



Turning Up The Heat:

The decline of press freedom in Australia 2001-2005

national security • silencing debate • voices gagged
obstacles • public's right to know • blocking the media
the challenge for journalism • defamation • war on terror
whistleblowers • immigration • public scrutiny • detention
homogenisation of news • protection of sources
tampa crisis • information • in the public interest • targets
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Christopher Warren
Federal Secretary
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1.0 Introduction

A free media is essential to a democratic society. It ensures we know what is happening in our world. It enables us to report, review and criticise.

But a free media never emerges as a gift from government. It needs to be fought for. It never attains a state of perfection, but rather sits on that uneasy fault line of power between government's desire for control and continuing pressure from society. Above all it depends on the preparedness of the media, itself, to push back that line away from governmental regulation and towards a freer media.

And while society is the key beneficiary of the transparency that a free media encourages, too often the news and information we bring will disturb as much as it will inform, providing public cover for government restrictions.

September 11 in Washington and New York, October 12 in Bali, the war in Iraq and the war on terror have demonstrated both the importance of a free media and provided political cover for its curtailment.

The 2001 attacks occurred against a pre-existing background of debate over asylum seekers, particularly those from Iraq and Afghanistan.

The Federal Government has relied on the understandable fears of and concern over asylum seekers to strengthen 'anti-terrorism' laws in Australia, some of which effectively limit free speech and civil liberties. Journalists have faced renewed pressure to reveal the identities of their sources. They have confronted increased restrictions on reporting matters of national security.

Like journalists and journalists' organisations everywhere, the Media Alliance understands instinctively what these attacks on democratic society mean.

It's an understanding that's born from our own long experience. Journalists have long been targets of terrorists. And in the very first days of the war in Iraq, we were tragically reminded of that stark fact when a terrorist suicide bomber killed the ABC's Paul Moran in northern Iraq.

But in that understanding, we should not accept that press freedom and human rights should be sacrificed to fear.

Any restrictions on human rights need to be weighed against the damage to the public interest and democratic values of Australia.

This report reveals that the balance has become skewed too heavily in favour of security investigators and law enforcement. Taken as a package, the new laws and the unprecedented enforcement of pre-existing laws has had a serious impact on the freedom of all citizens including Australian journalists.

That's why the Media Alliance is launching this annual free media report: so that year by year the Australian media and the Australian people can trace this long struggle.

This report details an alarming trend of escalating intolerance against journalists at home and abroad.

The new ASIO legislation is particularly concerning for Australian press freedom as it insulates our peak security body from public scrutiny. Journalists face jail for fulfilling their obligation to serve the public. Other abuses of existing laws like 'move on' and trespass laws have threatened journalists with arrest.

Freedom of Information laws are, paradoxically, constricting the public's right to know.

Amid increased 'message management', journalism cannot function properly when such fundamental ideals are being undermined.

Most disturbing is the increased climate of violence in which journalists are now working. The Alliance deeply regrets the loss of our colleagues in Iraq. It is especially concerning that in an increasingly media driven world that journalists appear to have become legitimate symbolic targets.

While these risks will continue to haunt journalists in dangerous conflict zones, we cannot be intimidated into running away from a story that demands to be told.

As this report shows, there has been a steady deterioration of freedom of the press since 2001. Journalists have been like the proverbial frog in a pot of cold water that is slowly brought to the boil. We do not notice the incremental changes, until it is too late.

Each change on its own may be bearable or of limited impact. But taken as a whole, the attacks on journalists and increasing government restrictions have posed a major threat to Australian press freedom since September 11, 2001.

2.0 Legislation and the courts wind back press freedom

In the post September 11 environment, Australia has seen the most significant tightening of laws restricting coverage in peace time, particularly regarding matters of national security.

2.1 ASIO silences debate

Some of the greatest impediments to press freedom in Australia, after the September 11 and Bali terrorist attacks, is seen in the amendments to the Australian Security and Intelligence Organisation (ASIO) legislation. The changes to the legislation effectively prohibit any media exposure of any active ASIO operation under warrant for up to two years – even if the operation is in violation of international human rights conventions.

The *ASIO Legislation Amendment Act*, passed only eight days after it was introduced to Parliament on 27 November 2003, sets out two offences for those who disclose ‘operational information’ that relates to the enforcement of an ASIO warrant.

There are two offences which raise the greatest alarm among journalists. These provisions fall within section 34VAA “Secrecy relating to warrants and questioning”.

The first offence prohibits the disclosure of any information relating to an ASIO warrant for a period of 28 days after it has been issued. In practice, this restriction stops those who have been questioned by ASIO and/or their lawyers from talking to the media. Despite the possibility that the subject of the warrant might have been arbitrarily arrested and despite any maltreatment he/she may have received at the hands of ASIO officials, there can be no disclosure to anyone for 28 days.

The ‘permitted disclosure’ provisions are little more than an internal authorisation mechanism for ASIO and the subject’s lawyers who may need to disclose certain details to arrange the subject’s defense. Public interest never comes into consideration where permitted disclosures are concerned.

The strict liability provision makes clear that it is the subject and his/her legal representatives which are present during the questioning who are the most vulnerable to a five-year jail term for unauthorised disclosures of ASIO information. But the final sentence of section 34VAA (3) opens the liability up to anybody who fulfils the *Criminal Code’s* definition of ‘recklessness’ in disclosing the information.

The fault element of recklessness, may at least, offer a defence for journalists who unwittingly disclose information which relates to a warrant or is ‘operational information’. Recklessness requires both an awareness of the results that an act will bring about and the disregarding of those results.

It is unclear however, whether the Act allows for journalists to make their own judgement that disclosing ‘operational information’ is in the public interest, and therefore, that it is justified and not reckless. A journalist disclosing information about an ASIO warrant which, for example, they believe to have been illegally issued and enforced in contravention of international human rights conventions, is a disclosure which, technically, is designed to disrupt ASIO operations and therefore could be regarded as ‘reckless’.

There is no specific public interest defence against knowingly disclosing this information for the purpose of informing the public and stimulating debate about ASIO’s activities. Accordingly, journalists are left vulnerable to a five-year prison term for doing their job.

The second offence is essentially a broader extension of the first. Section 34VAA (2) allows that for a period of two years after the expiry of the warrant, it remains an offence for anyone to disclose any ‘operational information’ that ASIO has or had relating to this warrant. The Act seeks to protect ongoing investigations that are linked to an initial warrant for a period of two years. But considering that there is no limit on the number of warrants that shall be issued, a long series of back to back warrants could mean that this two-year banning period does not actually begin until the final warrant has expired.

The Act implies that any journalistic disclosure of ASIO ‘operational information’ will be punishable by five years jail.

The definition of ‘operational information’ in section 34VAA (5) is extremely broad



Dennis Richardson Director-General of ASIO at the Security in Government Conference 2004. Canberra, March 17, 2004. Photograph by Penny Bradfield/The Sydney Morning Herald.

Dennis Richardson is the only member of ASIO that media are allowed to identify.

To inoculate ASIO from public scrutiny about their activities – and to have the potential to jail journalists who attempt to shed light on ASIO’s activities – is fundamentally undemocratic.

This poses a serious threat to the anonymity of journalists' sