper safeguards, there is nothing to stop law enforcement agencies from using these laws to muzzle journalists and expose their sources.

Attorney-General
Christian Porter | *James
Brickwood, The Sydney
Morning Herald*



2019

In January the Commonwealth Ombudsman released another report on the compliance of the Journalist Information Warrants provisions. The report noted the AFP's 2017 failures and the subsequent investigations by the Ombudsman into the failure and the Ombudsman's recommendations.

The report stated that the Ombudsman had made a second "non-routine inspection" from September 5-8 2018. "This inspection was to examine the way the AFP had used the Journalist Information Warrants since the first inspection and assess its progress in implementing the recommendations and suggestions from our October 2017 report."

The Ombudsman found that the AFP was still not complying with its requirements under the law. "At the September 2018 inspection, we noted two exceptions to adherence with the conditions of a warrant... At our second non-routine Inspection...

staff still do not complete formal telecommunications data training... Given that we identified training... as a particular risk in our October 2017 report, we are concerned this suggestion has not yet been acted on."

The hastily drafted *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019* swept up legitimate news reporting. While the intent, in the wake of the Christchurch shootings, was understandable, the legislation criminalised the reporting of news and gives the eSafety Commissioner extensive powers to take down news content.

This year marked 40 years since ABC foreign correspondent Tony Joyce was shot and injured while sitting in a Zambian police car after they he and his camera operator had been detained while trying to film a bridge that had been destroyed during recent fighting. It is alleged he was shot by a Zambian militiaman. Joyce was evacuated to London, but never regained

consciousness. He died in hospital on February 3 1980. There has never been a proper investigation into his death. MEAA continues to demand efforts are made to end the impunity surrounding his murder.³⁴

In June, a month after UNESCO World Press Freedom Day, the Department of Home Affairs and the Australian Federal Police commenced a war on journalism that included, over the space of four days, threats to a radio broadcaster, raids on the Canberra home of a News Corporation journalist and the offices of the ABC, and an additional raid on the offices of News Corporation raids that was subsequently called off.

BIPARTISAN SUPPORT FOR LAWS THAT ATTACK PRESS FREEDOM

Many of the laws passed by the Parliament in recent years have enjoyed what George Williams the Dean of Law at the University of New South Wales calls "convenient bipartisanship".³⁵



THE WAR ON JOURNALISM

Oppositions and governments have frequently worked together to pass laws in the name of “national security”. As mentioned in the previous section, those laws have had dangerous and threatening implications for press freedom. He is how some of that bipartisanship was demonstrated.

Then Opposition Leader Bill Shorten February 6 2018 – “I won’t support laws that see journalists imprisoned simply for doing their jobs.”³⁸

Then Prime Minister Malcolm Turnbull July 3 2018 – “We support press freedom, naturally...”³⁹

Section 35P’s penalties for exposing information

Report September 26 2014 – “The Senate passed on Thursday night controversial new laws relating to Australian intelligence operations. Known officially as the *National Security Legislation Amendment Bill (No. 1) 2014*, the bill passed with the support of the Coalition, Labor, the Palmer United Party and some other crossbench senators and will sail through the House of Representatives next week.”⁴⁰

Report September 26 2014 – “The *National Security Legislation Amendment Bill* will make it easier for security agencies to access personal computers and spy on Australians overseas. Under the new laws, the penalty for disclosing secret information is increased to up to 10 years’ imprisonment – a measure that could lead to journalists being jailed.”⁴¹

Foreign Fighters Bill and the sweeping definition of “advocacy”

Report October 29 2014 – “The Senate voted in the government’s *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (PDF)* on October 29. It received bipartisan

support, with 43 votes for the Bill to 12 against.”⁴²

Journalist Information Warrants used to identify journalists’ sources

Report March 17 2015 – “[Then] Attorney-General George Brandis said journalists and their sources were not the target of the legislation, which will require telecommunications companies to keep their customers’ telephone and internet data for two years. ‘This is not about identifying journalists’ sources,’ Senator Brandis said.”⁴³

Report March 16 2015 – “In a letter dated March 16 from Abbott to Shorten, the prime minister said... ‘I have decided that a further amendment be moved that will require agencies to obtain a warrant in order to access a journalist’s metadata for the purpose of identifying a source,’ Abbott said in the letter. ‘The government does not believe that this is necessary, but is proposing to accept it to expedite the Bill.’”⁴⁴

Report March 16 2015 – “One of the agencies included in the legislation, the Australian Federal Police, has refused to confirm whether any journalists have been the subject of telecommunications data requests in the past.”

Report March 26 2015 – “Labor and the Coalition voted to support the metadata legislation after rejecting amendments from crossbench senators seeking tougher privacy safeguards.”⁴⁵

Report March 2 2017 – “... our domestic spy agency is breaking down the confidentiality of journalists’ sources – by only seeking permission of the Attorney-General. Publishers and journalists are not asked or told what is happening. They can’t object to their data being sought and used to identify whistleblowers... The only official friend of the journalist – and their

whistleblowers – in cases of these new warrants is the public interest advocate (PIA). There are two of them, both retired judges. The PIAs were a last-minute concession as the amended act passed Parliament with bipartisan support. They are meant to make arguments about whether the disclosure of the journalist’s source outweighs the public interest in protecting source confidentiality. But as far as I can make out, the PIAs are pretty well MIA. They can’t talk to their ‘clients’ about what they are doing, let alone let the public know. We simply don’t know how the PIAs are faring. Just how busy are they knocking back requests to reveal the sources of journalist? We do know the first two PIAs had no experience in media law or journalism.”⁴⁶

The Border Force Act and information disclosures

Report July 1 2015 – “The Coalition, which passed the Border Force Act with the help of Labor, has previously said the laws are necessary for protecting sensitive operational information. It says similar provisions exist in other Commonwealth legislation, and the provisions are not there to prevent people from expressing their views on border protection policy.”⁴⁷

Report July 2 2015 – “On Wednesday, the Australian Border Force Act came into force. It makes it an offence for an ‘entrusted person’ (an Australian Border Force employee) to make a record of or disclose ‘protected information’. This is widely defined to include any information obtained by the person in their capacity as an employee. The penalty for the offence is two years’ imprisonment... Lawyers and asylum seeker advocates are concerned the act will have a ‘chilling effect’ on whistleblowers working in detention centres. But the ALP argues existing whistleblower arrangements for public interest disclosures remain protected... The act provides that a whistleblower bears the evidentiary burden of proof that an exception applies if information is disclosed. Whistleblowers must make judgements about whether a threat to life or health is ‘serious’ enough to warrant disclosure and then be willing to defend their actions in court. This alone may have a deterrent effect.”⁴⁸

Report July 8 2015 – “The Border Force Act contains strict secrecy provisions that cover all government contractors, including doctors, even outside of

“A FURTHER AMENDMENT... WILL REQUIRE AGENCIES TO OBTAIN A WARRANT... TO ACCESS A JOURNALIST’S METADATA FOR THE PURPOSE OF IDENTIFYING A SOURCE.”

PRIME MINISTER TONY ABBOTT, MARCH 16 2015



Above: Doctors Against the Border Force Act stand in a silence protest in Melbourne on July 4, 2015 | *Luis Ascui, Fairfax Media*; **Right:** The Manus asylum seeker regional processing centre, Papua New Guinea | *Andrew Meares, The Sydney Morning Herald*

Australia. By contrast, the protection of the Australian whistleblower law does not extend to disclosures made about the conduct of a PNG or Nauruan Government official or worker, or of any person who is not an Australian government contractor or officer. That includes detainees, or even a local priest in an offshore immigration detention centre. In addition, the whistleblower law offers no protection to those who make a public disclosure about the actions of an Australian government minister or policy, even if it harms people.”⁴⁹

The Espionage Bill and the Foreign Interference Bill

Report June 29 2018 – “The Senate has passed laws that amount to the most significant overhaul of Australia’s security and foreign interference laws in decades – creating new espionage offences, introducing tougher penalties on spies and establishing a register of foreign political agents... The original bill risked sweeping whistleblowers, aid workers, journalists and other not-for-profit workers into its net



through its wide-sweeping definitions, but the government and Labor insist amendments to the legislation have accounted for those concerns.”⁵⁰

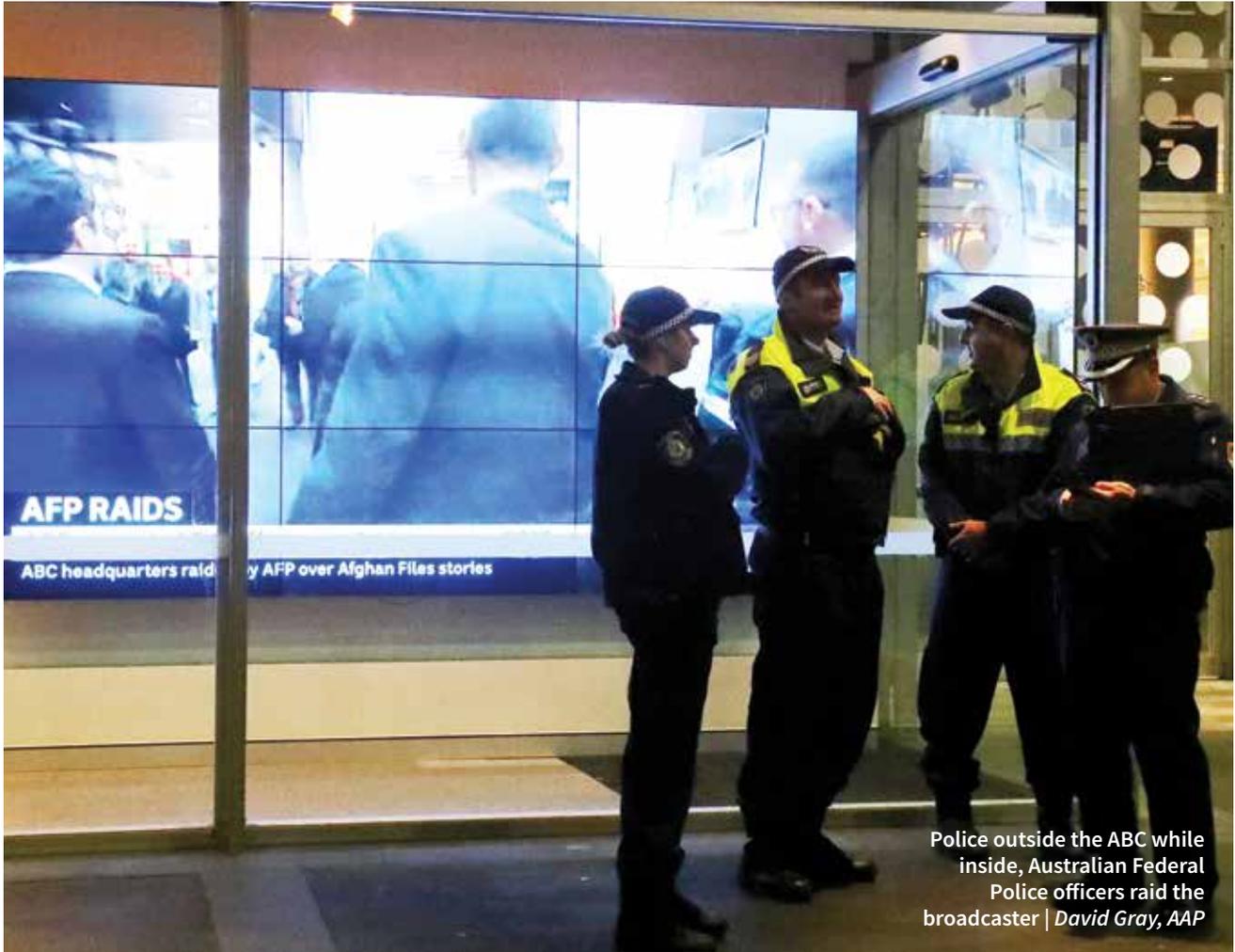
Anti-Encryption

Report December 7 2018 – “Australia has passed a bill designed to give intelligence agencies more power to access your encrypted conversations. Labor has agreed to pass the Morrison Government’s legislation without amendments, meaning they will be locked-in before Christmas.”⁵¹

Sharing Abhorrent Material

Report April 4 2019 – “The Australian

parliament has passed legislation to crack down on violent videos on social media, despite furious reaction from the tech industry, media companies and legal experts. The Labor opposition combined with the ruling Liberal-National Coalition to pass the law on Thursday... the chief executive of the Media, Entertainment & Arts Alliance Paul Murphy said it had ‘concerns that the legislation is being rushed in such a complex area without proper consideration to ensure it does not impinge on media freedom’.”⁵²



Police outside the ABC while inside, Australian Federal Police officers raid the broadcaster | *David Gray, AAP*

THE 2019 RAIDS

Over the course of four successive days in June 2019, the Department of Home Affairs and the Australian Federal Police (AFP) engaged in a war on journalism on behalf of the Australian Government.

The raids represented the most overt act of power waged against whistleblowers and the people they seek out to help them tell their truths: journalists.

The show of force was designed to intimidate and harass journalists and their media employers. It was a brute force tactic to punish the writers of news stories that had embarrassed the government. It sought to diminish the public's right to know by maintaining a shroud of secrecy over what our governments do in our name. It was a tactic that would have a chilling effect

on whistleblowers to deter them from exposing wrongdoing.

Government departments and agencies deployed powers that would muzzle the media and push back against the journalists' scrutiny of government.

The raids had the opposite effect. Instead, it was the government, the Department of Home Affairs and the Australian Federal Police who were forced on to the back foot. Outcry, in Australia and around the world, forced the suspension of the fourth brute force operation in the war on journalism. The outcry also caused politicians to hastily affirm their belief in press freedom. It also triggered two concurrent parliamentary inquiries.

The raids also had the effect of galvanising the media industry. Setting

aside competitive rivalries, the media acted with a united voice in a campaign to push back against the decades of laws and amendments that undermined and attacked press freedom.

Perhaps a reason for the media coming together had to do with the targets chosen by Home Affairs: threats of an investigation against a broadcaster with talkback radio station 2GB – a Nine Entertainment Co. subsidiary; a raid on the Canberra home of a senior News Corporation journalist; a raid on the offices of the ABC – the national public broadcaster; a planned raid on the headquarters of News Corporation Australia.

The raids were in reaction to news stories produced by journalists, stories that have been proved true.

THE RAIDS

FOUR ACTIONS

IN FOUR DAYS

BEN FORDHAM

THE STORY

Up to six illegal boats headed for Australia, by 2GB presenter Ben Fordham June 3 2019 – “The Department of Home Affairs is investigating reports from Sri Lanka that up to six boats could have recently attempted journeys to Australia. Home Affairs Minister Peter Dutton admitted last week there could be a wave of illegal vessels headed for Australia after 20 Sri Lankan asylum seekers were sent back. A senior source in Home Affairs has told Ben Fordham Mr Dutton is currently in Sri Lanka because ‘there could be up to six boats in play’. Out of the six believed to be headed for Australia, some may have been disrupted. Ben says the recent wave of illegal boats could be because of the recent federal election. ‘Is there a chance that the people smugglers were able to flog seats on boats... because they thought Labor was going to win the election?’”⁵³

THE TRUTH

Report four days earlier, May 30 2019 – “Home Affairs Minister Peter Dutton says the government is concerned more illegal boats are headed to Australia, after a vessel carrying 20 Sri Lankans was intercepted by Border Force.”⁵⁴

Transcript, May 30 2019 – “PETER DUTTON: Yeah look Ray, it’s a very disturbing development. Without going into all of the details, it’s not the only vessel that we’re worried about... RAY HADLEY: Well that’s a bit troubling you say that it’s not the only one that’s perhaps on the radar... are we talking about other vessels on the high seas at the moment from that part of the world or from Asia? PETER DUTTON: Well Ray, I just don’t want to go into the detail, but obviously we’ve returned now 10 vessels, or people off 10 vessels, almost 200 people from Sri Lanka alone... we need to make sure that people hear the very clear message

that if you attempt to come by boat, you won’t come to this country... there’s a lot of intelligence, a lot of information around in relation to people smugglers, those that are willing to hop onto boats, all the rest of it. It is a very dangerous period...”⁵⁵

THE PHONE CALLS

June 3 2019 – the Home Affairs investigation

Report June 4 2019 – “An hour after his report went to air yesterday, his producer was contacted by an official from the Department of Home Affairs to advise the material was ‘highly confidential’. ‘In other words, we weren’t supposed to know it,’ Fordham told listeners today. ‘We were told Home Affairs would investigate the disclosure and they would like me to assist that investigation.’

“He was contacted again last night by ‘senior officials’ and again this morning, when he was told Home Affairs had initiated an investigation that could lead to an AFP criminal investigation.

“The timing of this raid (on News Corporation journalist Smethurst’s home that morning) is interesting to me because only yesterday afternoon I found out I was potentially facing a similar raid,’ Fordham said.

“While he was told that he wasn’t the subject of potential charges, Home Affairs wanted him to assist in identifying his source. ‘It was explained to me that only a limited number of people had access to the information we broadcast,’ he said.”⁵⁶

2GB Report June 4 2019 – “(Presenter Ben Fordham) yesterday revealed a senior source in Home Affairs told him up to six boats could have recently attempted journeys to Australia from Sri Lanka.

Shortly after revealing the information

on-air, his producer received a call from the Department of Home Affairs. The official said an investigation would commence as a result of an “unauthorised disclosure” of information and Ben was asked to assist in the investigation.

“Home Affairs has told Ben the person who passed on the confidential information is the target, not Ben himself. Ben says he will not be revealing his source under any circumstances.”⁵⁷

Fordham said: “Annika Smethurst from News Corp was raided today, and time will tell if I’ll be next... Under no circumstance will I be revealing my sources on this story or any story. I work in a business that’s based on freedom of the press and shining a torch in areas where there are shadows and it’s not fair to the people who assist me in my work to give them up the moment the AFP comes knocking.”⁵⁸

Fordham June 4 2019 – “I don’t know how concerned I should be, because I haven’t been in a situation like this before. I’ll co-operate with them as much as I can, but I’m not able to reveal my sources. Never have, never will. Agencies like Home Affairs are free to investigate leaks, just as I’m free to decide not to reveal my sources.”⁵⁹

ANNIKA SMETHURST

THE STORY

Spying shock: Shades of Big Brother as cyber-security vision comes to light, by *The Sunday Telegraph* national political editor Annika Smethurst, April 29 2018 – “Two powerful government agencies are discussing radical new espionage powers that would see Australia’s cyber spy agency monitor Australian citizens for the first time...

“The power grab is detailed in top

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secret letters between the heads of the Department of Home Affairs and Defence, seen by *The Sunday Telegraph*, which outline proposed new powers for Australia's electronic spy agency – the Australian Signals Directorate (ASD). The Sunday Telegraph can reveal the Secretary of the Department of Home Affairs Mike Pezzullo first wrote to the Defence Secretary Greg Moriarty in February outlining a plan to potentially allow government hackers to 'proactively disrupt and covertly remove' onshore cyber threats by 'hacking into critical infrastructure'. Under current laws the ASD – whose mission statement is 'Reveal Their Secrets – Protect Our Own' – must not produce intelligence on an Australian...

"Under the proposal, seen by The Sunday Telegraph, Home Affairs Minister Peter Dutton and Defence Minister Marise Payne would tick off on orders allowing cyber spooks to target onshore threats without the country's top law officer knowing. Last month the proposal was compiled in a top secret ministerial submission signed by ASD boss Mike Burgess. The proposal outlines scenarios where cyber spies would use offensive tactics to 'counter or disrupt cyber-enabled criminals both onshore and offshore'.⁶⁰

AFP officers take away material seized from the home of News Corporation journalist Annika Smethurst | *Your Right to Know* campaign - Kym Smith, News Corp Australia



Federal police going through Annika Smethurst's kitchen | Picture supplied

THE TRUTH

Report February 19 2020 – "Australia's premier foreign cyber intelligence agency would be enlisted to help track down online paedophiles, terrorists and other serious criminals under a proposal being developed by the Federal Government.

"The ABC understands the change could allow the Australian Federal Police (AFP) to call for assistance from

the Australian Signals Directorate (ASD) or extend the cyber capability of the AFP. "The ASD, whose motto is to 'reveal their secrets, protect our own', is restricted under legislation to hacking, disrupting and destroying foreign criminal cyber activity.

"The agency is banned from spying or hacking into online systems based in Australia. This means that if cyber spooks working for ASD come across

cybercriminal activity within Australia, its work must immediately stop, no matter how serious the offence...

“Extending ASD’s powers to spy on Australians has attracted widespread criticism in recent years after News Corp reported federal departments were considering giving spy agencies greater surveillance powers. That article led to AFP officers raiding journalist Annika Smethurst’s Canberra home in June last year, more than a year after her story was published.”⁶¹

THE RAID

June 4 2019 – the seven-hour raid by Australian Federal Police

Smethurst describing the AFP’s raid on her Canberra home that began at around 9am on June 4 2019 – “They went through everything. They started in my bedroom; they went through my bedside drawers; under my bed, inside my bed; through all my clothes, the pockets in my clothes; as it’s been well publicised – my underwear drawer; inside handbags; Christmas decorations; inside DVDs – I didn’t even know I still owned a few DVDs. They went through page by page of every book I own, cookbooks; my sewing basket; behind picture frames. So, look, they were incredibly thorough...”⁶²

According to documents present to a High Court appeal over the warrant used in the raid: “The Secretary of Defence referred the publication of the articles to the Australian Federal Police (AFP), which commenced an investigation in response. In furtherance of that investigation, on 31 May 2019 the AFP succeeded in having two documents issued by a magistrate under the *Crimes Act 1914* (Cth) (the Crimes Act).

“The first was a search warrant (the First Warrant) issued under s 3E of the Crimes Act. The second was an order, under s 3LA of the *Crimes Act*, requiring Ms Smethurst to assist the AFP to access and copy data on computers or data storage devices held at her home (the s 3LA Order). On 3 June 2019 another search warrant (the Second Warrant), the terms of which were almost identical to those of the First Warrant, was issued.

“Each warrant described the offence to which it related as follows: *On the 29 April 2018, Annika Smethurst and The Sunday Telegraph communicated*

a document or article to a person, that was not in the interest of the Commonwealth, and permitted that person to have access to the document, contrary to s 79(3) of the Crimes Act 1914, Official Secrets.

“Both the First Warrant and the Second Warrant authorised AFP officers to enter and search Ms Smethurst’s home and to access and copy data held on computer or storage devices found there. On 4 June 2019 officers of the AFP executed the Second Warrant and searched Ms Smethurst’s home. After requiring Ms Smethurst to provide her passcode to access her mobile telephone, an officer copied documents from the mobile telephone on to a USB device belonging to the AFP.”⁶³

News Corp Australia statement

about the raid on Smethurst’s home June 4 2019 – “This raid demonstrates a dangerous act of intimidation towards those committed to telling uncomfortable truths. The raid was outrageous and heavy handed. News Corp Australia has expressed the most serious concerns about the willingness of governments to undermine the Australian public’s right to know about important decisions Governments are making that can and will impact ordinary Australian citizens. What’s gone on this morning sends clear and dangerous signals to journalists and newsrooms across Australia. This will chill public interest reporting.”⁶⁴

MEAA statement June 4 2019 –

“Yet again, we have an example of a government aiming to punish those who have brought to light vital information. Australians are entitled to know what their governments do in their name. That clearly includes plans by government agencies to digitally spy on Australians by hacking into our emails, bank accounts and text messages. It is an outrage that more than a year after the story was reported in April 2018 but just days after the federal election result, the Federal Police are now raiding a journalist’s home in order to seize documents, computers and a mobile phone in order to track down the source.”⁶⁵

Report June 4 2019 – “A federal police spokesman said today that there would be no arrests made from today’s raid but it would allege the disclosure of documents undermined Australia’s

national security. ‘The Australian Federal Police (AFP) can confirm it has executed a search warrant at a residence in the ACT suburb of Kingston today (4 June 2019). The matter relates to an investigation into the alleged unauthorised disclosure of national security information that was referred to the AFP,’ he said. ‘Police will allege the unauthorised disclosure of these specific documents undermines Australia’s national security. No arrests are expected today as a result of this activity. It would not be appropriate to comment further at this stage.’ Ms Smethurst reported at the time that both Home Affairs Minister Peter Dutton and then-Defence Minister Marise Payne had seen the proposal but that no formal proposal for legislative amendments had been presented to the government. Present laws do not allow the ASD to spy on Australian citizens.”⁶⁶

DAN OAKES & SAM CLARK

THE STORY

The Afghan Files – Defence leak exposes deadly secrets of Australia’s special forces, by the ABC National Reporting Team’s Dan Oakes and Sam Clark July 10 2017 – “Hundreds of pages of secret defence force documents leaked to the ABC give an unprecedented insight into the clandestine operations of Australia’s elite special forces in Afghanistan, including incidents of troops killing unarmed men and children.

“The ABC can reveal that some of the cases detailed in the documents are being investigated as possible unlawful killings.

“This comes a day after the ABC revealed the alleged cover-up of the killing of an Afghan boy and another alleged incident in which a father and son were shot dead during a raid.

“The documents, many marked AUSTEO – Australian Eyes Only – suggest a growing unease at the highest levels of Defence about the culture of Australia’s special forces as they prosecuted a bloody, secretive war against insurgents across a swathe of southern Afghanistan.

One document from 2014 refers to ingrained “problems” within special forces, an “organisational culture”

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An AFP officer departs the ABC studios led by ABC News Executive Editor John Lyons | Wolter Peeters, The Sydney Morning Herald

including a “warrior culture” and a willingness by officers to turn a blind eye to poor behaviour.

“Another document refers to a ‘desensitisation’ and ‘drift in values’ among elite Special Air Service soldiers serving in Afghanistan, while others allude to deep divisions between the two elite units which primarily comprise the special forces – the SAS based in Perth and 2 Commando Regiment based in Sydney.

“A large proportion of the documents are reports on at least 10 incidents between 2009-2013 in which special forces troops shot dead insurgents, but also unarmed men and children.

“The Inspector General of the Australian Defence Force is investigating at least two of the incidents as part of its inquiry into the conduct in Afghanistan of special forces, which includes alleged unlawful killing.

“Those two incidents – which both occurred in September 2013 – are the deaths of a man and his six-year-old child during a raid on a house, as revealed yesterday by the ABC, and the killing of a detainee who was alone with

an Australian soldier and allegedly tried to seize his weapon.

A report into another 2013 incident in which an Afghan man riding a motorcycle was killed by Australian troops, and a female passenger possibly injured, states that Afghan authorities were becoming increasingly agitated over Australians allegedly killing unarmed civilians, and threatened to stop working with Australians.”⁶⁷

THE TRUTH

Report February 25 2020 – “A secret inquiry into alleged war crimes by Australian special forces is in its final stages, and is focusing on accusations of unlawful killings and the cruel treatment of civilians and former enemy fighters.

“Investigators are looking into 55 separate incidents of alleged breaches of the rules of war in Afghanistan between 2005 and 2016.

“A total of 336 people have given evidence to the probe so far.

“The inquiry, by the Inspector General of the Australian Defence Force (IGADF), has been underway since May

2016 and was sparked by allegations and rumours of special forces troops killing unarmed Afghan men and children.

“Members of the Defence community have been frustrated at how long the inquiry has been taking to complete.”⁶⁸

Report March 16 2020 – “A Four Corners investigation has uncovered new allegations that unarmed civilians were unlawfully killed by Australian special forces in Afghanistan. The revelations... involve multiple incidents in which Afghans were killed after surrendering or while they were detained by the Special Air Service Regiment (SAS).

“A former SAS soldier told Four Corners he witnessed three incidents involving what he said was the murder of Afghans.”⁶⁹

THE RAID

June 5 2019 – the nine-hour raid by Australian Federal Police

Twitter – John Lyons 11.31am June 5 2019 – “HAPPENING NOW: AFP raid ABC headquarters in Sydney over a 2017 story on 7.30. @annikasmethurst yesterday, then @BenFordham asked by Home Affairs for a source, now the ABC. Is this the new normal?”⁷⁰



Following their raid on the ABC, AFP officers load their vehicle with the information retrieved from the ABC's computers | Wolter Peeters, *The Sydney Morning Herald*

Lyons – “I have to say, sitting here watching police using a media organisation’s computers to track everything to do with a legitimate story I can’t help but think: this is bad, sad and a dangerous day for a country where we have for so long valued – and taken for granted – a free press.”⁷¹

Lyons – “AFP RAID: having downloaded 9214 items which include the AFP’s keywords, ABC techs are now putting all those into a new folder. The ABC and AFP will then go through those items one by one to see whether they fit the terms of the warrant.”⁷²

Lyons – “AFP: For the record, one part of this extraordinary warrant: The AFP is allowed to ‘use any other computer or a communication in transit to access the relevant data; and if necessary to achieve that purposes (sic) – to add, copy, delete or alter other data in the computer...”⁷³

Lyons – “I’m still staggered by the power of this warrant. It allows the AFP to “add, copy, delete or alter” material in the ABC’s computers. All Australians, please think about that: as of this moment, the AFP has the power to

delete material in the ABC’s computers. Australia 2019.”⁷⁴

Lyons 8.31pm June 5 2019 – “And so it’s off into the night for the six AFP officers. For nine hours they’ve searched through ABC emails and documents. I think there’s a big question for the Australian public: is this what a free press looks like?”⁷⁵

Lyons – “It was a surreal moment: standing with a group of Australian Federal Police (AFP) officers around a big screen, sifting through 9,214 emails and documents belonging to my colleagues.”⁷⁶

Lyons – “I’ve never seen an assault on the media as savage as this one we are seeing today on the ABC.”⁷⁷

Report February 17 2020 – “The material seized included 124 files on two USB sticks, some which were duplicates.”⁷⁸

NEWS CORPORATION

June 6 2019 – the planned raid by Australian Federal Police

Report July 5 2019 – “The AFP had planned a similar raid on News Corp

Australia’s Surry Hills headquarters but decided not to proceed.”⁷⁹

Report July 15 2019 – “Added to the picture which has already emerged, the ABC can reveal that the day after the ABC raid the AFP was planning to raid the headquarters of News Corp in the Sydney suburb of Surry Hills.

“As with the ABC, the AFP had given News Corp 24 hours’ notice that it was coming. The reason the two organisations were given notice is simple: unlike a house, which the AFP can control and seal off, the headquarters of both News Corp and the ABC are large, complex buildings that AFP officers executing a search warrant would not know how to navigate without guidance.

“News Corp, having been told of the imminent raid, set aside a room and blacked it out so that anybody walking by would not see AFP officers going through computers and files.

“After a quick public and media backlash against the ABC raid, the AFP decided to put on hold its operation at News Corp’s headquarters.”⁸⁰

THE FALL-OUT

Australian Federal Police June 5 2019 – “The Australian Federal Police (AFP) can confirm there is no link between the execution of search warrants in the ACT suburb of Kingston yesterday (4 June 2019) and those on the Ultimo premises of the ABC today (5 June 2019).

“Both relate to separate allegations of publishing classified material, contrary to provisions of the *Crimes Act 1914*, which is an extremely serious matter that has the potential to undermine Australia’s national security.

“The AFP received two separate referrals from agency heads in relation to these serious matters...

“All AFP search warrants are authorised by a magistrate or an appropriate member of the judiciary.

“This is the result of supporting documentation or material being presented to the court which provides sufficient suspicion that a criminal offence has been committed. The AFP can confirm the Minister for Home Affairs was not notified prior to the execution of the warrants.

“The search warrants related to secrecy offences in Part 6 and 7 of the *Crimes Act 1914 (Cth)*. The AFP was unable to rely on the revised secrecy offences inserted into the *Criminal Code Act 1995 (Cth)* by the *National Security Legislation (Espionage and Foreign Interference) Act 2018 (Cth)*, as the alleged conduct occurred before the new offences commenced.”⁸¹

ABC managing director David Anderson June 5 2019 – “This is a serious development and raises legitimate concerns over freedom of the press and proper public scrutiny of national security and Defence matters. The ABC stands by its journalists, will protect its sources and continue

to report without fear or favour on national security and intelligence issues when there is a clear public interest.”⁸²

ABC editorial director Craig McMurtrie June 5 2019 – “This was outstanding reporting... it was clearly in the public interest and sometimes difficult truths have to be told. We will be doing everything we can to limit the scope of this and we will do everything we can to stand by our reporters.”⁸³

ABC director of news Gaven Morris June 5 2019 – “Our journalists do a really difficult job. I’m proud of what they do, they do it in the public’s interest. I’d say to all the journalists at the ABC and all the journalists across Australia, don’t be afraid of the job you do. Stand up and be proud of it and continue to act in the public’s interest knowing the stories you tell and the service you provide the community is a vital one for our democracy.”⁸⁴

MEAA Media federal president Marcus Strom June 5 2019 – “It should chill the public as well as journalists. This is not really about journalism and journalists. At the end of the day it’s about the general public and its democratic right to know what the Government is doing. These raids are all about intimidating journalists and intimidating whistle blowers so that mistakes made by the Government, including potential crimes, by the military, remain covered up, remain secret, and don’t fall into the public domain.”⁸⁵

10 News First national political editor Hugh Riminton June 5 2019 – “In two days the two biggest news organisations in the country have been sent a message: if anyone wants to leak information about questionable practices anywhere in our national security apparatus, the federal police will go after them and the reporters they speak to.”⁸⁶



Acting AFP Commissioner Neil Gaughan addresses the media following the AFP raids | Alex Ellinghausen, Fairfax Photos



Prime Minister Scott Morrison

June 6 2019 – “I can understand why these issues can cause great anxiety, particularly to members of the press.”⁸⁷

Australian Federal Police Acting

Commissioner Neil Gaughan

June 6 2019 – “I reject the claim over the last few days we’re trying to intimidate journalists or conduct a campaign against the media. The AFP is a strong supporter of press freedom. The media plays an important role in today’s society in keeping the Australian community informed... I’m not going to rule in or rule out anyone subject to further charges.”⁸⁸

Report June 6 2019 – “If we don’t take it seriously, it closes down an avenue of people providing the Australian intelligence and law enforcement agencies very sensitive information which ultimately does save lives. I can’t stress that enough,” [AFP Acting Commissioner Neil Gaughan] said.

“During a 30-minute press conference, Mr Gaughan claimed the Federal Police respected press freedom and denied the organisation was trying to intimidate journalists. But he said he could not rule out News Corp journalist Annika Smethurst or ABC reporters Dan Oakes and Sam Clark facing charges for publishing national security secrets, which would be without modern precedence. ‘No sector of the community should be immune to this type of activity or evidence collection more broadly,’ Mr Gaughan said.”⁸⁹

Report June 7 2019 – “The AFP’s acting commissioner Neil Gaughan confirmed the search warrant used against the ABC on Wednesday was approved by a local court registrar in Queanbeyan.”⁹⁰

Independent MP Andrew Wilkie

in a letter to Prime Minister Morrison June 7 2019 –

“These security operations are clearly a dreadful overreach by the government and a clumsy attempt to silence the media and deter future whistleblowers. I seek your assurance these matters will be investigated and that those who authorised the operations will be held to account. Frankly the government needs to back off and let the media do its job.”⁹¹

MEAA chief executive Paul Murphy

June 9 2019 – “I think our parliament has failed, they’ve been caught up



THE WAR ON JOURNALISM

around this rhetoric of national security and its over-application across far too broad an area. I think there is no doubt that the very public nature of these raids in combination with the deluge of legislation we've seen in recent years will succeed in intimidating whistleblowers from coming forward with information in the public interest and without the bravery of whistleblowers coming forward, investigative journalism becomes impossible in many aspects."⁹²

Open letter to Prime Minister Scott Morrison, Leader of the Opposition Anthony Albanese, Members of the Parliament of Australia June 14 2019 – “The Australian Federal Police raids on the home of News Corp Australia journalist Annika Smethurst and on the offices of the Australian Broadcasting Corporation represent a grave threat to press freedom in Australia.

“We welcome the Prime Minister's stated commitment to freedom of the press and openness to discuss the concerns that have been raised.

“A healthy democracy cannot function without its media being free to bring to light uncomfortable truths, to scrutinise the powerful and inform our communities. Investigative journalism cannot survive without the courage of whistleblowers, motivated by concern for their fellow citizens, who seek to bring to light instances of wrongdoing, illegal activities, fraud, corruption and threats to public health and safety.

“These are issues of public interest, of the public's right to know. Whistleblowers and the journalists who work with them are entitled to protection, not prosecution.

“The raids, a raft of recent national security laws, and the prosecutions of whistleblowers Richard Boyle, David

McBride and Witness K all demonstrate the public's right to know is being harmed.

“Truth-telling is being punished.

“It is also clear from the global response to the recent raids that Australia's proud reputation around the world as a free and open society is under threat.

“We urge Parliament to legislate changes to the law to recognise and enshrine a positive public interest protection for whistleblowers and for journalists. Without these protections Australians will be denied important information it is their right as citizens to have.

“We urge you to take prompt action to protect our democracy for all Australians.”⁹³

Attorney-General Christian Porter June 19 2019 – “There is absolutely no suggestion that any journalist is the subject of the present investigations... Obviously, if in any future proceedings the AG's consent was sought by the Commonwealth DPP, I would be required legally to consider all the circumstances of any case but I can say I would be seriously disinclined to approve prosecutions 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.”⁹⁴

Shadow Attorney-General Mark Dreyfus June 19 2019 – “While the threat of prosecution hangs over the heads of these journalists, the freedom of all Australian journalists to do their jobs, and the public's right to know, are harmed. Why is the Attorney-General contradicting the federal police as to whether these journalists are a target in the first place?”⁹⁵

Shadow Home Affairs Minister Kristina Keneally July 2 2019 – “The events of the past month have raised the question – is a free press a right Australians can continue to rely on under the Morrison government? There is a culture of secrecy and perverting the public's right to know that has been making its way through this government for too long, and it's time to call it out.”

Foreign Minister Marise Payne July 10 2019 – “The Government is committed to ensuring our democracy strikes the right balance between a free press and keeping Australians safe – two fundamental tenets of our democracy.”⁹⁶

Attorney-General Christian Porter July 4 2019 – “What we have said is that we're referring many of the matters that have been raised by organised media with us, to what's known as the Parliamentary Joint Standing Committee on Intelligence and Security – probably the most powerful Committee in Parliament. And particularly they're going to focus on the ways in which journalists can get caught up in investigations, particularly focusing on the way in which search warrants are issued and executed. And, specifically, they're going to look at things like whether or not when a search warrant that has that kind of effect on a journalist is issued, whether it could be contested so that the journalist or their organisation can voice their views on it in court. This covers a range of issues but it's a complicated space. There are issues around defamation and suppression orders.

“I mean, I've indicated as Attorney General I'm pretty satisfied with the way the Public Interest Disclosure Act works at a Commonwealth level. So, we are very much hearing, listening, I've got a great deal of empathy for many of the points raised and the first batch of those points are going to the most powerful and important Committee in Parliament.”⁹⁷

Foreign Minister Marise Payne to a global conference on media freedom July 10 2019 – “Freedom of expression, including media freedom, is a basic human right and a fundamental element of vibrant democracies. Australia is an open, liberal democracy guided by the rule of law, and strongly supports the principles of free press and the safety of journalists.”⁹⁸

“THERE IS ABSOLUTELY NO SUGGESTION THAT ANY JOURNALIST IS THE SUBJECT OF THE PRESENT INVESTIGATIONS...”

ATTORNEY-GENERAL CHRISTIAN PORTER, JUNE 19 2019



Prime Minister Scott Morrison
| Alex Ellinghausen for *The Sydney Morning Herald*

Report – “On April 1, the Australian Federal Police (AFP) wrote an extraordinary letter which could signal a dramatic change in how the media is viewed in this country: it wanted the fingerprints of two senior journalists... [The] AFP wanted finger and palm prints from Dan Oakes and Sam Clark, the ABC journalists who two years earlier had produced stories on the activities of Australian special forces soldiers in Afghanistan between 2009 and 2013...”

“[That] ‘fingerprint letter’ specifically stated that both Oakes and Clark were suspects in relation to three alleged offences – one under s79 (6) of the *Crimes Act 1914* concerning ‘the receipt of prescribed information’, one under s73A (2) of the *Defence Act 1903* concerning ‘unlawfully obtaining information,’ and another under s132 1 (1) of the *Criminal Code*... That April 1 letter appeared to be part of a 10-month investigation by the AFP

to try to build a case against the two journalists for breaking a story which had caused embarrassment to agencies of the Federal Government but posed no threat to national security.

“*The Sydney Morning Herald* recently revealed that the AFP requested from Qantas the travel details of Oakes. Qantas apparently handed over that information... The SMH also revealed that the AFP used national security laws to access the metadata of journalists nearly 60 times in one year...”

“With fingerprints and flight details of journalists being sought, there’s a strong sense that genuine investigative journalism is being placed by the Federal Government and its agencies in the same category as criminality. So precarious has freedom of the media become in Australia, that based on public statements the future of independent journalism could now be caught up in clearly differing positions

between Mr Dutton, the Minister for the powerful Home Affairs Department, and Mr Porter, the Attorney-General.

“Mr Dutton is arguing that AFP officers act independently. But at the same time that officers who report ultimately to him – the AFP officers who did the raids and the Home Affairs official who pressured Fordham – are executing search warrants and questioning journalists, the highest law officer in the land, Mr Porter, has said he is “disinclined” to see journalists charged. This is a high-level, and very important, game of intrigue.

“These developments appear to be part of a new climate in which journalists and their sources of information, sometimes referred to as whistleblowers, are targeted. As part of that new climate, journalists in Australia are receiving the sort of treatment previously reserved for criminals and terrorists.”⁹⁹

GLOBAL RESPONSE TO THE RAIDS

BBC News June 6 2019 – “Australian police have raided the offices of the country’s national broadcaster, ABC...”¹⁰⁰

Al Jazeera June 6 2019 – “... the second operation against media outlets in just two days.”¹⁰¹

France 24 June 6 2019 – “Journalists in Australia have condemned a police raid on the offices of the national broadcaster...”¹⁰²

ERT World June 6 2019 – “In Australia the police made a charge in the public television building...”¹⁰³

CNN June 6 2019 – “It has caused press freedom groups all around the world to raise alarm bells right now.”¹⁰⁴

BBC June 6 2019 – “This police raid against our partners at ABC is an attack on press freedom which we at the BBC find deeply troubling. At a time when the media is becoming less free across the world, it is highly worrying if a public broadcaster is being targeted for doing its job of reporting in the public interest.”¹⁰⁵

Reporters Without Borders June 6 2019 – “Persecuting a media outlet in this way because of a report that was clearly in the public interest is intolerable. This kind of intimidation of reporters and their sources can have devastating consequences for journalistic freedom and independent news reporting.”¹⁰⁶

International Federation of Journalists’ president Philippe Leruth June 6 2019 – “I strongly condemn the repeated harassment of journalists in Australia as infringements of press freedom. The IFJ strongly calls the Australian authorities to ensure press freedom and the Australian judicial and police authorities to respect the fundamental rights of journalists.”¹⁰⁷

CNN June 6 2019 – “We almost never see this in a democratic country like Australia. Something very troubling (is) happening on multiple fronts in Australia.”¹⁰⁸

The Telegraph June 6 2019 – “[the actions] led opposition MPs and media figures to query whether the recently re-elected centre-right Liberal Party was engaging in a campaign to muzzle press freedom.”¹⁰⁹

Geoffrey Robertson QC June 6 2019 – “[The acting Australian federal Police commissioner] should be called before parliament to explain and, if necessary, sacked... either for the delay (in executing the raids) or for, more importantly, undermining Australian democracy by authorising these raids.”¹¹⁰

MEAA resolution passed by the International Federation of Journalists 30th Congress June 14 2019 – “These raids are a grave assault on media freedom and the democratic right of citizens to be informed about the activities of their government. We note with concern the recent passage of legislation through the Australian Parliament which seeks to restrict public interest reporting, criminalise the work of investigative journalists and punish whistle blowers who bring important information forward in the public interest. Australia holds itself out as a bastion of media freedom, but these recent events seriously challenge that view and send a dangerous message to the world. We call on the Australian Parliament to take urgent action to legislate for the protection of journalists and their confidential sources, and to end its system of mass data surveillance. Democracy dies in darkness. It is vital that an appropriate balance be maintained between national security and the protection of free and fearless reporting in the public interest.”¹¹¹

MEAA issued two statements in response to the raids. The first dealt with the raid on Annika Smethurst’s home. MEAA said:

This morning’s raid by Federal Police on the home of a respected Canberra Press Gallery journalist is an outrageous attack on press freedom that seeks to punish a journalist for reporting a legitimate news story that was clearly in the public interest.

The raid is yet another example of the heavy hand of government seeking to: withhold important information from the public, harass and intimidate journalists who are reporting responsibly to the Australian community; and persecute and prosecute whistleblowers who reveal matters of concern, including exposing any information or activity that is against the public interest.

MEAA notes that the government has already rushed through deeply flawed anti-encryption legislation on the last sitting day of the Parliament in 2018. The new law seeks to “break”, or decrypt, the encrypted communications of ordinary citizens. MEAA has already warned that, based on past experience, Australian governments and their agencies have little regard for press freedom and there is every likelihood that the powers to be used over encrypted communications can be misused—either to identify a whistleblower or pursue a journalist for a story the government does not like.

MEAA Media president Marcus Strom said: “Yet again, we have an example of a government aiming to punish those who have brought to light vital information. Australians are entitled to know what their governments do in their name. That clearly includes plans by government agencies to digitally spy on Australians by hacking into our emails, bank accounts and text messages.

“It is an outrage that more than a year after the story was reported in April 2018 but just days after the federal election result, the Federal Police are now raiding a journalist’s home in order to seize documents, computers and a mobile phone in order to track down the source,” Strom said.

“MEAA has catalogued, in our annual press freedom report, the steady encroachment of government into



MEAA's response

muzzling the media and pursuing whistleblowers for daring to bring to light legitimate news stories that embarrass the government of the day. But when you go after whistleblowers you are going after journalism. When you seek to muzzle the media and deny their right to subject the powerful to scrutiny, you are attacking democracy and the public's right to know," Strom said.

MEAA calls on the Morrison government to show its support for press freedom.¹¹²

The following day, MEAA issued a second statement, this time in response to the raid on the offices of the ABC:

Two raids by the Australian Federal Police (AFP) on journalists and media organisations within the last 24 hours represent a disturbing attempt to intimidate legitimate news journalism that is in the public interest...

Yesterday's raid on a News Corporation Australia journalist, and today's raid on the ABC and two of its journalists, suggest that no media organisation is immune from government attacks on press freedom.

Marcus Strom: "A second day of raids by the Australian Federal Police sets a disturbing pattern of assaults on Australian press freedom. This is nothing short of an attack on the public's right to know.

"Police raiding journalists is becoming normalised and it has to stop.

"These raids are about intimidating journalists and media organisations because of their truth-telling. They are about more than hunting down whistleblowers that reveal what governments are secretly doing in our name, but also preventing the media from shining a light on the actions of government," he said.

"It is equally clear that the spate of national security laws passed by the Parliament over the past six years have been designed not just to combat terrorism but to persecute and prosecute whistleblowers who seek to expose wrongdoing. These laws seek to muzzle the media and criminalise legitimate journalism. They seek to punish those that tell Australians the truth.

"Yesterday's raid was in response to a story published a year ago. Today's raid comes after a story was published nearly two years ago. Suddenly, just days after a federal election, the Federal Police launches this attack on press freedom. It seems that when the truth embarrasses the government, the result is the Federal Police will come knocking at your door," Strom said.

"MEAA demands to know who is responsible for ordering these coordinated raids, and why now. We call for the Government and Opposition to take collective responsibility for the legal framework they've created that is allowing for what appears to be politically motivated assault on press freedom," Strom said.

"For years the Liberal and Labor parties have engaged in a high-stakes game of bluff which has seen the introduction of anti-democratic laws in the guise of national security legislation. It is time that the Government and Opposition had a common sense approach to defusing these poisonous laws that are effectively criminalising journalism. This attack on the truth must end."¹¹³

Talking the talk

Politicians were quick with declarations of their support for press freedom.

Prime Minister Scott Morrison June 5 2019 – “Australia believes strongly in the freedom of the press and we have clear rules and protections for freedom of the press.”¹¹⁴

Morrison June 7 2019 – “The Government is committed to press freedom, of course we are.”¹¹⁵

Minister for Home Affairs Peter Dutton June 7 2019 – “We value a healthy fourth estate.”¹¹⁶

Labor Leader Anthony Albanese to Home Affairs Minister Peter Dutton June 7 2019 – “What we’re seeing here is no-one in the government being prepared to defend the role that media has in our democracy, which is essential... You consistently have been trying to avoid scrutiny in all of the portfolios you’ve had. You characterise secrecy and lack of scrutiny that embodies your entire political career.”¹¹⁷

Deputy Labor Leader Richard Marles June 9 2019 – “At every moment along the way, we have been the proponents and responsible for amendments which go to the question of there being national interest tests which protect the freedom of the press. That’s actually our form over the last few years.”¹¹⁸

Albanese June 11 2019 – “I support freedom of the press... I think freedom of the press is an essential component of our democracy...”¹¹⁹

Dutton July 12 2019 – “All of us stand up for press freedom. There is no question of that in our country.”¹²⁰

Communications Minister Paul Fletcher June 12 2019 – “Well, can I make the point that press freedom is

a bedrock principle in a democracy – it’s a very important principle... Of course we understand that journalists are anxious about the events of last week the Australian Federal Police executing a search warrant, or two search warrants. And the Prime Minister said if there’s a suggestion, or evidence, or analysis that reveals the need for further improvement of the laws the Government’s always open to that.”¹²¹

Deputy Prime Minister Michael McCormack June 17 2019 – “Yes, I understand that a lot of people, particularly in media circles, are concerned about this and about free speech – of course I’ve always upheld the right of free speech.”¹²²

Foreign Minister Marise Payne to the Global Conference for Media Freedom July 11 2019 – “Press freedom has recently been the focus of national discussion in Australia, and while Australia ranks relatively highly on the [World Press Freedom Index] we recognise a sensible balance needs to be reached between protecting our national interest in the face of ever-evolving security challenges and upholding the public’s right to know.”¹²³ Reporters Sans Frontieres’ 2020 World Press Freedom Index ranks Australia 21st out of 180 countries¹²⁴

Human rights lawyer Amal Clooney, at the same conference July 11 2019 – “What happens in a country like Australia or the UK or the US will be looked at by every other leader in the world and potentially be used as an excuse to clamp down even further on journalists. Journalists all around the world are less safe if the rhetoric, or even policies or laws, of states that are supposed to be free are actually a threat to journalists in those countries.”¹²⁵

Albanese September 5 2019 – “There have been a series of actions which I



think have undermined the freedom of the press and the government needs to be very clear about the role of the press in a modern democracy.”¹²⁶

Albanese October 20 2019 – “People should not be charged for doing their job. Journalism isn’t a crime, it’s an essential part of our democracy; we need to cherish it. We need to make sure whatever legislative changes are required to ensure media freedoms are adopted. It should happen in a bipartisan way and it should happen quickly.”¹²⁷

Barnaby Joyce MP October 21 2019 – “The fourth estate is important but you’re not Clark Kent from the *Daily*



Nationals MP Barnaby Joyce, Minister for Home Affairs Peter Dutton and Prime Minister Scott Morrison | *Alex Ellighausen, The Sydney Morning Herald* Below: Deputy Prime Minister Michael McCormack | *Alex Ellighausen, The Sydney Morning Herald*

Planet... We talk about the public interest as if it's some indissolvable [sic] right... a beacon of justice which everything else can be put aside to protect."¹²⁸

Energy and Emissions Reduction Minister Angus Taylor October 21 2019 – “This is about getting the balance right and making sure we have a regulatory framework where we do protect press freedoms because they are enormously important, [but] there are circumstances where national security needs to be taken into account. As we've always said if there's strong evidence and strong arguments to change we are open to making those changes.”¹²⁹



Media freedom joins the current ‘freedoms’ agenda

BY MICHELLE GRATTAN, PROFESSORIAL FELLOW AT THE UNIVERSITY OF CANBERRA. THIS ARTICLE ORIGINALLY APPEARED IN THE CONVERSATION

Scott Morrison is very concerned to protect freedom of religion, and many Liberals tell us we don’t have enough safeguards for freedom of speech. Now the prime minister has on his hands a massive, unexpected and, for him, unwelcome argument about media freedom.

The public’s right to know is one issue at stake in the furore over the police raids on the home of a News Corp journalist and on the ABC’s Sydney headquarters, as is a government’s right to protect confidential information.

Also on the line are the reputations of the Australian Federal Police and of the government itself.

The Annika Smethurst April 2018 story – the detail of which was denied at the time – published extracts of a submission documenting bureaucratic discussions about the remit of the Australian Signals Directorate spy agency.

The 2017 ABC report was about the conduct of Australian SAS soldiers in Afghanistan.

Both stories reproduced actual documents, which increased the risk of the journalists and their sources being targeted by the authorities.

In each case, on a reasonable interpretation of “public interest”, the stories contained information that, it can be strongly argued, it was desirable to have in the public domain. “The

Afghan files” report in particular shone a light in a dark place, about unease with SAS culture and possible unlawful killings.

(The fact the police swooped on both News Corp and the ABC does mean, incidentally, that the media response has been more united than it might have been if, for example, only the ABC was in the frame.)

In the raids – which police and bureaucrats would prefer be called the execution of search warrants – the Australian Federal Police acted under the *Crimes Act 1914*, not under the new secrecy legislation passed last year. This was because of when the stories appeared. The *Crimes Act* provisions (replaced by the new law, which is wider but provides better defence for journalists) prohibited a Commonwealth official leaking information or documents, and also the publication of such information.

There is no escaping the inconvenient truth that leaks of sensitive information, and their publication, do involve conflicting interests and principles.

Firstly, officials are bound to secrecy by law. But, secondly, “whistleblowers” have an important role. While there are legal provisions covering them, these do not seem adequate.

Thirdly, the job of a well-functioning media is to hunt out information and increase accountability.

The weighting one gives to the

conflicting imperatives will often depend on where you sit. The “public interest” will, or should be, a concern all round – to politicians, officials and media – although there will also be different views on what this involves in particular instances.

Governments (of either side) and senior bureaucrats dealing with security will place maximum emphasis on confidentiality. In a news conference on Thursday defending the police’s role, the AFP’s acting commissioner, Neil Gaughan, referenced the information Australia received from its “Five Eyes” partner countries (Canada, New Zealand, the United Kingdom and the United States).

Gaughan said the AFP received “numerous referrals to us [of leaks] and to be honest we get too many. But the premise of investigating these matters is to ensure the international community knows that we take the leaking of information, sensitive information, seriously.

“If we can’t be seen to protect our own internal information, we are concerned the information flow to us dries up.”

But what do our intelligence partners make of the fact that it’s generally known that certain leaks, even involving security matters such as departmental advice on the medevac legislation, come from ministerial sources or those close to them, for political reasons? Needless to say, they don’t attract raids.

The media perspective is, naturally

The Afghan Files story by Dan Oakes and Sam Clark of the ABC's National Reporting Team



The Afghan Files

Defence leak exposes deadly secrets of Australia's special forces

By the National Reporting Team's Dan Oakes and Sam Clark

and properly, primarily focused on disclosure. Sometimes the media will simply have to stare down governments, even if that invites a counter-strike. They are in a strong position, as we've seen this week. Publicity is a powerful weapon; it has been the police and the government, not the media, on the back foot in the past few days.

Gaughan has insisted that ministers did not initiate the raids. Home Affairs Minister Peter Dutton's office was informed by the AFP when the matters were referred to it by officialdom for investigation. But Gaughan said the office did not get progress reports and was not forewarned of the raids.

He said the timing of the operations, which he determined, was not related to the fact the election was over (but the operations were grouped on consecutive days, for "resourcing" considerations). The police turned up at Smethurst's home unannounced, but had been negotiating with the ABC for months and finally arrived with an appointment. Gaughan said there could be more search warrants.

It is not clear why these investigations took so long. Nor is it evident why, given there is a court case afoot against David McBride, a former military lawyer, who

has confessed to leaking the Afghan files, the police are proceeding with that investigation (Gaughan said: "Just because someone says they did something, doesn't mean they actually did"). McBride has suggested the police may be after a second person.

Morrison – who has been abroad this week – finds himself caught between his own instincts for a high degree of control and mounting evidence that Australia is being portrayed internationally as acting repressively towards the media.

Initially, Morrison sounded dismissive. When asked whether he was bothered by the look of police raiding journalists homes, he replied, "it never troubles me that our laws are being upheld".

By the following day, he was seeking to strike a slightly different note. Asked whether a change in the law was needed, he said: "I'm open to having discussions about concerns that have been raised and we would consider that in relation to any issues that are raised with us."

But it didn't sound as though his position had shifted significantly – it was more a matter of becoming aware he was in the middle of a political

firestorm, not just a little brushfire.

What's needed now?

Another look at the legal provisions protecting whistleblowers, and perhaps those covering journalists as well.

But, most important, a more open political culture. While the government is busy arguing that it had nothing to do with this week's police actions, that is only half true.

It sets the climate in which so much is referred by officials to the police, often unnecessarily. It's a climate in which genuine whistleblowers are often hounded, media organisations find it increasingly hard to ferret out facts, and the public's right to know hardly gets a look in. Security considerations and confidentiality are important but they mustn't be cloaks for political or bureaucratic convenience (or worse, cover-ups).

Media freedom is as important a debate as those around religious freedom and free speech.

Michelle Grattan is Professorial Fellow at the University of Canberra. This article originally appeared in *The Conversation*¹³⁰



THE MINISTER

INTERVIEW WITH
MINISTER FOR
COMMUNICATIONS,
CYBER SAFETY AND
THE ARTS PAUL
FLETCHER; RADIO
MORNINGS WITH
PATRICIA KARVELAS,
ABC, JUNE 11 2019¹³¹

PATRICIA KARVELAS: Well following widespread condemnation of those raids on the media, including the ABC, the Federal Government is under immense pressure to demonstrate that it supports the freedom of the press. Today, the ABC Chair will meet with the Prime Minister. The Minister for Communications is Paul Fletcher and he joins us this morning. Minister, welcome.

PAUL FLETCHER: Good morning Patricia. Good to be with you.

PATRICIA KARVELAS: Thank you for joining us. What will you do to protect press freedom in Australia?

PAUL FLETCHER: Well, press freedom is obviously a bedrock principle in a democracy. It's very important for example that editorial decisions are made by media organisations independent of government. That media makes the decisions about the issues it chooses to cover. Of course, our Labor opponents in 2013 sought to establish the public interest media advocate which was described by one media executive as an attempt to introduce government sanctioned journalism. So it's a been a bit rich seeing Labor trying to claim that they're in some way advocates for press freedom. Our Government strongly supports press freedom and indeed, just

Minister for Communications,
Cyber Safety and the Arts Paul
Fletcher | *Alex Ellighausen, The
Sydney Morning Herald*

get them, but the process by which they then executed those search warrants, the process that was entirely their operational decision not pre-briefed to Ministers. And the Prime Minister said if there are deficiencies in that process and the Government always looks at these things. Of course our Government leader in the Senate Mathias Cormann said yesterday, when he was asked about the question of would there be a Senate Inquiry, he said there's a range of issues to be considered here and there will be some further statements in relation to this later in the week.

So I'm not going to add to what the Prime Minister or what Minister Cormann have had to say, but I do want to make the point – we're strong defenders of press freedom. It's a very important principle. Now, the ABC Chair spoke to me last week. She later publicly reported accurately on the content of that conversation. She put to me in strong views, in strong terms, the ABC's concerns. That's entirely her right and she's entirely, it's entirely appropriate for her as Chair of the ABC to be doing that.

And can I make this point, the Australian Federal Police, like media organisations, like any citizen are subject to the rule of law. So...

PATRICIA KARVELAS: So is the rule of law broken then, Minister? That's the key question.

PAUL FLETCHER: Well, the point I'd make is there are media reports that the ABC is intending to go to court to challenge the circumstances in which the search warrant was executed. If that is true, I have not been briefed on it at this point. But if that's true, that's entirely within their rights and it's consistent with the operation of the Federal Police under the rule of law.

The important thing in a democracy is that we balance up all of the relevant considerations. Freedom of the press is a key consideration, but of course, there are always factors such as the law of defamation, the law of sub judice which says you can't print things which might prejudice somebody's right to a free trial. So there are obviously always a range of factors to balance up.

PATRICIA KARVELAS: So you're saying that this can be resolved through the courts?

PAUL FLETCHER: What I'm saying is the way these factors are balanced up is in legislation which is passed by a democratically elected Parliament.

PATRICIA KARVELAS: But my question is – is the Government prepared to consider a media freedom act that positively puts the role of the press in the middle of our legal system? Is that something you're prepared to look at?

PAUL FLETCHER: And my response to you Patricia is that these are not novel issues. Indeed the provisions of the Crimes Act under which the AFP is conducting its investigation into government officials as to whether they breached secrecy provisions, that provision of the Crimes Act has been in place for decades. In fact...

PATRICIA KARVELAS: [Interrupts] That's not an answer to my question, Minister. Is the Government prepared to consider a media freedom act?

PAUL FLETCHER: What I'd say to you is the leader of the Government in the Senate was asked a question about a Senate Inquiry and he gave the answer which I've cited. I'm not going to add to that.

PATRICIA KARVELAS: Well hang on a minute – you're the Communications Minister. Do you think there is now grounds for a proper inquiry to look at the issues of freedom for the press?

PAUL FLETCHER: What I think is that there is always a range of factors to be balanced up. Freedom of the press is very important, and indeed just recently we legislated provisions giving a defence for journalists as I've already mentioned.

PATRICIA KARVELAS: And do you think that you need an inquiry now to look at this?

PAUL FLETCHER: Well, again, as the Senate leader, as our Senate leader has said, there's a range of issues to be considered here and there'll be further statements in relation to this later in the week...

PATRICIA KARVELAS: [Talks over] Can you give me an indication of what those further statements might indicate Minister?

in the last couple of years, we introduced provisions into the Commonwealth Criminal Code which included defence for journalists who receive information and deal with it if they genuinely believe it's in the public interest.

PATRICIA KARVELAS: So will you launch an inquiry, Minister?

PAUL FLETCHER: Well, in relation to the question of an inquiry, what the Prime Minister said when he was asked last Friday was he talked about the process by which the Australian Federal Police had obtained search warrants. Bear in mind they had to go to a judicial officer to



THE WAR ON JOURNALISM

PAUL FLETCHER: No, I'm not going to be adding to what our leader in the Senate has said. But what I will say is freedom of the press is a bedrock principle. It always needs to be balanced up against other things, that's always an issue in a democracy. What is important is that these laws which weigh up these factors are passed by democratically elected parliament, and then media organisations, journalists, others are free to exercise their legal rights including to challenge, for example, the exercise of a search warrant as it's reported the ABC intends to do. And that is absolutely their legal right in a democracy and it's absolutely appropriate that the Chair of the ABC should be a strong advocate for press freedom. And she made those points to me strongly last week.

PATRICIA KARVELAS: [Interrupts] But is the Government prepared to consider a media freedom act?

PAUL FLETCHER: Well again, I'm not going to add to what has been said.

PATRICIA KARVELAS: So is it something you're willing to consider?

PAUL FLETCHER: Well again, Patricia, you can keep asking the question...

PATRICIA KARVELAS: [Interrupts] I can because I don't have an answer Minister.

PAUL FLETCHER: ... and I'm going to keep giving you the answer which is I am not going to add to what the Government's leader in the Senate said yesterday about this, which is that there'll be further statements in relation to this later in the week.

PATRICIA KARVELAS: Okay. So you won't rule out considering a media freedom act?

PAUL FLETCHER: Again, I refer you to what our leader in the leader of the Government in the Senate has said. That is the Government's position in relation to whether there will be a Senate Inquiry, consistent with our strong belief in the freedom of the press, the importance...

PATRICIA KARVELAS: [Interrupts] So you think the best place to sort this out is through the courts?

PAUL FLETCHER: The courts have an important role in a parliamentary democracy. It has always been the case that freedom of the press is an important principle in our parliamentary democracy and in every democracy. It's also always been the case that a range of considerations get weighed up, so there are limits under the laws of defamation, the laws of sub judice to say national security laws and others. So there's nothing novel about the fact that these things are balanced up. And one of the proof points there is the fact that the provisions that the AFP are conducting this inquiry into government officials about are provisions that have been in the Crimes Act for many decades.

PATRICIA KARVELAS: And that's why there's now a call for a review and a new act.

PAUL FLETCHER: Well the point I'd make is that the provision that I cited which gives a defence for journalists was added into the legislation just in the last couple of years. So the Parliament, the democratically elected Parliament made a judgement in weighing up these factors that there should be such a defence and that defence is now in the law.

PATRICIA KARVELAS: Do you think that defence is strong enough?

PAUL FLETCHER: That defence is important and it reflects the very principle that you're asking about and that our Government considers is important, which is the importance of freedom of the press.

PATRICIA KARVELAS: Very quickly, Ita Buttrose told you that these raids were clearly designed to intimidate. Do you agree with them?

PAUL FLETCHER: I would not myself share those sentiments but Ita put those views to me strongly. Ita is a very experienced media executive. She has dealt with Sir Frank Packer and Kerry Packer over many decades. She's very accustomed to speaking without fear or favour. That's what she's in the job to do and I'm sure she'll continue to do it.

PATRICIA KARVELAS: And 30 seconds to answer this one, Ita Buttrose seems to think the funding door isn't closed for the ABC. Are there any circumstances where you could be persuaded to restore ABC funding?

PAUL FLETCHER: The point I'd make is that there's over a billion dollars a year being provided to the ABC each year over the next three years. There's more than \$40 million of funding that's provided to support local news and current affairs, and of course, as Chair of the ABC, I'm sure Ita will continue to be a strong advocate for ABC funding.

PATRICIA KARVELAS: Are you going to be at that meeting today?

PAUL FLETCHER: I will be at the meeting.

PATRICIA KARVELAS: And do you plan to come out and tell Ita that you have a new plan for press freedom?

PAUL FLETCHER: As the Prime Minister has said, we'll listen to what the Chair of the ABC has to say...

PATRICIA KARVELAS: Minister we're out of time.

PAUL FLETCHER: I'm sure she'll put her views very firmly.

PATRICIA KARVELAS: Minister for Communications there. It's news time, 9 o'clock.

“IT HAS ALWAYS BEEN THE CASE THAT FREEDOM OF THE PRESS IS AN IMPORTANT PRINCIPLE IN OUR PARLIAMENTARY DEMOCRACY AND IN EVERY DEMOCRACY.”

COMMUNICATIONS MINISTER PAUL FLETCHER, JUNE 11 2019

THE CAMPAIGN

On October 21 2019, MEAA joined with publishers, broadcasters and other media organisations in an unprecedented united campaign for reforms to protect media freedom, whistleblowers and the public’s right to know.

MEAA is a member of Australia’s Right to Know coalition, which includes commercial and public broadcasters and publishers, and the peak organisations for subscription and free TV and commercial and community radio. The coalition has an extensive history of lobbying governments on matters of press freedom. It was formed more than a decade ago.¹⁵²

In response to the raids, ARTK launched the Your Right To Know campaign on Monday, October 21 2019. The campaign focussed on a core truth: the public’s right to know what our governments do in our name was under attack. Through a mix of secrecy, legislation and surveillance, the government had begun a war on public interest journalism.

The audience for this campaign were to be the people most affected by these assaults; the Australian public. “Over the past two decades, Australian governments have passed more than 75 laws related to secrecy and spying. This raft of legislation has taken a toll on media freedom to investigate a huge range of issues. It has left journalists exposed to prosecution for publishing classified information and raised the risk of their sources and metadata being seized without a warrant.”

Australia’s leading print newspapers, both metropolitan and regional, blanked out their front pages with redacted words. The campaign also included radio and TV spots. The campaign web site, yourrighttoknow.com.au explained the issues and included examples of stories that had been subjected to pressure or interference to prevent them going to air.

The campaign included editorial content demonstrating the need for legislative reform, utilising case studies where press freedom and whistleblowers had been attacked.



Above: The Your Right to Know campaign began with newspapers blacking out their front pages **Below:** Your Right to Know campaign TV advertisement



The campaign sought public support for six key reforms. “To make sure journalists and their sources can expose wrongdoing without fear of reprisal, we’re seeking a suite of reforms:

- The right to contest the application for warrants for journalists and media organisations;
- Exemptions for journalists from laws that would put them in jail for doing their jobs, including security laws enacted over the last seven years;
- Public sector whistleblowers must be adequately protected – the current law needs to change;

- A new regime that limits which documents can be stamped secret;
- A properly functioning freedom of information (FOI) regime; and
- Defamation law reform.”¹⁵³

MEAA chief executive Paul Murphy said: “The culture of secrecy that has descended through these legal provisions restricts every Australian’s right to know and goes well beyond the original intent of national security.

“Journalism is a fundamental pillar of our democracy. It exists to scrutinise the powerful, shine a light on wrongdoing and hold governments to account to the people, but the Australian public is being kept in the dark about matters that affect them.

“The police raids on the home of News Corp journalist Annika Smethurst and the headquarters of the ABC in Sydney were direct attacks on media freedom in Australia but they are just the tip of the iceberg.

“The time has come to wind back these excessive laws and to decriminalise public interest journalism and whistleblowing.



Your Right to Know campaign TV advertisement

“The protection of sources must be enhanced, and the congested Freedom of Information system needs to be unblocked.”

Murphy said that stories broken by the media working with whistleblowers in recent years had exposed banking malpractice, aged care negligence, Tax Office excesses and animal mistreatment.

But in many cases, whistleblowers have been punished and bureaucracies have attempted to suppress information from being made public.¹³⁴

The Your Right To Know website explained the campaign in direct terms; “Journalists’ ability to do their jobs has been legally limited. Worse yet, the industry as a whole has suffered from a wider chilling effect where reporters become cautious of exercising even their legal rights to defend the public’s right to know.

“In 2007, Australian media organisations formed the Australia’s Right to Know (ARTK) coalition to address the unintended consequences of this legislation and urge lawmakers against unnecessary restrictions.

“We now await the findings of parliamentary and senate inquiries into the impact of law enforcement and intelligence powers on press freedom. With their reports due in the coming months, it’s crucial that we all play our part and let the government know how much we care about having access to the truth.”

THE INQUIRIES

George Williams, Dean of Law at the University of NSW has said: “Australia has rightly been described as the world’s most secretive democracy... Australia... stands out from the crowd. We have gone further than any other liberal democracy in the number of security laws enacted (82 at last count), and in their impact on democratic values. Too often, these laws demonstrate a willingness to shut down debate and to shield government from damaging, embarrassing information. The federal government has belatedly recognised this.

“Home Affairs Minister Peter Dutton has issued a ministerial direction to the Australian Federal Police that they consider press freedom before investigating journalists who publish secret material. Attorney-General Christian Porter has also instructed federal prosecutors that they must obtain his consent before charging journalists under certain national security laws. These directions miss the point. They make it less likely that journalists will be jailed, but only where they are protected through ministerial intervention.

“The liberty of journalists should not depend on the very people who may be harmed and angered by bringing information of wrongdoing to light. Journalists should not have to second-guess how the government will respond to their work, and whether a minister will use their discretion to protect them from prosecution. It compromises the independence of journalists and opens new avenues by

which their work may be subject to political interference.

“The directions by Dutton and Porter are also notable for who they do not protect. There is no suggestion of a ministerial shield for whistleblowers who reveal information to journalists about corruption, misconduct or the misuse of public power...

“The ministerial directions also fail to touch the underlying law that exposes journalists and whistleblowers to prosecution and jail time. These laws criminalise the revealing of secret information, whether it be by a whistleblower to a journalist, or a journalist to the public. The laws prioritise government secrecy, and typically provide no exception for reporting in the public interest. Many of these laws have no place in other nations. In fact, other nations have gone in the opposite direction in taking positive steps to protect basic freedoms. Every democracy apart from Australia provides legal protection for freedom of speech in a national bill of rights or human rights act.

“We have enacted laws for the prosecution and jailing of journalists and whistleblowers, and we alone have failed to provide positive protection for freedom of speech. It appears that our leaders are simply not interested in providing the protection needed.

“Instead, they have been ready to invoke national security and other interests to undermine the work of the media, and the free speech of citizens more generally.



Minister for Home Affairs
Peter Dutton and Prime
Minister Scott Morrison
| Alex Ellinghausen, *The
Sydney Morning Herald*

“The result has been a sustained assault on democratic freedoms in Australia. The last time we experienced this was during the great world wars of the last century. Those conflicts though were of more limited duration and involved extreme, but temporary measures that ceased with the end of hostilities.

“The situation today is more concerning. Our parliament continues to enact law after law that redefines the powers of our institutions and the relationship between citizens and the state. The rights of Australian citizens are one casualty, as is freedom of the press.

“We must escape the cycle by which laws are enacted in the name of national security, only to undermine the very values that they are meant to preserve and protect.”¹³⁵

THE PJCIS INQUIRY

On July 4 2019, a parliamentary inquiry into press freedom was

announced. MEAA was scornful that the Government’s press freedom inquiry would be conducted by the Parliamentary Joint Committee on Intelligence and Security (PJCIS).

MEAA said the inquiry would only delay urgent changes needed to protect the role of journalists and whistleblowers. “After the Australian Federal Police raids of journalists last month, there is now ample evidence available that a raft of national security laws over the past decade have diminished press freedom in Australia, and these problems should be fixed immediately without going through the process of a long inquiry.”

MEAA said the terms of reference for PJCIS were seriously flawed because they manifestly failed to address the need for whistleblower protection – the issue which has sparked the current concerns about press freedom in Australia. MEAA says an inquiry should be conducted in public with broad terms of reference to include all press

freedom issues, including whistleblower protection and freedom of information.

MEAA chief executive Paul Murphy said: “The need for urgent amendments to existing laws is clear and well-known. Media organisations and other civil society groups have repeatedly pointed out the flaws in legislation that fail to adequately protect whistleblowers who seek to expose misconduct, fraud, corruption and threats to public health and safety. For years now, these flaws in national security laws have been told to politicians again and again. Holding yet another inquiry merely delays the necessary amendments that are required now.”

MEAA said it is particularly inappropriate having the PJCIS conduct a press freedom inquiry. “This committee has been informed repeatedly about the threats to whistleblowers and press freedom contained in some of the 75 national security laws passed by the Parliament



THE WAR ON JOURNALISM

since 2001. And almost without exception the committee has ignored these concerns or, at best, provided the merest band aid to deeply flawed laws. All the while, governments are classifying an increasing array of documents as secret when there is no justification for hiding that information from the community.

George Williams, Dean of Law at the University of New South Wales also noted the PJCIS role in securing the passage of Australia's most contentious national security laws: "The... committee plays a key role in securing the passage of Australia's most contentious national security laws.

"Bills come to the committee with serious defects. The committee then produces a list of changes that inevitably attract agreement between government and opposition. The result is a bipartisan position that enables the enactment of the law. This occurs even where the bill has serious flaws. The committee plays this role because of its composition. Unlike other committees, it includes members only from the government and opposition... In this form, the body works as a closed forum in which deals can be done to secure the numbers for new security measures."¹⁵⁶

Murphy went on to say: "The PJCIS inquiry cannot have credibility unless it recommends legislative changes to provide comprehensive protections for whistleblowers, an ongoing commitment to the public's right to know through genuinely open and transparent government, and the decriminalisation of acts of journalism. Journalists should not go to prison for simply doing their job.

"If the government insists on such an inquiry, MEAA will participate and seek to appear as a witness. But it's our firm

belief that the issues and remedies are already well-known and it is urgent action by the Parliament that is needed now. This issue has sent shockwaves around the world – any delay to fixing the problem only continues to damage Australia's reputation. It's time that believing in press freedom is matched by action," Murphy said.¹⁵⁷

On August 2 2019, The Australia's Right To Know media industry lobbying group, which includes MEAA, has recommended a complete review of laws that inhibit press freedom.

The recommendations were made in a submission to the Parliamentary Joint Committee on Intelligence and Security's inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press.

The submission was written by 14 groups including media companies and associations. It addressed several key issues including the need to uphold the public's right to know and protection for whistleblowers, as well as the increasing classification of government information that should be made available plus the raft of new laws that criminalise legitimate journalism that is in the public interest.

The submission said: "While the AFP raids are the catalyst for the inquiry, the media organisations represented by ARTK feel strongly that the portrayal of our long-held and serious concerns regarding the precarious state of the Australian public's right to know as being limited to law enforcement and national security matters does not sufficiently reflect the full extent of the issues faced by Australian media companies and the community. In our view, the terms of reference for this inquiry do not sufficiently cover the

breadth and complexity of the issues we should be addressing in this forum.

"The PJCIS is the parliamentary body that has scrutinised and approved a swathe of recent national security laws that have undermined the public's right to know, pursued whistleblowers who seek to expose misconduct, and introduced jail terms for journalists for doing their job of keeping the community informed about what our governments are doing in our name."

The submission said: "ARTK has serious reservations about whether this inquiry is the right way to achieve the outcomes we believe are necessary to redress the combined impact of more than a decade of law making in the name of national security."

The submission went on to say: "Law reform is necessary and urgent. The combined effect of more than a decade of laws that individually create a proliferation of ways in which journalists can be exposed to the threat of criminal charges for simply reporting uncomfortable or unpleasant realities is now a matter of serious national concern. For the most part, these laws have very little to do with national security and everything to do with the exercise of power and the desire to avoid scrutiny."

The submission called for law reform in several key areas:

1. The right to contest the application for warrants for journalists and media organisations;
2. Public sector whistleblowers must be adequately protected – the current law needs to change;
3. A new regime that limits which documents can be stamped "secret";
4. A properly functioning freedom of information (FOI) regime;
5. Exemptions for journalists from laws that would put them in jail for doing their jobs, including security laws enacted over the last seven years; and
6. Defamation law reform.

ARTK also chided the conflicting statements from politicians who say they support press freedom. "Various Government Ministers have claimed in the wake of the recent AFP raids that there is full support for the operation of a free media. Disappointingly, others

"IT IS DISMISSIVE TO DESCRIBE THIS SITUATION AS MERELY ONE THAT IS CAUSING JOURNALISTS 'ANXIETY'. THIS IGNORES THE VERY REAL THREAT POSED TO DEMOCRACY..."

AUSTRALIA'S RIGHT TO KNOW, AUGUST 2 2019

have suggested that the mere fact that a journalist may be in possession of leaked documents should be sufficient for them to be considered to have committed a criminal offence.

“This amounts to suggesting that a necessary element in the reporting of matters of public interest is the receipt of information which is not publicly known is sufficient to support a finding of criminal activity on the part of a journalist who is doing nothing other than their job.

“This, it seems to us, is the nub of the problem this inquiry should have as its main focus. How can we ensure that the public’s right to be informed of the actions taken by Government in their name is sufficiently protected? There is no reference in any legislation to the importance of the right to know and there are no safeguards in place to force legislators to build protections into legislation.

“It is dismissive to describe this situation as merely one that is causing journalists ‘anxiety’. This ignores the very real threat posed to democracy through inaction or bureaucratic and political intervention. It is unlikely any Australian going about their job would not be anxious if they found themselves subject to potential AFP raids, criminal charges and jail time because they communicated something to other members of the public that would be in their best interest to know, even if the Government may not want that information disclosed.”

The submission also addressed what it called the “myth” of balancing free speech with the requirements of national security. “The right to free speech, a free media and access to information – in service of the public’s right to know – are fundamental to Australia’s modern democratic society: a society that prides itself on openness, responsibility and accountability.

“However, unlike some comparable modern democracies, Australia has no national laws enshrining these rights. In the US the right to freedom of communication and freedom of the press are enshrined in the First and Fourth Amendments of the Constitution and enacted by state and federal laws. In the United Kingdom, freedom of expression is protected under section 12

of the Human Rights Act 1998 subject to appropriate restrictions to protect other rights that are considered necessary in a democratic society.

“The absence of such an explicit right in Australia means that every law that restricts the public’s right to know challenges the fundamental principles that are the foundation of a modern, liberal democratic society.”¹³⁸

Paul Murphy has told a Parliamentary inquiry that there is an urgent need to overhaul Australia’s laws in order to promote press freedom. Making an opening statement to the PJCIS inquiry, Murphy said:

MEAA is a member of the Australia’s Right To Know group of media organisations and has participated in the preparation of the ARTK submission to this inquiry. MEAA fully supports the submission’s content and recommendations. MEAA appreciates the opportunity to appear at this public hearing.

The public’s right to know is a key tenet of a healthy, functioning democracy.

It is one of the responsibilities of open and transparent government.

It’s also a cornerstone principle of journalism.

In April this year, MEAA’s annual press freedom survey found that the national security and metadata retention laws, the widespread use of defamation laws, and excessive court issued non-publication orders are combining to make it more difficult for Australian journalists to do their jobs.

The survey found that:

- 63 per cent of journalists believe the overall health of press freedom in Australia is “poor” or “very poor”.
- And 85 per cent say press freedom has worsened over the past decade.

In each of the surveyed issues currently surrounding press freedom, more than half the journalist respondents say Australia’s performance is woeful.

And why? Because increasingly governments are looking to operate in secret; shroud its activities and suppress all the information about them; discourage freedom of

information searches; pursue and punish whistleblowers; and place barriers in the way of journalists seeking to tell the truth of what governments are doing in our name.

Waves of new laws have been introduced by our Parliament. They are framed as being about “national security” but contained within them are powers allowing the government to intimidate the media, hunt down whistleblowers, and lock-up information.

This national security assault on press freedom has worked to criminalise legitimate journalism. The various tranches of national security legislation when applied to journalists and their journalism, clearly have little to do with protecting the nation and more with making sure the public is kept in the dark. Prison terms for reporting on the activities of government agencies and for handling certain information are now enshrined in laws that were examined by this committee.

Journalists’ sources continue to be targeted and intimidated. While new laws seek to provide some whistleblowers with protection, and only under certain conditions and in defined circumstances, there are a number of high profile prosecutions.

The court actions mounted against Witness K and lawyer Bernard Collaery, the threat of 161 years in prison being faced by Richard Boyle, and the charges against former Defence Force lawyer David McBride all demonstrate that even when whistleblowers have told their stories to journalists and the public finally learns the truth, the truth tellers will still be pursued and punished.

Meanwhile, the government continues to equip itself with new weapons in the attack on whistleblowers. Having used the metadata laws to capture everyone’s telecommunications data, Journalist Information Warrants allow government agencies to secretly access journalists’ and media organisations’ data for the explicit purpose of identifying a journalist’s confidential source – thus placing the journalist in breach of their key ethical obligation to protect the source’s identity under all circumstances.

And the peak of the intimidation of whistleblowers and journalists came during four days in June.

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1. On June 3, Ben Fordham of 2GB is pressured by an official from the Department of Home Affairs to reveal his source for a story about asylum seeker boats.
2. On June 4, there's a dawn raid by the AFP on a journalist's home that goes on for seven hours.
3. On June 5, the AFP raids the offices of the ABC, using a warrant so dangerously broad that it allows the AFP to "add, copy, delete or alter" material in the ABC's computers;
4. On June 6, the AFP calls off what was a planned raid on the offices of News Corporation.

Four days of outrageous and unprecedented assaults on press freedom in Australia. Four days that caught the world's attention and besmirched Australia's reputation as an open and transparent healthy, functioning democracy.

Locking up information, punishing those who tell the truth, and placing barriers in the way of information getting out – all these are increasingly tainting Australian democracy.

It's time to push back this tide of secrecy, intimidation and harassment – not least because government has granted itself and its agencies extraordinary powers that are getting dangerously out of control.

The public's right to know must be upheld and championed by all those that value it. Empty words by politicians who say that "of course, we believe in press freedom" must be followed up with genuine action.¹³⁹

The PJCIS inquiry was expected to report in early 2020 but has been delayed by the outbreak of the COVID-19 pandemic.¹⁴⁰

THE SENATE INQUIRY

Australia's Right To Know coalition of media organisations (of which MEAA is a member) made a submission¹⁴¹ to the Senate Environment and Communications References Committee inquiry into press freedom.

"As the Committee is aware, ARTK has also made a submission to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) inquiry into the impact of the exercise of law enforcement and intelligence powers on freedom of the press...

"We believe a key issue to explore is the importance of a free media to ensure that the public's right to be informed of the actions taken by Government in their name is sufficiently protected.

"It is important to recognise the breadth of this issue, that it is not limited to 'national security' matters.

In recent years many legal provisions that undermine and threaten the Australian public's right to know have been passed by the Federal Parliament under the guise of various national security concerns and national security legislation.

"The culture of secrecy arising from these legal provisions that unnecessarily restrict Australia's right to know has permeated attitudes and processes more broadly. We have tackled some of these issues on a legislative amendment by legislative amendment basis and provided submissions and evidence to Parliamentary inquiries, particularly the PJCIS.

"But with each of these laws the tide of secrecy rises. This is deeply disturbing in a modern and robust democracy. The tool that is used – laws that are designed to put journalists in jail for doing their jobs – has a chilling effect on reporting. It is not far-fetched to conclude the impact of the AFP raids, and the approach the Government has taken to the fate of the journalists that are the subject of those search warrants, is intimidatory."

Due to the outbreak of the COVID-19 pandemic, the committee's final report was delayed until the second sitting Wednesday in 2021.¹⁴²



The Senate chamber in Canberra's Parliament House | *Andrew Taylor, The Sydney Morning Herald*



The High Court |
Sithixay Dittavong
Fairfax Photos

THE CHALLENGES

Two warrants, both used to raid journalists, were challenged in the court system.

One warrant, drawn up in late April 2019, was challenged by News Corporation. It was found by the High Court to be unlawful but an injunction to stop the use of the material seized using the illegal warrant was not granted. The AFP was ordered to pay costs.

The other warrant was challenged by the ABC. The warrant granted the AFP the power to “add, copy, delete or alter” material in the ABC’s computers. It was found by the Federal Court to be valid. The ABC was ordered to pay costs. The ABC decided not to appeal.

The ABC had sought a declaration

that the warrant used against it was invalid, arguing the warrant was “legally unreasonable” and included search terms that failed to create any meaningful limitation on the scope. The ABC named the registrar who issued the warrant as the first respondent, saying the decision to approve the warrant was not authorised under the *Crimes Act*, having regard to the implied freedom of political communication.

The ABC also sought an injunction applied to the seized files to prevent them being accessed or copied. The AFP undertook to keep the seized files sealed until the appeal was completed.

The ABC’s solicitor told the court that the warrant’s terms included very general words such as “secret”. He was told by the AFP’s executing officer

that the raid should be carried out in an “amenable” fashion – amenable to all parties concerned. The solicitor also said that he could recall words to the effect: “we don’t want any sensationalist headlines like AFP raids the ABC”.

The AFP countered by saying that the terms of its warrant indicated its investigation was focused on alleged offences concerning the provision and receipt of the leaked documents.

On February 24 2020, Federal Court Justice Wendy Abraham dismissed the appeal, ordering the ABC to pay costs. She ruled that the warrant’s three conditions, when read in the context of the warrant as a whole, provided “sufficient particularity in the offence descriptions”.



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The ABC news director Gaven Morris said the ruling as “a blow to the way Australians have access to information in their society and their democracy”.

“Urgent law reform is clearly required and all the way through this process, it’s clear that the way that journalists go about doing their role, the way public interest journalism is able to be undertaken in this country is a mess,” Morris said.¹⁴³

ABC managing director Davidson Anderson said the ABC wouldn’t appeal the Federal Court ruling because “the broadcaster could not litigate its way to “reforming fundamentally bad laws”.¹⁴⁴

MEAA said the failure of the warrant challenge meant that the only way to fix it is to change the law to protect public interest journalism and whistleblowers.

MEAA Media federal president Marcus Strom said: “That warrant targeted journalists who had published the truth. The warrant was issued with the intent to bypass the journalists’ ethical obligation to never reveal the identity of a confidential source – a principle of journalism recognised around the world,” he said.

“Journalists and whistleblowers cannot feel safe until there are legislative reforms to protect public interest journalism. Remember, there are three journalists still in legal limbo following the raids on the ABC and the home of a News Corporation journalist. This is not about making journalists above the law, but to bring the law into line with community expectations. There must be a positive legal protection for journalism that is in the public interest in order to uphold the public’s right to know.”

Strom added: “The scope of the warrant is extremely disturbing. It allowed the AFP to ‘add, copy, delete or alter’ material in the ABC’s computers. That represents a genuine threat to the ability of media outlets to carry out their duties if government agencies can cause immense disruption to entire computer networks as well as undermine the privacy of other Australians unrelated to the warrant’s intent,” he said.

“The warrant was approved by a local court registrar in Queanbeyan. But it

is clear that there needs to be greater oversight of these warrants” Strom said.

“As ABC managing director David Anderson has said today, the journalism in the Afghan Files was published almost two years before the raid. Its veracity has never been questioned.

“And yet for publishing the truth and upholding the public’s right to know, three journalists now face lengthy jail terms. Warrants should be contestable before they unleash their damage on the truth and the public’s right to know.”

The Department of Home Affairs and the AFP have made a supplementary submission to a Parliamentary inquiry into the freedom of the press that rejects the notion of contestable warrants, claiming contestability had the “potential to undermine the efficacy of such a warrant”.

Strom said: “That argument is a nonsense. The potential for overreach has already been acknowledged by the Department. On August 9 last year, Minister Dutton directed the AFP ‘to take into account the importance of a free and open press in Australia’s democratic society and to consider broader public interest implications before undertaking investigative action involving a professional journalist or news media organisation’. Contestability is clearly necessary to stem overreach by government departments and the AFP.”

MEAA chief executive Paul Murphy added: “The ability to contest warrants is not about placing journalists above the law. It is about reforming bad law. The public’s right to know what our government’s do in our name must not be allowed to be usurped by bad laws that punish the truth.”¹⁴⁵

On June 26, 2019 News Corp lodged a challenge to the warrant in the High Court seeking to have the warrant quashed as being invalid on grounds that it infringed implied freedom of political communication in the Constitution and that the warrant that had been issued was unlawful.

The plaintiffs sought the quashing of an order requiring the journalist to assist the AFP to access and copy data on computers or data storage devices held at her home. The plaintiffs also

sought to have the material seized by the AFP returned or destroyed and that none of it be provided to prosecuting authorities.¹⁴⁶

On April 15 2020 the full bench of High Court of Australia ruled¹⁴⁷ that the warrant used to authorise the search of Annika Smethurst’s home, was invalid and should be quashed. The court found that “the warrant relied upon by the AFP was invalid on the 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.”

The court did not seek to rule on the issue of infringement of the implied freedom of political communication in the Constitution. Having ruled that the warrant was invalid “it was not necessary for the court to consider whether the warrant... infringed the implied freedom of political communication.”

But in a grim portent for press freedom, the court ruled that, it would not grant the injunction sought by the plaintiffs for the seized material to be returned, destroyed, or not provided to prosecuting authorities. “A majority of the court declined to grant the injunctive relief sought by the plaintiffs, pointing to the plaintiffs’ inability to identify a sufficient right or interest that required protection by way of a mandatory injunction.”

In short, even though the warrant was unlawful, the material seized through the use of the unlawful warrant would not be protected – the authorities would be keeping the documents. The prospect that the journalist would be charged was still possible. But there may yet be a legal battle to be fought about using documents that had been seized using an unlawful warrant.¹⁴⁸

MEAA welcomed the decision to quash the warrant used by Australian Federal Police, however MEAA Media federal president Marcus Strom said: “The raid was an attack on the public’s right to know what our governments do in our name. The warrant has been quashed on a technicality but the powers that enabled the raid remain.



Attorney-General Christian Porter | *Dominic Lorrimer, The Sydney Morning Herald*

“Let us not forget there was a raid on the ABC the next day.

“Given that any move to prosecute now lies in the hands of the Attorney-General, we call on Christian Porter to rule out any such prosecution based on an unlawful warrant.

“The result was also mixed, with a majority of High Court justices dismissing a request that seized materials be destroyed. This was based on an assessment by the judges that there was no sufficient right that required protection. Starkly read, this means here is no protection for public-interest journalism in Australia.

“The result shows that any such warrants in future must be contestable before a Supreme Court justice. And it shows that the government must adopt Australia’s Right To Know coalition’s reform agenda for positive protection for public-interest journalism and whistleblowers,” Strom said.

News Corporation Australia’s executive chairman Michael Miller responded to the ruling by saying: “The High Court ruling sends an indisputable message, that the Federal Police must obey the law and that their raid on Annika Smethurst’s home was illegal.

“All Australians should be extremely concerned that a journalist’s home can be raided illegally. It’s now vital that

the Federal Government must allow media organisations to contest warrants against journalists to avoid debacles like this one occurring again.

“Annika Smethurst should not be prosecuted for simply doing her job as a journalist to rightly inform Australians on serious matters of public interest,” Miller said.

“It’s time for the Federal Government to bring this sorry mess to a prompt end. It’s time to end Annika’s ordeal.”¹⁴⁹

CRIMINAL CHARGES VERSUS MINISTERIAL DIRECTIONS

While the AFP has not ruled out charging News Corporation’s Annika Smethurst and ABC journalists Dan Oakes and Sam Clark, Attorney-General Christian Porter said on June 19 2019 – barely two weeks after the raids – that he would be “seriously disinclined” to sign off a criminal prosecution of journalists for their public interest journalism.

Two months later, on August 9 2019, Home Affairs Minister Peter Dutton issued a ministerial direction to the AFP to change its procedures to “take into account the importance of a free and open press in Australia’s democratic society” before executing search warrants.

As the *Sydney Morning Herald* reported: “While the AFP had told the ABC it planned to raid its Ultimo headquarters

in June, it did not give Smethurst prior knowledge that seven officers would search her Canberra home... While Mr Dutton did not explicitly order the AFP to abandon investigations into News Corp reporter Annika Smethurst and ABC journalists Dan Oakes and Sam Clark, senior police may interpret his direction as proof that the trio would never be prosecuted and decide to abandon their probes.

“The direction applies to investigations where police may be trying to prosecute government staffers who have leaked secret information...

‘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,’ the direction said. ‘I also expect the AFP to continue to seek voluntary assistance from professional journalists or news media organisations.’¹⁵⁰

Journalism academic Denis Muller writing for the public sector news web site The Mandarin, noted: “In light of the ministerial direction issued to the Australian Federal Police by the Home Affairs Minister Peter Dutton on August 9, it would be a spectacular contradiction in policy if the Australian Federal Police’s current pursuit of journalists were to end in prosecutions.”

He observed that the Dutton ministerial



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direction stated: “I expect the AFP to take into account the importance of a free and open press in Australia’s democratic society and to consider broader public interest implications before undertaking investigative action involving a professional journalist or news media organisation in relation to unauthorised disclosure of material made or obtained by a current or former Commonwealth officer.”

Muller commented: “So much for the uncompromising stance of Dutton and the then acting commissioner of the AFP Neil Gaughan that the law was the law, and if journalists broke it they could expect to be prosecuted like anyone else. The political sensitivity of this climb-down may be gauged from the fact the direction was issued at 4pm on a Friday.

“Dutton’s announcement was bereft of explanation. However, events since the AFP raids on the home of a News Corp journalist, Annika Smethurst, and on the ABC headquarters on June 5 and 6 respectively give a hint of the likely reason.

“First, there was the international condemnation across the Western world of the repressive nature of the police raids, expressed in a tone of disbelief that this could be happening in a mature democracy.

“Then there was the unified response from the heads of Australia’s three main news organisations, the ABC, News Corporation and Nine. Their message, delivered in a nationally televised broadcast from the National Press Club on June 26, was that a government obsessed with secrecy had now gone so far as to criminalise journalism.

“There was also the statement by the Federal Attorney-General Christian Porter that he was ‘seriously disinclined’ to prosecute journalists for doing journalism.

His consent is needed for any such prosecution.

By October 2019 however, Porter was more circumspect. Four months after the AFP raids, the ABC reported Porter saying that he could not guarantee that he would not sign off on the criminal prosecution of a journalist. “I can’t, though, give anything more definitive than that, because my role in this process is to assess a brief that may or may not come up, and a recommendation that may or may not come up, to the commonwealth director of public prosecutions.

“And it wouldn’t even get to that point until the AFP had concluded their investigation and delivered a brief, if they were minded, a brief to the DPP for their consideration.

“So I can’t abide by the law and give a definitive view without seeing what may be the evidence, if it even reaches that point.

“But the fundamental point is that investigations, whether they be of any Australian, are conducted by the AFP, completely arm’s length from government, as it should be, but these are extra safeguards put in place in that process.”¹⁵¹

Muller concluded: “There is nothing to stop the police from completing these investigations and providing a brief of evidence for Porter. However, given his stated position, allied with the new political dynamics created by the reaction to the raids and Dutton’s directive, it seems unlikely prosecutions will follow. While the ministerial direction represents a genuflection in the direction of press freedom, it provides nothing by way of protection for whistleblowers.”

By September 19 2019, now three months after the raid, Porter, in consultation with the Director of Public Prosecutions, finally issued a formal

ministerial direction of his own.¹⁵² The *Australian Financial Review* reported Porter had ordered “that journalists not be prosecuted without his consent for reporting on issues such as national security, defence and crime that might be uncomfortable for government.

“However, that does not mean News Corp political journalist Annika Smethurst and ABC journalists Dan Oakes and Sam Clark, who were raided by the Australian Federal Police in relation to stories covering national security and the armed forces, have been exonerated.”¹⁵³

MEAA and the Australia’s Right to Know lobbying group both find ministerial directions to be highly problematic: bad law cannot be patched up with a possibility. Bad law requires reform. Ministerial directions do not fix bad laws.

In the recent past both MEAA and ARTK have expressed concerns over the use of ministerial directions. On February 2 2018, following an outcry raised over the government’s Espionage Bill the (then) new Attorney-General Christian Porter was reportedly seeking advice on issuing a direction to the Commonwealth Director of Public Prosecutions that prosecutions of journalists could not proceed without his sign-off, replicating a safeguard his predecessor as attorney-general, George Brandis, had put in place for offences relating to reporting on special intelligence operations where section 35P of the *ASIO Act* would lead to jail terms of up to 10 years for journalists.¹⁵⁴

Shadow attorney general, Mark Dreyfus, said: “Porter’s suggestion of a veto power for himself smacks of political interference in the work of the independent DPP and does not give us any satisfaction that the press freedoms will be protected.”

On February 7 2018, Porter was reported as saying: “There is not, nor has there ever been, any plan... by the government to see journalists going to jail simply for receiving documents and that would not occur under this Bill as currently drafted.”¹⁵⁵

The three raided journalists are still waiting to know if they will be going to jail.

BAD LAW CANNOT BE PATCHED UP WITH A POSSIBILITY. BAD LAW REQUIRES REFORM. MINISTERIAL DIRECTIONS DO NOT FIX BAD LAWS.

Court ruling against ABC highlights the enormous deficiency in laws protecting journalists' sources

BY DENIS MULLER

The federal court's rejection of the ABC case against the Australian Federal Police raid on its Sydney headquarters in June 2019 reveals two issues of great importance to freedom of the press in Australia:

- The laws criminalising journalism are working exactly as the government intended, and
- The legal protections for journalists' confidential sources are seriously deficient.

The ABC challenged the validity of the search warrant under which the raid took place. By the time the raid was over, the police had downloaded 89 documents onto two USB sticks. They have been sealed pending the outcome of this case.

The raid was part of a criminal investigation into two ABC journalists, Dan Oakes and Sam Clark. A year earlier, they had broken a story containing allegations that Australian soldiers committed war crimes while on tours of duty in Afghanistan.

POLICE JUSTIFICATION FOR THE RAID

To obtain the warrant for the raid, the police applied to a local court registrar in Queanbeyan. It was issued for the purpose of investigating whether Oakes had unlawfully obtained military information under section 73A(2) of the Defence Act):

A person commits an offence if:

- a. The person obtains any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or air force aerodrome or establishment, or to any of the defences of the Commonwealth or any other naval, military or air force information; and
- b. That conduct is unlawful.

The warrant was also issued to investigate whether Oakes had dishonestly received stolen property from one of his sources, former Defence Department lawyer David McBride (contrary to section 132.1 of the *Commonwealth Criminal Code*).

McBride has outed himself as a source for the story and in separate proceedings has pleaded not guilty to five charges. His trial is to start on March 2.

ABC'S CHALLENGE TO THE WARRANT

In its case against the federal police, the ABC initially included a contention that section 73A(2) of the Defence Act is invalid because it violates the constitution's implied right of free speech on matters of government and politics.

The ABC did not persevere with this aspect of its argument, demonstrating

once again how limited and largely ineffectual that implied right is.

Ultimately, the ABC challenged the validity of the search warrant on five grounds:

- It was not authorised by the relevant law (section 3E of the Crimes Act),
- It was too wide-ranging,
- It was expressed in vague and uncertain language,
- It authorised seizure of material that could not provide evidence supporting the charges brought against Oakes, and
- It was legally unreasonable.

WHY 'SHIELD LAWS' AREN'T RELEVANT IN THIS CASE

Justice Wendy Abraham rejected all five of these grounds. In doing so, she drew attention to a huge gap in the protection afforded to journalists' confidential sources under what are called "shield laws".

They are set out in the Evidence Acts of the Commonwealth and all states except Queensland.

Basically, "shield laws" give journalists the right to ask the court to excuse them from revealing the identity of a confidential source on the ground that to do so would be a serious breach of professional ethics.

In deciding whether to grant this so-called privilege, the court must balance

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the public interest in the administration of justice against the public interest in the media's being able to obtain information.

The court must also take into account the possible consequences for the source and the journalist of a forced disclosure.

Abraham has pointed out that while these shield laws apply in court proceedings, they do not apply to search warrants, except in Victoria.

This case fell under Commonwealth law, meaning the shield laws did not apply. As such, protecting the confidentiality of the ABC's sources was not a relevant consideration.

The enormity of this deficiency in the law is immediately obvious. If the shield laws are to offer even the most rudimentary protection, they need to be extended beyond courtroom proceedings to include search warrants and other instruments of investigation.

WHAT HAPPENS NEXT

It is very likely the documents seized from the ABC will contain clues that enable the police to identify the journalists' sources.

While McBride has outed himself as a source in this case, Abraham's judgement does not discount the possibility there may be others.

McBride's future is already playing out in the courts. Whether Oakes and Clark follow him into the dock is now in the hands of the AFP and, ultimately, Attorney-General Christian Porter.

The AFP has said many times – with the endorsement of Prime Minister Scott Morrison and Home Affairs Minister Peter Dutton – that journalists are not above the law.

Australian governments have long been hostile to media freedom. That's unlikely to change any time soon.

Meanwhile, we await the report of the press freedom inquiry conducted

last year by the Parliamentary Joint Committee on Intelligence and Security and now three months overdue.

The inquiry was precipitated by public outrage over the AFP raids on the ABC and the home of a News Corp reporter, Annika Smethurst.

In its response to the Smethurst raid, News Corp has been more direct than the ABC. It has gone straight to the High Court, arguing that the raid itself – never mind the documentation behind it – was a violation of the implied right of free speech on matters of government and politics, a doctrine the High Court itself developed in 1997.

That matter is still to be decided. When it is, Australians will have another opportunity to assess just how free their press really is.

Denis Muller is Senior Research Fellow in the Centre for Advancing Journalism, University of Melbourne. This article originally appeared in The Conversation 156



Federal police raid
ABC's Sydney HQ over
Afghan stories | ABC



WHAT IT MEANS

MEAA summed up what the raids had meant and what should happen to turn around the assault on press freedom.

Towards the end of a tumultuous year, chief executive Paul Murphy told the audience at the annual Walkley Awards for Excellence in Journalism presentation:

One night I would like to stand here and praise our government, our parliament, for what they have done to protect press freedom.

Maybe next year.

Hopefully next year.

But most certainly not tonight.

Because the reality is our Parliament has made telling the truth – bringing important stories to your fellow citizens – a criminal offence. Armed police can raid your office. Or even more disgracefully, your home.

And it's not just journalist truth tellers who are subjected to this. Take Richard Boyle. He was concerned about harsh, unreasonable and possibly unlawful, debt collection methods by his employer, the Tax Office. He raised his concerns with his superiors but after seeing no action, he decided to go public.

The truth was told with the assistance of journalists at Nine Publishing and the ABC. It has led to a parliamentary investigation and an inquiry by the Small Business Ombudsman that will lead to changes in Tax Office practices.

But Richard's life has been shattered. His home was raided. He is now being prosecuted and faces six life sentences for telling the truth.

This is Australia in 2019. It is not the Australia we thought we knew. It is not the Australia we want.

Richard's story has become the experience of several whistleblowers that are punished, when they should be encouraged, and protected, for exposing wrongdoing on behalf of all of us.

In fact, you could argue that the strongest protection for whistleblowers at present is in the ethics of our own profession. Someone who makes a confidential disclosure to a journalist knows that journalist will protect their identity in all circumstances. Even under threat of jail. That unshakeable ethical obligation is at the heart of our profession.

The Right to Know campaign calls for protection for whistleblowers, and much more.

Research for the campaign showed 87 per cent of Australians value a free and

transparent democracy where the public is kept informed. But only 37 per cent think this is happening in Australia today.

In the past 20 years, around 75 laws related to secrecy and spying have been passed by our Parliament, each one chipping away at what Australians can know about their government.

The Right to Know campaign is seeking reforms to these laws in six key areas:

- *The right for journalists and media companies to contest applications for warrants;*
- *Exceptions from laws that criminalise journalists for doing their job;*
- *Proper protection for whistleblowers;*
- *Limits on which documents can be stamped as "secret";*
- *A properly functioning freedom of information regime; and*
- *Defamation law reform.*

The unparalleled unity of our industry, of our profession, in this campaign is inspiring and unshakable. This campaign will not stop until our Parliament takes action on reforming these laws.

And reforms are essential. Australia's role as an open and transparent democracy and a defender of democratic freedoms is more important than ever. But our reputation has been damaged. It is harder for Australia to advocate on the world stage if our own house is not in order.¹⁵⁷

ATTITUDES ABOUT PRESS FREEDOM

OUTCOMES OF THE 2020 MEAA PRESS FREEDOM SURVEY BY MARK PHILLIPS

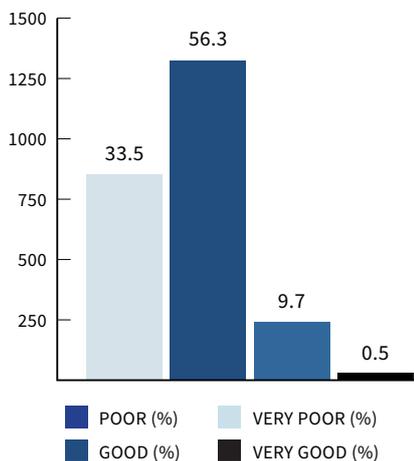
Concerns about the state of press freedom in Australia have become considerably more pronounced over the past year, according to the third annual MEAA press freedom survey.

Most likely prompted by the Australian Federal Police raids on journalists from News Corp and the ABC and the subsequent public education campaign by the Your Right To Know coalition of media organisations, the survey found a sharp deterioration in attitudes about press freedom compared to 2019.

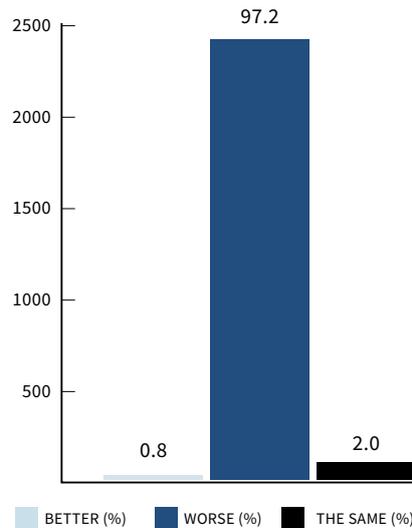
The survey was conducted online from February to mid-April, with 2472 people completed the survey, an increase of 61% on 2019.

A lower proportion of the full respondents (8.3%) were working journalists this year, while an additional 9.7% were retired or unemployed media workers, or studying for a career in journalism. Of the working journalists, 44% described themselves as freelancers, while 27% were in permanent employment.

HOW WOULD YOU RATE THE OVERALL HEALTH OF PRESS FREEDOM IN AUSTRALIA?



HAS PRESS FREEDOM GOT BETTER OR WORSE OVER THE PAST DECADE?



Asked how they would rate the health of press freedom in Australia, 89.9% of survey respondents said poor or very poor. This is a substantial increase from 2019, when the same question resulted in 71.5% replying poor or very poor.

There was a large rise in concern about the overall health of press freedom among journalists as well, with 84.4% rated it poor or very poor, compared to 63.2% in 2019.

These concerns were even more pronounced when people were asked if press freedom in Australia had got better or worse over the past decade. An overwhelming 98% of people said it had got worse, compared to 90.9% in 2019. This was marginally lower among journalists, with 95.1% saying it had got worse, compared to 84.9% in 2019.

Asked to rank in importance current press freedom issues, almost a quarter of respondents (23.22%) put funding of public broadcasting first, followed by government secrecy and lack of transparency (22.73), diversity of media

TOP 10 PRESS FREEDOM ISSUES IN 2020

1. Funding for public broadcasting (2019=5)
2. Government secrecy and lack of transparency (4)
3. Diversity of media ownership (1)
4. National security laws which criminalise journalism (2)
5. Whistleblower protection (3)
6. Freedom of Information (8)
7. Political attacks on journalism (6)
8. Journalist shield laws (9)
9. Defamation (7)
10. Court suppression orders (10)

ownership (13.7%), national security laws which criminalise journalism (11.97%), and whistleblower protection (10.56%).

This was a change from last year, when diversity of media ownership, national security laws, and whistleblowers were the three top ranking issues.

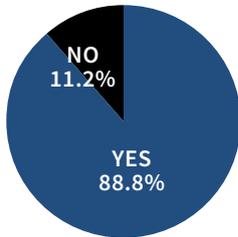
When asked to assess the health of particular press freedom issues, 85.5% rated government transparency as very poor, 85.03% said diversity of media ownership was very poor, and 83.4% said whistleblower protection was very poor.

By contrast, two issues which have become a significant financial cost for media organisations in recent years – defamation and court suppression – were only rated as very poor by 36.4% and 38.6% of respondents.

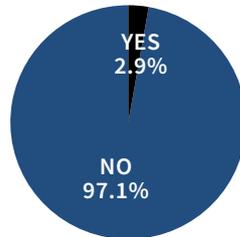
While only 5% of journalists who completed the survey said they had received a defamation writ in the past two years, 88.8% said they believed defamation laws make reporting more

JOURNALISTS' VIEWS ON PRESS FREEDOM ISSUES

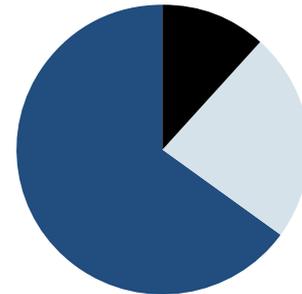
DO YOU BELIEVE AUSTRALIA'S DEFAMATION LAWS MAKE REPORTING MORE DIFFICULT?



DO YOU BELIEVE LEGISLATION IN PUBLIC AND PRIVATE SECTOR IS ADEQUATE TO PROTECT WHISTLEBLOWERS?

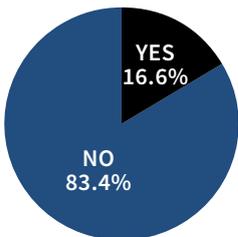


IF YOU WORK FOR A MEDIA COMPANY, IS YOUR EMPLOYER KEEPING YOU INFORMED OF CHANGES TO NATIONAL SECURITY LAWS AND HOW THEY MAY AFFECT YOUR JOURNALISM?

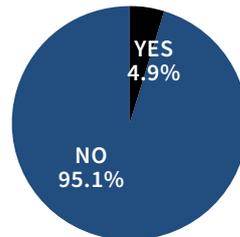


YES 11.7%
 NO 23.4%
 I'M A FREELANCER/SELF EMPLOYED 64.9%

IN THE PAST 12 MONTHS, HAS ANY OF YOUR REPORTING BEEN HINDERED BY A COURT ISSUING A SUPPRESSION/NON PUBLICATION ORDER?

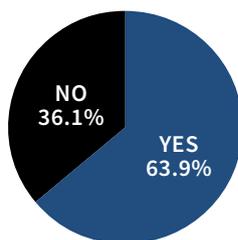


HAVE YOU RECEIVED A DEFAMATION WRIT IN THE PAST TWO YEARS?

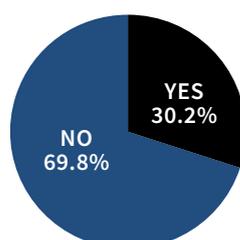


difficult. This was reflected by 31% of journalists saying they had had at least one news story spiked in the past 12 months because of fears of defamation action (compared to 28% in 2019).

DO YOU BELIEVE JUDGES ARE ACTIVELY DISCOURAGING REPORTING OF OPEN COURTS AND ARE TAKING A MORE AGGRESSIVE VIEW OF MEDIA REPORTING?



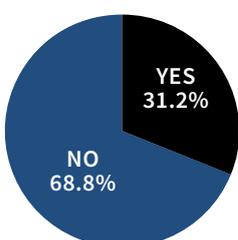
IN THE PAST 12 MONTHS, DID INFORMATION FROM A CONFIDENTIAL SOURCE WHOSE IDENTITY YOU PROTECTED LEAD YOU TO PUBLISH/BROADCAST A NEWS STORY



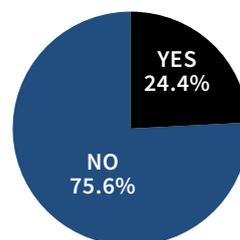
Almost two-thirds of journalists (63.9%) said they believed judges were actively discouraging open courts and taking a more aggressive view of media reporting, while 16.6% said their reporting had been hindered by a suppression or non-publication order.

Victoria has been regarded as having the most active use of suppression orders, highlighted by the blanket non-publication order during the trial of Cardinal George Pell in 2018. In Victoria, a slightly higher 24.2% of journalists said their work had been hindered by a suppression order, with 93.3% of them saying it had been excessive.

IN THE PAST 12 MONTHS, HAVE YOU HAD A NEWS STORY SPIKED OR DROPPED A STORY BECAUSE OF FEARS OF DEFAMATION ACTION?



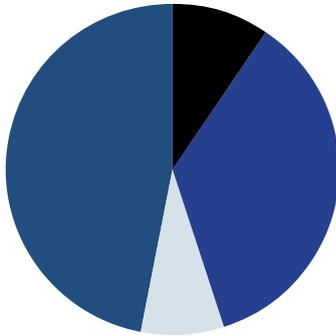
IN THE PAST 12 MONTHS, HAVE ANY OF THESE LAWS AFFECTED YOUR ABILITY TO PRODUCE YOUR JOURNALISM?



Thirty per cent of journalists said they used information from a confidential source to publish or broadcast a news story, but in a worrying trend, only 2.9% said they believed legislation in the public and private sector was adequate to protect whistleblowers. This compares to 8% in 2019.

Just over half (52.7%) of journalists said they or their employer took steps to

HOW FAMILIAR ARE YOU WITH THE MEAA *JOURNALIST CODE OF ETHICS*?



■ I DON'T KNOW IT WELL	9.7%
■ I KNOW IT EXISTS BUT I'M NOT SURE OF ALL THE DETAILS	35.5%
■ IT DOESN'T APPLY TO THE WORK I DO	8.0%
■ I KNOW IT WELL AND FOLLOW IT TO THE LETTER	46.8%

ensure they did not generate metadata that could identify a confidential source, but only 20.5% were confident this would be sufficient to protect their source. Additionally, only a third of employed journalists (excluding freelancers) said their employer kept them informed of changes to national security laws and how they may affect their work.

This year's survey also asked some new questions only for MEAA members about MEAA's *Journalist Code of Ethics*. Slightly under half (46.8%) said they knew the code well and followed it to the letter, while 35.5% said they knew it existed but were not sure of all the details. Almost one-in-five MEAA members (18.6%) said they had at some stage in their career felt pressured to do something in breach of the Code, and about 47.5% of employed journalists (excluding freelancers) said their employer promoted the Code of Ethics. Sixty-two per cent of journalists say what they read, hear or see in the media is their main source of information about press freedom issues, followed by MEAA (25.9%). But less than 1% said their employer informed them about press freedom issues.

Mark Phillips is MEAA's Communications Director

THE LAW

FIXING FREEDOM OF INFORMATION

BY ALISON SANDY

Freedom of Information is one of the cornerstones of democracy and even though many members of the public aren't cognisant of just how important it is, they do respond unfavourably to government attempts to block scrutiny and accountability.

Cover-ups, particularly of corruption, can shift voter allegiance – just look at the Queensland Fitzgerald Inquiry.

And if you look around the world, it's evident that media freedom directly correlates with personal freedom.

As journalists, we often rely on information from whistleblowers and close contacts, but we also have a responsibility to protect them. Freedom of Information (FoI) is one means to keep the public informed on issues they have right to know without implicating our sources.

However, FoI can be problematic if the laws aren't robust enough, or administered properly. In Australia, the Commonwealth and each state and territory has its own legislation.

Let's start with the worst. From my experience, and I lodge more than 600 applications a year, the older the legislation, the more obstructive. Part of that is because public servants know how to exploit all the loopholes so well by now and do so with such pride –

like a peacock courting his mate.

The oldest FoI laws are in Victoria and the Commonwealth, both of which date back to 1982. The latter, at least has had some changes thanks to the *Freedom of Information Amendment (Reform) Act* in 2010. But for the most part, all that most FoI officers in those jurisdictions want to do is frustrate applicants so they give up. And they can do this successfully because of the time and money it takes to exhaust all avenues in the review process.

The first step to deter would-be applicants is to argue about the scope, no matter what it is, and give excuses as to why it's not valid, e.g. too onerous to process, confusing etc. Then, once a scope is finally validated (bear in mind, sometimes, this may take intervention from the independent umpires, i.e. the Office of the Australian Information Commissioner (OAIC) or Office of the Victorian Information Commissioner (OVIC)), then FoI officers often try to take as much time as possible to process, either by asking for extensions, or just ignoring the timeframe altogether. In Victoria, the preference is to ignore it and hope it will go away.

When finally a decision is made, and this can take about a year, the officers provide a litany of exemptions, mostly applied incorrectly, so you can't access



anything worthwhile anyway. So then, it's back to the OAIC or OVIC and if that doesn't work, the Administrative Appeals Tribunal (AAT) or Victorian Civil and Administrative Tribunal (VCAT).

In the case of OVIC, it has very little power and none of the agencies respect the role it plays.

With the OAIC it's the lack of resources and inability to process the external reviews in a timely manner. This is common across most jurisdictions though.

For example, an application to the Federal Department of Finance for documents relating to complaints made by ComCar chauffeurs in relation to clients, took two years.

Others where information was not forthcoming from the Commonwealth

under FoI, and there are many, include just about anything about asylum seekers or refugees, code of conduct breaches, bullying complaints involving staff of Ministers, senior public servant performance bonuses and details as to whether decision-making has been made in the public interest's or that of the decision maker.

But it's worse in Victoria. There, the Office of the Premier no less, just ignored my application for documents relating to the pay rise of MPs for five months, before finally giving a decision after intervention from OVIC saying it was Cabinet in Confidence. That matter is still before OVIC.

As bad as the Premier's office is, the worst department by far in that state, and perhaps even the nation, is Victoria's Department of Transport. Regular disclosures under FoI are made from their interstate counterparts,

but trying to get the same kind of information from them is next to impossible in that it would prove too laborious and expensive to fight. The application fee to the Victorian Civil and Administrative Tribunal is \$663.50. By comparison, the NSW Civil and Administrative Tribunal (NCAT) is only \$104.

The Western Australian *FoI Act* isn't much better but it isn't treated with as much contempt as it is federally and in Victoria. New South Wales and Queensland have the best FoI legislation in Australia – both circa 2009 – while SA's *FoI Act (1991)* which isn't nearly as good, is currently under review.

So what makes their FOI legislation better than the rest? First, both the Queensland Information Commissioner (OIC) and the NSW Information and Privacy Commissioner (IPC) have

PRESS FREEDOM IN AUSTRALIA

teeth. They regularly overturn agency decisions, and the legislation has a pro-disclosure bias in favour of the applicant.

Unlike Victoria, there are significantly less issues for their independent umpires to access documents from agencies so they can scrutinise them and their decisions are treated with respect.

But it works best in NSW and here's why:

- At the end of the external review, the IPC just decides whether the agency has to make a new recommendation, and why. This is much quicker, because the IPC doesn't have to defend its decision. If the agency rejects it, the applicant can then go to NCAT. In Queensland, the OIC has to defend it in QCAT which takes up much more time that they could be spending reviewing new application, of which they have an overwhelming supply.
- New South Wales is much less expensive. Its application fee is only \$30 compared to \$50.80 in Queensland which just keeps climbing. Also, processing is much cheaper. In Queensland, the bills often go over \$1000.

As far as a blueprint for openness and accountability by way of effective FoI legislation, in my experience, the New South Wales' *Government Information Privacy Act (GIPA)* is the best in the nation. But even it needs to move with the times in relation to audio-visual material such as closed-circuit television, and at least bring in amendments to clear up some of the Act's ambiguities and if possible, include provisions as to how it's administered.

They include:

1. Defining what "personal information" is in video footage, e.g. only something that clearly identifies the person such as their face or a distinctive tattoo. Not clothes, or build, or height. Personal information is exempt under FoI legislation and rightly so.
2. Clearly articulating what an agency is required to do with footage, e.g. If they don't have the ability to blur faces or distinctive tattoos, acquire it. Many of them already have this ability in other areas, e.g. NSW Police in its media unit, but they will argue that's not accessible to them and it



87%

of Australians value a free and transparent democracy where the public is kept informed.

But only **37%** believe that's happening today

your right to know

Nationally representative quant research, commissioned by Australia's Right To Know coalition (October 2019)

refuses to get the same technology for its GIPA unit because they then would need to do it too. It's ridiculous given video footage is defined as a document in the same way as a paper report. So if it ensures it has the correct technology to properly redact information from documents, then surely, the same should exist for audio-visual material.

3. Ensuring all agencies accept credit card. Why are they allowed to limit to cheque or money order for payment? Who has cheque books nowadays?
4. The Acts should all have a pro-disclosure bias and define a public interest test. The terms of what is accessible under the Act needs to be specific so there's no room for misinterpretation.
5. External review agencies need to be adequately resourced.
6. Applications should be free. Fees should apply only when they are processed and only if they are processed on time (the latter already exists in NSW). This includes when an extension has been successfully sought.
7. The tribunals in which applicants are forced to go to when the legislation hasn't been lawfully applied need to

be cheap and easy to access.

8. All agencies and the tribunal should communicate via email if that's the applicant's preference. In Victoria, some agencies refuse and will only post their replies, even if an applicant insists on email.
9. Mandatory clear explanation by FOI officers as to what documents exactly are being captured and the searches they've undertaken when they claim an application is too onerous to process.
10. A schedule of documents should be provided with every estimated charge.

As far as overseas legislation goes, it's difficult to pinpoint one we could emulate. I've received bad reviews from many users of the US and UK versions and have not used either.

However, if the NSW GIPA legislation could be implemented across the nation, and federally, with the inclusions above, Australia could arguably lay claim to being the most open and accountable democracy in the world.

Alison Sandy is the Seven Network's FOI Editor



Victoria's Parliament

SUPPRESSION ORDERS

The High Court of Australia overturned Cardinal George Pell's conviction for historic child sex offences in a judgment handed down April 7 2020. In a unanimous decision all seven High Court judges found Victoria's Court of Appeal should not have upheld Pell's conviction. It found the evidence could not support a guilty verdict. On the same day, Pell was released from Barwon Prison in Victoria after spending a year in jail.¹⁵⁸

A contempt of court action still lingers over the trial judge's concerns that the media allegedly breached suppression orders at the conclusion of the original trial. The suppression order, which was of enormous scope, had been applied in the expectation that a second trial would take place.

As discussed in MEAA's 2019 press freedom report: "When a jury found George Pell guilty of five child sex offences on December 11 [2018], the media was suppressed from reporting on what was described as 'the nation's biggest story'. Media outlets criticised the suppression order as censorship. This drew national attention to the issues of granting suppression orders in the modern world.

"Although the Australian media was not able to inform the public of the verdict, it was widely discussed on social media – becoming the number one trending topic on Twitter – and some overseas media, such as *The Washington Post* and the *Daily Beast*, published the details of the outcome.

"This also drew attention to Victoria's status as the leading suppression

state – where the highest numbers of suppression and non-publication orders are issued in Australia. This is despite the introduction of the *Open Courts Act* in 2013..."¹⁵⁹

On November 29 2019, Australia's Right to Know coalition of media organisations, including MEAA, presented a submission to Victoria's Vincent Review of the state's *Open Courts Act 2013*. While the Victorian Parliament had passed some of the review's recommendations, there were still remaining some legislative recommendations contained in a discussion paper.

ARTK offered its thoughts on the proposals. "We believe it is important to reiterate... an important reference point regarding open justice which was included in our original submission to

the Vincent Review. That is: a starting point that open justice is important is inadequate.

“The test stated in both the Act and repeatedly throughout the common law is that suppression orders are a departure from status quo of open justice which must be shown to be necessary.

“Judges and magistrates must adopt a presumption in favour of reluctance to suppress any information before the Court unless arguments to the contrary have been rigorously tested and they are convinced otherwise. The principle should prevail over the individual case in all but exceptional circumstances.”

The ARTK submission agreed with a proposal that when a suppression order is made, the court or tribunal should be required to prepare a written statement of its reasons for the order, including the justification for its terms and duration.

“It is our strong position that a written statement of reasons be provided. It is untenable that weeks, perhaps even a month, could pass before a statement of reasons be available for the application of a suppression order. We believe an appropriate manner of dealing with unacceptable delays in a statement of reasons being available would be for the judge and/or magistrate to be required to deliver the statement of reasons *ex tempore* and for a transcript of the statement to be made available later that day. It is well recognised that there is a public interest in contemporaneous fair and accurate reporting of proceedings. By not requiring written reasons, even on transcript, to be available later the same day (or the following day) will have an adverse effect on contemporaneous reporting, as it will necessarily prevent an immediate appeal of the decision,” ARTK said.¹⁶⁰

In March 2017 MEAA, in its original submission to the Vincent Review, had recommended that a role of an advocate should be created to alleviate the media always having to act and pay to be a contradictor. MEAA argued that a media outlet should not have to argue the public interest in instances where the court was determining what could not be published.

“MEAA strongly recommends the creation of an Office of the Open Courts Advocate to argue the public interest in suppression order considerations – in advance of the issuing of the order and at any subsequent review of an order.

“This Advocate should play the role of contradictor and fill the gap formerly occupied by media lawyers representing media outlets – to argue for the public interest. This does not mean that media outlets will be frozen out from such debate. The media should always be afforded the opportunity to argue its position.

“However the public interest must be better served by having a contradictor in place to argue its case. MEAA acknowledges that this will require not inconsiderable resources to be allocated into the creation and funding of an Office of Open Courts Advocate. However, to do otherwise places an unfair and unreasonable burden on media outlets. The public interest and the public’s right to know should never be compromised because of a lack of resources.”¹⁶¹

The MEAA proposal was subsequently taken up by the Vincent Review which recommended the creation of a Public Interest Monitor who would “receive additional funding and resources necessary to perform the following functions:

1. The Monitor should be empowered, if requested by the judge to appear as contradictor, to make submissions

and ask question when the judge is determining whether orders should be made under the Open Courts Act, on what grounds and the fanning of their scope.

2. Orders, once made, can be referred to the Monitor for consideration by interested parties to enable the independent consideration of the needs, terms and duration of the order while maintaining the security of the underlying information. The Monitor’s decision whether or not to pursue the review of an order is final.
3. If it is considered necessary in the public interest to intervene, the Monitor should be able to seek the review of the order by the judge or prosecute an appeal.
4. The Monitor would report annually to the Attorney-General on the operation of the Open Courts Act.”

The Victorian Government had delayed this element of the legislation saying it was “subject to further consideration”.¹⁶²

ARTK responded: “We want to see material changes to the application for and issuing of suppression orders, including a robust audit, report and review process. As we raised in our previous submission, it is unrealistic for media company representatives to operate as the challenger to the issuing of all suppression orders. Rather, the process of application and issuing of suppression orders requires a more disciplined approach – including timeframes for notification to enable media companies to challenge the application for and issuing of warrants. However, it cannot and should not be the case that media companies are the check-and-balance on the system.

“Having said that, there may be a role for a Public Interest Monitor in challenging the application for and issuing of, appeal of suppression orders in instances where it is not possible for media companies to perform that role if media companies instruct the PIM to do so. In which case it must be stipulated that the PIM appear as a contradictor, acting under instruction of the media company or other third party – always as contradictor to the order being made... We do not support the concept of a court appointed contradictor... An annual report function, or more specifically a six-monthly audit and report... should be undertaken by an independent party to ensure robustness of reporting and analysis.”¹⁶³

“IT CANNOT AND SHOULD NOT BE THE CASE THAT MEDIA COMPANIES ARE THE CHECK-AND-BALANCE ON THE SYSTEM”

AUSTRALIA'S RIGHT TO KNOW, NOVEMBER 29 2019

CONTEMPT

A contempt of court action arising out of the original verdict in the trial of Cardinal George Pell was still pending in Victoria's courts at the time when the High Court of Australia overturned Pell's conviction for historic child sex offences in a judgment handed down on April 7 2020. In a unanimous decision all seven High Court judges found Victoria's Court of Appeal should not have upheld Pell's conviction. It found the evidence could not support a guilty verdict.

With the contempt action still in progress, the Victorian Law Reform Commission had, coincidentally, commenced a review of contempt of court. While there was some initial reluctance to respond to the Commission's call for submissions to its review, Australia's Right To Know group, including MEAA, subsequently wrote a submission addressing the media industry's concerns with contempt in Victoria.

The ARTK submission noted: "As the Commission is well aware, this is not a hypothetical issue, with 34 defendants involved in the Pell contempt proceedings. Our submission focuses on the issues canvassed in the Consultation Paper which are most relevant to the operations of its members and with which it can most meaningfully assist the Victorian Law Reform Commission."¹⁶⁴

In its general observations, the ARTK submission addressed the penalties applied to journalists, including when journalists have been convicted and even served jail terms for maintaining their ethical obligation to protect the identity of confidential sources.

The submission said: "The penalties courts can impose for contempt of court are severe. Accordingly, conduct that does not intend to interfere with the administration of justice and is not reckless as to the potential to interfere should not be subject to penalties and punishment.

"Given the quasi civil nature of prosecutions for contempt of court, limitations that would ordinarily apply in sentencing persons convicted of crimes, for example considerations under the *Sentencing Act 1991 (Vic)*, do not always apply in cases of contempt of court. For example, there are instances of significant fines being imposed, convictions being recorded and in the most serious cases, journalists being imprisoned when findings of contempt of court have been made. In other cases, journalists have been convicted after failing to give evidence in response to being charged with contempt on the basis that doing so would reveal the identity of confidential sources.

"While severe penalties can be imposed in contempt cases, the prosecution does not bear the same onus of establishing fundamental elements of the offence that applies in other criminal proceedings. It is necessary to bring any offence of contempt in line with other criminal offences. Where an allegation of contempt is made, the prosecution should be required to establish the fault element of the offence.

"By way of analogy, where the prosecution cannot establish the requisite intention to satisfy a charge of murder even if a person acted intentionally, an accused person can be convicted with the alternative lesser offence of manslaughter. Similarly, even when a journalist or publisher intends to publish material, if it did not intend to interfere with the administration of justice it should not be liable for contempt of court and subject to the severe penalties the courts can impose at their discretion once a finding of contempt has been made."

The ARTK submission also observed that, under current contempt laws, there was an unfair burden on publishers requiring them to be aware of every legal proceeding in the state which may be affected by a publication, no matter how unreasonable that may be, and to be able to guess at every statement which could be found to

have a tendency to prejudice. The submission said that this had created a particularly precarious environment for media organisation. It argued that this requirement under current law formed "an unreasonable impost on reporting and free speech, [that] should be remedied by legislative reform."

It added that if the Commission did not agree that a fault element should be introduced for the offence of contempt in all cases, then at very least it should be introduced for individual journalist defendants who "should not be subject to severe criminal penalties for doing their jobs in the absence of any intent to interfere with the administration of justice".

The ARTK submission also examined more specific matters including:

- Procedural safeguards;
- The availability of warnings;
- Sub judge contempt;
- Replacing the common law with statutory provisions;
- Jury directions to be modernised to cater for modern patterns of news consumption;
- Certainty around extradition cases;
- Abolishing the offence of contempt by scandalising the court;
- Prohibitions on publication under the Judicial Proceedings Act 1958 (VIC), including:
 - indecent matters and public morals,
 - divorce and related proceedings,
 - the prohibition on reporting directions hearings and sentence indication,
 - a victim's ability to speak, and
 - temporary restrictions applied to sex offences and family violence;
- The enforcement of prohibitions and restrictions on publication and better communication of those orders to improve awareness;
- Take down orders; and
- Applying an expiry date to legacy suppression orders (Victoria has at least 13 suppression orders with no end date – but there may be dozens more).¹⁶⁵

The contempt proceedings relating to journalists and media outlets accused of breaching a suppression order surrounding the Pell trials, had gone into abeyance over the subsequent 12 months following the initial summons.

As noted above, the High Court of Australia overturned Cardinal Pell's

conviction for historic child sex offences on April 7 2020 in a unanimous decision. All seven High Court judges found Victoria's Court of Appeal should not have upheld Pell's conviction, finding that the evidence could not support a guilty verdict.

The Pell trials' original suppression order was issued on Monday, June 25 2018 by the Melbourne County Court Chief Judge Peter Kidd in the matter of Director of Public Prosecutions v George Pell. "The prosecution had applied for the suppression order to prevent 'a real and substantial risk of prejudice to the proper administration of justice' because Pell originally was to face a second trial on separate charges."¹⁶⁶ It is important to note that no media organisations challenged the suppression order.

However, the verdict result subsequently leaked. The Guardian said: "Some international media outlets – who were unlikely to have been in court – published or broadcast the news. These international outlets included the Daily Beast, *The Washington Post* and several Catholic websites."¹⁶⁷

As a consequence, these news stories could be found within seconds of utilising search engines and were being distributed further and discussed on global social media platforms such as Twitter and Facebook.

The Australian said: "More than 140 international news reports about Cardinal George Pell's guilty verdict were published within 24 hours of his conviction last December, despite strict suppression orders."¹⁶⁸

There was little effort to remove any of these mentions except in a few instances where overseas media outlets came to recognise the legal issue surrounding publication. Some overseas media outlets flouted their breaching of the suppression order with apparent disdain for the reasons why the order had been issued, arguing the public had a right to know information that was in the public interest.

Both *The Washington Post* and *The New York Times* also weighed in on the use of a suppression order in the Pell trials. The *Times* said: "The slow-moving case – charges were filed in June – has been a test of both Australia's justice system and the Vatican's efforts to hold clerics

accountable after decades of abuse scandals. It is occurring in a country where defamation law favours plaintiffs, where criminal law protects defendants more than it does in many other countries, and where a number of legal standards restrict reporters' ability to publish information related to criminal cases."¹⁶⁹

Lawyer Justin Quill, whose law firm Macpherson Kelley acts for News Corporation publications, was reported in *The Australian* as saying: "The problem is, with this unusual case that attracts such international notoriety, the international media organisations published. That meant individuals in Australia, on Facebook and Twitter and other social media, were talking about it and the only people who were not talking about it were the mainstream media in Australia. This case is the perfect storm to demonstrate the law hasn't kept up with developments in social media."¹⁷⁰

In February 2019, up to 100 individuals and media organisations were sent a letter over allegedly breaching the Pell trials suppression order. "Victoria's director of public prosecutions, Kerri Judd QC, has written to as many as 100 individual publishers, editors, broadcasters, reporters and subeditors at the media giants News Corp Australia, Nine Entertainment, the ABC, Crikey and several smaller publications, accusing them of breaching a nationwide suppression order imposed during the case."¹⁷¹

On March 26 2019, a total of 36 journalists, editors and media organisations were named as having been summoned to appear in the Supreme Court of Victoria on April 15 over alleged breaches of the suppression order. The Director of Public Prosecutions called for "orders for imprisonment". No overseas media organisations were summoned.¹⁷² There was also no action taken against global search engines or social media platforms over their publication of information in breach of the order.

Almost a year later, on February 2020, and less than two months before the High Court decision to overturn Cardinal Pell's convictions, a directions hearing before Supreme Court judge John Dixon was dropping further charges that had been brought against journalists and their media employers.



The Victorian Director of Public Prosecutions dropped more than half of the original 205 charges alleging contempt of court over reporting on the George Pell case. In total, 105 charges had now been dropped but 100 were continuing.¹⁷³

The Australian reported the directions hearing: "Judge John Dixon chastised prosecutors over the slow progress of the case... 'It really concerns me (that we're) 11 months on and still talking about the basics. I still have no idea what kind of trial is going to come out.'"

"Barrister Lisa De Ferrari SC said there were fundamental issues with the media's approach to the proceeding. 'I hear what you say but I don't really understand it,' Justice Dixon said. Ms De Ferrari told the court the media was



behaving as though it was criminal proceedings and asking for a brief of evidence. She said admissions had been inconsistent about who was responsible for publications. She said it was 'absurd' for prosecutors to have to prove publication by various outlets.

"Barrister Matthew Collins QC, for the media, said counsel was doing the best they could, given the way the proceedings had been conducted. 'These are criminal charges. The director can either prove the allegations against these (respondents) or she cannot,' he said. 'The director has to prove each element of the charges.'

"Justice Dixon said there was too much boxing at shadows. 'In a case like this it's a legitimate defence to say prove your case,' he said. Justice Dixon has

made an order for prosecutors to file a further amended statement of claim and a brief of evidence. The matter will return for a further directions hearing at a later date," *The Australian* reported.¹⁷⁴

Following the High Court's decision to overturn the Pell convictions, *The New York Times* weighed in once more on the suppression order controversy, writing on April 7 2020: "From the very beginning of the case, Australia's judges resisted legal principles that treat criminal trials as public events in order to ensure accountability for a justice system that promises an impartial rule of law.

"Early on, a sweeping suppression order restricted what journalists could publish, barring even the most basic details, such as the number of people

involved in the original complaint. Strict rules that apply to all criminal cases, aiming to protect juries from information that might prejudice their decisions, also contributed to both a news and accountability blackout.

"The court prevented any mention of additional accusations lodged against Cardinal Pell and pressured news outlets to delete stories already published."

The US newspaper went on: "Journalists could not report on the case as it happened, meaning the original trial, which ended with a hung jury, largely disappeared. Even reporting about the suppression order, because it was a court document related to the proceedings, would have been considered breaking the law."¹⁷⁵

WHISTLEBLOWER PROTECTION

Three whistleblowing cases continue to underline the threats posed to those people who courageously tell the truth about what our governments and their agencies do in our name.

WITNESS K

Legal action was initiated in June 2018 against former spy Witness K and his lawyer Bernard Collaery who are being prosecuted for their roles in revealing a 2004 covert Australian spy operation to bug the Timor-Leste government during sensitive oil and gas negotiations.

The case began only after prosecutors had sat on evidence for three years – the Australian Federal Police had begun its investigation in February 2014 and a year later had presented its brief of evidence to the Director of Public Prosecutions. Charges weren't filed until May 2018.¹⁷⁶ Since then the case has progressed in secrecy and slowly – partly because the court needs to protect sensitive national security material while also preserving the defendants' right to a fair trial.¹⁷⁷

Witness K, a former Australian Secret Intelligence Service agent, became concerned about the bugging operation which diverted resources from investigation of the Bali bombings. In an affidavit he said the bugging was "immoral and wrong". He approached the inspector general of intelligence services. He was permitted to approach an approved lawyer, Collaery.

Collaery came to the belief that the operation was unlawful, and helped Timor-Leste mount a case to be heard in the Permanent Court of Arbitration in

The Hague. Witness K had his passport seized before he could depart to give evidence.

On December 3 2013 Collaery's offices were raided by Asio on orders of then Attorney-General George Brandis.

The following day, in response to the raid and the seizure of Witness K's passport, Collaery told the ABC: "The director-general of the Australian Secret Intelligence Service and his deputy instructed a team of ASIS technicians to travel to East Timor in an elaborate plan, using Australian aid programs relating to the renovation and construction of the cabinet offices in Dili, East Timor, to insert listening devices into the wall, of walls to be constructed under an Australian aid program."¹⁷⁸

The 2018 charges claim the pair illegally disclosed information in breach of section 39 of the *Intelligence Services Act*. Collaery is accused of unlawfully communicating intelligence secrets to journalists. Collaery and Witness K face the possibility of jail if convicted.

In August 2019, Witness K decided to plead guilty.

Collaery said later: "This is an attempt, to make no secret about it, this is a very, very determined push to hide dirty political linen. That's what this is all about, dirty political linen under the guise of national security imperatives. It's nonsense."¹⁷⁹

The court action continues and hearings are expected to take place in April 2020, 16 years after Australia's spy operation against Timor-Leste government. Witness K's identity remains secret.¹⁸⁰

RICHARD BOYLE

Australian Tax Office whistleblower Richard Boyle faces a staggering 161 years in prison for exposing misconduct by the ATO. He has been charged with 66 offences, including telephone tapping and recording of conversations without the consent of all parties and making a record of protected information and, in some cases, passing that information to a third party. He faces the prospect of six life sentences.

His revelations, including directives to automatically seize funds from small business and individual accounts, blew the lid on alleged abuses by the ATO and prompted a joint investigation by *The Age*, *The Sydney Morning Herald* and the ABC. It also triggered the legal action being brought by Tax Commissioner Chris Jordan.

The revelations also prompted the House Standing Committee on Tax and Revenue to make 37 recommendations including to "recommend a new Tax Office charter, an appeals group headed by a second independent commissioner, the transfer of debt-recovery functions into the ATO's compliance operations and a restructure of compensation processes".¹⁸¹

The Tax Office had rejected an investigation request from Boyle months before he went public over allegations the agency was ripping money out of individual and small business accounts under a directive to use more heavy handed debt collection tactics. Boyle informed the Tax Office's internal watchdog that staff had been instructed to start issuing garnishee notices to meet revenue targets – a tool used to scrape money from accounts, sometimes

Witness K's lawyer Bernard
Collaery | Jeffrey Chan
Fairfax Photos



without the account holder's knowledge. A letter from the Tax Office's senior investigator in October 2017 dismissed Boyle's concerns. "The information you disclosed does not, to any extent, concern serious and disclosable conduct. A disagreement with government policy is not disclosable conduct."¹⁸²

"Mr Boyle has previously said he made a 12,000 word disclosure to the Tax Office, but claims this was rejected by tax authorities. The Australian Federal Police raided his home days before he went public and only a month after the ATO offered him a settlement to prevent him from speaking out." The disclosure may offer Boyle some protection under the public sector's *Public Interest Disclosure Act 2013*.¹⁸³

Boyle's home was raided in April 2018 by the Australian Federal Police accompanied by an ATO investigator. The ABC reported: "He attempted to film the raid but the AFP officers seized his mobile phone, and the phone of his fiancée. The warrant specifically refers to Four Corners and Fairfax reporter Adele Ferguson, and alleges that Richard Boyle had illegally taken either originals or copies of taxpayer information, photos of ATO computer screens or emails. Boyle said there was some suggestion from the AFP and ATO officers at his home that he had committed a crime in speaking to the media. "It's absolutely astonishing. I'm horrified that this organisation has these powers over the community and I think things need to change," he said."¹⁸⁴

The Australian's Robert Gottliebson wrote: "Arguably Australia's most significant whistleblower, the man who forced both our major political parties to alter their small business taxation appeal policies, is now set to face a court battle. That's the cost of being a whistleblower."¹⁸⁵

In October 2019, Boyle launched a campaign to raise funds for his legal defence. MEAA has urged members and the journalism community to support his crowd-funding campaign.

Boyle's situation was one of the case studies use by the Australia's Right To Know lobbying group of media organisations in its campaign, *Your Right To Know*, launched in the wake of the Australian Federal Police raid on the home of a Canberra News Corporation journalist and the Sydney offices of the ABC.¹⁸⁶

DAVID MCBRIDE

A lawyer, retired Australian Army major David McBride, is charged with theft over war crimes investigation files that were allegedly handed to journalists. He was arrested and charged on September 5 2018 by Australian Federal Police as he was about to depart Sydney airport to return to his home in Spain.

McBride's Sydney home was raided in February 2018 – the search warrant was seeking any information relating to ABC journalists, various military files and topics and the "7.30 Report" and "Afghan files". It's alleged that classified Defence documents were provided to ABC journalists and then later publicly released on July 10 and 11 2017.¹⁸⁷

"On July 11 2017, the ABC's 7.30 program released a major investigation called *The Afghan Files*. The story was promoted as 'Defence leak exposes deadly secrets of Australia's special forces'. It featured extraordinary detail about investigations, including 10 incidents between 2009 and 2013 where special forces had allegedly shot dead insurgents and unarmed civilians, including children. Among the investigations mentioned were controversial cases relating to the death of a man and his six-year-old child

during a raid on his house, and the killing of a detainee who was alone with a soldier and was alleged to have tried to seize his weapon."¹⁸⁸ In the ACT Magistrates Court on March 7 2019 McBride was formally facing five charges for leaking classified material to three senior journalists at the ABC and the then Fairfax Media newspapers.

The ABC reported: "Mr McBride has not entered pleas to any of the charges, but outside court said he was 'not making any bones about' his role in the events. 'There's no question in that I've told the Federal Police I did give the classified documents to the Herald, to the ABC, and to [journalist] Chris Masters,' he said. 'I'm seeking to have the case looking purely at whether the Government broke the law and whether it was my duty as a lawyer to report that fact.' Mr McBride said he had tried internal processes within the department to bring his allegations of wrongdoing to light, but went to the press when that was not successful."¹⁸⁹

The Guardian reported: "'I think it was swept under the carpet,' McBride told reporters on Thursday. 'I eventually saw the police; they didn't do anything about it. Finally, I saw the press, and it was published on the ABC. They've threatened me all along with going to jail. If I was afraid of going to jail, why would I have been a soldier? Unfortunately there are too many people in Canberra who are afraid. Plenty of people knew what I knew, but no one else stood up.'" He said he wanted the court to simply consider whether the government's actions were illegal.

On June 14 2019, McBride appeared in the ACT Supreme Court after being committed to stand trial. Outside the court he told journalists: "The world will hear about what went on I have faith in the judiciary. I'm a true believer. I think the judiciary will give me a fair hearing. I think it's complicated and I don't ever want to be accused of actually breaching national security. I am a patriot, I believe in this country. I think what I did was the patriot duty to stand up for what's right about this country.

"I have no doubt once I'm acquitted that the media and the world will hear about what went on. Because the reality is none of it is truly national security, none of it is about our secret mind-reading powers. It's all about what

"HIS WILL BE A TEST CASE FOR WHISTLEBLOWERS AND THE RIGHT FOR ALL OF US TO KNOW WHAT HAPPENS IN THE SHADOWS OF OUR GOVERNMENT AND MILITARY."

NICK XENOPHON ON WHISTLEBLOWER DAVID MCBRIDE



Top: Whistleblower Richard Boyle had his home raided | **ABC Above:** Leaks from whistleblower David McBride prompted the raid on the ABC | *Alexandra Back, Fairfax Media*

happened 10 years ago on a mountain top in Afghanistan and what happened across the lake at Parliament. It's not national security, it's just nationally embarrassing."¹⁹⁰

A profile published in *The Sydney Morning Herald* on June 23 2019 says: "Over several months in 2014, Major David McBride gathered top-secret files at night from the computers at the high-security joint operations headquarters near Bungendore, east of Canberra. He would then drive home and stay up until

the small hours compiling the material into a lengthy dossier that charted his complaints about the military...

"The report he compiled centred around investigations into potential war crimes by Australian special forces soldiers in Afghanistan but widened out into some of his other flash-points of anger towards the military and political hierarchy, including the handling of sex abuse allegations in the army and a review into the treatment of women in Defence.

"McBride, a military lawyer for special forces, pushed his report internally at first. At one point, he went to the Australian Federal Police. Eventually, he went to journalists. But the story he wanted told wasn't the one that ended up appearing in the ABC under the title *The Afghan Files*.

"The man at the heart of the leak that prompted the controversial police raid on the ABC's headquarters earlier this month is a complicated individual... The considerable task that now lies ahead of him as he defends himself against charges of theft of Commonwealth property, breaching the Defence Act and unauthorised disclosure of information is to persuade a court that what he did was actually his duty and therefore not a crime.

"He doesn't deny taking hundreds of pages of classified documents, nor leaking them. So he has to prove that the entire system is wrong, not him. If he fails, he faces many years in jail.

"'What I've done makes sense to me,' he says. 'It's the kind of battle I've always wanted. Even though I would quite like to be able to let it go and get on with my life, I don't see how I can.'"¹⁹¹

On July 11 2019, McBride reached an agreement with the court about the closing of the court if sensitive documents are discussed during his trial. McBride will, however, continue to press the government on why the material remains secret. "I mean how secret can they be?" he said of the documents. "It's 10 years ago about what people shot someone in Afghanistan, what the minister may have said. I mean how are our enemies the Russians, the Chinese, how is that going to be used against us? The government should be made to say why [they] can't reclassify these things, what is truly secret about it?"¹⁹²

Former senator Nick Xenophon is representing McBride. He said: "The latest accusations of war crimes in Afghanistan on Four Corners reveal the very issues that McBride was trying desperately to advise military commanders and politicians of in 2013. His will be a test case for whistleblowers and the right for all of us to know what happens in the shadows of our government and military."¹⁹³

The McBride trial is scheduled to resume in September 2020.

DEFAMATION

In December 2019, a defamation claim in the Federal Court sought to compel two senior investigative journalists to reveal their confidential sources. The claim involved multiple Walkley Award-winning journalists Nick McKenzie and Chris Masters – both members of MEAA – over a story they wrote alleging a war crimes incident in Afghanistan in 2012.

MEAA Media federal president Marcus Strom said: “MEAA backs our members who are obliged to adhere to the MEAA *Journalist Code of Ethics*. Clause 3 of the Code says that confidences made to a journalist’s source must be respected in all circumstances. There is no higher principle for journalists the world over.

“Journalists have been found guilty of contempt and jailed for maintaining this ethical principle. But they have not revealed the identity of their confidential source. To do so would be a betrayal of trust. It would have a chilling effect on journalism because whistleblowers would think twice about telling the truth if their identity is exposed.

“The principle of journalists’ privilege is already enshrined in Commonwealth ‘shield’ laws that protect journalists from being compelled by a court to name their sources. Shield laws exist in many countries around the world. To discard the shield at a time when the public’s right to know is already under assault would further damage press freedom in Australia,” Strom said.

“It is pointless to pursue this path in court because the outcome is already known: journalists cannot and will not reveal their confidential sources,” Strom said.¹⁹⁴

The case illustrates the nexus between defamation actions against journalists and the attempts to use that action in order to identify the source of the contested news story. In recent years,

defamation has been the cover for these attacks on press freedom.

MEAA believes that only through the adoption of a uniform journalist shield law regime can these assaults, which are generally unrelated to the reputational harm claimed by plaintiffs in defamation actions, can be ended.

MEAA has called for the adoption of such a regime to end the varying shield laws that exist across most jurisdictions in Australia – except Queensland – which, due to their lack of uniformity, invite jurisdiction shopping particularly in the era of “borderless” digital publishing.

On May 3 2019, Unesco World Press Freedom Day, the Australia’s Right To Know media industry lobbying group submitted its response to the Council of Attorneys-General (COAG) regarding the reform of Australia’s uniform defamation regime. ARTK includes MEAA as a member but is composed of Australia’s media employers who confront the challenge of defending their outlets’ journalism, funding those defences and, if unsuccessful, funding the damages imposed by the court.

After 13 years of operation, Australia’s uniform national defamation regime is undergoing a much needed revamp. The review came after many years of discussion at the Council of Attorneys-General (COAG), spurred on in the wake of the Senate Select Committee report into the Future of Public Interest Journalism.¹⁹⁵

On February 26 2019 the Defamation Working Party, established by COAG and led on its behalf by New South Wales, released a 43-page discussion paper for public consideration.

The May 3 2019 submission was ARTK’s response to the discussion paper. The submission said: “With the operation of the uniform defamation law ticking over

13 years, ARTK presented a united view that it is time to update the law to:

- Take account of international best practice, including recent amendments adopted in the UK, to update the law to be fit-for-purpose for digital news reporting; and
- Address some aspects of the law which, through 13 years of ‘road testing,’ do not operate as intended.

“Some have suggested that it would be appropriate to undertake a root and branch review of the legislation. While we are not averse to that suggestion, we are also keen to get on with addressing the long-standing problems without further unnecessary delay.”

On November 29 2019, The Guardian reported: “The Australian Council of Attorneys General has agreed to a radical overhaul of Australia’s defamation laws to “put downward pressure on damages for hurt feelings”, with proposed changes likely to be brought in by June.

The New South Wales attorney general, Mark Speakman, who steered the review of defamation reform, released a set of draft proposed amendments to defamation law that will be introduced into all parliaments after a short round of public consultation over the next two months.

The amendments include:

- Requiring a plaintiff to show serious harm to warrant defamation action
- Require concerns notice to be given to a publisher before defamation proceedings may be commenced
- A new defence for peer-reviewed material in academic or scientific journals
- A new defence for responsible communications for matters in the public interest
- A change so that maximum damages for non-economic losses are awarded only in the most serious cases
- Single publication rule, so that



| Jim Rice, Fairfax Media

online publishers can be sued only in the defined period after the alleged defamatory content was first published, not each time the page is clicked on.

- The changes are in line with what Speakman outlined last week ahead of the meeting in Adelaide on Friday morning.

Speakman said the changes would bring Australia's defamation laws into the digital age.

"These reforms will unclog our courts of neighbourhood tiffs, they will put downward pressure on damages for hurt feelings, and they will protect responsible public interest journalism," he said.

"It's perhaps miraculous that all states and territories and the commonwealth can agree on these reforms, a very tight and ambitious timetable, with a view to having these laws in place by June 2020."

The federal Attorney-General Christian Porter agreed.

"That is a very, very rare thing, and I

hope that that will be recognised in the consultation process, that these very significant reforms to the way in which defamation law should work in Australia have the agreement from both sides of politics, from the commonwealth and every single state and territory, as the logical starting point," he said.

The draft amendments outline that the changes would apply only to alleged defamatory material published after the legislation passes.¹⁹⁶

On January 24 2020, the Australia's Right To Know group made a further submission with its recommendations regarding the Working Party's model draft amendment provisions.¹⁹⁷

The ARTK submission responded to several of the draft provisions including:

- The right of corporations to sue for defamation;
- The single publication rule;
- The offer to make amends, including whether juries should return a verdict in all other matters first, and other matters;
- Dispensing with jury trials, including jury trials in the Federal Court;
- Defences including contextual

truth, academic protection, qualified privilege, honest opinion (including in the employer-employee context;

- The serious harm threshold;
- The responsibility and liability of digital platforms;
- Remedies including the damages quantum, multiple proceedings; and
- Other issues such as the death of a party, election of a trial by jury, plus matters that had already been raised by ARTK but which had not been addressed in the draft provisions including formalised pre-litigation processes, summary judgement procedures.

ARTK also called for a review system to be included in the Model Draft Provisions.

Speakman said a second stage of the reform process will start later in 2020, including examining whether or not digital platforms should bear responsibility for defamatory material published on their sites among other matters.

ARTK continues to make submissions on aspects of defamation law reform.

NATIONAL SECURITY

JOURNALIST INFORMATION WARRANTS

Journalist Information Warrants continue to be used to secretly access the metadata of journalists in order to identify their confidential sources.

The warrants are designed and were intended to secretly circumvent journalists' ethical obligations to always protect the identity of their confidential sources. This obligation, journalist privilege, is recognised and protected in Commonwealth shield laws for journalists and in the shield laws of every state and territory bar Queensland. The Journalist Information Warrants simply ignore that legal protection that a court would provide, in order to operate in secret.

While it is currently impossible to identify which sources are being pursued through the use of Journalist Information Warrants, it is clear from the Australian Federal Police raids on a Canberra journalist's home and the offices of the ABC that Journalist Information Warrants are just another weapon in the arsenal of governments who seek to punish those responsible for exposing and publishing embarrassing truths about what our governments do in our name.

The warrants were introduced with bipartisan support as a last minute political concession to ensure the passage of amendments to the *Telecommunications (Interception and Access) Act 1979*. There was no consolation with MEAA or media employers by any political party before they were introduced.

Under the Journalist Information Warrant system, the granting of a warrant allows at least 22 government agencies to access a journalist's telecommunications data or their employer's telecommunications data for the express purpose of identifying a journalist's confidential source.

The warrant will be granted where the Minister believes that the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the source. If this warrant is granted, it remains secret and the journalist is unable to challenge it. Further, the warrant has a life span of six months before it needs to be renewed and grants access to data up to two years old.

The Journalist Information Warrant scheme:

- Operates entirely in secret with the threat of a two-year jail term for reporting the existence of a Journalist Information Warrant.
- Public Interest Advocates are appointed by the Prime Minister to consider the public interest but they also operate in secret and do not represent the specific interests of journalists or their media employers.
- There is no comprehensive reporting or monitoring of how the warrants operate.
- Journalists and media organisations will never know how much of their data has been accessed nor how many sources and news stories have been compromised.

The warrants allow the government

agencies to access:

- The journalist's account details.
- Phone: the phone number of the call or SMS; the time and date of those communications; the duration of the calls; the journalist's location, and the device and/or mobile tower used to send or receive the call or SMS.
- Internet: the time, date, sender and recipient of the journalist's emails; the device used; the duration of the connection; the journalist's IP address; possibly the destination IP address (if the carrier retains that information); the journalist's upload and download volumes; the journalist's location.

The 22 government agencies include the anti-corruption bodies that already have star-chamber powers, as well as Australian Border Force, the Australian Securities and Investments Commission, the Australian Crime Commission and state and federal law police forces.

ASIO doesn't have to front a court or tribunal; it can apply for a Journalist Information Warrant directly to the attorney-general. In February 2017, ASIO told Senate Estimates that ASIO had been granted "a small number" of Journalist Information Warrants.

IMPROPER ACCESS TO JOURNALISTS' DATA

In April 2017 the AFP reported that an AFP member accessed a journalist's call charge records and telecommunications data without a Journalist Information Warrant being issued. The illegal accessing of the data was only discovered after another agency



prompted the AFP to investigate.

The Commonwealth Ombudsman investigated the incident. It found that the illegal activity had occurred in the AFP's Professional Standards Unit.

The Ombudsman found the officer involved did not know a Journalist Information Warrant was needed to access a journalist's telecommunications data. This was attributed to a lack of training in the Australian Federal Police about how the warrant system worked and insufficient controls to prevent applications being processed that did not meet relevant thresholds.

The Ombudsman was also told that the accessed data had been destroyed but a year later the Ombudsman discovered that this had not been done due to a lack of technical know-how.¹⁹⁸

The Ombudsman also noted the AFP had 54 officers with the capability to issue Journalist Information Warrant authorisations.

In January 2019 the Ombudsman said the AFP had still not acted on recommendations for training Professional Standards Unit staff. Also,

a second inspection of the AFP found it was still not fully complying with the law by not complying with warrant specifications.

In 2017-2018 the AFP revealed it had used just two Journalists Information Warrants that had been used to access telecommunications data 58 times.

POLICE AND JUDGES UNABLE TO FOLLOW "THE LETTER OF THE LAW".

The Ombudsman's report for 2017-2018 found that Western Australian police had twice obtained invalid warrants targeting journalists.¹⁹⁹ Once again this was put down to a lack of proper controls over who could authorise them.

The WA Police also complained it had experienced difficulty obtaining a Journalist Information Warrant and had to make an application in South Australia owing to a public interest advocate not being based in WA.

"WA Police Commissioner Chris Dawson blamed an 'administrative error' over the collection and search of a journalist's metadata without a valid warrant. Mr Dawson said police had sought the warrants from a judge who had erroneously believed he had been

appointed a "public interest advocate" under the metadata legislation. 'Clearly two judges were sufficiently convinced that this was a proper investigative process to take, therefore a warrant was issued,' he told 6PR Radio. 'But it was an administrative error that the appointee that signed the first stage of the warrant wasn't officially appointed. That's the issue.'

The police and judicial bungling that followed was high farce. Commissioner Dawson explained it this way: "They went to another jurisdiction outside of Western Australia to a particular judge and said 'we're applying for this'. Affidavits were produced. That judge erroneously thought he'd been appointed as that next step. The judge thought he'd been appointed, we thought he'd been appointed and the warrant was then validated by a Western Australian judge. The letter of the law hadn't been followed since the [Public Interest Advocate] had not been appointed at that moment in time."²⁰⁰

On January 29 2020, the federal government's report on law enforcement agencies' use of telecommunications data for investigating crimes and surveillance for the 2018-19 financial year revealed

that the Australian Federal Police had accessed the metadata of journalists 20 times and obtained six Journalist Information Warrants to identify those journalists' sources in the last financial year.²⁰¹

MEAA responded to these latest numbers by expressing concern at the increased use of Journalist Information Warrants. MEAA chief executive Paul Murphy said: "The Journalist Information Warrant is utterly flawed and is dangerous. It undermines the public's right to know. It has a chilling effect on public interest journalism. It threatens confidential sources and whistleblowers and means they will think twice before making any contact with the media through any form of telecommunication.

"We must remember that last June's AFP raids on the home of a News Corp Australia journalist and the ABC were both about looking for information about sources used by journalists regarding news stories that embarrassed the government – stories that had been published up to two years earlier. So the desire of government agencies to hunt down a confidential source comes a long time after a news story is broadcast or published."

Murphy said: "Accessing journalists' and media outlets' telecommunications data compromises the ethical obligations that journalists always have: to protect the identity of confidential sources – people such as whistleblowers who seek to expose wrongdoing by telling the truth about what our governments do in our name. It is an ethical pillar of journalism that has seen journalists tried for contempt and serve a prison term rather than identify their confidential source. The purpose of a journalist information warrant is to secretly circumvent a journalist's ethics because they inconvenience a government agency's pursuit of a whistleblower.

"The inability to tell the truth about what our governments are doing in our name is at the very heart of media organisations' ongoing Your Right To Know campaign. The campaign asked for six key reforms, one of which was the right for journalists and media organisations to contest the application for warrants," Murphy said.

"The danger of government agencies trawling through massive amounts of data in order to identify a source is considerable. The data that media outlets and journalists have available contains not just phone calls but also ongoing work in the form of notes, emails, working drafts of news stories and so on. So aside from the source that agencies are hunting, there may be dozens of other news stories that contain confidential information, stories that are in the planning phase or that have been put on the backburner until later – all of which may also contain other sources' identities. The agencies granted the powers to access data to hunt one source, may compromise the confidentiality of many sources for many news stories – placing whistleblowers and others at risk. All of this done without anyone's knowledge," Murphy said.²⁰²

PUBLIC INTEREST ADVOCATE CHAOS

In July 2019 the ABC's Media Watch program said that eight Public Interest Advocates have been appointed. Only five appointed since the scheme became operational are still serving – their appointments are due to expire in October 2020. Those five are based in Queensland, New South Wales, South Australia and Tasmania.²⁰³ Their activities are secret...

Media Watch said: "The journalist's rights are supposedly looked after by a Public Interest Advocate appointed by the Prime Minister, whose job, according to the Department of Home Affairs, is to: 'promote the rights of a journalist to seek and impart information by independently considering and evaluating warrant applications and providing independent submissions in the warrant application process.'

"But as lawyer Michael Bradley pointed out in Crikey earlier this month: the PIA is not there to represent the journalist's rights, and the public interest isn't framed in terms of rights at all. The PIA operates in secret and nobody gets to know what they did or didn't say.'

"What's more, it's pretty hard to discover even who [the Public Interest Advocates] are. In 2016, *The Sydney Morning Herald* did manage to identify the two initial Public Interest Advocates – retired judges Kevin Duggan and John Muir – and noted that 'neither

specialised in representing journalists or in media law'.

"So, how have those two men been faring? Media Watch has learned that Kevin Duggan resigned from his position in 2017 and John Muir died last February.

"So, who is now doing the job? We asked the PM's office, who told us to ask the Attorney-General, who flicked it on to Home Affairs, who eventually told us that since the data retention scheme came into effect in 2015 eight Public Interest Advocates have been appointed. Five of those appointed are still serving, with their current appointments due to expire in October 2020. Those five advocates are based in Queensland, New South Wales, South Australia and Tasmania.

"So, who are they? Well it's not easy to find out, but the eight appointments are recorded in a document from 2016 about gender ratios on government boards. And we understand that the five still serving are David Bleby, Ian Callinan, Richard Chesterman, Peter Evans and Peter Jacobson.

"So, Media Watch contacted all of them and asked: How many times have you considered or evaluated a Journalist Information Warrant since you were appointed? Have you ever made an evaluation that argued against a Journalist Information Warrant? Do you think there is enough transparency around the process of Journalist Information Warrants and your role in considering them?

"None of them would speak on the record. But Media Watch did learn that at least one had argued against a warrant, and another had pointed out errors and omissions in an application from a state police force, which was then dropped.

"And that's as much as we can publicly reveal."²⁰⁴

On June 9 2019, MEAA chief executive Paul Murphy said: "A journalist information warrant can be issued to access the metadata of journalists... to track down their sources in complete contravention of the ethical responsibilities of journalists and in complete contravention of the Commonwealth's own shield laws which



are designed to protect journalists' sources. All of this is conducted behind closed doors, without any requirement for an advocate to be present... It's a very dangerous provision."²⁰⁵

REVIEW OF THE MANDATORY DATA RETENTION REGIME

On July 4 2019, Australia's Right to Know coalition of media organisations made a submission to the Parliamentary Joint Committee on Intelligence and Security review of the mandatory data retention regime of the *Telecommunications (Interception and Access) Act 1979* (the TIA Act).

Journalist Information Warrants are a subset of the overall mandatory data retention regime – itself a legislative framework that requires carriers, carriage service providers and internet service providers to retain a defined set of telecommunications data for two years, ensuring that such data remains available for law enforcement and national security investigations. Under this framework, approved law enforcement agencies are able to access this data without a warrant.

The ARTK submission noted following freedom of the press and access to journalists' metadata concerns being raised during the consideration of the proposed legislation, the Journalist Information Warrant scheme was introduced.

The ARTK submission went on to explain that while the intention of scheme “may have been well-meaning, as it currently stands it does little to meaningfully deliver its stated aims. The [scheme] is poorly drafted, cloaked in secrecy and does nothing to address concerns relating to identification of journalists' sources.”

The submission, which was sent to the inquiry less than a month after the Australian Federal Police raids went on to say: “The current investigations and associated AFP raids into reporting by News Corp's Annika Smethurst and the ABC have shone a spotlight on the erosion of fundamental press freedoms that is the cumulative effect of multiple pieces of legislation, including this one. It is critical that any law in this area is proportionate to the concerns the law is seeking to address.

“In our view, the [Journalist Information Warrant scheme] and the mandatory data retention regime do not pass this test. It is now incumbent on this Committee and the Government of Australia to take action to ensure that the public's right to know is appropriately balanced with the harms that are sought to be addressed in relation to national security. “The Government's objectives must be clearly stated and well defined and where these objectives may impact

on press freedom, the measures to address them must be no more than is reasonably necessary to achieve the overall national interest, which includes the national interest in open and accountable Government and public administration.”

ARTK went on to recommend amendments to the Journalist Information Warrant scheme and related legislation “to ensure the Australian public's right to know is actively considered in ‘balancing’ the actions of law enforcement and intelligence activities. The recommended amendments are vital to the fundamental role of news reporting in Australia's right to know. These amendments, in combination with the extension of the definition of computer to computer network, and the ability to add, delete, alter, and now copy data that is not relevant to the security matter (albeit for the purpose of accessing data that is relevant to the security matter and the target) amplifies the risks to the fundamental building blocks of journalism including undermining confidentiality of sources and therefore news gathering.”

ARTK's recommended that “accessing the metadata and/or content of journalists' communications for any reason or purpose associated with undertaking professional journalistic

activity should not be the subject of any authorisation for disclosure, including any warrant issued, under the TIA Act. That is, we believe that journalists who are reporting in the public interest should be exempt from the operation of this legislation.

“If this is not accepted, then we strongly contend that the JIW Scheme must be overhauled as detailed below:

- A Journalist Information Warrant (JIW) is required for ALL warrants sought under the TIA Act when the subject of the warrant is a journalist, media organisation or similar; and
- An application for a JIW must be contestable and authorised only if the public interest in accessing the metadata and/or content of a journalist’s communication outweighs the public interest in NOT granting access; and
- The JIW Scheme must apply consistently to ASIO and enforcement agencies; and
- Transparency across all elements of the JIW Scheme is required.”

The ARTK also pointedly noted: “Unfortunately, our submission is mostly devoid of evidence of the way in which the JIW Scheme has operated and the role played by the PIA (Public Interest Advocates), since the commencement of the Journalist Information Warrants in 2015 because of the secrecy provisions which apply to the applications for, and approvals of, Journalist Information Warrants.

“However, we are aware that:

- There has been at least one breach of the TIA Act by the AFP where, in the process of an investigation, an AFP member accessed Call Charge Records and telecommunications data pertaining to a journalist without a Journalist Information Warrant being issued, in breach of the TIA Act;
- The AFP has admitted that they had obtained another journalist’s metadata, prior to the commencement of the JIW Scheme, at the request of the Department of Immigration in order to determine the journalist’s sources of a story published by Guardian Australia that revealed that a Customs vessel had entered deeper into Indonesian waters than previously disclosed. Whilst not in breach of any law, the incident assists to indicate the types of matters in which Commonwealth enforcement

authorities consider there to be a greater public interest in disclosure than in the protection of fundamental freedoms, such as confidential information, privacy and the public’s right to know; and

- At least two PIAs have been appointed.”

The ARTK added: “In addition, three recent events of grave concern to the media involve the use of AFP warrants or other investigative powers directly affecting journalists and related to their confidential sources.

1. First, the AFP raid at the home of News Corp journalist Annika Smethurst on 4 June 2019 involved a search of the entire contents of Ms Smethurst’s home in order to identify the source of an article written in April 2018 which suggested that the government was considering allowing surveillance of its citizens by the Australian Signals Directorate;
2. The raid at the premises of the ABC in relation to documents featured in ABC reporting known as “the Afghan files” about aspects of Australia’s special forces in Afghanistan occurring during the period 2009-2013, which had been published in 2017; and
3. The third incident involved the questioning of 2GB and Sky News journalist, Ben Fordham regarding information which he had broadcast on 2GB to the effect that the Department of Home Affairs was investigating the passage of six asylum seeker boats from Sri Lanka to Australia.”

ARTK recommended that an exemption be made available for public interest reporting. It said: “We are aware of no evidence to suggest that the accessing of journalists’ information to identify confidential sources of news reports plays a sufficiently useful role in the performance of the proper functions of Australia’s security and other enforcement agencies that it would outweigh the importance of the public interest in protecting the identity of confidential sources to the media. To the contrary, it is clear that the continued existence of legislative power which allows such access is likely to have a serious chilling effect on public interest reporting in Australia, and is extremely vulnerable to circumvention. Sources of important public interest information are unlikely to make any

contact with the media if they fear that those communications can be traced. Similarly, journalists are likely to be wary of publishing reports which expose Government decision making and policy information for fear of being the subject of intrusive search powers, including of their metadata records – for any purpose, not just to identify sources – as a result.

“On the basis of the limited amount of information available to us, as indicated above, it is difficult to see how the identification of the source of information in those examples could be said to provide sufficient assistance to the protection of genuine security interests as to outweigh the recognised public interest in protecting the confidentiality of sources. In some cases, the information allegedly provided by the source is simply not significant. In others, it is old and possibly out of date.

“The media organisations which comprise ARTK have a proven record of consulting with Government and exercising appropriate editorial discretion to ensure that no matter which would truly threaten Australia’s national security is published by them. It is vital that secretive and extensive disclosure powers are not then used, and do not appear to be used, to prevent and punish the publication of stories which are merely embarrassing for our Government.”

The ARTK went on to recommend an overhaul of the Journalist Information Warrant scheme:

- An application for a Journalist Information Warrant must be first approved by the Attorney General and the scheme must be applied equally across the types of applicants involved;
- The Journalist Information Warrant scheme must apply consistently to ASIO and enforcement agencies
- An application for a Journalist Information Warrant must be contestable;
- Public Interest Advocates must be independent of government, appropriately remunerated for their work and have all relevant information before them; and
- Transparency across all elements of the Journalist Information Warrant scheme.

DECRYPTION

On September 13 2019, MEAA made a submission to the Independent National Security Legislation Monitor’s review of the *Telecommunications and Other Legislation Amendment (Assistance & Access) Act 2018* – the TOLA Act.²⁰⁶

The review was the first opportunity for elements of the government’s “national security” powers to be examined in the immediate aftermath of the Australian Federal Police raids on the home of a Canberra News Corporation journalist and the offices of the ABC three months earlier. MEAA believed it was important to couch its concerns in light of the new operating environment Australian journalism was working in following the raids, where journalists were facing criminal charges for doing their job and the Government’s immense powers had been utilised by the Australian Federal Police.

MEAA had previously raised its concerns about the then proposed TOLA legislation in a statement in December 2018.²⁰⁷ MEAA called on the government to reconsider its legislation in order to address concerns about the impact on journalists and their sources.

MEAA said in 2018 that the Bill should not be allowed to proceed in its current form. MEAA chief executive Paul Murphy said: “This Bill would grant access to the communications data of journalists without any proper judicial oversight, and with no consideration of the need to protect public interest reporting. Journalists increasingly rely on encrypted communications to protect the identity of confidential sources. Offering this protection is vital. It gives whistleblowers the confidence to come forward with public interest concerns. In the absence of that confidence many important stories will never come to light.”

The *Telecommunications and Other*

Legislation Amendment (Assistance and Access) Act 2018 (the Act) enables the issuing of:

- Computer access warrants – search warrants to be granted to seize and access computers and other electronic devices;
- Assistance Orders applying to device owners;
- Technical assistance requests and notices applying to designated communications providers to permit law enforcement authorities’ access to devices; and
- Remote execution of search warrants.

Although MEAA does not doubt the criminal class’s use of digital communications, MEAA said it was concerned that the enacted legislation is “neither reasonable nor proportionate”.²⁰⁸

“The Act as it stands carries too few safeguards and exceeds the threats it seeks to manage. It typifies the sledgehammer to crack a walnut approach that is now commonplace in Government attempts to bolster national security and community safety at the expense of press freedom and the public’s right to know what our governments do in our name.

“MEAA Media’s journalist members are especially concerned that warrants and orders may be issued in cases where matters of public interest have been reported through the provision of information by confidential sources and which attract penalties under the *Commonwealth Crimes Act*. The breach of such a confidence by a journalist offends MEAA’s *Journalist Code of Ethics* and endangers coverage of issues deserving public scrutiny.”

MEAA went on to say that “together with the new laws that criminalise journalists and journalism, that allow for the surveillance of journalists through the Journalist Information Warrant scheme in the

Telecommunications (Interception and Access) Act 1979, and the raft of amendments contained 2018 *National Security Amendment (Espionage and Foreign Interference) Act*, law enforcement agencies’ powers have been increased to the point where they have a chilling effect on public interest journalism and threaten the public’s right to know.”

MEAA argued that extreme powers such as these have often been packaged under the guise of “national security”. “However, in their application, these laws attack press freedom, criminalise legitimate journalism and hinder the free flow of information to the community – the necessary hallmarks of open and transparent government. The decryption Bill had not demonstrated by example how the application of powers used against journalists and their journalism actually preserves national security or the safety of the community, MEAA said.

“Instead, we now have a situation where the homes and offices of journalists and their media employers are raided by government agencies. These raids represent an example of how powers granted to government can trample on press freedom and the public’s right to know. They provide a cautionary example of what can go wrong.

“For example, the recent raids demonstrate that the need for an urgent response to threats to “national security” is clearly nonsense given a year or more has passed since the news stories in question were published and broadcast. Also, the news stories at the centre of the raids are demonstrably true; they are clearly in the national interest; and they do not pose a threat to national security or safety.”

MEAA said it had key concerns around the key components of the Act, noting that the AFP raids provided important examples relating to the TOLA powers:

Computer Warrants

Under the legislation, a law enforcement agency may apply for a warrant to covertly search electronic devices and access content. The warrants permit the search of electronic devices to determine whether it is relevant and covered by the warrant, which seems to be a process of reverse logic.

MEAA is concerned that the test for enhanced search warrants of “suspecting on reasonable grounds that evidential material is held in a device” will allow fishing expeditions into the communications activity of an ever-escalating number of citizens, including MEAA’s members.

Although the Government asserts that a computer access warrant does not authorise the addition, deletion or alteration of data, the explanatory materials also state that such adjustments can be made “where necessary to execute the warrant”...

A recent example of overreach is the warrant utilised by Australian Federal Police during its nine-hour raid on the headquarters of the Australian Broadcasting Corporation. The warrant allowed the AFP to “use any other computer or a communication in transit to access the relevant data; and if necessary to achieve that purposes (sic) – to add, copy, delete or alter other data in the computer...” The ability for a warrant to allow a government agency to “add, copy, delete or alter” information on a computer system is an outrageous and frightening development in Australia.

Furthermore, the AFP’s keywords search terms were so broad they initially captured 9214 emails and documents – an example of a very wide net being cast in that particular fishing expedition.

Assistance Orders

These can be issued by a judicial officer to require a device owner to provide access to the device where it is reasonably suspected that “evidential material” is held on a device. The penalty for refusing to assist authorities will increase to a maximum of five years’ imprisonment.

These measures are not confined to what may be considered serious risks of harm to community safety, but to all forms of misconduct.

It is inappropriate to compel members of the community to permit access to personal information without some regard



for the severity and nature of an offence.

Technical Assistance Orders

The legislation seeks the introduction of:

- Technical Assistance Requests (TAR),
- Technical Assistance Notices (TAN), and
- Technical Capability Notice (TCN).

These apply to communications providers operating in Australia.

TARs are voluntary and are issued at agency head (or delegate) level. If the request is acted upon by a provider, that provider and their agents are granted civil immunity.

The TAN is a compulsory order requiring a provider to give assistance wherever capable of doing so. TANs are issued by security and law enforcement agency heads or their delegate(s).

TCNs are also compulsory orders that may only be issued by the Attorney-General. The distinction between a TAN and TCN is that the TCN can require a communications provider to build a capability or functionality to provide the assistance sought. A TAN can only seek the application of mechanisms that already exist. Notices must be for the purpose of enforcing criminal laws, protecting public revenue or safeguarding national security. Each exercise must be reasonable and proportionate.

MEAA is gravely concerned that judicial approval for the issue of notices is not required, although we are advised that the device for which assistance is being sought must be subject of an underlying search warrant.

MEAA strongly opposes the ability of departmental officers and the Attorney-General being able to issue requests and notices, where only the slimmiest of evidential tests may be applied. Additionally, the proposed transparency of the new regime is fundamentally inadequate.

Other than the remote prospect of a compliance audit conducted by the Ombudsman, nowhere is it proposed that detailed public scrutiny of requests, notices, orders and warrants will be possible. Citizens must be content with reviewing the annual reports of at least 21 law enforcement agencies to determine the number of new law enforcement instruments applied for and issued. And recent examples show that the annual reports may take a year before they are eventually released to the public and the truth discovered.

A July 8 2019 news story states: “Documents prepared by the AFP show investigators were granted two special ‘journalist information warrants’ in the 2017-18 financial year, and used those



warrants to access journalist metadata on 58 separate occasions.”

Another news story dated July 23 2019 again revealed the tardiness of government reporting: “Police have conducted a series of illegal metadata searches, including Western Australian police obtaining invalid warrants targeting journalists and ACT police accessing data 116 times without proper authorisation. The breaches of the Telecommunications (Interception and Access) Act are revealed in a Commonwealth Ombudsman report for the period July 2016 to June 2017, tabled in parliament by the government on Monday [July 22 2019].”

Privacy and Protection

Finally, MEAA must register its strongest objections to enabling Commonwealth agencies to disturb – if not destroy – the integrity of encrypted communications systems.

It seems clear to all outside of law enforcement bodies that allowing such trespasses will lead to widespread breaches of personal and professional privacy and of course, lead to journalists being disabled from ensuring that their sources are protected as their Code of Ethics requires them to do “in all circumstances”.

MEAA seeks, as a bare minimum, the incorporation of exemptions for persons engaged in journalism and the media industry to ensure that matters of public interest can continue to be reported without fear of government agencies seeking warrants and orders to pursue journalists that shine the light on matters in the public interest and the public’s right to know.²⁰⁹

On January 29 2020, the federal government’s report on law enforcement agencies’ use of telecommunications data for investigating crimes and surveillance for the 2018-19 financial year revealed that the Australian Federal Police accessed the metadata of journalists 20 times and obtained six journalist information warrants to identify those journalists’ sources in the last financial year.

The Guardian²¹⁰ said “the report also reveals, for the first time, how law enforcement agencies are using the government’s new anti-encryption legislation passed at the end of 2018. The AFP issued five technical assistance requests to tech companies, while New South Wales police issued two Tars.

“Tars are notices sent to tech companies or individuals seeking voluntary assistance for the purpose of investigating a serious crime. It is one

stage below forcing compliance with a technical assistance notice, under threat of fines of up to \$10m or jail time for individuals.

“The highly secretive nature of the notices means it is not revealed which companies were involved, or what assistance was offered. The report states that the offences being investigated that required companies to provide a means into otherwise encrypted data included cybercrime, homicide, illicit drug offences, organised crime, theft and telecommunications offences.

“The number of times metadata is handed over has remained relatively stable, at 295,691 for the financial year, compared with 301,124 for the previous year. The majority of these authorisations were related to illicit drug offences, fraud or homicide.

“The cost to the telecommunications industry to manage the data retention regime on behalf of law enforcement continued to decline in 2018-19, down to \$17m compared with \$35m the previous year. The amount of money recouped from law enforcement agencies was \$7.4m. The total cost of the program since it was implemented in 2015 has been \$229m for telecommunications companies, with \$46.5m collected back from law enforcement.”²¹¹

THE INDUSTRY

THE MODERN AWARD

Journalists employed by digital publications will be entitled to penalty rates, overtime and other key conditions after a Fair Work Commission ruling that they should have access to the same protections and rights as print journalists.

The commission found that digital media workers should have access to minimum standards for their wages, penalty rates, overtime and other conditions of employment such as hours of work and breaks as those standards enjoyed by print journalists.

The Commissions' full bench agreed with MEAA's argument that digital media workers should have full access to the *Journalists Published Media Award*, the benchmark award in the published media industry (covering news titles and magazines).

The decision removed an anomaly where digital journalists, doing the same job as print journalists, were denied access to the award.

The Fair Work decision is part of the four-yearly review of modern awards. MEAA first put its case to the Commission in 2015. MEAA's arguments for including digital journalists were strongly opposed by some of Australia's biggest media outlets (including Nine Entertainment – incorporating the former Fairfax company, Rural Press and the Daily Mail).

MEAA Media director Neill Jones said: "The Fair Work ruling means that if you work for a digital media start-up or a digital-only publication you are no longer treated as a second-class journalist.

"This decision removes the award's outdated focus solely on print journalists which placed digital workers at a disadvantage. The decision to modernise the award brings those journalists together under one standard, in recognition of their shared roles and responsibilities as media professionals, regardless of whether they work online or in print."

MEAA Media federal president Marcus Strom said: "Digital is the reality of all newsrooms today. It's about time the Award caught up with the working lives of our members.

"Congratulations to the MEAA Digital Media Committee, made up

of working journalists at a range of online publications. Now, more than ever, journalists working in digital media need to join the union so we can collectively enforce these new entitlements."

The FWC has also ruled that journalists working for country non-daily newspapers should be entitled to a 10 per cent weekend penalty rate loading if they have to work on a Saturday or Sunday. This is the second significant outcome for workers in this Fair Work ruling.

The decision has a 12-month transition period before it comes into full effect.²¹²



The Adani Abbot Point coal terminal



EDITORIAL INDEPENDENCE

Nine Entertainment Co's print journalists raised concerns about the impact on their newspapers' Charter of Editorial Independence following reports that Nine had hosted a Liberal Party fundraising event. The \$10,000-a-head event at Nine's studios in Sydney raised \$700,000. Guests at the event included prime minister Scott Morrison and the communications minister Paul Fletcher.

The house committees at Nine Publishing's three major metro daily mastheads wrote to Nine's chief executive officer Hugh Marks and the managing director of publishing Chris Janz to inform them of their objections to the nature of the event and its impact on their editorial independence.

The letter said: "Reports in *The Sydney Morning Herald*, *The Age* and the [*Australian Financial Review*] yesterday about Nine hosting a Liberal Party fundraiser at our Willoughby offices

have raised the question of where the Nine newspapers' political loyalties lie.

"The former Fairfax mastheads have a long history of political independence. If this has changed and we are now associated with the Liberal Party, this should be conveyed to staff. A decision to host fundraisers for Labor or other political parties would be of equal concern.

"We strongly object to our reputation for independent journalism being compromised by the hosting of party political fundraisers. This can only serve to make the job of working journalists more difficult.

"Our mastheads have done much to expose the corrupting influence of money on politics. It is vitally important that we remain independent of the political process."²¹⁵

The newspapers' group executive director James Chessall emailed staff,

stating: "I raised my concerns with Nine chief executive Hugh Marks yesterday morning. He has responded by telling me it was a mistake to host the function. Hugh made the point Nine's primary motivation was to engage with the government on issues of importance to the newsrooms – such as press freedom and the ACCC's inquiry into digital platforms – which is a valid argument for management to make. But he agrees it could have been handled better."

He also touched on the views of staff who were concerned the event could "temporarily tarnish" the Nine-owned papers "reputation for independence".

"I note the House Committee's statement from yesterday which reflects the views of many staff worried the event could temporarily tarnish our reputation for independence. We have already seen rival outlets attempt to capitalise on the story even when they have no evidence to support their allegations."

On June 4 2019, MEAA members at the ABC called on the leadership of the public broadcaster to address allegations of editorial interference by Indian mining multinational mining conglomerate Adani. Adani Australia owns and operates the Abbot Point coal terminal in Queensland and the Carmichael coal project.

The allegation was made on ABC TV's Media Watch program the previous evening which confirmed that Adani had made a complaint about a planned ABC Radio AM news story. The story was subsequently "pulled" from being broadcast by ABC management.

MEAA union delegates issued a statement of their concerns: "We, the MEAA National House Committee, are deeply concerned by the report on Media Watch last night regarding allegations of editorial interference by corporate interests in ABC reporting in regards to mining company Adani. We invite ABC News director Gaven Morris to front newsfloor staff today to address these allegations and any other questions from staff on the floor. ABC MEAA Isobel Roe, whose story on Adani appears to have been pulled, and we reaffirm the commitment of all ABC journalists to the editorial independence of the ABC and to upholding our ability to do our job without fear or favour."

MEAA said ABC management must defend the public broadcaster from editorial interference, be it political or corporate, and uphold the obligations of the ABC Charter. MEAA noted the Media Watch report said Adani was seeking documents such as expenses and phone records of ABC journalists, via freedom of information requests.

The then MEAA director Katelin McInerney said: "This is a blatant attempt to intimidate and harass journalists going about their duties to report legitimate news stories in the public interest. Attacks on press freedom must not be tolerated in a healthy functioning democracy – regardless of whether those assaults come from political interests or powerful corporations seeking to deter legitimate scrutiny of their activities. ABC journalists must be given the backing and support of ABC management to continue doing their job and fulfilling their responsibilities to keep their audience informed," McInerney said.²¹⁴

The impact of COVID-19 on the media industry was immediate. But before the virus affected jobs in newspapers in particular, there were already a series of redundancies under way in the industry.

On April 18 2019 MEAA said plans to slash as many as 36 editorial staff at *The West Australian* and *The Sunday Times* would mean that Western Australians will lose dedicated editorial coverage of vital community issues. MEAA says the job losses were the inevitable result of the merger of the two businesses.

"Among the journalists who are departing are the state political editor and the health editor – both of whom were recognised for the excellence of their journalism at the 2018 WA Media Awards where they were recognised as the WA Journalist of the Year and for the Most Outstanding Contribution to Journalism respectively. Others to take redundancy are long-term skilled production staff and photographers. Reporting staff to go include court, sports and political reporters as well as editors."

MEAA's West Australian director Tiffany Venning said: "This is a devastating blow for West Australians. In a one newspaper town like Perth, these editorial losses harm the local community's right to know. But because so many skilled people are departing in one hit, it's a tremendous loss for everyone in WA. The departure of these journalists means local WA media is shrinking – and that translates to dramatically less coverage of crucial community issues.

"The sheer scale of these job losses will deprive readers of award-winning, highly skilled, professional journalism and important in-depth scrutiny of WA politics, health, sport and the judiciary as well as other crucial editorial coverage," Venning said. "Western Australians are entitled to have their local journalists reporting on the issues that are important to Western Australians. What's worse is that those staff who remain will have to work even harder at a time when they are already seriously overstretched," she said.²¹⁵

In June 2019 News Corp Australia announced it would cut 55 editorial positions from its mastheads around the country, with almost a third of the cuts to be made to Victorian newsrooms. The redundancies at metro daily mastheads include the national broadsheet *The Australian* and capital city tabloid newspapers, plus *The Weekly Times*.²¹⁶

News Corp management said it is targeting journalists who lacked digital skills. MEAA argued that this suggested News Corp has failed to adequately train its workforce to meet the challenges of the digital transformation that has affected all media outlets.

The then MEAA Media director Katelin McInerney said at the time: "MEAA members in these newsrooms are angry News Corp is making further cuts when the company is also saying subscriptions are up, readership is up and online growth is outpacing their rivals.

"The subscription and readership growth has come about because skilled and experienced journalists have been delivering the kind of content News Corp readers want, despite its editorial staff already working in understaffed and under-resourced newsrooms.

"We believe this short-term cost-cutting strategy ignores the need to invest in journalism so that experienced editorial staff can pivot to digital platforms and produce quality editorial content such as the Walkley Award-winning Teacher's Pet podcast series. This is what audiences want – investment in quality journalism not cost-cutting.

"It is counter-intuitive to keep relying on short term cuts and short term thinking at a time when News Corp audiences are demanding more of their journalism.

"These cuts simply cannot be 'absorbed': fewer journalists can only mean fewer stories from and for the communities they serve," McInerney said.

On March 3 2020, just weeks before COVID-19 would cause immense damage to media outlets, AAP announced it would close its AAP



REDUNDANCIES

Newswire business in June and its Pagemasters sub-editing operation in August; the Medianet and Mediaverse divisions would be sold. The closure would represent the loss of 600 jobs, at least half of them editorial positions.

MEAA called the decision a gross abandonment of responsibility by AAP's shareholders – major media outlets News Corporation Australia and Nine Entertainment. MEAA called on the investors to recognise that they cannot fulfil their duty to inform the community without delivering a solution to fill the enormous void left if AAP is not available to perform its function.

MEAA Media federal president Marcus Strom said: "Any decision to abandon AAP will be devastating for our members and AAP staff and we will do all in our power to support them.

"This decision will also devastate the media industry and the communities it serves. AAP's shareholders must realise the prospect they face should they abandon AAP. Look at the news stories, the photos, the coverage, the quotes and the enormous spectrum of excellent

journalism that AAP has supplied over the past 85 years. AAP delivers news, photos and sub-editing services that the major media groups either cannot or will not.

"Beancounters at the top of media organisations might think they can soldier on without AAP, but the reality is it will leave a huge hole in news coverage. Filling those holes will fall to already overburdened newsroom journalists. Or coverage will simply cease to occur.

"AAP has also trained generations of journalists and has been an excellent start for many of Australia's top journalists. It is reckless and short-sighted of media bosses to jettison this wonderful media institution.

"To lose AAP is to deny Australians across the nation of essential news and information."

Two days later, as more details emerged about the closure, MEAA said the majority shareholders "must be upfront with workers and subscribers about whether they had an agenda to shut the service down in order to inflict damage on their media competitors"²¹⁷

MEAA noted that disturbing revelations had emerged that the final impetus for the decision to close AAP was a desire by Nine Entertainment and News Corporation Australia to hurt their smaller rivals who rely on the wire service for breaking and national news.

MEAA said Nine and News must answer for the decision to shut AAP. Strom said: "In total 600 people, of which 300 are journalists including 100 photographers, will be out of work as a result of this decision made by the media bosses at Nine and News.

"News Corp and Nine said the reason for shutting down AAP was that it was no longer financially viable and had been damaged by the proliferation of free news on social media and digital content aggregators.

"However, today's reports suggest a more sinister motive: the closure is designed to deliberately harm their print and online rivals who subscribe to AAP for news about politics, sport, business, courts and crime, and for breaking news. The fact that they didn't put AAP up for sale indicates News and Nine simply wanted AAP shut down.



PRESS FREEDOM IN AUSTRALIA

“For months, AAP staff were misled by management that the company was in good shape. Some employees have taken out mortgages or shifted cities in good faith because of the assurances they were given by management,” Strom said.

“The closure of the newswire is a kick in the guts for those staff. But the loss of the extensive news coverage provided by AAP means consumers around Australia will lose a trusted, reliable, accurate and impartial source of vital information.

“The media bosses responsible for the decision to shut AAP should pledge to employ any AAP editorial staff who want to remain in journalism,” Strom said.

MEAA chief executive Paul Murphy said where the market had failed, the government must intervene to protect public interest journalism. “It is now urgent for the federal government to address the crisis in news media caused by the erosion of revenues through the proliferation of sharing of content for free by the giant digital platforms and by the loss of crucial news coverage that was only available from AAP,” he said.

MEAA said this media crisis stems from the failure of the federal government to effectively deal with the damage being inflicted on news media by digital content aggregators, search engines and social media has on news content makers.²¹⁸

Murphy said: “This could be addressed by a levy on a percentage of the revenue digital platforms like Google and Facebook make from their use of news media content. The levy would then go to a public interest journalism fund which would help fill the void left by the loss of AAP and promote high quality journalism to ensure the public’s right to know.”

MEAA said the impact global digital behemoths have had on media revenues was investigated by the Australian Competition and Consumer Commission’s digital platform inquiry, but the government’s response to the inquiry was inadequate.

Strom said: “Google and Facebook are riding the coattails of news outlets, using the outlet’s news stories to lure away their audiences and advertisers

which leads to the platforms also taking from the revenue streams that those news outlets sorely need. This erosion of media revenues through the proliferation of sharing of content for free by the giant digital platforms is a major cause of why AAP is losing subscriber revenue.”

In its submission to the ACCC inquiry, MEAA had called for a percentage of revenue to be levied on digital platforms for the use of media content, with the funding then to be retained and distributed through a public interest journalism fund. AAP made a similar proposal in its submission.

Murphy said: “In its final response to the ACCC inquiry last year, the federal government failed to pick up on this recommendation or even to introduce proper regulation of digital platforms. The AAP crisis makes it imperative that this proposal be revisited. The government must deal with the serious case of market failure that is resulting in a decline in quality public interest journalism, which is essential for our democracy.

He added: “It’s also incumbent on the media shareholders to not depart the field leaving AAP in such a state. AAP’s shareholders must explore every opportunity to keep it in operation. Hasty incorrect decision-making achieves nothing. Other ownership and funding structures must be considered. To do less is irresponsible.”

On March 6 2020, MEAA wrote to the chair of the ACCC Rod Sims, saying: “The closure of AAP has dire ramifications for the Australian media industry. The impact on the production of local news across the country is profound. We call on the ACCC to consider whether the closure of AAP is likely to significantly lessen competition in the Australian media market.

“Formed in 1935 by 13 of Australia’s leading news organisations who put aside their rivalries to create an independent news resource that could be trusted to get it right, deliver it efficiently and without political bias, AAP has been a cornerstone of Australia’s media ecosystem ever since.

“Apart from the almost 200 reporters, photographers and sub-editors it employs, the newswire plays a crucial

role in providing Australians with reliable reporting of courts, politics, sport, business, general news and photography. AAP’s historic mission statement has always been to provide news that is independent, accurate, objective, balanced and completely free of political agendas.

“At a time when the media landscape is fracturing and we are struggling to counter the proliferation of fake news, a news source that is trusted and accurate is more important than ever.

“The crisis confronting AAP is a parable for the devastating damage being inflicted on all news media by digital content aggregators, search engines and social media. This has undermined the revenue streams of not just AAP, but all media organisations, pushing some to the edges of viability and making it more difficult to fund quality public interest journalism.

“The ACCC’s digital platforms inquiry spent two years collecting masses of evidence about the negative impact major digital companies like Google and Facebook have on media content producers and on consumers. It found that the value of the Australian newspaper market had fallen from \$4.6 billion to \$2.5 billion over the past decade, and is dwarfed by the size of Google and Facebook.

“As the union for AAP’s editorial staff, MEAA urges the ACCC to fully examine the actions of the shareholding companies (News Corp Australia and Nine) in light of recent media commentary regarding the motivation for ceasing operation of the newswire service. What are the competition policy implications of a potential transfer of the AAP news and photograph archive, for instance?”²¹⁹

As it became apparent that COVID-19 was placing an enormous strain on media newsrooms to report the torrent of information necessary to keep their communities informed, to advise them on safety precautions, and what assistance would be available to them, MEAA called on the major shareholders to suspend their closure of the AAP business.

On March 18 2020 MEAA wrote to AAP chief executive Bruce Davidson, Nine Entertainment chief executive Hugh Marks, News Corp Australia



executive chairman Michael Miller and Seven West chief executive James Warburton: “Australia is facing a once in a generation challenge presented by the COVID-19 pandemic. At a time when Australians are facing the most significant health challenge since the 1918 H1N1 influenza pandemic, the AAP Newswire service is more critical than at any time since the end of the Second World War. Accordingly, MEAA urges the shareholders to reconsider the decision to close the newswire service and to keep the newswire service open right through the calendar year 2020. Such a decision would be in the national interest.”²²⁰

On March 19 2020 there was a brief respite as Davidson suspended the redundancy process for two weeks after the company had received several approaches from potential buyers for the business. Davidson told staff he had “entered discussions with a number of different investors about a potential acquisition of the business, which includes the AAP newswire, Pagemasters subediting service and contacts database Medianet.

“Sources familiar with the discussions said the company was in the process of securing confidentiality agreements and providing guidance on AAP’s financials. No bid has been made and conversations have not progressed to due diligence. The process is being managed by corporate advisory firm TMT Partners.

“This development was not expected by management, the AAP Board or the AAP shareholders,” Davidson said. “AAP’s shareholders have now asked me to enter into discussions with the interested parties to determine if any of these approaches offer a credible and sustainable future for AAP.

“I must stress that at this stage we have no understanding on the viability or otherwise of these approaches. We all should be cautious: nothing may come of these discussions and the interested parties may not be qualified to run a news organisation.”²²¹

The Guardian reported the development, noting: “Staff, some of whom were due to finish as early as 27 March, ‘have the option to remain employed’, [Davidson] said. ‘I understand that this development creates more uncertainty for all of you, and I apologise for adding yet another level of complexity in this difficult time. We have written to all of the parties who have expressed interest in AAP to initiate the information sharing process, and expect this to be completed in 14-21 days.’

“Some 200 journalists and 100 photographers were set to lose their jobs when AAP closed. “An earlier suggestion by Davidson to bring in new investors to save the wire was rejected by shareholders, the news service’s Melbourne chief of staff Kaitlyn Offer said in the days after the shock announcement.

“Offer said the remarks were made when Davidson and the AAP chairman, Campbell Reid, who is also an executive at News Corp, addressed staff in Melbourne.”

Media outlets including Guardian Australia, who rely on the accurate, unbiased reporting AAP provides called for the service to be continued. It reported: “Davidson said the latest approaches had occurred ‘amid the concern and outpouring of goodwill around AAP’s role in Australian media... It’s heartening to see the value of AAP is being more highly recognised,’ he said.”²²²

On March 23 2020 opinion polling and media research business Roy Morgan was revealed as one of the parties expressing an interest in possibly buying the entire AAP business. Executive chairman Gary Morgan told *The Australian*: “We are looking at the whole thing, but that depends on what that business might look like.”²²³

COVID-19’s impact on the media industry was immediate and brutal. By Wednesday March 25 2020, barely a week since governments had begun recommending Australians adopt the “stay-at-home” strategy to limit the spread of the virus, newspapers in regional Australia had begun to not only lay-off staff, enforce leave, cut working hours, ask staff to take reduced pay or work for free but also shut down.²²⁴

PRESS FREEDOM IN AUSTRALIA

Among the newspapers that warned they could not continue were titles including the Taylor Group's South Australian masthead *The Bunyip*; in Victoria, the Elliott Group's *Sunraysia Daily*, *Sunraysia Life*, *Swan Hill Guardian*, *Gannawarra Times*; plus other Victorian titles – the *Loddon Times*, the *Yarram Standard* and the *Great Southern Star*, the *Latrobe Valley Express* and *Gippsland Times*; in NSW there was *The Barrier Daily Truth* in Broken Hill.²²⁵

The Sydney Morning Herald said the Australian Community Media business recently sold by Nine Entertainment Co. (owner of *The Sydney Morning Herald*) was reportedly considering its options. "Australian Community Media, which own[s] about 160 digital and print publications across the nation, had been considering temporarily stopping print production of glossy magazines or smaller titles in regional areas, but no action has been taken to date.

"ACM's 14 daily titles, including *The Canberra Times*, *Newcastle Herald*, *The Border Mail*, *The Courier* and *Bendigo Advertiser*; agricultural titles like *The Land* and its title for the over 60s, *The Senior*, would still operate, should a decision be made. Executives at the company, owned by media proprietor Antony Catalano and Alex Waislitz, have already volunteered pay cuts to provide some financial relief while the business looks at other ways to slash costs as the COVID-19 pandemic continues to erode advertising revenue."²²⁶

A week later, *The Sydney Morning Herald* reported: "Prime Media Group, WIN Corp and Southern Cross Austereo are asking the Morrison government to underwrite their businesses to help them through the pandemic, as advertising revenue falls as much as 50 per cent. The three broadcasters have plans to stop producing news bulletins across Australia within weeks, according to senior sources familiar with the businesses. This would leave the ABC as the sole broadcaster of regional television news. In most areas WIN is affiliated with Ten, Southern Cross is affiliated with Nine and Prime is affiliated with Seven."

"While some of the broadcasters are eligible for the government's \$130 billion JobKeeper wage subsidy package, they argue it is not enough to help them through the crisis... Joint ventures

between regional broadcasters in areas such as regional Western Australia, Tasmania and Darwin are also under review and may have to be shut down, according to multiple sources familiar with the discussions. The government is also considering the temporary relief of spectrum tax fees and forbearance of content quotas by the Australian Communications and Media Authority as ways to provide further relief, but no formal announcement has been made."²²⁷

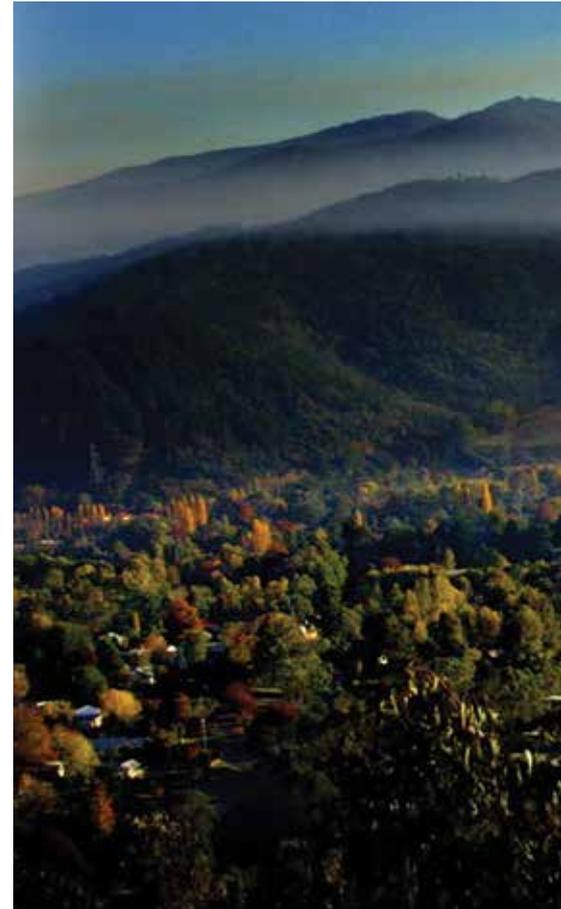
This was before the various benefits of the Federal Government's many stimulus packages had begun to flow to the business sector. However, the government had failed to acknowledge the role of the media industry in providing essential information to communities during the pandemic and had not provided any direct industry-specific assistance to support the media outlets operationally during the crisis. MEAA was concerned that some of the closures were premature given that it was clear more stimulus measures were imminent and that communities were heavily reliant on their local media outlets for information.

MEAA said: "At a time when fast and accurate information is more important than ever, media owners have an obligation to do all in their power to keep publishing, broadcasting and serving their communities. MEAA is responding to reports that regional newspapers have begun shutting down their titles and putting their staff out of work."

Strom said: "The media is an essential service right now. Media outlets have a heightened responsibility to their communities. They provide a lifeline that binds a community together and bolsters resilience. Their local knowledge cannot be replaced by media outlets in the bigger cities.

"Without doubt this is a difficult operating environment but many of these mastheads have a long and proud history – they have survived depression, drought and world wars. And yet a week of this current crisis has led them to close their doors. Shutting down in advance of the benefits they are to receive from the government stimulus packages, is a knee-jerk reaction.

"The stimulus money available to these businesses includes lines of credit, relaxed insolvency regulations and



business cash flow measures. Pulling down the shutters only piles more pressure on communities that already have limited employment opportunities and that can ill afford more people on welfare.

"Long after this crisis is over, those communities will remember how their trust in and support for their local newspaper over many years was repaid by having the media proprietors abandon them at a crucial time of need," Strom said. "Furthermore, if the papers can't survive, the government must step in and financially support them as an essential service until this crisis has passed."

Strom added that these closures reinforce the need for the AAP business to remain open. "AAP delivers an irreplaceable service. The media, like other industries, needs help to keep performing its vital function and outlets must be provided with every assistance to be able to stay operational."²²⁸

In the absence of any significant government industry-specific assistance in order to keep media outlets performing their essential function in informing their communities, MEAA



Regional media is fighting for survival as revenue crashes amid the COVID-19 pandemic

wrote to Communications Minister Paul Fletcher on March 25 2020. MEAA urged the Federal Government to immediately unlock \$48 million in funding to keep regional and rural newspapers alive during the coronavirus crisis.

The money had already been allocated to a Regional and Small Publishers Jobs and Innovation Package, but MEAA said the package must be repurposed as a survival fund to prevent local publishers from closing their doors.

MEAA added that the Federal Government should provide additional funds as needed to support the media’s essential service, which has suffered a devastating advertising downturn since the introduction of the public health restrictions on activities such as eating out and entertainment.

“Federal and state governments can also help to make up for some of the lost revenue by placing public health advertising with regional and small publishers,” MEAA said in its letter to the Minister.

Strom said: “This is a time when the public needs accurate and factual

information about what is happening, and people naturally turn to local, national and international media expecting this.

“Local publications in particular are lifelines for their communities; they know them intimately. We are concerned about what will fill the void left by their closure. In such a vacuum, misinformation and ‘fake news’ can flourish.

“While most of the rest of us are locked in our homes, many journalists will still be out risking their health to inform the community. This is an essential service, and governments should be doing all they can to ensure that it can continue.

“But newspaper proprietors must also do their part. They must explore alternative avenues to keep their communities informed rather than take the drastic and unacceptable step of shutting down publications, as has begun happening in regional Victoria.

“We understand the financial pressures publishers are experiencing and offer our help to negotiate ways of easing this burden, but closing the doors at

this time would be a betrayal of their workforce and a betrayal of their communities.”²²⁹

On April 6 2020 the Communications Minister Paul Fletcher said the government would offer \$5 million response from its \$48 million Regional and Small Publishers Jobs and Innovation Package to support regional newspaper and digital public interest journalism.

Strom responded: “The package announced by Communications Minister Paul Fletcher is wholly inadequate. We are seeing newspapers that have served their communities for more 100 years shut their doors and lay-off workers but the best the Government can offer is to bring forward a paltry \$5 million dollars out of a \$48 million fund – a fund whose purpose is to promote regional journalism, local jobs and innovation.

“Aside from the miserly level of funding, there is still no process for applying for these funds. The Government says the funding guidelines will be available in coming days. But regional media outlets began shutting down last week; they

need support now. They provide an essential service to their communities because big city media can't focus on their localised issues," he said.

"MEAA is concerned that by the time the regional publishers come to grips with the application process, deal with the red tape and find out if they are successful, it will be too little too late.

"Since the COVID-19 outbreak we have seen a dozen or more regional papers announce that they can't keep going. These mastheads include *The Sunraysia Daily*, *The Barrier Daily Truth* and *The Yarram Standard* – papers that have been stalwarts in serving their communities for decades.

"More funds, that are already earmarked for regional media, must be pushed out of Canberra and into the regions and rural towns that desperately need them," Strom said.

While mainstream media outlets were reporting big rises in audiences, their advertising revenue had plummeted. On March 25 2019, News Corp Australia announced it would implement a strategy to combat the decline in revenue due to COVID-19 safety procedures. The company also signalled it would begin making some staff redundant.

The company's executive chairman Michael Miller said News Corp would seek to reduce its costs by compelling staff to cut back their hours of work, encourage them to take annual leave, introduce nine-day fortnights and compel leave-taking over Easter. Company executives would also have to take cuts to their pay.²⁵⁰

MEAA Media advised News Corp members to not make any commitments to management about shorter hours or forced leave until MEAA had gained greater clarity on these measures.²⁵¹

On April 2 2020, Miller wrote an opinion piece about the challenges COVID-19 was throwing up at a time when the media was already under immense financial pressure. He wrote: "Audience demand for trusted local news and lifestyle content has never been greater, yet media companies are under unprecedented financial pressure. "Too many examples in recent months show Australian media is passing its

tipping point. The announced closure of AAP, the looming loss of local voices such as *The Sunraysia Daily* and the decision by Nine to suspend key products are ominous signs. And yesterday News Corp Australia announced it was suspending the print editions of 60 community titles across four states from April 9...

"The question is obvious; when audience demand has never been higher, why are trusted media companies in such danger? The simple answer is the loss of revenue triggered by COVID-19 has further tightened the financial stranglehold the international tech giants have over Australia's creative industries.

"We are now at the stage where unless the Federal Government takes decisive action to make 2020 the year digital platforms start paying publishers to use their content, the bad news for media and Australian communities will get much worse.

"Time has run out. The trading imbalance between the platforms and Australian media companies cannot continue.

"The COVID-19 emergency is powerful evidence that when it really matters, people turn to news from professional, accountable and trusted news organisations. Total audience numbers for all traditional media have exploded and are now the largest in our industry's history. For News Corp Australia total readership is up 81 per cent (1). Consumer subscription sales are up 287 per cent (2). This increase is the most dramatic we have ever seen. It's the same story for video – a record 102 million views across our network, up 45 per cent year on year (3). In print, downloads of print replica editions on digital devices are up 34 per cent (4), supermarkets are selling out of papers and home delivery inquiries are surging.

"But media companies are trapped by draconian legislation and regulation restraining their ability to grow, merge and compete, while on the privatised internet they are plundered by tech giants with no commitment to local communities, no journalists and no content of their own.

"Yet despite this uneven playing field, media companies have innovated;

created new products and embraced new forms of delivery as audiences and advertisers moved online... These kinds of innovations, together with our strongly growing subscription model, are the building blocks that can fund local journalism that gives Australian communities a voice. But we need Government to act. For too long we've been handcuffed in a virtual digital dictatorship. Successive Australian Governments have stood by and watched as our traditional business model has been brought to the brink of failure – they must not stand by and endanger our future as well.

"We don't know when COVID-19 will end, but we do know where this will all end unless Government addresses the imbalance in bargaining power held by the digital platforms over media businesses," Miller wrote.²⁵²

Australian Community Media, the regional and rural newspaper division Nine Publishing sold to Antony Catalano and Thorney Investments in April 2019, announced on April 14 2020 that it had decided to begin winding back its print publications by closing down an unnamed number of non-daily titles, standing down an unknown number of staff and reducing the hours of other workers.

MEAA said the announcement had been made without adequate consultation and was disrespectful to loyal editorial staff. MEAA added that was weighing up whether to take ACM to the Fair Work Commission for failure to consult about the changes, in breach of the company's enterprise agreement.

MEAA Media director Neill Jones said staff had been kept in the dark by management and only became aware of the decision at the same time as the public.

It was still unclear which publications would be closed or how many editorial employees would be impacted, he said. "ACM management is legally required to consult with staff representatives, including MEAA, before undertaking any major changes to operations. That hasn't taken place and all management has done by this announcement today is create more uncertainty among employees about where cuts will be made.

"Management needs to detail as soon as possible where the cuts will be felt.

“MEAA also finds it difficult to reconcile how a company can take such drastic action and yet not be eligible for the [government’s COVID-19] JobKeeper income subsidy. Employers should be exploring all avenues to retain staff rather than making people redundant. We are urgently seeking more clarity from the company about the grounds on which it claims it is not eligible for JobKeeper.”

Jones said the Federal Government could no longer ignore the crisis in Australia’s regional media. “ACM is Australia’s largest owner of regional and rural publications, and for a company of this size to be closing down mastheads is more evidence, if any was needed, that the future of regional media in this country is under threat. Advertising revenues have been devastated by coronavirus, and we have seen close to a dozen mastheads close in the last fortnight while the Communications Minister Paul Fletcher has sat on his hands.

“More than ever, rural and regional communities need trusted sources of news and the government must provide emergency funding so media in country Australia can survive.”²³³

The following day, April 15 2020, the government announced almost \$100 million in federal funding and support for regional newspapers and broadcasting during the coronavirus crisis. While the move was welcome MEAA said a long-term plan was needed to ensure the sector’s future.

The regional media support package was in the form of a \$50 million Public Interest News Gathering program, and the balance was tax relief for commercial TV and radio. MEAA said: “This comes after the closure of more than a dozen publications around the country due to reduced advertising revenue due to the pandemic.”

In the wake of this announcement, MEAA called for regional proprietors to press pause on newspaper closures and staff cuts – including the changes announced by Australian Community Media yesterday. ACM said it would close an unspecified number of 125 regional non-daily newspapers around Australia with journalists directed to the JobSeeker queues.



Australian Community Media titles | *The Canberra Times*

“Today’s announcement picks up recommendations from the Australian Competition & Consumer Commission’s digital platforms inquiry. While guidelines for accessing the new package are still being prepared, MEAA says they must reflect the ACCC recommendation that the funds are used for local news reporting in regional communities. Importantly, the ACCC recommended annual funding while today’s announcement is only for one year,” MEAA said.²³⁴

Long before the impact of COVID-19 on regional and rural media, MEAA had been warning the government that media outlets outside of the big cities were struggling, not least in the face of drought. On June 20 2019, MEAA said the loss of up to 40 jobs in four newsrooms of the WIN Network in major regional centres in NSW and Queensland (Orange/Dubbo, Albury, Wagga Wagga, and Queensland’s Wide Bay covering Hervey Bay and Bundaberg) was a devastating blow to public interest journalism in Australia’s regions and highlighted a crisis that demands government intervention.

In August 2018 WIN had announced it would abandon its news bulletin in Tasmania. While some journalists and camera operators would be left on the ground, Tasmanian news would be presented from Wollongong and news bulletins would be cut completely on weekends. That decision cost nine jobs.

WIN also began taking a feed from Sky News – once again news that is not sourced locally.

MEAA’s then Media section director Katelin McInerney said, “The steady ongoing decline of journalism in regional Australia means there is a decline in the public information needed by regional communities. Fewer journalists on the ground, fewer local stories, fewer local voices causes immense harm to these communities. Homogenised news sourced from the big cities is not a replacement – it merely underlines how the community is being poorly served. It means a dangerous loss of scrutiny of regional issues including local politics. For the rest of Australia it means that there is less journalism available from the heartland of Australia that lies beyond the urban fringe.”

McInerney said: “It’s vital that local MPs and community leaders take a stand to arrest the decline in their local news media. MEAA calls on the Morrison Government to work with media stakeholders and local communities to urgently develop an action plan to arrest the loss of public interest journalism and to encourage and promote the development and growth of local news media. Reporting of local news is essential to regional communities. It goes to the heart of the role the fourth estate must play in informing and promoting a healthy functioning democracy.”²³⁵

GENDER

GENDER PAY GAP

The gender pay gap in the media industry has narrowed slightly, according to the annual study by the government statutory authority, the Workplace Gender Equality Agency (WGEA). The study uses the Australian Bureau of Statistics' average weekly earnings trend series to calculate the pay gap.

In its quarterly report for February 2020 using data to November 2019, the WGEA found that the pay gap in the Information, Media and Telecommunications industries had fallen 1.3 per cent from 18.5 per cent in 2018 to 17.2 per cent.

However, these industries still lag well behind the national average. Over the same time frame, WGEA found the national gender pay gap was 13.9 per cent, down 0.3 per cent, meaning that women earn \$242.90 less per week than men (\$1508.50 versus \$1751.40).

Over the decade to 2019 the national gender pay gap was at its lowest in the most recent period of November 2019, at 13.9 per cent; it was at its highest in November 2014, at 18.5 per cent.²³⁶

GENDER IDENTITY

On November 8 2019, the Australian Press Council (of which MEAA is a member) released an advisory guideline for editors and journalists – *Reporting on persons with diverse sexual orientation, gender identity, and sex characteristics*.

The guideline was the culmination of 12 months' research and community consultation by the Council with editors, journalists, peak community and health organisations, mental health specialists, people with lived experience, police and academics.

The consultation process included

roundtables in Sydney and Melbourne and individual consultations with stakeholders.

The Council said:²³⁷ "Freedom of speech and freedom of the media are essential to democracy and central to keeping the community well informed and able to deal with complex social issues. With these freedoms come important responsibilities for the media. The Press Council's general principles, which all publisher members are obliged to comply with, reflect an appropriate balance, acknowledging the importance of reporting and expression of opinion in the public interest.

"From time to time the Press Council develops advisory guidelines in particular areas to inform the operation of the General Principles and as a resource for journalists and publications.

"This advisory guideline for reporting on people with diverse sexual orientation, gender identity, and sex characteristics is intended to help publishers and journalists report on people with diverse sexual orientation, gender identity and sex characteristics and the issues which affect them, with appropriate consideration of a range of sometimes sensitive factors. The Press Council also aims to promote the understanding that unfair or inaccurate reporting about these individuals can have serious adverse mental health outcomes for them."

The Council said the advisory guideline is not binding on the Press Council's constituent members, but aims to provide guidance for reporters interviewing people with diverse sexual orientation, gender identity and/or sex characteristics; publications; and council adjudication panel members and staff.²³⁸

M EAA is concerned at the rise of hate speech in Australia.

Hate speech poses a threat to democracy, a free media and social equality.

The rise of extremism and the increasing normalisation of hate speech place journalists in a difficult position: how to report these issues responsibly, how to resist efforts to be co-opted by extremists, and how far journalists should go to provide balance or shield their audience from extreme hate speech.

The Christchurch shootings on March 15, 2019 – allegedly the product of an Islamophobic extremist who was partly inspired by hate speech manifestos in the media and on the internet – and the way it was covered by media outlets, brought into sharp focus the urgent need for a framework for journalists to report on race and religion without unwittingly contributing to social division or extremist ideologies.

In February 2019 the National Media Section committee of MEAA Media formally endorsed new MEAA guidelines for reporting on hate speech and extremism.²³⁹ The purpose of the new guidelines is as a resource to assist journalists in reporting on these difficult issues in a responsible and ethical way.

The guidelines were informed by an industry forum, hosted by MEAA and Media Diversity Australia, in Sydney on March 28 2019 – immediately after the Christchurch shootings.

The guidelines principally draw on the National Union of Journalists (UK and Ireland's) guidelines on reporting race, first published in 2014. Additional input was provided by Media Diversity Australia and other experts. MEAA has also drawn on Australian and international resources for journalists about how to report on race, Islam and Aboriginal and Torres Strait Islander people and issues.

MEAA Media members have been advised of the guidelines. An information campaign will be rolled out across the MEAA Media section





The MEAA guidelines for reporting on hate speech were developed in the wake of the Christchurch shootings | Jason South, Fairfax Photos

HATE SPEECH

membership and the public and community groups will be encouraged to engage with members about the guidelines.

MEAA Media members will be expected to familiarise themselves with the guidelines – just as they are required to do with the MEAA *Journalist Code of Ethics*.²⁴⁰ The guidelines are available to the public on MEAA’s website and include Frequently Asked Questions.²⁴¹

The guidelines are designed to be an editorial tool to assist MEAA Media members as they carry out their duties. The guidelines are designed for use by MEAA members and for display in newsrooms.

The guidelines are just that – a guide for reporting. The guidelines do not replace the MEAA *Journalist Code of Ethics* which is binding on all MEAA Media journalist members. The Code already places a responsibility upon MEAA Media members not to place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality or religious beliefs.

Also, the new guidelines do not seek to replace the advisories of the Australian Press Council or existing legislation, including the *Race Discrimination Act*.

The guidelines include sections on ethical journalism and general guidance for reporting on race, religion, culture and ethnicity. There are specific guidelines for reporting on racist organisations; extremist violence; immigration and asylum plus links to the relevant federal and state legislation.

MEAA Media federal president Marcus Strom said that while the guidelines were developed in response to the ethical dilemmas raised for journalists covering the Christchurch shootings, MEAA had long been concerned at the difficult position journalists have been placed in by the rise of extremism and increasing use of hate speech.

“For some time, racist, neo-Nazi, and extremist groups have become very adept at using the media to spread their messages of hate, intolerance and violence,” Strom said.

“As journalists, we have a responsibility to report on these issues, but how do we cover these groups without providing them with a platform for their extremist views?”

“How do we resist efforts to co-opt us? How do we strike the right balance between informing the public and protecting our audiences? These are the types of questions the guidelines seek to help answer.”

“These guidelines are intended as an ethical framework that will help journalists when reporting on race, religion, immigration, and extremism, but in no way, shape or form is MEAA seeking to dictate to journalists how they should go about doing their jobs,” Strom said.

“Freedom of speech is fundamental to the role of journalism, which is to inform and to provoke thought. That means sometimes journalism may offend or insult, but that does not mean it intends to vilify. Journalism that deliberately seeks to vilify on the basis of race deserves to be condemned. Hate speech is antithetical to ethical journalism.”

DIGITAL PLATFORMS

The final report of the Australian Competition & Consumer Commission's digital platforms inquiry was released on July 26 2019.

MEAA found that the report laid out in stark terms the threat posed to public interest journalism by rise of Google, Facebook and other similar businesses, says the union for Australian journalists and media workers.

MEAA welcomed the ACCC's comprehensive report and the recommendations it contains to sustain public interest journalism into the future. The ACCC had recognised the dramatic decline in the number of journalists and the corresponding decline in coverage of areas of public interest from 2006 to the present: 26 per cent of print journalists between 2006 and 2016 and falls of 20 per cent between 2014 and 2018 alone.

MEAA said this dramatic decline of local, regional and rural media outlets and the cuts in funding to the national public broadcasters should ring alarm bells for politicians. MEAA said they must act urgently on the report's recommendations to ensure communities are kept informed to ensure a healthy, functioning democracy.

The ACCC also pointed to the abandonment of critical areas of public interest journalism (courts, local government, and health and science coverage) and the escalating crisis in local news coverage, with its observation of the closure of 106 local and regional news titles throughout the country in the 10 years to 2018.

To counter this, the ACCC recommended stable and adequate funding for the public broadcasters, the development of

sustainable and independent funding to secure the future of local news coverage through an annual \$50 million grant program, and tax reforms to enable the growth of not for profit journalism.

MEAA chief executive Paul Murphy said the ACCC had also correctly recognised that Google and Facebook should be regulated similarly to other media businesses.

"In this review, the ACCC has acknowledged that the ubiquity of Google and Facebook has placed them in a 'privileged position' in Australia's media landscape where they have substantial bargaining power with news media businesses.

"We also agree that these companies are both 'rivals' and 'unavoidable' business partners of Australian media content producers," Murphy said.

"Google and Facebook need to negotiate responsibly with media content organisations and start paying for the content they have thus far exploited for free.

"MEAA supports the urgent development of a regulated code of conduct governing digital platforms' commercial relationships with news media businesses.

"We are pleased that the ACCC has picked up on recommendations first made by MEAA to support public interest journalism," Murphy said.

MEAA however did query some of the other recommendations made by the ACCC, including introducing a mandatory take-down in the Australian Communications and Media Authority code to assist copyright enforcement on digital platforms, handing increased

powers to ACMA to identify "reliable and trustworthy news", and the introduction of a statutory tort for serious breaches of privacy.

While MEAA welcomed the ACCC's report and bulk of its finding, the subsequent actions by the Federal Government indicated that politicians were not going to act on the ACCC's warnings and solutions. The government response was released on December 12 2019 with MEAA saying the government had given up on tackling Google and Facebook. MEAA said the federal government had missed an opportunity to deal with unregulated behemoths.

In a statement MEAA said: "Today's inadequate response to the Australian Competition and Consumer Commission's extensive and considered two year review into these digital platforms' impact on the Australian community means proper regulation and accountability of these giants will not occur in the foreseeable future.

"The ACCC's world-first, meticulous review provided masses of evidence about the negative impact major digital companies have had on consumers, communities and market rivals," MEAA said.

Murphy added that it was perverse that a major inquiry directed at reining in dominant digital companies has resulted in them receiving a virtual clean bill of health.

Facebook had a market capitalisation of about \$US600 billion; Google's market cap was \$US930 billion as at December 2019. "The Australian newspaper market was valued at \$4.6 billion in 2010," Murphy said.

"Despite the digital transformation



Rod Sims, Chairman of the Australian Competition and Consumer Commission | *Alex Ellinghausen, The Sydney Morning*

and the thousands of jobs lost, the sector is now worth about \$2.5 billion. Commercial television networks are losing hundreds of millions of dollars in revenue each year – all while Australia’s population increases.

“These trends seem locked in; the costs are further cuts to quality media, greater reliance on untested (and sometimes dangerous) content and a loss of capacity to produce local and national news that serves our democracy.

“Australia has missed a golden opportunity to create rules that are fair to all.”

Setting up “special units” to monitor the already known impact of major digital platforms will fail to establish a level playing field for all news carrying bodies where all play by the same rules. This will remain a pipe dream, MEAA said.

Voluntary “Codes of Conduct” had been proven a failure in all market sectors. To propose voluntary codes to deal with fake news, growing internet manipulation and to “address bargaining power imbalances” would not achieve any tangible outcomes,

MEAA warned. “There is no timeframe for the ‘staged process to reform media regulation’. Media reform has been reviewed up hill and down dale for decades, yet all we see is inaction.”

Although MEAA welcomed some of the enhancements and the establishment of a new Digital Platforms Branch in the ACCC, the Government’s overall response represented an indifference towards solving problems that will now continue to erode Australian culture, jobs and welfare, MEAA said.

As the coronavirus crisis ramped up in early February 2020, ACCC chairman Rod Sims again took up the issue of getting the big digital platforms to work better with media outlets. Sims described the impact of the digital platforms and the coronavirus as a “one-two blow” for the media industry.

The previous day News Corp Australasia executive chairman Michael Miller “singled out government inaction in the media space and the role of the digital platforms in hastening the demise of media in Australia,” *The Australian* reported. “Miller said if there was not significant progress on the drawing up

of a commercial agreement between the media companies and the digital platforms by May, then the government should bring forward a compulsory code as it had promised.”²⁴²

The ACCC had recommended to government as part of its digital platforms inquiry a new code of conduct for interactions between media companies and digital platforms like Google and Facebook that would allow revenue to be given to the creators of original journalism.

Sims said an agreement between the media companies and the digital giants was more urgent than ever as the coronavirus decimates an already struggling industry. He said he was confident a new code regulating the relationship between Facebook, Google and Australian media would be in place by November and earlier if the government chooses to step in.

A key recommendation of the ACCC’s digital platforms inquiry was to introduce a code of conduct to ensure news businesses on digital platforms are treated fairly and transparently.²⁴³

WHAT MEAA SUPPORTED IN ITS SUBMISSION TO THE ACCC REVIEW (APRIL 2018)

Digital platforms of scale should be classified as media companies for regulatory purposes.

In the absence of Australian publishers and content creators being reasonably compensated for use of media content, an access-per-user fee or percentage of revenue charge be levied on digital platforms of scale, such funding to be retained for a contestable Public Interest Journalism Fund.

An effective “good faith” requirement be included in collective bargaining authorisations under section 88 of the Competition and Consumer Act to enable Australian media companies to engage in mutually satisfactory commercial negotiations.

Inserting a mandatory ‘public interest’ test into section 50 of the Competition and Consumer Act (Mergers and Acquisitions).

Fast-tracking the Productivity Commission’s recommendations for a new Comprehensive Right for consumers to control their data and creation of a new Data Sharing and Release Act.

The Government consider increasing maximum penalties for “mass” privacy/data breaches.

Consumers be provided with plain language information about the extent of algorithm use and advised of safeguards.

FACT CHECKING

On February 19 2020, BuzzFeed News reported that, in Australia, Facebook has 17 million users but only seven fact checkers. “Some of the biggest news stories in 2020 – Australia’s bushfires, Trump’s impeachment trial, the spread of the coronavirus – have been in part defined by the viral hoaxes, rumours and fake news spread widely on Facebook’s platforms. The social media giant, which recently boasted of having 2.5 billion monthly active users worldwide who post a billion pieces of content a day, is locked in a constant battle against its users over misinformation.”

“Facebook doesn’t fact check anything itself. Instead, it uses independent companies to review claims made on its platforms... When a post is found to contain false information by a fact checker, the company labels the post as false, prompts users if they go to share it and claims that it limits the posts’ reach by more than 80 per cent.

“Considering nearly a third of Australians get their news from Facebook, these fact checkers play an outsized role in determining what gets seen, and in what context, for the country’s 17 million users.

“So just how many people are working on figuring out what’s real or not on

Facebook in Australia? Seven. Between them, they’ve completed 220 fact checks since April 2019 – about one check every one and a half days on average.

“Facebook has two third-party fact checking partners in Australia: Agence France-Presse (AFP) and Australian Associated Press (AAP). AFP has two digital verification journalists working in Australia – they’ve completed 140 checks since launching in April 2019. Two sources with knowledge of AAP’s FactCheck operation said the company has five people working in the team: an editor, deputy editor, an open-source & verification editor and two reporters. AAP’s FactCheck has 80 fact checks listed on its website since May 27, 2019,” BuzzFeed reported.²⁴⁴

With the shareholders of AAP closing the business from mid-2020 Facebook has said it will shift most of its Australian fact checkers to a new agency to be established by AAP chief executive officer Bruce Davidson. “A Facebook spokesperson said ‘We will continue to work with AAP on their fact-checking operations, with the support of our long term partner, Agence France-Presse (AFP). When AAP ceases operations, fact checking for Facebook will move to a new media services company which is being established by AAP CEO Bruce Davidson.’”²⁴⁵

On April 30 2019 MEAA urged the purchasers of the Fairfax regional newspapers’ group, Antony Catalano and Thorney Investments, to commit to investing in journalism at the Australian Community Media group so they continue to provide a genuine service to local communities.

MEAA expressed concern about what the change of ACM group ownership would mean for independent journalism and the group’s 160 community, regional and rural publications around Australia, and for the jobs and conditions of Fairfax regional employees.

MEAA demanded the same three core commitments of Catalano that it did of Nine CEO Hugh Marks when the Nine-Fairfax merger was announced the previous year, namely:

- Job security – preserving current levels of employment.
- Enterprise agreements – honouring the current Fairfax EBAs.
- Editorial independence – committing to the Fairfax Media Charter of Editorial Independence.

MEAA stressed it was also important for the new owners to maintain the individual identities of the mastheads which in some cases have been built up over more than a century.

MEAA Media’s then director Katelin McInerney said: “There are about 650 editorial staff employed across the country by the ACM group. It is essential that the individual audiences for each of the group’s mastheads be respected.

“The business model that Antony Catalano introduced at the Fairfax Domain group was to combine the editorial of several mastheads into near-identical content. Editorial cutbacks meant that genuine local reporting was gradually whittled away in favour of bland vanilla news stories shared across several mastheads, regardless of what individual audiences wanted.

“You can’t do that with regional newspapers. The ACM mastheads are supported by fiercely loyal readers. The newspapers must continue to



MEDIA OWNERSHIP

provide local news, information and entertainment to the communities they serve. Their readers are entitled to have local editorial content, not homogenised news generated from somewhere else.”

McInerney added: “It is vital at this time that staff have a strong, cohesive voice that represents the views of all mastheads. A union delegation from all regional ACM mastheads is being convened, and will join with representatives from *The Canberra Times*, *Illawarra Mercury*, *Newcastle Herald* to ensure all levels of the business – metro, regional daily and country non-daily – have their views represented.

“Journalists are stronger together. We are united in the fight to protect: newsrooms, the number of journalists on the ground and decent working conditions. Journalists at these publications want to continue doing the job their communities expect: inform the community and tell their stories, be a voice for readers, hold power to account, have the time and editorial commitment to report without fear or favour,” McInerney said.²⁴⁶

On March 26 2020, Bauer Media was granted Australian Competition & Consumer Commission approval to buy the Pacific Magazines division of

Seven West Media for \$40 million. The sale, when first mooted, had triggered competition concerns given the two publishers had titles that were rivals for the same audiences.²⁴⁷

The ACCC decision reflected the dire state of the magazine market with the regulator alluding to the magazine publishing industry being in such a dire state that titles belonging to the two entities had already closed or were likely to close no matter if the deal went ahead or not.

In a statement the ACCC said: “The ACCC carefully assessed the impact of the merger, given the close competition between the parties’ key print magazines, Bauer’s *Woman’s Day* and *Take 5*, and Pacific Magazines’ *New Idea* and *That’s Life!*”

ACCC chairman Rod Sims said: “The significant declines in the circulation and revenue experienced by many magazines are sustained, substantial and likely to continue, resulting in less investment in content and fewer retail promotions.

“We note that some magazine titles have already closed, and others are likely to follow, regardless of this deal. We also note that the content offered by the four key magazine titles, including celebrity news, ‘real life’ stories, puzzles, and food, health and lifestyle tips, is all

available from other sources.

“Ultimately, we determined that although there is a notable level of competition between the particular print titles, the transaction was not likely to substantially lessen competition because publishers in other media, particularly online publishers, will increasingly compete with Bauer,” Sims said.

The ACCC found that while many of Bauer and Pacific Magazines’ customers value the tactile nature of physical magazines, they are often not regular buyers of the magazines. Further, increasingly others see online content as a ready alternative, and this should constrain Bauer’s ability to raise prices or reduce investment on content.²⁴⁸

Subsequently, Pacific Magazines began court proceedings against Bauer to ensure the purchase agreement was strictly adhered to. Reports suggested that with the downturn in revenues as a result of the COVID-19 pandemic, Bauer may have sought to reduce the \$40 million it was to pay for the acquisition.²⁴⁹

On April 2 2020 Bauer announced it was closing its New Zealand titles, making redundant its entire NZ workforce. It blamed the coronavirus for the decision, saying the business was no longer viable. It was seeking buyers for the business.

GOVERNMENT

PUBLIC BROADCASTING

In the 2019 MEAA press freedom report²⁵⁰, MEAA described the recent events at the national public broadcaster as tumultuous. “From the politicisation of the national broadcaster’s funding and a call for the organisation to be sold off, the imposition of unnecessary inquiries as favours for Pauline Hanson’s One Nation’s support of the Government’s media package, and a crisis of leadership at the ABC.

CUTS TO FUNDING

The Federal Budget brought down on May 8 2018 revealed cuts of \$127 million from the funding of the ABC. MEAA called the cuts “dangerous and irresponsible”, and added that the cuts presented grave implications for audiences seeking news and information. MEAA said²⁵¹ the loss of \$43 million over three years in funding to support news and current affairs, particularly in regional Australia, was particularly short-sighted.

Some of the millions stripped from the ABC “were redirected to other spending measures within the communications and arts portfolio, according to the budget papers, including \$48.7 million for the commemoration of the 250th anniversary of James Cook’s landing in Botany Bay.”²⁵²

The then MEAA Media director Katelin McInerney said: “The [combined] potential \$43 million cut to dedicated news funding, and the freezing of indexed funding at a cost of \$84 million, are crippling blows to the ABC and follow years of under-funding by the Abbott and Turnbull Governments.”

The latest funding reduction would amount to almost \$340 million being

cut from the ABC’s base funding since 2014.

LEADERSHIP CRISIS

On September 24 2018 Justin Milne announced that ABC managing director Michelle Guthrie had been sacked – two years and four months into her five-year term.

The leadership crisis at the ABC worsened on Wednesday September 26 when allegations were raised suggesting Milne had compromised the ABC’s independence – allegations he denied.

The leadership crisis led MEAA to subsequently call for a comprehensive public inquiry. “Staff members made very clear... their disgust with the targeting of journalists behind the scenes from those who are supposed to uphold the ABC’s independence. This is not a one-off attack on the ABC’s independence, but is the culmination of years of inappropriate external meddling in the ABC’s affairs.”²⁵³

MEAA chief executive Paul Murphy said: “Mr Milne seems to have misunderstood that the role of the ABC is as a public broadcaster, not a mouthpiece for the government of the day. The job of the chair of the ABC is to defend the independence of the broadcaster from political attacks, not to act as a messenger or do a hatchet job because the government is unhappy with the coverage it is receiving. ABC journalists cannot do their jobs of reporting fairly and without fear if they do not have confidence that the board and the chairman have their backs.”

The vacuum created by the departure of the ABC chair and the ABC managing director would be followed

by an example of direct government interference in the ABC’s board selection process – and not for the first time.

On February 25 2019 Minister for Communications Mitch Fifield and Prime Minister Scott Morrison announced that former print media executive and more recently Network Ten panel show member Ita Buttrose would be recommended to the Governor-General for appointment as the new chair of the ABC board.

The government’s move to override the legislated independent panel selection process was reportedly because the recruitment firm appointed during the five-month hiatus since Justin Milne’s resignation had not found a woman to make the short list of three. Morrison said: “It is true that she was not one of those who have been independently recommended, and I can confirm that the independent recommendations did not include a female candidate.”²⁵⁴

Her appointment came “after Senate estimates heard... that the company brought in to run the recruitment process was paid more than \$160,000 to whittle down the list of potential names.”²⁵⁵

On April 1 2019, the Senate political interference inquiry made a series of recommendations:

- Amend the *Australian Broadcasting Corporation Act 1983* to define the term “consult” to ensure that the Prime Minister provides the Leader of the Opposition with information about the outcome of the Nomination Panel recruitment process and any alternate nominee, and the opportunity to discuss a proposed recommendation



Former ABC chair Justin Milne, former ABC managing director Michelle Guthrie and former Prime Minister Malcolm Turnbull | Alex Ellinghausen Fairfax Photos

- for appointment.
- Amend the election criteria for the appointment of non-executive Directors) Determination 2013 to:
 - allow for applicants with substantial experience or knowledge in the field of education;
 - emphasise the need to demonstrate an understanding of the role of the fourth estate and independent media in democracy; and
 - require no less than two non-executive members of the ABC Board to demonstrate substantial experience or knowledge in the media industry.
- Amend the *Act* to set out the selection criteria for the Nomination Panel and enhance the transparency and accountability of the work of the Nomination Panel.
- Amend the *Act* to require the Prime Minister to table a statement advising the Parliament on the extent and outcome of consultations with the Leader of the Opposition.
- The Board should formally review these events, including the findings of this inquiry, and report to the Minister on lessons learned and steps taken to guard against a similar occurrence in future.
- The Government should acknowledge the benefit and desirability of stable funding for the ABC, not only for ABC planning purposes but also as a guard against political interference, and

commit to stable funding for the ABC over each budget cycle.²⁵⁶

Commenting on the report Murphy said: “It must be remembered that this inquiry was called following the sacking of ABC managing director Michelle Guthrie and subsequent allegations of interference in the ABC’s editorial processes by board chairman Justin Milne.

“Recommendations which improve the independence and transparency of board appointments, add more media experience to the board and protect the ABC’s staff from political interference are all sensible and welcome.

“Particularly important is the final recommendation for stable funding over the budget cycle of the ABC ‘as a guard against political interference’. We urge the swift and full implementation of the Committee’s recommendations. That would be an important step towards ensuring the chaos and dysfunction of last year is not repeated.”²⁵⁷

A NEW MANAGING DIRECTOR

With Guthrie’s departure MEAA, in a statement on September 24 2018, called for the next managing director of the ABC to be prepared to fight for better funding and independence, and to champion public broadcasting in a hostile political environment.

McInerney said Guthrie’s two-and-a-half years as managing director would unfortunately be remembered for historically low levels of funding, hundreds of redundancies, unprecedented political attacks on the ABC’s independence, and low staff morale.

“It is no secret the ABC is caught in the pincers – between the need to invest in an ever-changing media landscape, and a decline in real funding to historically low levels,” McInerney said. “The next managing director of the ABC will face real challenges, including how to restore the trust and confidence of staff by ending the ‘Hunger Games’ processes, casualisation, and outsourcing which in four years have seen more than 1000 experienced workers leave the organisation.

“They must have a clear vision for the ABC and be able to articulate the direction they want to take the organisation. They must be a vocal public advocate for the ABC, who is prepared to tackle head-on the historically low levels of ABC funding with meaningful engagement with the Federal Government. They must be 100 per cent committed to public broadcasting and to fend off any attempts to privatise the ABC either directly or by stealth.



ABC managing director David Anderson with ABC chair Ita Buttrose

“They must be a champion for quality Australian content and specialist content and a staunch defender of the ABC’s independence and of its editorial staff. This includes refocusing daily journalism away from lifestyle content and ‘clickbait’ and back towards news and current affairs.

“Importantly, the ABC board must also be prepared to back the staff of the ABC and the integrity of the ABC as a respected publicly-owned institution in the face of unrelenting political attacks.

“We feel it is time for a new vision and new direction for the ABC to emerge, allowing journalists and content makers to get on with the job of serving audiences with the content they trust. External critics of the organisation should now pause to give the new leadership some time and space, to allow this dialogue to happen in good faith.²⁵⁸

On May 3 2019, Unesco World Press Freedom Day, David Anderson was appointed managing director of the ABC replacing Michelle Guthrie. “Mr Anderson is an exceptional media professional with strong content, digital and strategic experience.

“The ABC Board resolved unanimously to appoint David Anderson following a national and international search that produced many impressive candidates.

“With almost 30 years of service, David’s knowledge of the ABC is unsurpassed. He has a deep understanding of audience needs and the Board is confident he has the skills and ability to respond to the challenges of a changing media environment.

“We believe he is the right person to lead the Corporation at this time. David already enjoys the trust and confidence of the ABC leadership team and staff and he is ideally placed to continue to provide strong leadership and direction,” Ms Buttrose said.

In accordance with the ABC Act, Anderson will be engaged for a term of five years and as managing director he has ultimate responsibility for all editorial content.

“It is a privilege to be appointed to the role, overseeing one of Australia’s most loved and respected cultural institutions,” Anderson said.

“I look forward to continuing to lead the ABC and allowing our talented teams to get on with what the ABC does best: serving the Australian people, delivering Australia’s finest agenda-setting news and current affairs, hosting conversations and telling stories that look and sound like Australia.”

Anderson has enjoyed a successful career at the ABC and has a strong track

record in television production and commissioning successful programs across all genres.

Before stepping into the role of Acting Managing Director in September last year, Anderson was the Director, Entertainment & Specialist, responsible for all ABC radio music networks (triple j, Double j, Classic, Country and Jazz), podcasts and specialist radio content (Radio National) as well as broadcast television networks (ABCTV, ABC Kids, ABC Comedy, ABC ME) and on-demand products and services (iView, ABC Listen, ABC Kids Listen, ABC Kids), and network websites and apps.

During his tenure, he has held several senior executive roles, including Director of Television, Director of the ABC’s Digital Network and Director of Strategy & Planning. In his capacity as Director of Strategy & Planning, Anderson worked to redeploy expenditure towards audience-focused content, products and services; and as Director of Digital Network he led the Corporation’s digital transformation by identifying ways to engage new audiences and creating a personalised and connected online network.²⁵⁹

On April 1 2019, MEAA welcomed the tabling of the report of the Senate inquiry into political interference in the ABC. MEAA chief executive Paul Murphy said: “It must be remembered

that this inquiry was called following the sacking of ABC managing director Michelle Guthrie and subsequent allegations of interference in the ABC's editorial processes by board chairman Justin Milne.

"Recommendations which improve the independence and transparency of board appointments, add more media experience to the board and protect the ABC's staff from political interference are all sensible and welcome.

"Particularly important is the final recommendation for stable funding over the budget cycle of the ABC 'as a guard against political interference'. We urge the swift and full implementation of the Committee's recommendations. "That would be an important step towards ensuring the chaos and dysfunction of last year is not repeated."²⁶⁰

On November 18 2019, a year after the ABC revealed it had underpaid casual staff, the broadcaster said it would backpay \$23 million owed to affected employees beginning in December.

In December 2018 it was revealed the ABC had underpaid up to 2500 staff employed since 2012 by using flat pay rates without accounting for penalties, overtime and other entitlements required under the ABC enterprise agreement. Some current and former casual employees in the ABC's News and Current Affairs division were among those who were underpaid.

MEAA Media director Neill Jones says: "We are pleased that current and former ABC casual staff are finally being paid the money owed by their employer... Now we have a process for these the wages to be paid. The underpayments only came to light because a union member raised the alarm.

"We look forward to the speedy resolution of each of the individual under-payment cases and will continue to work with our members to ensure that they are paid back every cent they are owed."

He added: "This issues highlights that the ABC relies heavily on staff who spend years employed as casuals or across a series of short-term contracts. Many staff are legally entitled to ongoing employment.

"The ABC needs to introduce a clear process to ensure that these employees are provided with the opportunity to convert from casual and contract employment to on-going employment," Jones said.

The ABC said in a statement: "We are sincerely sorry that this happened and deeply regret the impact it has had on our people. This error should not have occurred.

"The underpayments resulted from the practice in some areas of the ABC of paying casual employees flat rates of pay designed to be high enough to compensate for penalty rates and overtime provided for by the Enterprise Agreement (EA). In some cases the flat rates were insufficient to do this and resulted in people being paid less than they were entitled to.

"The ABC notified the Fair Work Ombudsman of the issue in December last year and has been liaising regularly with the Fair Work Ombudsman as well as the CPSU and the MEAA, throughout the remediation process.

"The ABC has also already taken other actions, including amending our casual engagement process to ensure that all casual employees are paid their entitlements under the EA and rolling out a revamped training program for hiring managers about our legal obligations when using various types of employment arrangements."

The ABC is continuing to have discussions with the Fair Work Ombudsman and the unions about this matter."²⁶¹

The casual backpay issue came as the ABC wrestled with the funding cuts that had been imposed by the government. The ABC has yet to tell staff how it will manage the decline in funding and what jobs and areas may be threatened by potential cutbacks.

JOB LOSSES AND CUTS TO COME

David Anderson has warned that there will be cuts, telling a Senate estimates committee on October 22 2019: "There will be job losses. It's not something that I can quantify at this point in time because I think that there is still more work to be done. As we look at the efficiency of what we're doing, some of

it relates to people's employment, some of it does not. Efficiency comes in many forms, so I'm reluctant to put a number on that at the moment. The quantum of what the ABC puts out will have to reduce if we're going to maintain the quality of what it is we do for the public."²⁶²

The resources of the ABC were significantly stretched during the bushfire crisis of November 2019-February 2020. As the national emergency broadcaster the ABC has additional imposts on its operations in order to fulfil its duties to keep its audiences fully and constantly informed. ABC staff performed their role with exemplary skills and dedication, sometimes at risk to themselves.

On March 3 2020 Anderson told a Senate committee that the ABC would ask Communications Minister Paul Fletcher for another \$5 million a year to cope with bushfire- and emergency-related reporting, saying the bushfire coverage had cost the national public broadcaster an extra \$3 million in the current financial year.

"The minister has both publicly, and in meetings with me, asked (me) to spell out to him exactly what those additional costs have been. I've advised him of that figure. We estimate it's going to cost \$5 million per annum if this is going to be the new normal ... we need to bolster our resources in future to meet the challenge'."

Then Anderson had expected he would be make an announcement to staff in March about budget cuts and redundancies – that has been delayed. He ruled out cuts to regional coverage.

He warned: "There will be an effect on our content as well as our staff. I have indicated... I will be coming back to staff both in regard to a five-year plan ... and how we intend to meet those challenges."

Communications Minister Paul Fletcher had written to Anderson suggesting the ABC sell some of its building assets, including its Sydney's Ultimo and Melbourne Southbank properties. Anderson said selling property would not solve the ABC's funding shortfall. "That only deals with a one-off sale, not an ongoing efficiency you need to find."²⁶³

IMMIGRATION

SAUDI JOURNALISTS

On November 19 2019, MEAA wrote to Immigration Minister David Coleman and Home Affairs Minister Peter Dutton, seeking their intervention in the immigration detention of two Saudi Arabian journalists who were seeking asylum. MEAA wrote to the ministers noting that the pair feared persecution in Saudi Arabia after they received death threats following interrogation by Saudi authorities.

The two journalists were detained in immigration administrative detention.

MEAA acted together with PEN International over concerns that the pair's safety was at risk while they are currently detained, and that their lives would be endangered if they were returned to Saudi Arabia.

The men were in a relationship and say they had been outed as gay – gay sexual activity is illegal and punishable by death in Saudi Arabia. MEAA has not named the pair at the request of their legal adviser.

The two journalists had extensive experience with global media organisations having worked for CNN, CBS News, CBC, France 24, Channel 4 and the BBC. Following a CBC report on allegations of the torture of Saudi dissidents, one of the journalists was questioned by Saudi state security over his frequent work for foreign media outlets. He was accused of conspiring against the Saudi government.

The journalists were arrested again some months later, and interrogated once more. Both journalists subsequently received death threats. Among the threats was the authorities' intention to reveal their gay relationship to their families and employers which would put the journalists' lives in extreme danger.

In September 2019 they were informed that they would be questioned again

and they subsequently decided to flee the country for their own safety. They arrived in Australia on October 12 2019 utilising tourist visas and were put in administrative detention when they sought asylum.

Saudi Arabia has an appalling record on press freedom assaults and the treatment of independent journalists both within its own borders and elsewhere in the world. According to the New York-based Committee to Protect Journalists, at the end of 2018 there were 16 journalists imprisoned in Saudi Arabia (up from 11 in 2017), and nine more were detained in the first half of 2019. The organisation also ranked Saudi Arabia as the fourth most censored country.

Under Crown Prince Mohammed bin Salman, Saudi Arabia's already repressive environment for the press has suffered sharp deterioration. Anti-terror and cybercrime laws and specialised courts give authorities free rein to imprison journalists and bloggers who stray from the pro-government narrative. At least four of the journalists detained under bin Salman's crackdown were abused and tortured in Saudi prisons, according to medical assessments prepared for King Salman and leaked to *The Guardian* newspaper.

The Saudi Arabian Government also admitted to the murder, dismemberment and disposal of the body of prominent Saudi journalist-in-exile Jamal Khashoggi at its consulate in Istanbul a year earlier. In an interview on the US *60 Minutes*, the Crown Prince said of the murder: "I take full responsibility as a leader in Saudi Arabia, especially since it was committed by individuals working for the Saudi government."

MEAA, along with PEN International and Reporters Sans Frontieres, asked Minister Dutton to intervene in the journalists' case with the aim of releasing them from immigration administrative detention and allow them to urgently pursue their request for asylum which, MEAA hoped, the Australian Government would be willing to urgently accept given the risks they face for their work as journalists.²⁶⁴

On December 17 2019 it was reported that the two journalists had been released from immigration detention while their asylum claims were processed.²⁶⁵

BEHROUZ BOOCHANI

On November 19 2019, journalist and award-winning author Behrouz Boochani arrived in New Zealand. Boochani, whose book *No Friend but*



Author and journalist
Behrouz Boochani |
Hoda Afshar

Award-winning journalist
Mimi Mefo | *Elina Kansikas*
for *Index on Censorship*



the Mountain was painstakingly written from behind the wire while in detention in an Australian funded and operated asylum seeker detention centre on Manus Island in Papua New Guinea received a visitor's visa to travel to Christchurch to speak at a literary event.

The ABC reported that Boochani had received temporary travel documents and permission from the PNG Immigration Department to travel to New Zealand for the event. "Boochani has recently been accepted for resettlement in the United States and said he was investigating whether he could fly from New Zealand to the US, once the process was completed."²⁶⁶

Boochani had spent more than six years in Australian immigration detention after fleeing Iran after being persecuted and threatened for his work as a journalist.

MEAA had campaigned for journalists and cartoonists detained on Manus to be released, particularly as their claims for asylum were based on their very real threats to their safety because of their journalism. Boochani was the last to remain in detention. In April 2019 MEAA led and coordinated a renewed campaign to have Boochani released

from the Manus Island detention centre and resettled in Australia.²⁶⁷

MIMI MEFO

On October 23 2019, MEAA urged Australian immigration authorities to reverse a decision to deny a visa to a prominent Cameroonian journalist to speak at a freedom of expression forum in Brisbane.

Mimi Mefo works as a freelance journalist in Germany and had recently flown to London to speak as the guest of the UK government at a major global conference on media freedom. After speaking at Griffith University, Mefo was due to fly from Australia to give the prestigious Carlos Cardoso memorial lecture in South Africa on October 28, where Nobel Prize-winning economist Joseph E. Stiglitz would give the keynote.

Her anticipated stay in Australia was for a few days only.

MEAA wrote to the Immigration Minister David Coleman seeking his urgent intervention. MEAA told the Minister that Mefo's visa was refused because immigration authorities said they "were not satisfied that the applicant's employment and financial

situation provide an incentive to return".

MEAA said: "The conference, hosted by Griffith University, is an internationally renowned event bringing together the world's leading thinkers and activists to discuss global issues. Mefo is due to speak on media freedom and the challenges she faces as a journalist in Cameroon."

MEAA went on to explain that Mefo was the winner of this year's Index on Censorship Freedom of Expression Award

MEAA wrote: "You may be aware that Index on Censorship has issued a statement urging Australian immigration authorities to reverse their decision, saying: 'Australia prides itself on its democratic values, including freedom of expression. This means it needs to support and champion those being denied the right to speak in their own countries. Denying visas to journalists who have faced oppression and censorship in their own countries simply emboldens the oppressor.'²⁶⁸

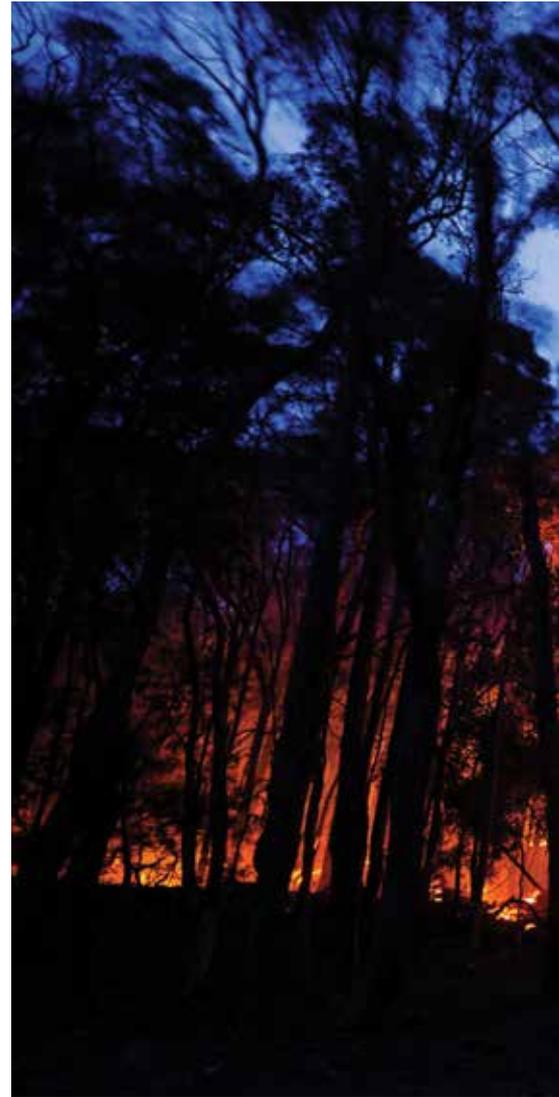
Mefo never received a visa and consequently was unable to speak in Australia on freedom of expression.

International Federation of Journalists – “There can be no press freedom if journalists exist in conditions of corruption, poverty or fear.”

UNESCO observatory of killed journalists – “1319 journalists killed since 1993.”²⁶⁹

Committee to Protect Journalists December 11 2019 – “The number of journalists imprisoned globally for their work in 2019 remained near record highs, as China tightened its iron grip on the press and Turkey, having stamped out virtually all independent reporting, released journalists awaiting trial or appeal. Authoritarianism, instability, and protests in the Middle East led to a rise in the number of journalists locked up in the region – particularly in Saudi Arabia, which is now on par with Egypt as the third worst jailer worldwide.”²⁷⁰

International Federation of Journalists February 4 2020 – “On 31 December 2019, the IFJ published its list of media workers killed in the line of duty, showing 49 journalists killed in 2019... The report provides a regional analysis of the state of press safety and detailed information on the circumstances surrounding the deaths of the 49 media workers listed. Latin America is the region with the highest number of deaths (18), followed by Asia-Pacific (12) and Africa (9), the Middle East and Arab world (8) and Europe (2). Two key observations emerge from the statistics. Firstly, threats, harassment, imprisonment and murder no longer take place only in countries at war. Secondly, the victims are mainly local journalists. In the majority of cases, it is articles and reports on abuses of power, corruption and crime that have led to targeted violence and killings... There were 970 journalists and media staff killed in the decade 2010-2019.”²⁷¹



SAFETY AT WORK

BUSHFIRES

The bushfires that raged across Australia from November 2019 through to February 2020 were on such a massive scale and so dangerously powerful that media crews were sometimes isolated and putting themselves in harm’s way. Some journalists were stranded in towns as fires raced towards them and like the local population, they were unable to escape.

MEAA commended members who worked so hard to keep their communities informed. On January 7 2020, as part of an advisory on how to utilise resources for reporting on disasters (including safety tips for those exposed to traumatic incidents) MEAA said: “MEAA commends our trained professional journalists on the vital role they are playing in keeping communities across the country informed of the risks and keeping Australians informed and connected

with developments around the country.

“We also understand and appreciate the interest of foreign media in this story. We advise any journalists unfamiliar with Australian fire conditions to exercise extreme caution. It is important to remember that journalists at the fire front have undergone significant training and preparation for their role. They are supported by experienced producers and colleagues to ensure that they do not put themselves and others in danger.

“The situation on the ground is dangerous and unpredictable. Sudden changes in conditions can lead to life-threatening situations. We strongly advise any journalists considering coverage of the fires to contact the relevant local rural fire service.

“Across Australia bushfires are threatening human life, property and

precious ecosystems. The impacts on communities are devastating. As the impacts of anthropogenic climate change increase, scientists predict an increase in the intensity of fires and the lengthening of the bushfire season. Put your own safety and the safety of others ahead of any other considerations.

“It’s important to make sure you look after yourself – please refer to these helpful resources specific to trauma for journalists covering bushfires. MEAA supports our members vital role in reporting this major natural and human disaster. We remind all journalists of the MEAA *Journalist Code of Ethics*, in particular the requirement to respect privacy.”²⁷²

JOURNALISTS DOING THEIR JOB

On July 22 2019, less than three weeks after the Australian Federal Police raids on the ABC and a journalist’s home,



a French TV crew was arrested while reporting on a protest at a railway line that would service the Adani Australia's Abbot Point terminal and its Carmichael coal mine.

The following day MEAA wrote to Queensland Premier Annastacia Palaszczuk, the Queensland Attorney-General and Justice Minister Yvette D'Ath and the Queensland Police Commissioner Katarina Carroll regarding the incident.²⁷³

"We write to express our concern at the arrest of four French TV journalists yesterday at Abbot Point terminal while they were reporting on a protest being conducted at the site. MEAA believes their arrest, detention, charges and bail conditions are an outrageous assault on press freedom. Journalists should be allowed to carry out their duties reporting on a matter of public interest without being arrested and charged.

"We understand that the crew did not understand they were trespassing on a railway line that was private property while they were filming and reporting on the protest. When Queensland police personnel approached them and asked who they were, the TV crew duly presented their French Government-issued Carte d'identité des journalistes professionnels that clearly identifies them as professional journalists. It seems their press cards were ignored, with one of the police saying to them: "Journalists should know better."

"They were told they were obstructing the railway and were then arrested, placed in handcuffs and put into police vehicles. The French journalists say they were not asked to move on. They say they did not refuse to comply with any requests made by the police... because the police made no requests. They were then detained for seven hours and were subsequently charged with trespass.

"As one of the French journalists has subsequently explained: 'In France you have the right to film in the streets ... even though you film the protests you are not part of the protest yourself, you are a journalist, you do your job and make the report, that's just life.'

"Remarkably, their bail conditions ban the crew from being within 20 kilometres of Adani's Carmichael mine site and less than 100 metres from any other Adani site. It is egregious that journalists should be subject to a total exclusion zone that curtails their right to report and only further infringes on the public's right to know.

"At a time when Australia's reputation as a nation that upholds press freedom is already damaged, the actions of Queensland Police have only gone to attract more unwelcome attention. The actions of Queensland Police were heavy handed and unworthy of

PRESS FREEDOM IN AUSTRALIA



Left: French journalist Hugo Clement's press card; **Right:** Victoria Police aim pepper spray at media crews | Paul Dowsley, Twitter

a healthy functioning democracy that upholds press freedom.”

MEAA urged that “the charges against our colleagues be dropped and that they be allowed to report without the restrictive conditions that have been placed upon them.”

On Thursday July 25, Queensland Police Service said they were dropping the trespass charges against the French TV crew.²⁷⁴

On October 30 2019, during an Extinction Rebellion protest in Melbourne, Seven News reporter Paul Dowsley was manhandled and pushed while he was attempting to join other TV media representatives as they were filming the protest.²⁷⁵ MEAA wrote to the chief commissioner of Victoria Police Graham Ashton about the incident: “We write to express concern over the actions of police against journalists during the protests at this week’s International Mining and Resources Conference at the Melbourne Convention and Exhibition Centre.

“MEAA acknowledges that Victoria Police members have an important role to play at protests such as these and that public safety is a paramount concern in difficult situations. In heated exchanges, thoughts and actions are placed under considerable pressure. However, the media also has an important role to play: to observe and report on these events in the public interest. It must involve itself in order to appropriately scrutinise and inform the community of what is taking place. We acknowledge that at times this

places journalists at risk. But we cannot countenance assaults on journalists as they carry out their duties.

“We are particularly concerned that subsequent police statements do not convey the reality of events that have been recorded on video. During the demonstrations this week, journalists have been hit by pepper spray which has been wildly streamed into a broad swathe of the crowd without due care and regard for non-protesters including journalists who were affected. On another occasion, video recorded media outlets’ camera operators being pushed away by a police member who pointed pepper spray container directly into their faces.²⁷⁶

“In a well-publicised incident a Channel 7 reporter was assaulted by police. It was clear from video of the incident²⁷⁷ that he was not proceeding directly to the group of protesters who were already behind barriers and Victoria Police members standing two or three deep. The video shows the journalist was proceeding obliquely not towards this gathering but to where media cameras were already filming, explaining as he went where he was walking to and that he was moving to the public area not towards the barricades or the protesters.

“He was clearly recognisable as a working journalist (indeed, he is well known to Victoria Police as a long-standing court and police rounds reporter). He was holding a Channel 7 microphone in his hand. He was dressed in a suit and tie. He was standing with other media and proceeding to where

other media were already working. Many others repeatedly identified him as a journalist – indeed the video was taken by a reporter from *The Australian* who loudly and repeatedly identified him as a journalist.

“Despite all this, the assaults by police members only ended when he reached the very location that he had been walking towards – next to the camera operator. The journalist later said: ‘Incredible. I was obeying their direction to move to another area. I’m stunned.’

“We believe a Victoria Police statement misrepresents what took place. The statement said: “It is unfortunate that members of the public, including journalists, are not following instructions by members of Victoria Police. In this case the reporter did not follow police instructions... This was a safety issue and Victoria Police believes an appropriate amount of force was used to move the reporter from the area. We have given media repeated advice to be mindful of their surroundings to ensure their safety to avoid risk of injury.

“MEAA would contend that the safety of this journalist and other media reporting on this event have been put at risk by the actions of Victoria Police. We believe it is important that Victoria Police members receive training that acknowledges and respects the role of the media in reporting public events. We believe it is important that guidelines are designed to protect members of the media as they carry out their duties as well as ensuring that police members can also carry out their responsibilities – it is a two-way street.

“MEAA would welcome the opportunity to meet with you to discuss ways the media and police can work better together to ensure appropriate protection for journalists to ensure greater understanding and cooperation with police.”

Victoria Police has agreed to a meeting and MEAA hopes to raise our concerns at that meeting.

ABUSE TOWARDS FEMALE JOURNALISTS

On April 26 2019, a *St George Shire Standard* reporter and a *Saturday Telegraph* photographer were attacked following a press conference held by former Senator Fraser Anning during the federal election campaign.

The pair had been reporting on the open-air conference in a park at the site of Cronulla riots. During the conference, people had been heckling journalists as they asked questions. As the two media workers were leaving the location, the female reporter was being followed out of the park by an 18-year-old man who directed “obscene comments” at the reporter. When the photographer intervened and began taking photographers of the man, the man repeatedly punched the photographer. The incident was captured on video.

MEAA said the attack was “absolutely shocking”. “It’s completely unacceptable in a democracy for journalists to be physically threatened or assaulted in the course of doing their job. Journalists perform an important role holding politicians to account; they deserve to be able to ask questions in complete safety.”²⁷⁸

On December 2 2019, the charges against the man were dismissed because he had anxiety, gambling problems and depression. “His mental health is so poor, a court heard that his mum had to take him to the Fraser Anning event where the incident occurred.”

The *Daily Telegraph* reported that NSW Police bail documents stated the man was “an associate of a far right political group” and his “actions were unprovoked and against a member of the media in a political setting”.

The man’s barrister told the Sutherland Local Court that his client came from a “respected family” in Sydney’s eastern

suburbs and had attended Waverley College on a rugby league scholarship.

Magistrate Michael Love, reviewing footage of the attack, said the man had been “aggressive the whole time”.

“He was moving into the alleged victim as opposed to swiping and moving away,” he said.²⁷⁹

On February 18 2020, a journalist working for the ABC reported via Twitter that while researching a Four Corners story²⁸⁰ a St Kevin’s College “father threatened to have a senior member of Victoria Police who he was mates with dig up dirt on me”... and “a number of students made misogynistic comments about me in a closed FB group”.²⁸¹

On October 23 2019, MEAA joined in a call that a united industry approach by media organisations is needed to combat the prevalence of online harassment and abuse of women media workers, a new report recommends.

Don’t Read the Comments: Enhancing Online Safety for Women Working in the Media recommends that media organisations should begin treating gender-based abuse against women journalists on social media and websites as an issue of health and safety and take more responsibility for ensuring that women journalists are supported in the aftermath of attacks.

The report was launched by Gender Equity Victoria and MEAA and follows research that more than a third of women journalists had experienced online harassment, trolling and stalking during the course of their work, but only 16 per cent said they were aware of their workplace having existing policies to address online abuse.

Freelance journalists, who do not have the support structures provided by employers to their staff, are particularly vulnerable.

Adam Portelli, MEAA’s Victoria & Tasmania Regional Director, said women journalists should not feel that they cannot safely participate in online platforms, or self-censor to avoid abuse.

“In the modern publishing age, journalists are expected to have a presence on multiple digital platforms,

and it is unacceptable that they feel unsafe because of bullies, trolls and stalkers,” Portelli said.

“For better or worse, social media and other online platforms are part of the modern journalist’s workplace, and online abuse and harassment must be treated as a workplace health and safety issue.

“While men and women are both trolled online, it is women who often receive abuse because of their gender, that takes the form of sexist and derogatory comments, through to serious accusations of physical harm such as death and rape threats.” said Kit McMahon, Chair of GEN VIC.

“Online abuse has very real impacts on women’s mental health, where women report experiencing depression, panic attacks and sleep disturbance, which also impacts on their ability to do their work for fear of further abuse.”

GEN VIC and MEAA began working together on strategies to counter online gender-based abuse last year and after consulting with women journalists and media workers, have developed pragmatic strategies for media organisations to prevent and respond to gender-based abuse on their platforms.

The recommendations contained in *Don’t Read the Comments* are:

- A whole-of-organisation approach to address systemic and structural sexism in the workplace.
- Training on gender, implicit bias and bystander intervention for all staff in a media organisation.
- Treating gender-based abuse against women journalists on social media and websites as an issue of workplace health and safety.
- Moderation guidelines and training that explicitly address gendered and other identity-based abuse as a subset of abuse that requires a strong response from the organisation.
- Requiring audience members to complete a simple comprehension quiz before they are permitted to comment.
- Requiring media organisations to provide specific support for freelance journalists even after the story has been published and invoices paid.²⁸²

IMPUNITY

Nine murders, no prosecutions

At a time when eyes are focussed on the role of the Australian Federal Police in the raids on the home of a News Corporation journalist and the offices of the ABC plus the use of Journalist Information Warrants allowing the AFP to secretly access journalists' and media outlets telecommunications data – both types of sweeping power have been utilised in order to bypass journalists' ethical obligations to never reveal the identity of a confidential source.

Both types of activity usually come at the request of a government department or agency. As such they represent dangerous powers that can be, and arguably have been, misused.

It is also clear that AFP officers have been poorly trained in their legal obligations under the powers that have been granted to them – an issue observed by the Commonwealth Ombudsman on several occasions.

But it is also worth noting the role played by the AFP regarding the failure to properly investigate the murder of eight Australian journalists working overseas. The most notorious and shameful example is the murder of the Balibo Five more than 40 years ago. But more recent examples also show a failure to follow through with investigations that could help bring the killers of journalists to justice.

Thirty-two years after their deaths, a coronial inquest into the killing of five Australian journalists at Balibo in East Timor identifies, through witness

testimony, a suspect who allegedly ordered their murder.

The suspect is a prominent figure in Indonesia with a long military career followed by extensive involvement in national politics.

Two years go by.

The Australian Federal Police begins a war crimes investigation.

A further five years pass.

Called before a parliamentary committee, the AFP says it is still engaged in an “active investigation”; the investigation has “multiple phases”; and the AFP is still awaiting results from inquiries overseas.

What are those inquiries? The AFP doesn't say but in an astonishing admission it admits it has “not sought any co-operation from Indonesia and has not interacted with the Indonesian National Police”.²⁸³

Just eight days later, the AFP announces it is abandoning the investigation due to “insufficient evidence”.²⁸⁴

After an investigation lasting 1868 days, the AFP had made no attempt to question the suspect identified by the inquest.

Between 1975 and 2003 nine Australian journalists have been murdered and yet none of their killers have been brought to justice. Nine people killed and not a single prosecution, and little or no proper police investigation. Why?

Has there even been such a total failure to bring the murderers of a singular profession of Australians to justice? Is the very reason for that failure *because* they are journalists and does it simply reflect the global disdain for investigating journalist killings.

In a statement to mark Unesco's International Day to End Impunity for Crimes Against Journalists, Audrey Azoulay, the director-general said: “The statistics are sobering: in the last 10 years at least 881 journalists have been killed around the world for simply telling the truth. Forty-four have died so far in 2019 alone. In almost nine out of 10 cases, these crimes have gone unpunished.”²⁸⁵

Unesco says: “Impunity leads to more killings and is often a symptom of worsening conflict and the breakdown of law and judicial systems. UNESCO is concerned that impunity damages whole societies by covering up serious human rights abuses, corruption, and crime.”²⁸⁶

Australia has nine cases of journalists who have been killed with impunity. All but one case involve a journalist working in a conflict zone overseas. The remaining eight cases are a sorry tale of ongoing government indifference and an apparent unwillingness to thoroughly investigate the murder of Australian journalists.

The impunity from justice enjoyed by the killers should be seen for what it is: a shameful apathy to bring the murderers of journalists to justice.



Tony Joyce second from right with the ABC's *This Day Tonight* team

The impunity enjoyed by the killers of Australian journalists adds our country to a long list of countries that allow killers to get away with murder. It sends a signal that the Australian Government and its agencies treat the lives of Australian journalists as counting for less than other Australians.

“Unesco calls for those responsible for journalist deaths to be held accountable... Unesco holds to account all those who put journalists at risk, all those who kill journalists, and all those who do nothing to stop this violence.

“The end of a journalist’s life should never be the end of the quest for truth.”²⁸⁷

TONY JOYCE

Last November marked 40 years since the murder of ABC foreign correspondent Tony Joyce. There has been little to no effort to investigate the circumstances of his death or to bring those responsible to justice.

MEAA hopes that, despite the passage of time, there can be renewed effort to investigate how Tony was killed, who was responsible and how they can be found so that Tony can receive the justice that has been denied to him for more than four decades now.

Tony Joyce was born on August 9 1946. He studied modern history at Magdalen College, Oxford, and emigrated to Australia in 1968. He did administrative work on a sorghum project in the Northern Territory and became a production assistant with several film companies before being appointed a specialist trainee with the ABC in March 1969, gaining experience in radio with the current affairs programmes AM and PM.

In 1971 he went to Brisbane to work on ABC Television’s *This Day Tonight*, joining the reporting staff of T.D.T. in Sydney in September. His duties included presenting, producing, interviewing and directing; he was promoted senior reporter in May 1972.

Joyce was sent to Singapore as an overseas correspondent in 1975. He was reporting from Saigon in April and was one of the last reporters to leave before the city fell to the North Vietnamese. Joyce’s reporting took him throughout South and South East Asia, covering the state of emergency in India, military coups in Thailand, and the plight of Vietnamese boat people. In 1978 he was one of the first Australian journalists back into Vietnam where he made a television documentary.

In March 1979 Joyce was posted to London. His beat included Africa, and on November 21 he arrived in Lusaka to report on the escalating conflict between Zambia and Rhodesia (now Zimbabwe).

With his cameraman Derek McKendry, he travelled about 55 kilometres to film Chongwe Bridge which had been destroyed by Rhodesian commandos. Zambian soldiers arrested the two of them and placed them in a police car.

A man, thought to be a political officer with the militia, raised his pistol and shot Tony Joyce in the head. Joyce was flown to London, but never regained consciousness.

Zambia’s President Kenneth Kaunda wrote to Australian Prime Minister Malcolm Fraser to claim that Zambian “security forces” had fired at Joyce and McKendry, “mistaking” them for white “Rhodesian commandos” who had crossed the border with Zambia, formerly Northern Rhodesia.

In June 2019, *The Sydney Morning Herald* published the obituary for Stuart Revill, former assistant managing director of the ABC, who had died in Sydney, aged 90. It noted that Revill had been

the broadcaster's European manager, based in London and added: "In 1978, while reporting the Rhodesian war from the Zambian side of the border ABC journalist Tony Joyce was shot in the head by militia.

"Revill, Tony's wife, Monica, and chief correspondent Ken Begg flew to Zambia, finding that Joyce was near death. Revill organised a leading London neurosurgeon to come to Lusaka and then after a week, arranged for the transport of the unconscious Joyce to London, where he survived for another two months. Today, Monica Joyce and her son, Daniel, say that Revill was unstinting in his support of them."

On July 31 2015, journalist Alan Ramsey wrote in *The Sydney Morning Herald*: "Two years after 'the incident', the wondrous Peter Bowers would write a two-part series in *The Sydney Morning Herald* in November 1981 which nailed the Zambians for Joyce's murder. Photographer McKendry, in a detailed interview, scrupulously described the individual gunman who had shot Joyce even though he was never asked by the Zambians to identify him; nor, indeed, did Zambia even interview McKendry after the New Zealander refused to sign, while still locked up for four days in a cell, the concocted police version of a 'battlefield shooting'.

Bowers was damning in his analysis: "The cover-up [with Kaunda and Fraser] shows with chilling clarity how heads of government, whatever their politics, will put the wider national interest above individual human rights and fundamental justice when they perceive that to do otherwise would harm the national interest."

In an interview on ABC national television with Richard Carleton on November 9 1981, after publication of his closing article, Bowers was even harsher. He told Carleton: "The Prime Minister (Fraser) is a party to the cover-up to the extent he is no longer pressing the Australian position and demanding an inquiry [by the Zambians]. Not only that, but he went into Parliament and made excuses for the Zambian authorities failing to find out what had really happened. Clearly Mr Fraser has seen it to be in the national interest to no longer press cover-up of a crime in Zambia, to turn a blind eye, to connive. Why? Because he is obviously concerned



The Balibo Five, from left to right - Gary Cunningham, died aged 27; Brian Peters, died aged 24; Malcolm Rennie, died aged 29; Greg Shackleton, died aged 29; Tony Stewart, died aged 21. | *Balibo House Trust*

it could affect his personal relationship with Kaunda [as well as] his whole black-African strategy which is one of his strongest commitments in the international arena."

In September 1981, on the eve of a Commonwealth heads of government conference in Melbourne and Sydney, with Malcolm Fraser the host and Zambia's President Kaunda in attendance, along with Britain's Margaret Thatcher and a raft of lesser Commonwealth leaders, an internal memo was circulated within the senior bureaucracy in Canberra: "We do not wish President Kaunda to arrive in Australia under the impression we are dissatisfied with his explanation of events... We would not want the Joyce matter raised further with the Zambians at this stage."²⁸⁸

Tony Joyce was posthumously awarded a Media Peace Prize (1980) by the United Nations Association of Australia.²⁸⁹

Tony's colleague at *This Day Tonight*, political journalist Paul Murphy, wrote this about Tony: "[He] was a talented and accomplished journalist, admired by his peers for his integrity and high professional standards, and loved for his considerable wit and humour. A thoughtful and compassionate observer of the human condition, including its misery, deprivation, cruelty and hopelessness, he was a humanist and a humanitarian. His experiences made him a realist and a fatalist. His death was an instance of a journalist whose luck ran out while he was engaged in work for which he cared passionately."²⁹⁰

THE BALIBO FIVE

Journalists Brian Peters, Malcolm Rennie, Tony Stewart, Gary Cunningham and Greg Shackleton were murdered by Indonesian armed forces in Balibo, East Timor, on October 16 1975.

It is alleged they were killed on the orders of Captain Yunus Yosfiah who commanded the Kopassus (Indonesian Special Forces) Team "Susi" that attacked Balibo in a combined operation with regular troops of Rajawali Company B.

In 2007 Brian Peters' sister, Maureen, through her lawyers, invoked a provision of the *Coroners Act 1980 (NSW)* to ask for a coronial inquest based upon Brian's residence in New South Wales.²⁹¹

On November 16 2007, NSW Deputy Coroner Dorelle Pinch brought down her finding in the inquest into Brian's death.

"Brian Raymond Peters, in the company of fellow journalists Gary James Cunningham, Malcolm Harvie Rennie, Gregory John Shackleton and Anthony John Stewart, collectively known as 'the Balibo Five', died at Balibo in Timor-Leste on 16 October 1975 from wounds sustained when he was shot and/or stabbed deliberately, and not in the heat of battle, by members of the Indonesian Special Forces, including Christoforus da Silva and Captain Yunus Yosfiah on the orders of Captain Yosfiah, to prevent him from revealing that Indonesian Special Forces had participated in the attack on Balibo."²⁹²



Journalist Greg
Shackleton in Balibo,
October 12 1975

Pinch found the journalists were surrendering to the Indonesian forces by throwing their arms in the air and protesting their status as ‘Australians’ and ‘journalists’ when the order came from Yosfiah that they be killed.

During the inquest an “eyewitness identified Yunus Yosfiah from a photograph projected on screen at the coronial inquest. The Coroner found that the journalists could not have been and were not mistaken for combatants. They clearly identified themselves as Australians and as journalists. They were unarmed and dressed in civilian clothes. They all had their hands raised in the universally recognised gesture of surrender. They were killed in a matter of minutes.”²⁹⁵

“... there is strong circumstantial evidence that those orders [to kill the journalists] emanated from the Head of the Indonesian Special Forces, Major-General Benny Moerdani [a key planner of the invasion of East Timor – known as Operation Lotus/Seroja – who had also been involved in sending Indonesian soldiers into East Timor disguised as volunteers, died August 29 2004²⁹⁴] to Colonel Dading Kalbuadi [died October 10 1999], Special Forces Group Commander in Timor, and then to Captain Yosfiah.”²⁹⁵

In her finding, Pinch stated that she “intended to refer the matter to the Commonwealth Attorney-General for

consideration of potential breaches of division 268 of the *Commonwealth Criminal Code* [the section that outlines offences deemed as war crimes]”.

Pinch recommended that the killings be investigated by the Australian Federal Police (AFP) as a war crime as the journalists “were killed deliberately on orders given by the [Indonesian] field commander, Captain Yunus Yosfiah.”²⁹⁶

A statement in the British Parliament, (Brian Peters and Malcolm Rennie were British citizens) responded to the Coroner’s findings: “The Australian Government admitted in 2002 that their officials were informed by the Indonesians on 13 and 15 October 1975 that Balibo would be seized covertly by Indonesian troops on 15 and 16 October, which is what happened. They also quickly found out about the deaths.

“As the coroner’s report shows, key Australian officials and Ministers knew the main facts about the deaths within 48 hours. From the closed material, including an Australian intelligence review, we can see that they even knew who led the attack.”²⁹⁷

It took a further two years after the inquest, on September 9 2009, before the Australian Federal Police finally announced that it would conduct a war crimes investigation into the deaths of the five journalists. Never before has there been an Australian

Commonwealth prosecution for war crimes under the *Geneva Conventions Act*.²⁹⁸

Over the course of what would turn out to be five long years, little was ever disclosed about how the AFP war crimes investigation was being conducted, what lines of questioning were being pursued, what evidence had been gathered or whether the families were being kept informed of the AFP’s progress.

The AFP appeared to be particularly slow in its activities around the war crime investigation. There were warning signs of what was to come.

On May 5 2013, *The Sydney Morning Herald* reported: “For the past three years Australian Federal Police have been investigating the killings of newsmen Gary Cunningham, Brian Peters, Malcolm Rennie, Gregory Shackleton and Anthony Stewart at the tiny village of Balibo in East Timor’s south-west in 1975. But correspondence sighted by Fairfax Media and from information provided by interview with Gary Cunningham’s brother Greig, the investigation appeared to be facing serious problems. Last month the AFP wrote to the families of the late newsmen warning that officers were ‘still seeking to access material from Timor Leste (East Timor) which may be relevant to the investigation’.

“The timeframe for receiving this

information is unknown and outside the control of the AFP and other Australian agencies,' warned the correspondence from Mick Turner the AFP's national coordinator of special references.

"An AFP spokesman yesterday said as part of the Balibo investigation, the AFP had requested information from overseas agencies. 'The AFP has no control over the time taken to provide the information as this is determined by those overseas agencies,' he said. 'The correspondence gravely concerned Mr Cunningham who said he had recently heard a potential witness to the murders had recently died.'²⁹⁹

Then on October 13 2014, just three days before the 39th anniversary of the war crime and five years into the AFP's investigation, the AFP answered a question asked about the progress of the investigation in a Senate estimates committee. The question had been asked in an estimates hearing seven months earlier and it had taken that long for the Senate to receive the response from the AFP.

The AFP advised the Senate committee that the "active investigation" into the murder of the Balibo Five was ongoing. "The AFP says the investigation has 'multiple phases' and results are still forthcoming from inquiries overseas."

But in a remarkable revelation, the AFP stated that despite the passage of five years of "active investigation" with "multiple phases" it was still awaiting results from inquiries overseas. Just what those inquiries overseas were is unknown as the AFP admitted it had "not sought any co-operation from Indonesia and has not interacted with the Indonesian National Police".³⁰⁰

Just eight days later came the final blow. On October 21 2014 the Australian Federal Police announced it was abandoning its five-year investigation due to "insufficient evidence".

"During the investigation the AFP identified challenges associated with establishing jurisdiction. The investigation continued in an effort to overcome those issues. As a result, the AFP has exhausted all inquiries in relation to this matter and will be taking no further action. The AFP has had ongoing consultation with the families throughout this complex and difficult investigation."

The Guardian reported: "Shackleton's widow, Shirley Shackleton, reacted angrily to the news, describing it as a "shocking" and "terrible" outcome. 'I will keep on this until I die,' she told AAP.

"Ben Saul, barrister and professor of international law at the University of Sydney, called for the AFP to fully explain their legal reasons for not going ahead with the investigation. 'Certainly the NSW coroner felt there was a sufficient legal basis to commence a prosecution. So it's really incumbent on the federal police to release their legal advice to explain why it is they think it's not possible and why they take a different view to senior lawyers in that coronial inquiry.

"Saul, who acted for [MEAA] at the NSW inquiry, said there are 'complexities' in the legal situation relating to prosecuting a war crime. 'It has to show that there was an international armed conflict between Indonesia and Portugal ... and that in the context of that the journalist were killed,' he said, adding 'I think the legal case for that conflict's existence is very strong on the facts'. He said that while the criminal standard of proof was much higher for the police than in a coronial inquest, the AFP have not 'satisfactorily' explained if they had exhausted all lines of inquiry," The Guardian reported.³⁰¹

MEAA said in response to the abandonment: "Last week, the AFP admitted that over the course of its five-year investigation it had neither sought any co-operation from Indonesia nor had it interacted with the Indonesian National Police. The NSW coroner named the alleged perpetrators involved in murdering the Balibo Five in 2007. Seven years later the AFP has achieved nothing.

"It makes a mockery of the coronial inquest for so little to have been done in all that time. This shameful failure means that the killers of the Balibo Five can sleep easy, comforted that they will never be pursued for their war crimes, never brought to justice and will never be punished for the murder of five civilians. Impunity has won out over justice."³⁰²

On October 15 2015 the son of Gary Cunningham, John Milkins, said he wanted more information about why

the AFP had decided to close the investigation. "I would be pleased to see it reopened. I feel it was closed without an explanation to the Australian public." Milkins added: "We [the families of the slain journalists] don't think that story's finished. I think perhaps the government would like the book to be completely closed but I think there are many chapters still to write, there are many unknowns."³⁰³

In a letter to MEAA on April 15 2015, the AFP's Deputy Commissioner Operations Leanne Close said: "As stated by the AFP Commissioner during the last Senate Estimates hearing on November 20, 2014 the AFP has now completed an extensive review of the investigation into the deaths of the 'Balibo Five'. It has been determined there is insufficient evidence to support providing a brief of evidence to the office of the Commonwealth Director of Public Prosecutions for consideration for prosecution under Australian law."

YUNUS YOSFIAH

Deputy Coroner Dorelle Pinch's coronial finding had identified Yunus Yosfiah as the Kopassus officer who allegedly ordered the killings. The AFP would not have had any difficulty finding Yosfiah, the man identified by NSW Pinch as having ordered the killing of the Balibo Five.

Counsel assisting the coronial inquest, Mark Tedeschi QC, said Yosfiah had not responded to invitations to appear at the inquest.³⁰⁵

ABC Radio interviewed Yosfiah on March 2 2007, during the inquest.

ELEANOR HALL: The former Indonesian general and cabinet minister, Yunus Yosfiah, has laughed off the arrest warrant issued by the coroner leading an inquiry into the death of Australian journalists in East Timor more than 30 years ago. Several witnesses appearing at Glebe Coroner's Court have accused Mr Yosfiah of playing a lead role in the killing of the journalists, when he commanded an Indonesian Special Forces unit during the invasion of East Timor in 1975. A State Deputy Coroner has said the warrant was issued because Mr Yosfiah had refused repeated invitations to appear at the inquiry. However, it has no jurisdiction beyond Australia, and Mr Yosfiah has told our Indonesia correspondent Geoff Thompson that he's fed up with the

allegations, and has no plans to come to Australia to be questioned.

YUNUS YOSFIAH: I think the allegations that have already been mentioned before since '98, '99, and then 2000. I've been fed up with that allegation, okay? I do know myself I didn't do anything.

GEOFF THOMPSON: How do you feel about being a wanted man in Australia?

YUNUS YOSFIAH: (Laughs) How I feel?

GEOFF THOMPSON: Yes.

YUNUS YOSFIAH: Nothing.

GEOFF THOMPSON: Nothing?

YUNUS YOSFIAH: Nothing. Because I do know what I did and what I didn't. Those people talking about that, they just make a big lie for the Australian people and the world's people.

GEOFF THOMPSON: And what do you say to the court? What do you say to the coroner at the court who has issued this request for your arrest?

YUNUS YOSFIAH: I don't want to answer that because I have already answered many questions, and I believe the same question that they will provide to me, and I have answered that question many times before. Please open the file in '98, '99 and 2000, please.

GEOFF THOMPSON: Are you upset by this warrant for your arrest?

YUNUS YOSFIAH: No. Because I just said they make a big mistake with that. I do understand myself that I'm not provoked by that.

GEOFF THOMPSON: Do you have any plan to travel to Australia any time in the future?

YUNUS YOSFIAH: No, no, no. Not yet.

GEOFF THOMPSON: Would you ever travel to Australia again in your lifetime?

YUNUS YOSFIAH: What for?

GEOFF THOMPSON: Does it worry you or concern you that if you did travel to Australia at the moment, you would be arrested?



YUNUS YOSFIAH: (Laughs) I don't know.

GEOFF THOMPSON: Is it upsetting to you that you would be arrested in Australia at the moment?

YUNUS YOSFIAH: No, no, no. Because I know that I am not emotion for them.

YUNUS YOSFIAH: I don't feel any guilty, you know what I say?

GEOFF THOMPSON: The Coroner at the Glebe Coroner's Court Dorelle Pinch, she has issued this warrant for your arrest. Do you have any message for her?

YUNUS YOSFIAH: No. I think what I answered to you now, they already hear that. I don't want to answer the same question that already through to ask to me many times before. If you want me, if you want the answer, like that, please open the file.

GEOFF THOMPSON: Why do you think they say these things in the courtroom?

YUNUS YOSFIAH: I don't want to answer your question about this case anymore. With the same question that already asked to me times several years ago.

GEOFF THOMPSON: Anything you want to say to the court in Sydney. Any message for that inquiry?

YUNUS YOSFIAH: I'm still... saying deep sympathy to the families for that.

GEOFF THOMPSON: To the families, you give sympathy?

YUNUS YOSFIAH: Yes, yes. Because maybe so many, so many information that not true.

GEOFF THOMPSON: You think the family has been lied to?

YUNUS YOSFIAH: Yes.

PRESS FREEDOM IN AUSTRALIA

GEOFF THOMPSON: And they haven't been lied to by you?

YUNUS YOSFIAH: No. I believe not.

GEOFF THOMPSON: It seems that...

YUNUS YOSFIAH: I keep my word, I keep my word, you know?

GEOFF THOMPSON: You keep your word?

YUNUS YOSFIAH: Yes.

GEOFF THOMPSON: It seems that they don't believe you though.

YUNUS YOSFIAH: Well, it depends on them. They only to believe me or not.

ELEANOR HALL: That's the former Indonesian Interior Minister Yunus Yosfiah, speaking to our Indonesia Correspondent Geoff Thompson.

Yosfiah continued to play a prominent role in Indonesian politics.

Yosfiah was born in Rappang on August 7 1944.³⁰⁶ After Balibo, Yosfiah rose to be one of Indonesia's most decorated soldiers. He was commanding officer of the Indonesian Armed Forces Command and Staff College (with the rank of Major General) and Chief of Staff of the Armed Forces Social and Political. He was chairman of the Armed Forces Faction in the Indonesian National Assembly. He retired from the army in 1999 with the rank of Lieutenant General.

In 1998-99 Yosfiah served as minister of information in the government of President Bacharuddin Jusuf Habibie. In May 1998, in his inaugural speech as minister, he promised that he would support journalists in their profession.³⁰⁷

As late as March 2019, Yosfiah was supporting the ticket of Indonesian presidential candidate, Gerindra Party chairman Prabowo Subianto. *The Jakarta Post* reported: "Prabowo, a former commander of Kopassus, is also backed by several retired members of the elite unit, including Lt. Gen. (ret) Yunus Yosfiah, a former Kopassus captain during Indonesia's 1975 invasion of then-East Timor, and Lt. Gen. (ret) Yayat Sudrajat, the former chief of the military's Strategic Intelligence Agency (BAIS)."³⁰⁸

Prabowo lost the election but on October 23 2019 he was appointed Defence Minister by President Joko Widodo.

A war crime was committed at Balibo in 1975.

The killers have been getting away with murder.

It is never too late for justice.

ROGER EAST

Roger East was a freelance journalist on assignment for Australian Associated Press when he was murdered by the Indonesian military on the Dili wharf on December 8 1975.

According to the ABC Staff Memorial, East was born in Girraween in Sydney's west on February 7 1922 but grew up at Eumungerie, near Dubbo. After serving with the Navy in the 1940s he began his journalism career reporting for several NSW rural newspapers.

"He joined ABC Radio in Melbourne in 1958 before moving to Brisbane. East left the ABC in 1961 to work on the liberal *Rand Daily Mail* in South Africa, as early stirrings of opposition to apartheid emerged. In 1963 East became an editor of the ABC-affiliated television news agency Visnews in London. John Tulloh, later the ABC's Head of International Operations, worked under East and recalls him as very fair, a good mentor and a good guide.

"Roger East rejoined the ABC in Sydney in 1965, working for radio and TV, before heading overseas once more to edit an English-language newspaper in Spain and working at the UN in New York. Once again back in Australia in 1972 he became a publicity officer for the National-Country Party and later did a similar job for the Labor Party.

"It was the tragedy of East Timor which drew Roger back into reporting. He told people he wanted "to get the truth out.

"He opened a one-man news agency in East Timor, stringing for both ABC Radio in Darwin and the AAP news agency in Sydney. He filed reports on East Timor's calls for international support and provided the first accounts of the killing of the five journalists at Balibo. As the sole remaining

foreign reporter in East Timor his stories described the approaching Indonesian forces and the plight of the civilian population. Roger East's final story for ABC Radio was heard on Correspondents Report on the afternoon of December 7 1975.

"His plans to flee to the mountains with retreating Fretilin soldiers were thwarted when he was cornered in Dili by Indonesian paratroopers. He was executed on Dili wharf with a single shot to the head on December 8 1975. His body fell into the sea and was never recovered.

"Roger East was 53 and was survived by his sister Glenise 'Katie' Bowie, and brothers Alan and Bill."³⁰⁹

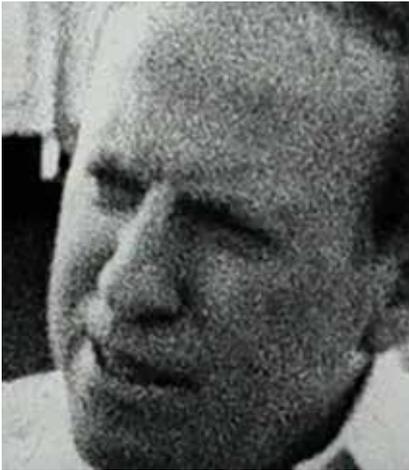
On December 14 2008 ABC Radio's *Hindsight* program looked at the life and career of Roger East. This is an edited transcript of the episode.

Michelle Rayner: The story of the five Australian-based journalists who were killed in Balibo in Timor on October 16th 1975 is well known to many of us, particularly after last year's coronial inquest which found that the men, who've become known as the Balibo Five, were all killed by Indonesian forces. But far less well known is the fate of a sixth foreign journalist who was killed in Timor that same year.

Roger East: [archive material] Well, everything's settling down here, or so it seems. I'm quite happy. I think I'm on a very peaceful island.

Michelle Rayner: That's the voice of Australian journalist Roger East. He was the last foreign correspondent left in Dili when Indonesian paratroopers landed in the Timor capital on December 7th 1975 and launched a brutal 24-year occupation.

At the time of his death, Roger East was in his early 50s and a seasoned journalist who travelled and worked all around the world. Like the Balibo Five, he went to Timor to investigate the events first-hand. But Roger East had been planning to stay on through the course of the occupation of Timor to try and offer eyewitness coverage of the conflict, even if he had to go underground. His death, less than 24 hours after the Indonesian military swept into Timor, effectively put an end to any independent reportage of the Indonesian occupation as it played out over the next two decades. And unlike the



Above: Roger East, died aged 53; **Right:** The 'Flag House' at Balibo | Felix Dance



Balibo Five, Roger East's death by gunshot has never been the subject of a coronial inquest. In fact, up until recently Roger East had largely slipped from the pages of history, a footnote in the better-known story of the Balibo Five. But the findings of the recent inquiry into their deaths has renewed interest in this history and the Australian journalists whose lives were caught up in the story...

Newsreader: It's just after 22 minutes past eight, and now to the case of Roger East. Roger East is a freelance journalist, one of the small band of men who wander the world, concentrating their attention on the trouble spots and sending dispatches home to pay their way. Some weeks ago Roger East became the only Australian journalist to go into East Timor after the death of the five previous Australian journalists to go into the area. He was warned that he entered at his own risk and nothing has been heard of him since the invasion of Dili, and there are now serious fears for his safety.

[ABC Four Corners producer] Peter Cronau: The Balibo Five were TV journalists, so they were getting film back to Australia and they were being seen on the colour screen, whereas Roger had his typewriter sending out written reports (anonymously often, because they didn't publish by-lines a lot) to wire services.

So the deaths of the journalists were more real to a public that needs colour and movement to understand issues. For Roger, he was a backroom boy pumping out stories for a newswire, so he wasn't going to grasp the attention of the public nearly as much.

[Then Asia-Pacific editor for Fairfax] Hamish McDonald: There was a kind of Hemingway-esque sense of fate or mission about him going to Timor. He was in his 50s, single, unattached. I felt he wanted to make his name and come out of it remembered for something he did.

Roger East: [archive material] I'm quite happy. I think I'm on a very peaceful island.

[Producer of Hindsight] Erica Vowles: Journalist Roger East was born in Sydney in 1923. He had two brothers, Bill and Alan, and a younger sister, Glenise...

Peter Cronau is a producer with the ABC's Four Corners program. He's researched the life of Roger East for a biography about him. He says the navy provided Roger East's entrance into a life full of travel and work, far away from country NSW.

Peter Cronau: Certainly getting out of a depressed rural setting was something a hell of a lot of people did after the Depression, and he did that by joining the navy, which came along at about the same time as WWII. So he spent many, many years in the Royal Australian Navy, and in fact was at the fall of Singapore, spent a lot of time, ironically, in what later became Indonesia, he spent a lot of time in Jakarta. And during that time he saw the world.

Erica Vowles: Roger East... left Australia in the late 1940s to spend much of the next two-and-a-half decades travelling and working his way around the world.

He landed first in England, but by 1955

he was in Cyprus... In 1956 when the Suez crisis was in full swing, Roger East left Cyprus and headed to the conflict zone... [He] returned to England in the 1960s, and picked up work in the new media; television. A friend from that time, journalist John Tulloh, met Roger in London in 1963 and worked with him at Visnews, the precursor to Reuters TV...

By the time Roger East was 50 years old, his career in journalism had seen him in Africa, the United States, the Middle East, the United Kingdom, Europe and China. He'd also worked in public relations for the United Nations...

Erica Vowles: While Roger East's interest in Timor was growing, at this stage the brewing conflict in the region wasn't getting as much attention from established media. And anyway, Timor was being overshadowed by the wars in Vietnam and Cambodia.... Current president of Timor Leste, Jose Ramos Horta was foreign minister in exile during the 24 year long Indonesian occupation. He first met Roger East in Darwin in October 1975.

Jose Ramos Horta: As a person he immediately struck me as very passionate, very emotional, not a typical Anglo-Saxon or Australian; laid-back, cool, quiet, understated. He was very almost like a Latino, you know, very passionate, and you can see in his eyes, his voice, his emotion. And immediately I liked him because of that. I think we were both very similar in this regard.

Newsreader: It's now feared that five Australian television newsmen may have been killed in the fighting in East Timor.



PRESS FREEDOM IN AUSTRALIA

Although the reports are unconfirmed, the influential Indonesian newspaper Kompas quotes the UDT leader Senor Lopez da Cruz as saying that the bodies of four white men were found in the ruins of a house in Balibo late last week soon after the newsmen were reported missing. Also near the bodies was a hand-written note with the word 'Australia' on it.

Erica Vowles: In October 1975, five Australian-based television journalists, who were investigating the conflict in Timor, were shot in the small village of Balibo. For Roger East it was the catalyst for his decision to somehow get to Timor...

Peter Cronau: He was able to get to Timor. He agreed to help them set up a news agency to enable better quality reporting to be able to come out of Timor...

[Roger's sister] Glenise Bowie: He phoned me on the afternoon that he was leaving for Timor and we had a long conversation and I reminded him how dangerous it was, about how the five young Aussies had just been recently killed, how dangerous it was. He'd been trying for ages to get there and he got so excited he'd been granted permission to fly out that night. It was a long farewell, it was a long talk.

Erica Vowles: He quickly began dispatching reports to Australian news bureaus and to wire services around the world. On November 10th 1975 he scooped every other journalist in Dili by publishing for the first time eyewitness accounts of the October deaths of the Balibo Five. But the breadth of Roger East's reportage went much further; it was on-the-ground analysis of events as they were unfolding in Timor and the mounting tension as the Indonesians closed in.

Reading: [Roger East news reports] War comes to Dili nightly. A war of nerves, as both curfew and night settle on this balmy Pacific island, an Indonesian warship noses down the bay... There's too much confusion in Jakarta thinking to get their facts [about the deaths of the Balibo Five] to gel and their reports in harmony. First the Five were missing, then we were told they were shot as communist sympathisers of the Fretilin forces. Still later Jakarta blamed Portugal, and finally the deaths resulted from mortar fire, the bodies burned beyond recognition and their burial place not noted...

What actually happened at the border village at Balibo, related by these three

[militiamen], conformed to earlier sketchy reports of how the Australians died... Channel Nine's Brian Peters was shot while still filming the advancing Channel Seven's Gary Cunningham, Greg Shackleton, Tony Stewart, and Nine's Malcolm Rennie, died with their hands in the air and their backs to their captors...

Erica Vowles: Timor declared itself to be an independent nation on 28th November 1975, but it was to be a short-lived celebration. It was becoming clear that an Indonesian invasion was imminent. Roger East had always planned to retreat to the hills behind Dili with Fretilin forces and to report on the impact of the invasion from a radio base he had already set up.

Meanwhile, Timorese leaders like Ramos Horta, uncertain of their own escape routes, were arming themselves. Roger East was advised to do the same, but according to Ramos Horta, he refused to carry a gun.

Jose Ramos Horta: He saw me with a gun and he made fun of me because I looked a bit clumsy with a gun, and he said something like, 'Jose, don't shoot yourself.' I told him, 'Roger, it's not so funny', and he showed me a pen or pencil and said, 'This is my gun.'

Roger East: [archive material] I have made arrangements; I'm up to the border where the fighting is. I probably won't get back from the frontier until the following weekend.

Erica Vowles: Roger East never made it to the hills. [His] escape route to the hills by this time was cut off. Several witnesses have been interviewed about the first two days of the invasion, and there's overwhelming evidence to implicate Indonesian paratroopers in the execution of Roger East on December 8th 1975.

[Former East Timor consul] James Dunn: I had a couple of witnesses many years ago, one who saw this Australian being dragged by three Indonesian soldiers, kicking and swearing at them, to the wharf, and then later another one at the wharf said he was one of those who was taken to the edge of the wharf. And first of all he was forced to stand and face the sea, but he turned around and said, 'I'm not Fretilin, I'm an Australian, I'm an Australian,' and the bullets hit him and his body went into the water.

Erica Vowles: Roger East's death took

some time to be verified. There were reports that he was still alive, that he had made it to the hills with Fretilin, all of which caused much pain and anguish for those close to him... Meanwhile, the Indonesian occupation of Timor continued. Two hundred thousand people died during the occupation due to starvation and mass murders, and the bulk of these deaths happened in the first three years after the invasion. These deaths remained largely unknown to the world, as independent reportage from the country itself was made impossible.

Erica Vowles: In 1995, while Indonesia still occupied East Timor, the Australian government held an inquiry into the death of Roger East. It concluded that he'd been killed by an unnamed Indonesian soldier. And last year the Northern Territory government rejected further requests for a coronial inquest, on the grounds that Roger East's death did not 'satisfy the definition of a reportable death'.³¹⁰

MEAA believes that in light of the evidence uncovered by the Balibo Five inquest that led to the AFP investigating a war crime, there are sufficient grounds for a similar probe into Roger East's murder and that similarly, despite the passage of time, the individuals who ordered or took part in East's murder may be found and finally brought to justice.

However, given the unwillingness to pursue the killers of the Balibo Five, MEAA does not hold out great hope that Australian authorities will put in the effort to investigate East's death. Again, it is a case of impunity where, literally, Roger's killers are getting away with murder.

THE BALIBO FIVE-ROGER EAST FELLOWSHIP

MEAA has honoured the memory of the Balibo Five and Roger East with a fellowship in their name, in conjunction with Union Aid Abroad-APHEDA. MEAA has provided the bulk of the funding and additional funds being received from the Fairfax Media More Than Words workplace giving program, and private donations. The fellowship sponsors travel, study expenses and living costs for East Timorese journalists to develop skills and training in Australia.

BALIBO'S LIVING MEMORIAL

In March 2019 a new school was opened in Balibo as a memorial to the five



Juanita Nielsen,
editor and publisher
of the newspaper
Now, at her Pott's
Point office | McNeill

murdered journalists. Seven Network journalist Nick McCallum wrote: “The school was built in an area where there were no education facilities. This now means local children will no longer miss out on the start of a basic education...

“East Timor’s Education Minister Dulce Soares grew up near Balibo and her family had direct contact with the Australian journalists several days before they were killed. She vows the local schoolchildren will now be taught about the young Australians who died trying to tell a story the world needed to know. ‘Honestly to say as a Timorese I

feel ... I’m very emotional,’ she said. ‘All Timorese people, especially people in Balibo, they should know exactly what is this story about the Balibo Five’.

“The formal opening ceremony was attended by the widow of one of the journalists, Shirley Shackleton. [She] was swamped by the 56 students now attending the school and was overwhelmed by the gratitude. ‘I think it’s a wonderful legacy. True in every way,’ she said.

“At age 87, Shirley Shackleton says such events can still make her sad, bringing

back such painful memories. But this school opening was just so uplifting. ‘It’s been such a hard fight, but look at it!’ she said. ‘It’s marvellous these children have got a beautiful school’.”⁵¹¹

BALIBO HOUSE TRUST

The trust honours the memories of the Balibo Five by working with the Balibo Community to enrich their lives. Its work includes:

- Promoting early childhood education through the Balibó Five Kindergarten and the proposed Prep-Grade Two school at Belola.
- Developing skills through the Balibó Community Learning Centre.
- Creating employment and income through tourism at the historic Balibó Fort, Balibo Fort Hotel and Dental Clinic.
- Improving the oral health of the Balibo community by providing free dental treatment and community education and preventative programs.
- Fostering awareness of the significance of Balibó to relationships between Australia, Timor-Leste and Indonesia.
- Maintaining a permanent memorial to the five journalists murdered at Balibó in 1975 and to the Balibó people murdered during the Indonesian occupation of Timor-Leste.

For more information on the work of the Balibo House Trust, go to: <http://balibohouse.com/>

JUANITA NIELSEN

Sydney journalist and editor Juanita Nielsen disappeared on July 4, 1975. Nielsen was the owner and publisher of *NOW* magazine.

Juanita Joan Nielsen was born on April 22 1937 at New Lambton, Newcastle, New South Wales. She was a great-granddaughter of Mark Foy; her father was a major shareholder in Mark Foy’s Ltd. Her parents separated soon after her birth and she was raised by her mother at Killara, Sydney. Educated at various schools, including Presbyterian Ladies’ College, Pymble, she obtained her Intermediate certificate in 1952 and worked at Mark Foy’s as a glove model before leaving Australia in 1959.

She returned to Sydney in 1965 and opened the Gear Box fashion boutique in Mark Foy’s city store. She was briefly estranged from her father for leading

an unsuccessful shareholders' revolt against a takeover offer (\$4 million) by McDowell's Ltd for Mark Foy's in 1968. Following their reconciliation, her father bought her a terrace house in Victoria Street, Kings Cross, and a local newspaper, *NOW*, which she published from her home.

Wearing distinctive clothes and a 'beehive' wig, Nielsen modelled fashions and hair styles for her newspaper's feature pages. She also conducted a vigorous editorial campaign in support of the green ban movement against the redevelopment of Victoria Street by businessman Frank Theeman, mobilising local residents against the demolition of the street's historic terraces and the eviction of their tenants.

There were numerous threats to her safety.

In the midst of the tension, Nielsen agreed to attend a meeting at the Carousel Club in Kings Cross on July 4 1975, regarding advertisements being placed in an upcoming edition of *NOW*. The club's owner at the time was "King of the Cross", organised crime boss Abe Saffron.

The Daily Telegraph reported that a "club employee, Eddie Trigg, who set up the meeting, was jailed in 1977 after admitting that he and an accomplice had planned to kidnap Nielsen less than a week before she disappeared, but pulled out of the caper at the last minute.

"Police believe the small-time crook was likely the last person to see Nielsen alive."³¹² Trigg died in 2013.

"Attempts to find her or her corpse proved fruitless. Despite public outcry, the mystery remained a major case in the annals of unsolved Australian crimes. Over the years some information about the circumstances of her presumed abduction and murder came to light. Two persons connected with the Carousel nightclub were convicted (one in 1981, the other in 1983) on charges of conspiracy to abduct Juanita Nielsen on an earlier occasion. The trials did not directly involve events on the day she vanished."

It was not until 1 November 10 1983 that a coroner and jury of six declared that

Nielsen had died "on or shortly after July 4 1975". They were unable to name "the place of death or the manner and cause of death", but found "evidence to show that the police inquiries were inhibited by an atmosphere of corruption, real or imagined, that existed at the time".³¹⁵

In 1994 the Commonwealth Parliamentary Joint Committee on the National Crime Authority further castigated investigative ineptitude in the case and emphasised links between her presumed murder, property developers and the criminal milieu at Kings Cross.

As recently as August 2014, NSW Police forensics dug up the basement of a former Kings Cross nightclub in an attempt to locate her remains but the search was unsuccessful. While there have been convictions over her abduction, no formal homicide charges have been brought and Nielsen's remains have never been found.³¹⁴

Journalist and author Peter Rees wrote in 2015: "Juanita's disappearance on that wintry day in the heart of Kings Cross is now embedded in the psyche of Sydney, a metaphor for the city's redevelopment and property battles. The old Mark Foy's emporium, where Juanita once worked, is now the Downing Centre courthouse complex. The failure to solve her murder has left an enduring stain on the administration of justice in NSW. Juanita Nielsen would have understood the irony."³¹⁵

PAUL MORAN

In March 2020, the individual who is believed ordered the terrorist attack that killed Paul Moran, began serving a 12-year prison sentence in Italy.

On March 22 2003 Moran, a freelance cameraman on assignment with the Australian Broadcasting Corporation to cover the Iraq war, was killed while working near the town of Sayed Sadiq in northern Iraq. While filming, a suicide bomber in a taxi pulled up beside him and exploded the device, killing Moran instantly.

Moran, aged 39, was the first international media person killed in the 2003 Iraq war.

The attack was carried out by the now defunct terrorist group Ansar al-Islam

which was listed by the United Nations and the United States as a terrorist arm of Al-Qaeda.

According to US and UN investigations, the man most likely responsible for training and perhaps even directly ordering the attack was Oslo resident Najmuddin Faraj Ahmad, also known as Mullah Krekar.

Paul Moran had worked in the Iraq region before. According to the his biography on the website of the Paul Moran Foundation: "In late 2002 with a war in Iraq looming, the ABC approached Paul to work as its cameraman/editor in Northern Iraq in view of his extensive knowledge and experience there. He leapt at the opportunity provided it did not conflict with another happy event in his life, the arrival of his first child. On February 3 2003, a baby girl arrived. Paul and [his wife] Ivana named her Tara Alexandra.

"The following month, after much thought, Paul decided he was ready to move to Northern Iraq for the ABC. There he linked up with an experienced ABC foreign correspondent, Eric Campbell, himself a new father for the first time. They filed several reports and by all accounts thrived in what they were doing despite the hardships and omnipresent dangers as the war finally began.

"On March 22 2003, they travelled from the nominal Kurdish capital of Sulaymaniyah to visit the base of an extremist group, Ansar Al-Islam, which US missiles had hit the previous night. Just as they completed their filming, there was some sudden commotion outside the base. Paul instinctively ran to get some shots. At that very moment, a car screeched up alongside him and others and exploded. It was a suicide bomber. Paul stood no chance."³¹⁶

The ABC Staff Memorial says: "The news of Paul's death was greeted with disbelief, mainly due to his larger-than-life character, his apparent indestructibility and the widespread regard and admiration of those who knew him."³¹⁷

"Born and raised in Adelaide, Paul is remembered as an adventurous and spirited boy who developed an early interest in photography. He began his working life at 18 as an office boy at a

local TV station but soon graduated to cameraman.

“In 1990, Paul moved to London where he made the initial Middle East contacts that were to inspire his interest in the region. After Iraq invaded Kuwait, he was recruited to work for an exiled Kuwaiti TV service but Paul preferred the independent life of a freelancer, shooting and editing his own news stories and features.

“He travelled widely, gathering friends everywhere and developing a deep interest in humanitarian issues and the plight of refugees.”

The Foundation website adds: “He had a natural empathy with the oppressed and the underdog. The historic plight of the Kurds in Northern Iraq and Iran and their quest for a state of their own moved him.... Paul was far more concerned about humanity than money or material gain. He believed the best in people.”³¹⁸

Mullah Krekar, a 63-year-old Iraqi Kurdish preacher who has been residing in Norway as a refugee since 1991, admits to being the founder Ansar al-Islam.³¹⁹ He has since distanced himself from that group, claiming not to have led the terrorist organisation since 2002.³²⁰

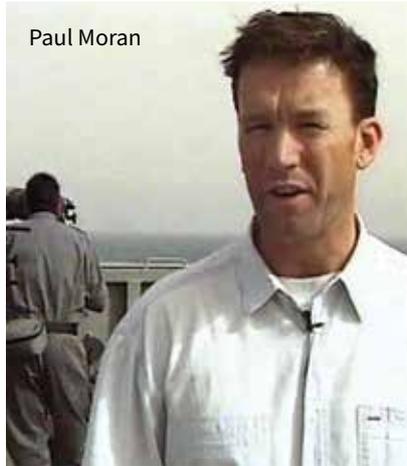
While Norway has been seeking to have him extradited since 2003 on the grounds that he is considered a threat to national security, Krekar has escaped extradition to Iraq or to the US because Norway resists deporting anyone to countries that have the death penalty.

Krekar has been imprisoned in Norway on two occasions. In 2012 he was found guilty of four counts of intimidation under aggravating circumstances. He was sentenced to two years and 10 months in prison for making threats against the future Norwegian prime minister.

He was released from prison in January 2015 and ordered into internal “exile” at the village of Kyrksaeteroera, a town 500 kilometres from Oslo.³²¹ Krekar had to report regularly to police and stay in a refugee centre.

On February 20 2015, a month after his release and in the aftermath of the massacre in Paris of journalists,

Paul Moran



editorial and office staff at the *Charlie Hebdo* magazine, Krekar was arrested for saying in an interview that when a cartoonist “tramples on our dignity, our principles and our faith, he must die”. Krekar was charged with “incitement” and making death threats against a Kurdish man. He was sentenced to 18 months in prison.³²²

On February 10 2015 MEAA wrote to then Justice Minister Michael Keenan and then AFP Commissioner Andrew Colvin, stating: “We are deeply concerned that if those responsible for killing Paul are not brought to justice then they are getting away with murder.

“You would be aware that the United Nations General Assembly has adopted Resolution A/RES/68/163 which urges member states to: ‘do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies.’”

On April 15 2015, the AFP’s Deputy Commissioner Operations Leanne Close replied to MEAA’s letter saying that there was insufficient information available to justify an investigation under section 115 of the *Criminal Code Act 1995 (Harming Australians)* and that despite the new information on Krekar’s movements, the AFP would not be taking any further action.

On November 11 2015, while in prison, Krekar was served with an arrest warrant as part of Europe-wide and

Italy-coordinated police “swoop on Islamist militants planning attacks.” The raids targeted Krekar and 14 other Iraqi Kurds and one non-Kurd.

The Italian prosecutors allege the men were involved in a Kurdish Sunni group called Rawti Shax – meaning “the New Course” (also known as Didi Nwe meaning “Towards the Mountain”) that sought to train fighters for a future conflict in Iraq’s Kurdistan. The prosecutors alleged the organisation was a jihadist network led by Krekar, adding that Krekar had pledged allegiance to ISIL in 2014.

In mid-March 2016 Norwegian media said Krekar had been released from his Norwegian jail after a court found him not guilty of the earlier charge of making threats. His lawyer said Krekar would seek compensation.

On November 23 2016 the Norwegian Police Security Service arrested Krekar in order to secure his extradition to Italy. But on November 30 2016 it was reported that Italy had withdrawn its extradition claim, and Krekar was released.³²³

In July 2019 Krekar was convicted, *in absentia*, by an Italian court in Bolzano of leading a jihadist group. He was sentenced to 12 years in prison for leading the Rawti Shax network, a now-disbanded Kurdish movement that allegedly has links with Islamic State and which is thought to have planned attacks in Western countries. Krekar has described the charges as “fake”.

On March 26 2020 the Norwegian Justice Minister Monica Maeland announced that Krekar had been extradited to Italy to serve his sentence.³²⁴ Krekar was flown to Italy that evening and held in Rebibbia Prison in Rome.³²⁵ His lawyers condemned the extradition citing concerns over Krekar’s health in an Italian prison in the midst of the COVID-19 pandemic.

Paul Moran Foundation

After Moran’s death his wife Ivana Rapajic-Moran has established the charitable Paul Moran Foundation. Its first project was to fund a children’s library, part of a learning centre for 829 boys and girls in Erbil, in the northern Kurdish region of Iraq.

The Ampatuan Massacre trial

BY MIKE DOBBIE

The November 23 2009 Ampatuan Massacre in the southern Philippines is the single greatest atrocity committed against media workers. Of the 58 people murdered, 32 were journalists.

For many years, MEAA has been closely involved in monitoring the impact and aftermath of the massacre. MEAA representatives including the Media section federal president participated in the initial International Federation of Journalists' rapid assessment solidarity mission on December 5-11 2009.³²⁶

MEAA followed up its initial engagement in several subsequent missions to determine what progress was being made on bringing the perpetrators to account given the Philippines government's appalling history of impunity. In 2014, on the occasion of the fifth anniversary of the massacre, an IFJ mission included two MEAA representatives including the MEAA Media federal vice-president.³²⁷

MEAA has continued to call for justice for the victims of the massacre, an end to the impunity surrounding journalist killings and increased safety for journalists.³²⁸ MEAA's Media Safety and Solidarity Fund has also provided financial support and assistance for the education of the children of the slain journalists.³²⁹

The Ampatuan Massacre took place in the province of Maguindanao, on the island of Mindanao, on Monday, November 23 2009.³³⁰ The massacre is named after the provincial municipality in which it took place as well as the war-lord Ampatuan family that is charged with the killings.

Mindanao has been caught up in a long-running insurgency with the government arming local clans to fight the insurgents. War lords have created large heavily armed militias sparking dangerous rivalries among rival clans.

The massacre victims were in a multi-vehicle convoy heading to the provincial capital of Sharrif Aguak to file election candidacy papers for Esmael "Toto" Mangudadatu for the upcoming May 10 2010 national gubernatorial elections. Mangadadatu was challenging the long-standing incumbent governor Andal Ampatuan Snr. Ampatian ran his own militia and had installed various members of his family in posts within his administration.

At 10am the eight vehicles were stopped at a PNP checkpoint on the highway by officers of the Philippines National Police commanded by a chief inspector, and about 100 armed men led by Andal Ampatuan Jr.

At the checkpoint, the convoy of Mangudadatu's family, the journalists plus two unrelated vehicles caught up at the checkpoint, were commandeered by the gunmen. The eight vehicles were diverted west from the highway on to a rough dirt track. They were driven along a ridge line for about 2.5 kilometres to the top of a knoll with a steep drop-off. A yellow tracked-wheel excavator was parked at the top of the track. It had dug three pits between 1.5 metres and 3.5 metres deep.

Over the next hour the armed men killed 58 people: 43 men and 15 women. The victims were initially taken out of the vehicles and shot in batches of about 10. But when the others refused

to get out of the vehicles they were shot where they sat.

The excavator began to bury the bodies and vehicles, interspersing each layer by driving over the vehicles to crush them.

At 11am the local military commander was told that the convoy may have been kidnapped and an infantry brigade was ordered to commence operations to rescue those who had been abducted. Soldiers reached the massacre site at about 3pm, disturbing the excavator as it tried to bury all evidence of the massacre. Six layers of bodies and vehicles were crushed in the pits; the other vehicles were intact and contained the dead. One body, the 58th, was never recovered from the site causing immense grief for that man's family – particularly as no charges were ever brought over his murder.

A total of 197 people are officially accused of having a role in the massacre. Eighteen of the accused carry the Ampatuan surname, including clan patriarch Andal Ampatuan Sr, and his sons Andal Jr and Zaldy Ampatuan. The chief inspector at the checkpoint and a staggering 61 other police officers are charged for their role in the massacre.

Achieving justice is achingly slow and highly traumatic for the victims' families. The Ampatuan trial only began on September 15 2010 – 293 days after the arrest of Andal Ampatuan Jr.

By the fifth anniversary of the massacre, only 118 of the 197 suspects had been arrested and arraigned. At least 79 suspects are still at large: five are police officers; four are members of the Armed Forces, and 53 are members of the



Top: Excavating the buried vehicles and bodies at the Ampatuan Massacre site | *Nonoy Espina, NUJP*; **Above left:** The Ampatuan Massacre site | *Nonoy Espina, NUJP*; **Above right:** The massacre site | *The Philippine Star*

government-subsidised paramilitary militias.

Nine of those still to be arrested have the surname Ampatuan. At least four prosecution witnesses were murdered or died under mysterious circumstances. Clan patriarch Andal Ampatuan Sr. died in 2015.³⁵¹

At times the court would sit only two days a week – Wednesdays and Thursdays. In the 1500 days to the fifth anniversary of the massacre the court had sat for only 206 days. It took 560 days before the assets of the Ampatuans were frozen.³⁵²

By November 23 2019, the 10th anniversary of the massacre, 70 suspects were still at large.³⁵³ Even so, the trial had been a mammoth undertaking. An editorial in the *Cebu Daily News Inquirer* stated: “Consider the workload: 166 witnesses for the prosecution and 107 witnesses for the defence or 273 witnesses to be cross-examined, 15 sets of offers of evidence in connection for the bail applications of the 70 persons accused, who are part of the 197 respondents including the prime suspect... Andal Ampatuan Jr. The nine-year trial had... produced transcripts of stenographic notes worth 59 volumes, 129 volumes of records for the case

and 10 volumes of the prosecution’s evidence.”³⁵⁴

On December 19 2019, trial judge Jocelyn Solis-Reyes brought down verdicts on 101 people who had been put on trial for their roles in the massacre. “Of the accused, eight members of the powerful Ampatuan clan — including brothers Andal “Unsay” Ampatuan Jr. and Zaldy Ampatuan — were convicted of 57 counts of murder and sentenced to 40 years in prison without parole.”

In all, 28 people were convicted and sentenced to *reclusion perpetua*, a

Filipino legal equivalent to a life sentence. A further 15, mostly police officers, were found to be accessories to the crime and sentenced to between six and 10 years imprisonment. Some 53 people, including another son of Andal Ampatuan Sr., Datu Sajid Islam Ampatuan, and also several police officers along with three other Ampatuan family members were acquitted of murder on the grounds of reasonable doubt. Three police officers were acquitted because the prosecution had failed to prove their guilt.³⁵⁵

In a statement the National Union of Journalists of the Philippines (NUJP) said: “The Ampatuan name is the one to which the massacre has been burned in the Philippines psyche in the years since.

“... this is a significant and landmark step in proving the guilt of the Ampatuan clan members and their minions in the massacre – the worst single attack against journalists in the world and the worst single election-related violence in the country.

“The convictions and indemnification can never bring back the lives of the victims and erase the pain of the families who lost their loved ones. But this verdict, in some ways, alleviates the suffering that they have endured for the past 10 years,” the NUJP said.

The International Federation of Journalists said: “While we welcome the verdict, it came after ten years of heavy campaigning, sacrifice, pain and the suffering of many. Children have been left without parents, witnesses murdered and impunity for crimes against journalists has reigned. The result has been more journalist lives lost in the process. Justice came at a great cost but we commend the efforts of many who have persisted in a very necessary and critical fight for justice. The IFJ stands in solidarity with NUJP and will continue to fight for justice against those who try to stamp out the truth.”³⁵⁶

The Philippines’ Center for Media Freedom and Responsibility wrote of the court’s judgement: “... this one decision cannot eliminate in one stroke the other factors that have made impunity possible and practically inevitable. These include the weaknesses of the justice system particularly at the local



Top: Ampatuan Massacre suspects await the Supreme Court verdict; **Above:** Andal Ampatuan Junior | *CS Monitor*

level where communities are rendered more powerless by abusive politicians who collude with local officials, police and military under their command.

“Ending impunity demands the dismantling of the structures of control imposed by ruling clans and political dynasties. Operating as virtual warlords, these political leaders have at their service the government’s public security forces as its private army. Reforms for the long term include the strengthening of the justice system so it can be a separate and independent third branch of government, enabling justice officials to effectively prosecute wrongdoers.

“For their own protection, the press community must work together to put its own house in order so journalists can provide news in the interest of the public; and providing relevant

and meaningful information that will help citizens participate in public life. Journalism must win back its credibility and prove its usefulness to the people. Only then can a press be ensured of the kind of public support that will help prevent threats and attacks against journalists and press freedom.

“It is an impressive decision that called for singular dedication and courage on the part of Judge Jocelyn Solis-Reyes. But this is only the first step.”³⁵⁷

Mike Dobbie is MEAA Media’s communications manager. He led the IFJ’s 2009 rapid assessment solidarity mission and participated in subsequent missions including the five-year anniversary international solidarity mission in 2014.



Exiled Saudi journalist Jamal Khashoggi is last seen entering the Saudi embassy in Istanbul

Tackling impunity

On October 29 2018, MEAA wrote to Foreign Affairs Minister Marise Payne and Shadow Foreign Affairs Minister Penny Wong advising them that on October 22 the global journalists union, the Brussels-based International Federation of Journalists (MEAA is an affiliate member and hosts of the IFJ’s Asia-Pacific office in Sydney) had made a formal representation to the United Nations proposing a new UN convention dedicated to the protection of media professionals.

In its letter, MEAA noted that to date in 2018, two journalists had been killed every week on average and conviction rates for those who mastermind such killings remain almost non-existent.

“Journalist killings is a growing concern, highlighted most recently by the murder of Saudi journalist Jamal Khashoggi and bomb threats made to the offices of CNN,” MEAA said.³³⁸

“The IFJ argues that the deliberate targeting of journalists and the systemic impact of attacks on media workers indicates the need for a dedicated

instrument to tackle crimes against journalists and has proposed the new convention (see the attachments).

MEAA added: “There is an important Australian element to the proposal. Since 1975, nine Australian journalists have been murdered with impunity – eight while working on assignment overseas. The most recent case is that of ABC cameraman Paul Moran killed by a car bomb in northern Iraq in 2003, leaving behind his wife and a seven-week-old daughter. The individual who ordered the bombing is known but he has not been brought to justice for his role in the murder of Paul.”³³⁹

Subsequently, on March 19 2019, the International Federation of Journalists issued a statement:

Representatives from governments in every continent today joined the IFJ, journalists’ unions, editors groups, public broadcasters and media organisations in a united call for the United Nations to take action to tackle impunity by adopting a Convention on the safety and protection of journalists... The Convention on the Protection and Independence of Journalists and Other

*Media Professionals*³⁴⁰ seeks to provide greater safeguards for media workers by:

- Rectifying a gap in international law for binding norms establishing safeguards for media workers specifically
- Including not only journalists, but all the media professionals who are at risk every day, from the cameramen to the drivers, interpreters etc
- Allowing denunciations of systematic violations by persons other than the direct victims, effectively combating self-censorship
- Providing for interim measures and an expedited procedure in case of alleged violations.

The Convention not only includes incontrovertible obligations such as the protection of journalists against attacks on their life, arbitrary arrest or forced disappearances, but also others so far found only in soft law, like the obligation

- To protect the confidentiality of journalistic sources;
- Not to misuse national security to hinder the work of journalists through arbitrary detention;
- To conduct an effective investigation where crimes against journalists have been committed, capable of bringing to justice not only the executors, but also the moral authors of crimes.

In the shadow of violence

On the afternoon of October 16 2017 Maltese investigative journalist and anti-corruption activist Daphne Caruana Galizia wrote a post on her widely read blog *Running Commentary*, concluding: “There are crooks everywhere you look now. The situation is desperate.”

She published the post then got into her Peugeot 108 and drove away from her home. Moments later, at about 3pm, Daphne was murdered when a car bomb in her vehicle detonated. She was killed instantly.

The chassis of the car was blown off the road and landed in a nearby field. Daphne’s remains were found by her son Matthew, 80 metres away from the blast site. He wrote: “I looked down and there were my mother’s body parts all around me.” Daphne was 53.³⁴¹

Given that the incident was the sixth car-bombing in Malta in two years it seemed unlikely that there would be much reaction to her death. But, as is only sometimes the case, the murder of a journalist drew widespread local and international outrage.

Daphne was described as Malta’s most intrepid and controversial journalist. She was a regular columnist with *The Sunday Times of Malta* and later *The Malta Independent*.

She was regularly confronted by intimidation and threats, libel suits and other lawsuits. She was arrested on two occasions. “The front door of her house was set on fire in 1996. The family dog had its throat slit and was laid across her doorstep. Years later, the neighbour’s car was burned, possibly in a misdirected attack. There was a further incident in 2006, when the house was set on fire while the family

was asleep inside. After Caruana Galizia started blogging, her terrier Zulu was poisoned and her collie Rufus was put down after being found shot. According to Matthew Caruana Galizia, threats were almost a daily occurrence. These took the form of phone calls, letters, notes pinned to the front door, text messages, emails, and comments on her blog.”³⁴²

She began her powerful blog in 2008, using it to publish her investigative reporting and commentaries. In 2016 and 2017 she began revealing allegations about Maltese politicians including identifying politicians caught up in the Panama Papers tax haven investigations revealed via the International Consortium of Investigative Journalists. Daphne identified the tourism minister, together with the chief of staff of Prime Minister Joseph Muscat, owned a Panamanian company and operated trusts based in New Zealand. Her final blog post was directed at the chief of staff, describing him as a “crook”.

On November 27 2019, Reporters Sans Frontieres wrote: “After more than two years of impunity for the assassination of journalist Daphne Caruana Galizia by a car bomb in Malta, the criminal investigation is finally moving forward, with a number of arrests and political resignations taking place over the past week. Despite this apparent progress, RSF emphasises that political resignations are not a sufficient step towards justice, and demands prosecution of the masterminds and all others involved in the assassination without further delay.

“The Prime Minister’s former chief of staff, Keith Schembri, is the latest to be arrested in connection with the assassination of Daphne Caruana Galizia, following his resignation on



November 26. Minister for Tourism Konrad Mizzi has also resigned, and Minister for the Economy Christian Cardona has suspended himself. Businessman Yorgen Fenech – the owner of Dubai-registered company 17 Black – has been arrested, questioned, and released three times. He has not yet been charged, but remains guarded by police and has requested immunity from prosecution in exchange for information. Fenech’s personal doctor, Adrian Vella, has also been arrested in connection with the assassination.

“Suspected middleman Melvin Theuma has been granted a presidential pardon in exchange for information, and is scheduled to testify before a magistrate on November 29. Three accused hitmen – Alfred Degiorgio, George Degiorgio, and Vincent Muscat – also remain in detention following their arrest on December 4 2017, but have not yet been brought to trial.

The wreckage of Daphne Caruana Galizia's car



“After two long years of impunity, we welcome the significant developments that now appear to be taking place in the investigation into the assassination of Daphne Caruana Galizia. This is the result of sustained campaigning by Daphne Caruana Galizia’s family and Maltese and international civil society in the face of tremendous pressure, as well as the courageous investigative reporting that has continued. However, these are not sufficient steps towards justice. We call for all hitmen, all middlemen, and all masterminds to be prosecuted to the full extent of the law.

“For the country to be able to turn a page and move on, all has to be known about the facts and those responsible for the murder, and all steps have to be taken to ensure full justice.”³⁴³

In December 2017 Prime Minister Muscat resigned “driven from office by the constitutional and political

crisis triggered by the murder of the investigative journalist Daphne Caruana Galizia.”³⁴⁴

On April 17 2018, a consortium of 45 journalists from 18 news organisations in 15 countries, including *The Guardian*, *The New York Times*, *Le Monde* and the *Times of Malta*, published The Daphne Project, a collaborative digital publication to complete her investigative work.³⁴⁵

On December 31 2019, the International Federation of Journalists published its annual list of media workers killed in the line of duty. The 2019 list showed 49 journalists killed – half as many as in previous years.

Latin America is the region with the highest number of deaths (18), followed by the Asia-Pacific (12), Africa (9), the Middle East and Arab world (8) and Europe (2).

The IFJ said: “Two key observations emerge from the statistics. Firstly, threats, harassment, imprisonment and murder no longer take place only in countries at war. Secondly, the victims are mainly local journalists. In the majority of cases, it is articles and reports on abuses of power, corruption and crime that have led to targeted violence and killings.”

Since the launch of the IFJ Killed list report in 1990, the federation has recorded 2530 deaths of journalists.

“The IFJ continues its work to combat impunity by demanding that governments take responsibility for the lack of investigation into the murders of journalists and calls for an International Convention for the Protection and Safety of Journalists. It also welcomed the condemnation at the end of 2019 in the Philippines of those who ordered the massacre of 32 journalists in Maguidanao on November 23 2009.”³⁴⁶

AUSTRALIANS ABROAD

JULIAN ASSANGE

On Thursday April 11 2019 WikiLeaks founder and publisher Julian Assange was arrested by police in London. MEAA recorded his arrest in the 2019 press freedom report *The public's right to know*.³⁴⁷

Assange is currently an inmate of the Belmarsh Prison in England for offences unrelated to his work with WikiLeaks. He is currently fighting against his extradition to the United States where he faces 18 charges under the US *Espionage Act*.

MEAA wrote to the British and Australian governments urging them to oppose his extradition to the United States. In the letter, MEAA restated that WikiLeaks has played a crucial role in enabling whistleblowers to expose wrongdoing and many media outlets have collaborated in that work.

MEAA's letter, addressed to the UK High Commissioner Vicki Treadell, and copied to Australian Foreign Minister Marise Payne and the Opposition Spokesperson on Foreign Affairs Penny Wong, said: "We write to convey concerns about the possible extradition to the United States of Julian Assange, the publisher of WikiLeaks, and urge the UK and Australian governments to oppose extradition to that country.

"Mr Assange is an Australian citizen and has been a member of MEAA's Media Section – the trade union and professional association of Australian media workers – since 2007.

"MEAA is concerned that Mr Assange is facing possible extradition to the United States regarding WikiLeaks' publication of US government files nine years ago.

We believe a prosecution of WikiLeaks' personnel will have a chilling effect on the public's right to know what governments do in the name of their citizens.

"It is a principle of a free press that the media have a duty to scrutinise the powerful and to hold them to account. The media report legitimate news stories that are in the public interest.

"WikiLeaks was established in a way to allow whistleblowers seeking to publicly expose wrongdoing to upload material anonymously and with no possibility of being traced. This is common practice among media organisations around the world – using technology that allows whistleblowers to submit material to a media outlet anonymously and confidentially.

"On April 5 2010 WikiLeaks revealed US military gunsight video showing US military helicopters killing two Reuters war correspondents, Saeed Chmagh and Namir Noor-Eldeen, in Iraq on July 12 2007.

"The publication of US diplomatic cables in November-December 2010 was done with the full collaboration of numerous media outlets in several countries including *The Sydney Morning Herald* and *The Age* in Australia, *The Guardian* in the United Kingdom, *The New York Times* in the US, *El Pais* in Spain, *Le Monde* in France and *Der Spiegel* in Germany. None of these media outlets have been cited in any US government legal actions as a result of the publishing they have done in collaboration with WikiLeaks.

"In 2011 the WikiLeaks organisation was awarded the Walkley Award for

Most Outstanding Contribution to Journalism – in recognition of the impact WikiLeaks' actions had on public interest journalism by assisting whistleblowers to tell their stories. The judges said WikiLeaks applied new technology to "penetrate the inner workings of government to reveal an avalanche of inconvenient truths in a global publishing coup".

"Extradition of Mr Assange and prosecution by the United States would set a disturbing global precedent for the suppression of press freedom.

"We welcome the provision of Australian consular assistance. We urge that he be provided with medical assistance if required. The Australian and UK governments should publicly oppose the extradition of Mr Assange to the United States."³⁴⁸

On May 23 2019, Assange was indicted by the US Justice Department with 17 additional charges for his role in receiving and publishing classified defence documents both on the WikiLeaks website and in collaboration with major publishers that had included *The New York Times*, and *The Guardian*.

On June 4 2019, MEAA once again wrote to Foreign Minister Payne and UK High Commissioner, renewing its calls for the Australian and United Kingdom governments to oppose moves to extradite Assange to the United States to face trial on the 18 espionage charges.

MEAA said: The charges "contain a real threat to press freedom for journalists and media outlets around the world".

The new charges, under the US

Protest for Julian Assange,
Martin Place, Sydney |
Rhett Wyman, *The Sydney
Morning Herald*



Espionage Act, went far beyond the initial single charge made against Assange in April 2019 that accused him of conspiring with former Army intelligence analyst Chelsea Manning in a conspiracy to crack a Defence Department computer password.

“If Assange, who is currently in jail in the United Kingdom, is extradited to the US and found guilty, he faces up to 170 years in jail.

“The US Department of Justice charges against Assange relating to the alleged violation of the *Espionage Act* contain a real threat to press freedom for journalists and media outlets around the world. Respected leaders of the journalism profession have condemned the US indictment:

- Alan Rusbridger, former editor of *The Guardian* says: ‘... the attempt to lock [Assange] up under the *Espionage Act* is a deeply troubling move that should serve as a wake-up call to all journalists.’
- The *Washington Post*’s executive editor Martin Baron, a winner of the Pulitzer Prize, says: ‘The [Trump] administration has gone from denigrating journalists as ‘enemies of the people’ to now criminalising common practices in journalism that have long served the public interest.’

- Joel Simon, executive director of the Committee to Protect Journalists, says: ‘Equating the publication of classified information with espionage also strengthens the hand of repressive governments who routinely jail journalists for publishing information they wish to keep secret.’
- The International Federation of Journalists, representing more than 600,000 media professionals in more than 140 countries, says: ‘... this indictment would criminalise journalistic inquiry by setting a dangerous precedent that can be abused to prosecute journalists for their role in revealing information in the public interest. By following this logic, anyone who publishes information that the US government deems to be classified could be prosecuted for espionage.’

“As we said in our previous letter, the extradition of Assange and prosecution by the United States for what are widely considered to be acts of journalism would set a disturbing global precedent for the suppression of press freedom.

“We urge you as Foreign Minister to use all resources available to convince the UK Government to oppose the extradition of Assange to the United States in relation to his role as publisher

of WikiLeaks and to publicly call on the US Government to refrain from this attack on global press freedom.”³⁴⁹

MEAA then pushed for support from the International Federation of Journalists. At the IFJ’s 30th World Congress in Tunis, its affiliated unions unanimously supported MEAA’s resolution urging the British and Australian governments to resist the extradition of Assange to the US. “Regarding the indictments filed by the US Government against Julian Assange, the resolution said the charges ‘pose a threat to journalists and journalism around the world.’”

The resolution went on to say: “The indictments clearly seek to prosecute Assange for the receipt and the publication of vital information in the public interest, clearly at odds with previous decisions of the US Supreme Court to protect First Amendment rights. The [IFJ] congress supports the call of our affiliates for the governments of the United Kingdom and Australia to resist the application to extradite Assange to the United States. The congress asks the IFJ Executive Committee: to take the case to the UN Human Rights Council [and] to call on the European Parliament and the Council of Europe to respect freedom of opinion.”³⁵⁰

PRESS FREEDOM ABROAD

During a visit to Australia, London-based Australian human rights lawyer Jennifer Robinson, legal adviser to Julian Assange, sat down with MEAA to explain the implications for all journalists of the US government indictment against him, and why it is important for MEAA members to campaign against his extradition on press freedom grounds..

At that time Assange was an inmate of the Belmarsh Prison in England for unrelated offences, and the US government was expected to begin extradition proceedings in 2020.

Robinson has been a legal adviser to Assange and Wikileaks since the start of this decade. Robinson said the indictment of Assange “sets a terrifying precedent” by “criminalising common journalistic practices which have been used towards the public interest for decades in the United States”.

“Julian is an Australian citizen, a member of the MEAA, who faces prosecution and extradition to the United States for publishing... truthful information about the United States,” she said. “That is a terrifying precedent and will impact on not just the US media but on journalists and news organisations around the world.” Robinson says the extradition hearing may be drawn out for several years and Assange was grateful for any support for his case from MEAA and its members in the Australian media community.³⁵¹

In December 2020, the editor in chief and spokesman for WikiLeaks, Kristinn Hrfansson, visited Australia to lobby journalists and politicians to support Julian Assange in his fight against extradition to the US on espionage charges. Hrfansson explained why all journalists should be concerned about the Assange case.

Hrfansson, who has been in regular contact with Assange in Belmarsh Prison, says it is important that journalists realise the case sets precedents that go well beyond an individual.

Originally from Iceland, Hrfansson has been involved in WikiLeaks for a decade, and took over as editor-in-chief in 2018, the sixth year of Assange’s exile in the Ecuadorian embassy in London, which only ended with his arrest in April last year.



Top: WikiLeaks editor in chief and spokesman Kristinn Hrfansson; **Above:** Jennifer Robinson, legal adviser to WikiLeaks founder Julian Assange

Hrfansson said journalists should be gravely concerned about the case against Assange, whatever their personal feelings about WikiLeaks. “Of the 18 indictments he is facing, 17 are based on the [US] *Espionage Act*,” Hrfansson explained. “They are equating journalistic practices with espionage. This has not happened in the 101 years since this law was passed in the United States and it’s now being used with extraterritorial reach. [The indictments] give out the signal that no journalist anywhere in the world is safe if he or she is publishing information

that is of displeasure to the ‘empire’.

“People can understand that this is a grave attack on their work; the foundation and the basis of their work. Everybody can put himself in those shoes and foresee that at some point if this escalates and if this goes forth, he or she as a journalist could face the same circumstances.

“I can feel that in this country people are seeing that this is something that has to be fought vigorously because if Julian Assange is extradited to face



Australian citizen and a respected author and online journalist and blogger was detained while on a visit to China as he was boarding an internal domestic flight from Guanzhou to Shanghai on January 19 2019.

He was reportedly interrogated for 12 hours before disappearing into state custody at an, as yet, undisclosed “residential” location. His wife was also detained; she has since been released but is unable to return home to Australia.

“We are concerned that he is being deprived of his human rights. For almost three months now, he has been denied access to his family. He is being detained without trial or access to legal counsel and is being denied access to Australian consular officials.

“We believe this assault on an Australian citizen’s human rights, his interrogation and secret detention, casts a shadow over the working relationship of Australian journalists in China and calls into question their being able to perform their journalistic duties in safety and without harassment or intimidation from authorities.

“MEAA protests the continued detention of our journalist colleague and we urge you to release Mr Yang so that he may return with his wife to Australia.”³⁵⁴

On July 19 2019 MEAA again wrote to the Chinese Ambassador to protest that Yang could soon face up to three years’ imprisonment on national security charges that may relate to his work.

Until July 18, Yang had been held under “residential” surveillance at a prison facility in southern Beijing. That afternoon – the day before the deadline for determining whether he would be released, charged or have his detention extended – his wife was advised that he had been relocated to a different “criminal” detention centre in Beijing with the expectation that he will be formally charged with “endangering state security”. On two occasions his wife, Australian resident Yuan Xiaoliang, has been briefly detained and questioned.

At no time during the previous six months have Yang’s family or Australian consular officials been told what Yang is alleged to have done.

death in a US prison, he is not going to be the last journalist to face that fate.” The Australian Federal Police raids in the middle of 2019 on the Canberra home of a News Corp journalist and the Sydney offices of the ABC contributed to a sense that journalism and press freedom is under siege, with striking parallels to the pursuit of Julian Assange.

Hrafnsson believes this has been a factor in the changing mood among Australian journalist towards supporting Assange. “It can’t be a coincidence that after Julian was dragged in this indecent manner out of the embassy you have seen more and more raids on journalists in America. You’ve seen threats against journalists in Latin America. There is basically universally an attack on truth going on.

“And you’ve seen the evidence of this country. It is part of the same picture. And it should unify journalists all around the world, not just behind Julian Assange and WikiLeaks, but behind the right to publish. He is at the moment standing on the edge of the cliff, but all journalists are being slowly pushed slower and slower in the same direction.

“He himself told me in Belmarsh when I visited that the message that he wanted out – and what to say to journalists – basically is ‘this is not about me. This is about you’. And that is the core of the matter. I hope that will... unify journalists all around the world in that campaign.”³⁵²

On March 26 2020 a British judge in Westminster Magistrates Court denied Assange bail after his lawyers argued that his release from England’s

Belmarsh Prison would mitigate his “high risk” of catching COVID-19. A report from AAP published by *The Sydney Morning Herald* said: “District Judge Vanessa Baraitser ruled that Assange had absconded before and said that Belmarsh prison was following government guidelines to protect detainees with no confirmed virus cases there yet. She accepted that government advice may change rapidly but for the time being she denied strict bail for the 48-year-old.

“As matters stand today this global pandemic does not, of itself, yet provide grounds for Mr Assange’s release,’ Judge Baraitser ruled.

“In my view there are substantial grounds to believe that if [released] ... today he would not return to face his extradition hearing. There are no conditions that allay this concern and this application is therefore refused.’

“Defence lawyer Edward Fitzgerald QC...said Assange has prior chest and tooth infections, and osteoporosis, placing him at a higher risk from the virus. The QC described prisons as ‘epidemiological pumps’ where diseases spread rapidly and said the defence team had recently been denied entry to Belmarsh because 100 prison staff were self-isolating. ‘If he continues to be detained in prison... there is a real risk that his health and his life will be seriously endangered in circumstances from which he cannot escape.’”³⁵³

YANG HENGJUN

On April 9 2019, MEAA wrote to the Chinese Ambassador to Australia about Dr Yang Hengjun, a MEAA journalist member in good standing. Yang, an

MEAA also wrote to the Australian Foreign Minister Marise Payne who had said she was “deeply disappointed” Yang had been transferred to criminal detention. “If he is being detained for his political views, then he should be released.”³⁵⁵

MEAA warned that Yang’s detention casts a long shadow over the working relationship of Australian journalists in China and calls into question their being able to perform their journalistic duties in safety and without harassment or intimidation from Chinese authorities.

The International Federation of Journalists, the global body representing 660,000 journalists from 187 trade unions in more than 140,000 countries, has said: “... Yang Hengjun’s ongoing detention without charge is a serious violation of human rights and the longer it continues will create pressure for the Chinese authorities and China’s image abroad.”

MEAA has urged the Chinese Government to release Yang so that he and his wife may return to Australia.

On July 20 China’s Foreign Ministry responded to MEAA: “The Australian national Yang Jun is suspected of criminal activities endangering China’s national security. The Beijing State Security Bureau has taken compulsory measures on him and investigated him according to law. The Chinese national security authority will handle the case in strict accordance with the law and fully protect his legal rights.

“China deplores the statement by the Australian foreign minister, urges the Australian side to stop interfering in the handling of the case by the Chinese side, and [to] stop making irresponsible remarks.”³⁵⁶

On March 25 2020 it reported that the Chinese Government was preparing to formally charge Yang over the still unclear espionage allegation. Up to that point, Yang has been detained without charge for more than 400 days, with little access, if any, to lawyers, consular assistance or his family.³⁵⁷

PHILIP WEN

On February 20 2020, MEAA wrote to China’s Ambassador to Australia to express its concern at the revoking by China of three *Wall Street Journal*



Philip Wen and the ABC’s Beijing correspondent Bill Birtles share a final drink before Philip’s departure | *Bill Birtles, Twitter*

foreign correspondents’ press credentials.

One of the three was Australian journalist Philip Wen who has worked in the Australian media for several years during which time he was a member of MEAA Media.

MEAA’s letter has been copied to the Australian Foreign Minister Marise Payne.

MEAA wrote: “[The journalists’ expulsion] is particularly worrying because none of journalists were involved in the news article to which China has taken exception. Indeed, it appears that China is attacking three respected journalists who were not involved in either the opinion article or the particular headline that has offended China.

“MEAA is concerned that not only is the withdrawal of three’s press credentials an excessive and unnecessary action but it is also an assault on press freedom – particularly at a time when the world is looking at China for strength and leadership.

“The expulsion of three foreign journalists also casts a shadow over the goodwill that is being extended to China right now – it strains relationships and chills the foreign media as they carry out their duties in difficult conditions and under immense workloads.

“We sincerely urge the Chinese Government to reconsider our colleague Philip Wen’s expulsion and to restore his press credentials as a

gesture of good faith. We also urge the Government to find a more constructive and cooperative approach to express its concerns about the opinion article that has caused offence. Both these actions would reassure the foreign media as they carry out their reporting responsibilities at this crucial time.”

The International Federation of Journalists’ United States affiliate, NWU said: “Ordering three journalists to leave China, in the midst of a health crisis where the world is following every development, reflects the heightened tensions between the US and China. We request these press credentials be restored as limits on press freedom do not serve the needs of a world in search of answers to this immediate crisis.”

The IFJ said: “This move shows the efforts the Chinese authorities are prepared to take in a bid to stem negative coverage of the coronavirus both in China and globally. Despite there being no direct link from the piece in question to the journalists, China has now ejected three senior journalists with no due cause. The end result can only be seen as an excuse to shut down all WSJ coverage and send a very intimidating message to any other foreign journalists in China and their media companies. The IFJ calls on the Chinese government to acknowledge the apology and statements made by the WSJ and allow the journalists to remain in China to provide vital reporting not only on the coronavirus but the other important reporting that sheds light on all aspects of China to the rest of the world.”³⁵⁸

THE ASIA-PACIFIC

Authoritarian regimes have stepped up their repression of journalists and media outlets

BY MELANIE MORRISON

Propaganda, censorship, intimidation, the spread of misinformation, and job insecurity continue to pose press freedom challenges in the Asia Pacific. With the spread of the deadly coronavirus in the first few months of 2020, these challenges have only been compounded. Authoritarian governments have responded to the pandemic by imposing restrictions on the free flow of information and media workers face heightened job insecurity as media organisations struggle to survive. Yet it is precisely in these times of crisis that accurate and high quality reporting is crucial.

Governments across the region continue in their attempts to silence critical voices and intimidate the media. Far too many journalists and media organisations in the region were subjected to harassment and intimidation, and threatened with legal action on spurious charges. But journalists are a resilient lot and, while governments fail to provide sufficient protections to ensure their safety and security, media workers soldier on.

The past year also saw welcome

developments in the region. Most notably, there was a significant reduction in journalist deaths, down from 32 in 2018 to 10 in the 12 months to March 31 2020.

Pakistan was the region's most deadly country for media, with six journalists killed, then the Philippines with two and Afghanistan and India both reporting the brutal murder of one journalist each.

November 2019 also saw guilty verdicts against the masterminds of the Ampatuan Massacre in the Philippines, the single deadliest attack on media: the brutal murder of 32 journalists. The verdict provided a slender hope of finally tackling impunity in one of the world's most deadly countries for media workers but unfortunately systemic violence persists in that country and, indeed, in many parts of the Asia-Pacific.

AFGHANISTAN: While the number of murdered journalists has dropped significantly over the past year, the safety of journalists and media workers in Afghanistan remains perilous. Abuses by the Taliban, the warlords and corrupt political officials are constant threats to journalists and to press freedom.

There have been several prominent incidents of violence towards journalists. Editor-in-chief for Radio Gardez Ghar, Nader Shah Sahebzadeh, disappeared after leaving his home on the evening of July 12. His lifeless body was found the next day. During the fourth round of Afghanistan's presidential elections on September 28 2019, at least three journalists were attacked. In March this year a reporter and a cameraperson were wounded when members of the Islamic State attacked a commemorative event in Kabul.

CAMBODIA: In Cambodia, the steady decline in press freedom and democratic rights continues. Last year the crackdown on press freedom that took place in the lead-up to the 2018 elections continued. And, the closure of all independent media outlets succeeded in silencing objective voices, critical of the government.

While several outlets, including Voice of Democracy, have shifted to online platforms, local independent media outlets were shut down or sold to owners with strong ties to the government.

Online media outlets and social media activity have suffered a further blow as Hun Sen's government has extended its power to monitor and control news content, including websites and social media.

The International Federation of Journalists' (IFJ) 2019 South East Asia Media Freedom Report, *Holding the Line*, found that almost 80 per cent of media workers felt the media situation had worsened over the year, with the majority saying their work led them to have concerns for their safety and security.

CHINA: In October 2019 China celebrated 70 years of Communist Party rule. Under President Xi Jinping's leadership, the government has steadily tightened its grip over the media and internet. The government continues to silence dissent through the use of sophisticated mass surveillance and monitoring, blocking websites and social media access, and the coordinated spread of state propaganda.

In China's western province of Xinjiang, these repressive techniques were utilised to implement a total lockdown of media access to the province and the jailing of journalists. The silence that was imposed means human rights abuses and the repression of the Uighur people continues unabated and unreported.

Systematic abuses of Chinese journalists continued throughout China. In April 2019, Beijing-based citizen journalist Xie Qiang was arrested for "picking quarrels and stirring up trouble" with authorities. In July, Huang Qi, an investigative journalist and publisher of the human rights news website 64 Tianwang, was sentenced to 12 years in prison after months of secret court proceedings without lawyers.

At the end of 2019 at least 48 journalists were imprisoned in China.

With the rapid spread of the coronavirus within Wuhan and well beyond the city's borders, the Chinese government has come under fire for initially suppressing news of the deadly virus. Authorities gagged Dr Li Wenliang, an ophthalmologist at Wuhan Central Hospital, who alerted the Chinese public to the seriousness of the virus and shortcomings in the Chinese government response in December. In early January Li was questioned and forced to sign a statement saying he had "spread false rumours". Li died of COVID-19 in February.

In January 2019, the IFJ and its affiliate the Hong Kong Journalists Association raised concerns over the accuracy of public information contained in the coronavirus reporting. Several months on, as COVID-19 became a global pandemic, blame is apportioned to China for bungling its initial response.

But Chinese government propaganda has swung into action in an effort to reframe the country as a responsible global citizen providing health support and equipment to countries outside China.

China's evolving narrative still heavily relies on the suppression of news at home. With a yearning for reliable information, Chinese citizens took to posting and sharing information about the virus. Many of these posts were quickly suppressed and citizen journalists punished.

In February 2020, journalists from *The Wall Street Journal* were expelled from China in what the IFJ has said "shows the efforts the Chinese authorities are prepared to take in a bid to stem negative coverage of the coronavirus

both in China and globally". In March US journalists from *The New York Times*, *The Washington Post* and those remaining at *The Wall Street Journal* were instructed to hand back their credentials to Chinese authorities.

HONG KONG: As a special administrative region of China, Hong Kong has enjoyed relative press freedom. But these freedoms have been dashed as China seeks to control public opinion by influencing media owners and manipulating social media.

When pro-democracy protests began in June last year, with millions taking to the streets in Hong Kong over proposed extradition laws and to demand for greater freedoms, China's influence over the region became glaringly evident. Security forces were brought in to smash the protests, but pro-democracy groups remained defiant. Journalists covering the protests were also targeted by the heavy handed security forces. They were abused, beaten and prevented from wearing masks to protect themselves from tear gas and pepper spray.

In a textbook example of Chinese propaganda, a campaign was launched on social media accusing pro-democracy protestors of being violent extremists. In response Twitter suspended hundreds of accounts that it said originated in China that were "deliberately and specifically attempting to sow political discord in Hong Kong".

INDIA: The Bharatiya Janata Party (BJP) won the May 2019 election which saw a return of Prime Minister Narendra Modi. Soon after coming to power, the BJP rushed to amend two repressive acts: the *Unlawful Activities (Prevention) Amendment Act* and the *National Intelligence Agency Act*, conferring greater power to the central government.

The Modi government continued its widespread practice of intimidating journalists for criticising government officials and policies. Throughout the year journalists came under attack not only for their profession, but also for the news agency they represented and, disturbingly, for their religious identity and gender.

In a stain on India's reputation as an open democracy, the country has recorded the largest number of internet

“AT LEAST 20 JOURNALISTS FROM VARIOUS MEDIA OUTLETS WERE ATTACKED WHILE COVERING DEMONSTRATIONS IN THAMRIN, CENTRAL JAKARTA.”

INTERNATIONAL FEDERATION OF JOURNALISTS - ASIA PACIFIC



Top: Hong Kong Journalists Association protest; Above Left: Kashmir photojournalist of the Press Trust of India and the Kashmir Monitor | IFJ Asia-Pacific

shutdowns – a way for governments, both central and state, to restrict and control news. This has been most intensely felt in Kashmir, where the government revoked the special constitutional status of Jammu and Kashmir and shut down the internet in August 2019.

The IFJ launched a Kashmir campaign entitled “Postcards from Kashmir: Inside the world’s longest communications shutdown”. Eight months on, the 4G mobile internet is suspended, clearly restricting the work of journalists and violating the public’s right to know. The outbreak of

COVID-19 has left 7 million people in the Kashmir valley without internet at a time when access to information is critical.

INDONESIA: Although Indonesia’s national press law guarantees protection for journalists to carry out their work, violence against media workers is ongoing. In the IFJ survey released in November 2019, concerns over threats against journalists were clear.

The survey highlighted three kinds of violence that typified the year: targeted attacks in response to journalistic work

(29 per cent), threats to journalists or others close to them (17 per cent), and random physical attacks by the general public (16 per cent).

On May 21 and 22 2019, at least 20 journalists from various media outlets were attacked while covering demonstrations in Thamrin, central Jakarta. From September 23 to 26, a wave of demonstrations in the country was marred by violence against journalists, with at least five journalists being targeted and victimised. In both of these cases, intimidation, physical abuse and prohibition of coverage threatened media freedom and imposed barriers

to reporters' access to information. Harassment and virtual abuse has increasingly moved online with the expansion of social media.

The rise in the abuse of journalists prompted unions and civil society organisations to establish the Committee for Journalists Safety in April 2019. The committee is mandated to combat impunity, as the police have failed to file and investigate cases of violence and intimidation against journalists.

The issue of West Papua continues to tarnish Indonesia's human rights record. A racist attack on West Papuan students in Surabaya in August 2019 saw the Jokowi administration send thousands of troops to the restive region. Internet shutdowns prevented access to information and journalists reporting on the unrest and internet blackout were subjected to intimidation and "doxing" attacks on social media.

In September, Surabaya police issued an arrest warrant for Veronica Koman, an Indonesian human rights lawyer, after she shared videos on Twitter of the unrest in Papua. She was accused of "spreading fake news and provoking unrest". Documentary filmmaker Dandhy Laksono was arrested in September after he posted a tweet about the violence against civilians in Jayapura and Wamena, Papua. He was charged with violating the online hate speech law.

With successive Indonesian governments blocking journalist access through a complex system of bureaucratic controls, there is a clear and continuing obstruction to access to information.

MALAYSIA: The ruling Pakatan Harapan (PH) or Alliance of Hope coalition swept to power in the 2018 general election and among its early promises was a repeal of laws used by the former administration to restrict press freedom. But few of these promised reforms have materialised. The long-awaited Media Council, intended to allow greater freedoms for media workers, has to be formed. And the controversial *Anti-Fake News Act* and *Printing Presses and Publications Act*, both criticised for silencing political opponents and curtailing press freedom, remain in place.

Job security is also an issue with the closure of several publications due to falling circulation and the shift to online news platforms. The Edge Media Group's chief executive officer Ho Kay Tat attributes the decline of print media to readers becoming disenchanted with newspapers being used as "tools of politics."

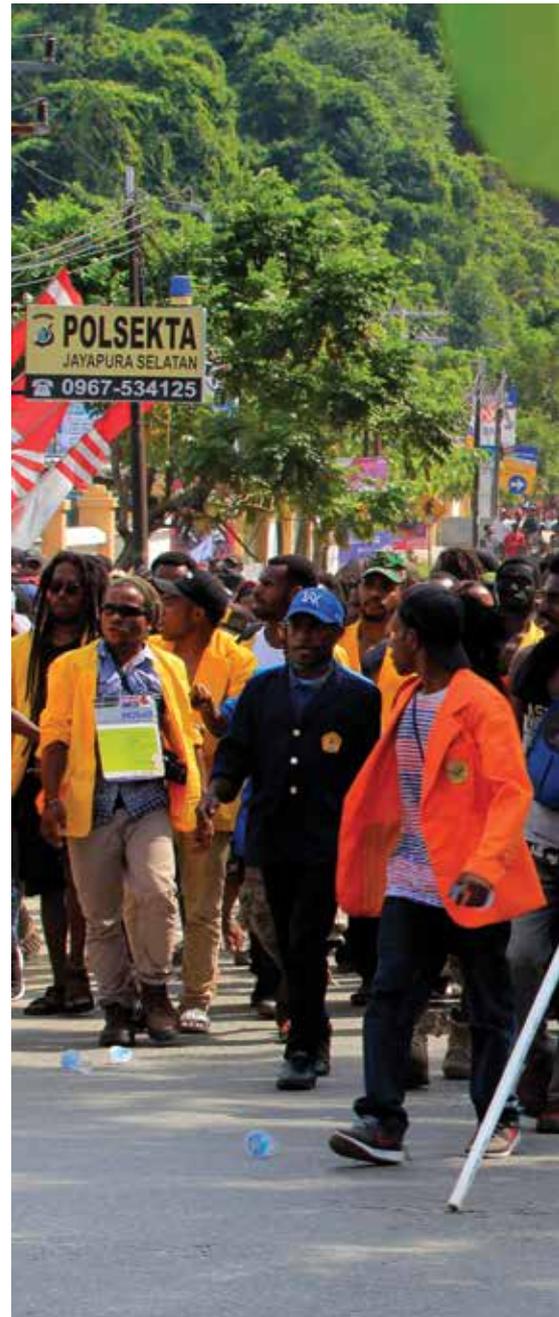
MYANMAR: Myanmar under the Aung San Suu Kyi-led NLD government has failed to create an environment for a free media. Dangerous and volatile schisms exist along ethnic lines and harassment of media workers is rife, particularly in the "ethnic" states. In a divisive media environment, public trust is eroding and media outlets are struggling to survive due to political pressures, lack of structural reforms and poor media business models.

In a welcome development, Reuters journalists Wa Lone and Kyaw Soe Oo were released under a presidential amnesty for 6520 prisoners on May 7 2019. Despite this positive move, journalists remained silenced by repressive laws that impede press freedom. The IFJ-South East Asia Journalists Unions' survey conducted in 2019, found that 56 per cent of journalists said that government policy and legislation are the main threats to the independent media in the country.

National elections are planned for late 2020 and without genuine press freedom, the elections are at risk of being undermined by undemocratic forces. Civil society groups anticipate that, in the absence of press freedom, disinformation campaigns will disrupt the democratic process.

NEPAL: "The year wasn't a happy one for the journalism sector," begins the press statement on the annual review of 2019 by the Federation of Nepali Journalists (FNJ). Since May 2019, Nepal witnessed 45 verified incidents of press freedom violations. The umbrella organisation of journalists noted that while there was a slight decrease in the number of press freedom violations compared to the previous year, the disturbing trend of undermining press freedom and journalists' rights from both the state and non-state actors continues.

This past year has seen the state amend existing press freedom laws and propose



new laws that undermine the freedom of the press, freedom of expression and internet freedom. These include the new *Information Technology Management Bill*, which is seen as a tool to threaten freedom of speech online, and the *Media Council Bill*. Media stakeholders view the Media Council more as a government agency to control media workers than a body to ensure responsible journalism.

Police have used a controversial information technology regulation to arrest journalists and activists who are critical of the government. According to Nepal's Freedom Forum, in 2019 38 journalists were arrested, detained or questioned by police for critical reporting.

The student protest
against racism in
Jayapura | *Gusti
Tanati, Jubi*



PAKISTAN: Journalists in Pakistan increasingly operate in a climate of fear and, over the past 12 months, the country holds the dubious honour of being the region's deadliest country for journalists.

Mirza Waseem Baig was one of six journalists killed in this period. Baig, a 40-year-old reporter for Urdu language channel 92 News, was gunned down outside his home in Punjab province when three criminals riddled his body with bullets on August 30 2019.

In February 2020 this year, the body of Aziz Menom from *Dawn* newspaper was found dumped in a canal near his

home in the Sindh province, with wire tied around his neck. During his 30 year journalism career, Menom had received several threats because of his investigative reports.

Media outlets have also come under intense pressure as in the case of GEO TV which was forced off air for criticising the government. Censorship has ramped up with several media offices raided and campaigns designed to intimidate journalists such as “#ArrestAntiPakistanJournalists” were running on social media after two broadcast journalists Hamid Mir and Asma Shirazi made critical comments about Prime Minister Imran Khan's policies.

Brazen attacks on journalists and media organisations have become the norm. In June 2019, the president of the Karachi Press Club (KPC) was physically assaulted by a ruling party politician during a live broadcast. Several journalists were injured when the police in Pakistan Administered Kashmir, raided, fired tear gas shells and then wielded batons when they charged journalists in the Muzaffarabad Press Club in October 2019.

Imran Khan's government has created new media laws to stifle press freedom. In February 2020 the government approved a new law to control social media in Pakistan, called the Citizen



The arrest of Nepali journalist union leader Ajaya Shiwakoti

Protection Rule. And, in further efforts to disempower the media, the government made the Pakistan Media Council dysfunctional by sacking dozens of its employees in early March 2020.

PHILIPPINES: November 2019 marked 10 years since the Ampatuan massacre when 58 people including 32 journalists were killed in the world's single deadliest attack on the media. In December 2019, the Ampatuan brothers Datu Andal Jr, Zaldy, were found guilty. In a case that rocked the country, the verdict was a welcome development. But it is a sad indictment that it did not stop the killing and abuse of journalists the Philippines. Under the Duterte administration attacks against the media continue with impunity, as the authorities fail to solve the vast majority of extrajudicial killings and investigate attacks on journalists.

Journalist Eduardo Dizon, who worked at Bridgata News FM radio, was shot dead when driving home in the southern Philippines island of Mindanao. His death brings the total number of journalist deaths under Duterte's administration to 14. IFJ violations monitoring found that in the year to November 2019 the number of attacks on Filipino journalists

including killings, threats and non-fatal attacks, totalled 185. The continued persecution of the Rappler news website and its chief executive officer Maria Ressa on spurious legal charges indicates the complete disdain that President Duterte has for critics of his government. This personal vendetta can also be seen in the threat to block the franchise renewal of the most watched broadcast network ABS-CBN which has the potential to put up to 11,000 media workers out of a job.

In another disturbing trend "red-tagging", the practise of spuriously accusing individuals of being linked to communist and terrorist groups, continues. In September 2019, Froilan Gallardo, photojournalist for *MindaNews*, Sonia Soto, host of a Central Luzon Television public affairs program, and a former National Union of Journalists of the Philippines (NUJP) director Leonardo Vicente "Cong" Corrales were red-tagged, the latter also targeted with death threats.

SRI LANKA: On Easter Sunday in 2019, Islamist suicide bombers attacked three churches killing more than 240 women, men, and children and injuring hundreds more. This unleashed a series of retributory attacks against Muslims

which had ongoing implications for human rights. Social media was blocked in the immediate aftermath of the bombings.

In November, retired Lieutenant Colonel Gotabaya Rajapaksa was elected on a platform of strengthening national security. Journalists and human rights defenders have come under pressure with dozens of reports of assaults, harassment and intimidation. In January this year leaflets threatening to kill seven Tamil journalists were left at the Batticaloa Press Club in the eastern province of Sri Lanka. The threats were reported but the police failed to take steps to punish the perpetrators or to provide protection for the threatened Tamil journalists.

Journalists' organisations, organised jointly by IFJ affiliates in Sri Lanka, came together to mark "Black January" on January 28 2020. The event is a commemoration of a series of press freedom assaults including murders that have all taken place in that month. They include the murder of *Sunday Leader* editor Lasantha Wickrematunga in 2009, the disappearance of political columnist Prageeth Ekneligoda in 2010, the attack on Sirasa media network in 2009 and the brutal attack on television producer Lal

Hemantha Mawalage in 2008. More recently, January has also witnessed the murder of Tamil parliamentarian T Maheshwaran, the abduction of Akuna journalists Sisira Priyankara, Nihal Serasinghe and Lalith Seneviratne and the former army commander Sarath Fonseka's characterisation of certain journalist as "traitors". The commemoration called on the new president to end impunity and secure justice for outstanding unsolved cases of assault, murder, and disappearance of journalists and media workers.

THAILAND: Over the past 12 months, Thailand was hit by the largest layoffs of journalists in its history, with at least 800 losing their jobs, according to estimates by the National Union of Journalists Thailand (NUJT).

While the Thai press enjoyed relative freedom to cover stories, reporters who criticised the military junta and its policies face intimidation and punishment. In September, political commentator Cherlermchai Yodmalai, the editor and columnist of a pro-junta daily, was fired from hosting radio for alleging corruption at the National Defence College. On October 3, after Phnom Penh-based Belgian journalist Kris Janssen was prevented from interviewing activist Anurak Jeantawanich, he was detained for five hours by Thai immigration officers and told not to pursue his investigative story about the string of violent attacks against pro-democracy activists.

On September 10, the new Deputy Agriculture Minister Thammanat Prompao threatened to sue *The Sydney Morning Herald* along with local media for exposing his past criminal record. These incidents signal a rise in state surveillance and censorship in an effort to protect the junta's fragile coalition.

With the growing censorship of politically sensitive issues in the mainstream media, more and more Thais are getting their news from social media. The rise of social media as a political force has meant opposition figures are able to get their message out. It has also led to an explosion in fake news. With new cyber-security laws, Thai authorities have the power to censor online news under the guise of combatting fake news.

TIMOR LESTE: While journalists suffer from poor pay and working conditions, media workers in Timor Leste feel that press freedom has improved over the past year. The IFJ- South East Asia Journalists Unions survey, released in November 2019, revealed that 63 per cent of respondents say that the country's media situation had "significantly improved" over the past 12 months.

A key problem for journalists in Timor Leste is a lack of access to crucial information and documents which are controlled by the government. In a small country like Timor Leste, keeping outside with the government is crucial for the survival of media companies, leading to a rise in self-censorship.

Journalists have also voiced concern over renewed moves to include defamation in the penal code. Civil society groups have said that if Timor Leste goes ahead with the introduction of criminal defamation, it would amount to a betrayal of promises of democracy enshrined in the constitution.

VANUATU: Vanuatu, like other Pacific nations, is largely free of violence against journalists, but there is an emerging climate of censorship.

In November, long-term Vanuatu resident and journalist Dan McGarry had his annual work permit rejected and his residence visa cancelled. McGarry, a Canadian citizen, worked as the media director for Vanuatu's *Daily Post*. McGarry believes his expulsion was politically motivated after his critical reporting about Chinese influence in the country. In December, the Supreme Court of Vanuatu voided government orders banning McGarry from returning to the country.

In 2020 authorities in Vanuatu, like authorities throughout the region, were accused of using COVID-19 to impose restrictions which impede free speech and the ability of journalists to report facts in the global health crisis.

Melanie Morrison is project manager with the International Federation of Journalists – Asia Pacific



Melanesian Media joins together for press freedom

IN MID-NOVEMBER 2019 MEAA supported a forum for Melanesian editors and journalists to discuss common threats faced by journalists and media outlets in PNG, Vanuatu, Fiji, the Solomon Islands, West Papua and Bougainville.

On November 13, the forum made five recommendations to promote and respect press freedom, using a united voice to address the increasing threats to media freedom that they face daily. The forum also promised to work with Australian academics, journalists and other colleagues in developing ongoing collaborations with the Melanesian Media Freedom Forum and its members.

The statement by the forum presented a sobering array of issues that need to be addressed: "We call on Melanesian governments to:

- Respect the media and its necessary place in national conversations.
- Require political leaders and senior public servants make themselves available for interviews with their local media.
- Recognise, respect and support National Media Associations as the voice of the media industry.
- Fund public broadcasters properly to ensure they have sufficient equipment and staff to enable their services to reach all citizens in their country and to adequately play their watch-dog role.
- Assure the safety of journalists as they pursue their professional activities."³⁵⁹

The risks facing Australian journalism

BY KERRY O'BRIEN

This year, for a brief moment in the history of Australian journalism, every significant news organisation in this country put its competitive instincts and its differences to one side and united as one voice to stand against an unacceptable step down the road to authoritarianism.

Authoritarianism unchecked can lead to fascism. Fortunately in this country we're a long way from that yet, but a study of history amply demonstrates how fascism begins. Freedom is usually eroded gradually. It might happen over years, even decades. Its loss is not necessarily felt day by day, but we will certainly know when it's gone.

So far the Morrison government has resisted the industry's appeal for fundamental protections of a free and robust press to be enshrined in legislation at the very least – not placing journalists above the law – but enshrining in a practical and meaningful way their special place as a crucial pillar of democracy.

Perhaps the government is intending to wait us out, waiting for the issue to go away in the hope that most people in this country are so consumed by bread and butter issues, so consumed by their own lives and personal struggles and challenges, that they won't care enough when the chips are down to support something as abstract as the spirit of democracy or the spirit of freedom – because you can't cash in the spirit of something at the bank, as you might a tax cut.

That is why we have to remain resolved to keep this campaign going, and not let it go, even after a few months, because those of us who have witnessed and experienced and reported on repression

in other countries, some of them not too far from our own shores, understand the solid reality of democracy as well as the strength or weakness of its spirit. Some of our colleagues have paid the ultimate price for exposing abuses of democracy, and lost their lives.

Australia's Foreign Minister, Marise Payne, recently chastised China on its human rights record, observing that “countries that respect and promote their citizens' rights at home tend also to be better international citizens”.

I would add to that: countries that don't respect and promote their citizens' rights at home are living in glass houses and have diminished their right to be taken seriously when they try to preach to neighbours from a high moral ground they have surrendered.

This also comes at a time when the spirit of freedom of information laws if not the letter, is being abused and there are more allegations of corruption being investigated officially than ever before.

There's another inconsistency that needs to be called out. This Government is fond of saying, as it did in seeking to distance itself from the decisions by Australian Federal Police to raid the ABC and the home of News Corp journalist, Annika Smethurst, that it can't interfere in police operational matters. Yet, in seeking to assuage the concerns of media companies and journalists after the raids, the Attorney-General, Christian Porter, promised that he would actually be prepared to become involved in the process to the extent of insisting on the Director of Public Prosecutions getting his personal consent before seeking to prosecute a journalist.

Sorry Mr Porter, that is not reassuring.

The judgements you might bring to bear will not be independent of the government's own self-interest, and we all know that self-interest of any stripe, political or otherwise, can be a powerful deterrent from doing the right thing. That is not understanding the spirit or the concept of free speech, nor materially guaranteeing free speech or a free press.

But we have to practice what we preach. Our work across the breadth of all media and all communities should speak for our integrity—from the smallest story to the biggest. Individually and collectively. And if it doesn't that should make us uncomfortable, in the very least. Because if we are going to stand on our dignity and defend press freedom as a fundamental pillar of democracy, then we have to be sure that our actions are defensible, that we practice what we preach, that we do what we say we do. And at the heart of the Walkley Foundation's work is the protection and promotion of integrity in journalism.

There is one other issue I want to acknowledge tonight. In 2011 Walkley judges awarded a Walkley to WikiLeaks with Julian Assange as its editor, for its outstanding contribution to journalism. The judgement was not lightly made that Julian Assange was acting as a journalist, applying new technology to “penetrate the inner workings of government to reveal an avalanche of inconvenient truths in a global publishing coup”. Those inconvenient truths were published far and wide in the mainstream media. As we sit here tonight, Julian Assange is mouldering in a British prison awaiting extradition to the United States where he may pay for their severe embarrassment with a life in prison. Again, this government could demonstrate its commitment to a free press by using its significant influence



Kerry O'Brien
 photographed at the
 2019 Walkley Awards |
 Nicola Bailey/1826

with its closest ally to gain his return to Australia.

Another challenge our industry faces is the trend towards the polarisation of our craft – the attempts by some to paint us as either of the left or of the right – has to be resisted, because I firmly believe that for the vast bulk of us, that is not how we practice our trade. We do not arrive in the nurseries of journalism as budding ideologues of left or right, nor do the vast bulk of us become that way as we develop.

I absolutely reject the Roger Ailes view of the world, that if you're not on the right then you must be on the left.

For journalists to call out the powerful of any political colour for their abuses of power is not about ideology. It is simply journalists doing their job, practicing their craft.

Adele Ferguson was not reflecting some personal ideological hatred of capitalism when she called out corrupt behaviour within our banking and financial sector, forcing a royal commission on a reluctant government. And nor were the whistleblowers who

helped her, being ideological. They saw a wrong and followed their conscience with great courage to reveal it, paying a heavy personal price in the process.

There was nothing ideological about Chris Masters' determination to bring into the light of day, serious and deeply disturbing allegations of war crimes by elite Australian military forces in Afghanistan, first in his book, and then with Nick McKenzie in further sustained investigative reporting. It was strong, compelling journalism of integrity.

When Hedley Thomas gripped the world with his Teacher's Pet podcast, forced the re-opening of the Lynette Dawson case, leading to the arrest of her husband, was he driven by ideology? Of course not.

Or when Anne Connolly forced another royal commission, into aged care, with her exposes of the sickening abuses within that industry?

Joanne McCarthy wasn't under instruction from some secret socialist cell or driven by a hatred of Christianity when she exposed the pattern of endemic sexual abuse and attempted

cover-ups perpetrated from within the Catholic Church in the Hunter region.

Kate McClymont wasn't acting as a servant of either the conservative right or the Labor left when she doggedly and courageously exposed the entrenched corrupt practices of Eddie Obeid.

Abuse of power is abuse of power, no matter who the abuser is. Corruption in this country is corruption, no matter who the corrupt are, no matter what their politics.

This is a time of serious challenge for our craft across a broad front, at a time when democratic societies like ours are losing their trust in institutions pretty much across the board. The integrity reflected in the work we're about to celebrate tonight is our bulwark against that erosion of trust and a reminder not only to the citizens of this country, but importantly to ourselves, of what we're capable of, and of what we aspire to be.

This is an edited version of the speech⁵⁶⁰ the then Walkley Foundation chair Kerry O'Brien gave at the 64th Walkley Awards for Excellence in Journalism

The way forward

BY MIKE DOBBIE

There is nothing quite as hollow as politicians declaiming that they support press freedom after police raid a journalist's home and a media outlet's offices in response to true news stories that embarrass the government.

For almost 20 years there have been efforts by the Australian parliament to hide these truths. Politicians have cited the need for "national security" to implement new laws and amendments to existing legislation that hand dangerous powers to the government and its agencies.

George Williams, Dean of Law at the University of New South Wales, says that since the 9/11 attacks in 2001, the Parliament has passed at least 82 national security laws³⁶¹ – one new national security law every three months.

He notes that the Parliament has passed these laws with what he calls "convenient bipartisanship". In 2018 he wrote: "This has occurred even where serious concerns remained. Problems have been put aside in favour of the opposition presenting a united front with the government. The result has been bills enacted in haste and with inadequate scrutiny. These laws are needed to protect the community but too often they are inadequate or trample unnecessarily on democratic freedoms."³⁶²

While these laws are designed to provide security to the nation in the "war on terror", they also have been used for other purposes far from protecting Australians from terrorists.

With little or no justification about why particular powers that have little to do with combating terrorism are needed, these laws also lock up information, apply secrecy classifications to information that need not be kept secret, pursue and

punish the whistleblowers who seek to reveal wrongdoing and illegality, and criminalise the journalists and journalism that tell these truths.

Indeed, while the Parliament has been busy enacting its laws that muzzle and attack freedom of expression it has done very little to create any legislation to protect and defend freedom of expression, the public's right to know, provide comprehensive protections for whistleblowers or guarantee the freedom of the media to do its job as the fourth estate in a healthy functioning democracy.

The Australian Federal Police (AFP) raids that took place in June last year were at the instruction of government departments and their agencies. They came just a month after UNESCO World Press Freedom Day on May 3 – the day when last year's press freedom annual report was released. The report's focus was prescient: it was entitled "The public's right to know".

What were the government and its agencies thinking when one day they were threatening an investigation against a journalist and then followed that up with raids over the following three days?

Whatever they thought would happen, the government's exercise of power and intimidation has galvanised the media industry to campaign against the laws that have been passed by the parliament. Journalists and their employers are unified in calling for reforms and they are determined not to back down.

Reforms are vital if Australia is to be a healthy functioning democracy. The alternative is more of what we saw in early June 2019 – an authoritarian response akin to the actions of a police state.

Australia seeks to be an open and transparent democracy. It stands on platforms around the world as a promoter and champion of democratic freedoms. It chides nations that carry out human rights abuses.

It's much harder to be taken seriously as a human rights defender when you send a signal that it's acceptable to repeatedly deny the public's right to know and punish anyone who lets the public in on the truth.

The future for press freedom is in the six areas of reform being sought by MEAA together with the other members of the Australia's Right to Know lobbying group. The reforms were spelled out in the public campaign launched in the wake of the June 2019 raids, Your Right to Know.

The reforms are:

- The right for journalists and media companies to contest applications for warrants;
- Exceptions from laws that criminalise journalists for doing their job;
- Proper protection for whistleblowers;
- Limits on which documents can be stamped as "secret";
- A properly functioning freedom of information regime; and
- Defamation law reform.

Journalists are not saying they are above the law. Rather, bad laws are in need of reform.

At the heart of these reforms is the importance of ensuring that the public's right to be informed of the actions taken by Government in their name is sufficiently protected.

The culture of secrecy that has arisen from the web of new "national security" laws not only unnecessarily restricts Australians' right to know but it has also, as the ARTK said in its submission



to the Senate’s press freedom inquiry, “permeated attitudes and processes”.

“With each of these laws the tide of secrecy rises. This is deeply disturbing in a modern and robust democracy. The tool that is used – laws that are designed to put journalists in jail for doing their jobs – has a chilling effect on reporting. It is not far-fetched to conclude the impact of the AFP raids, and the approach the Government has taken to the fate of the journalists that are the subject of those search warrants, is intimidatory.”

In other comparable countries, there are legislated protections for press freedom, freedom of expression and the public’s right to know (including comprehensive protections in whistleblower laws). Australia has no comprehensive

national legal framework that enshrines these fundamental human rights. Without such a framework, Australia cannot truly lay claim to being a modern, liberal democratic society.

The inquiries that have taken place to date have seen a strong pushback from reform by some of the government agencies – giving up power is never easy.

But there must be an acceptance that not only is reform necessary but half measures will not do. The repeated failure to address the comprehensive reform of bad laws has led to Ministerial Directions that fail to account for attacks on press freedom that are being undertaken and that provide no real comfort that those attacks will not happen again depending on the

Minister of the day. Also, given that the raids were undertaken to pursue leaks about stories that embarrassed the government, there appears to be no real determination to free up information which is currently locked up under unjustifiable presumptions that it needs to be classified as secret.

Press freedom’s future, and the ability of Australian democracy to function freely and vibrantly, is in the hands of the parliament. Regardless of the outcome, the public has a right to know what our governments do in our name. And journalists will keep doing their duty to bring that information to our communities.

It’s true that democracy dies in darkness.

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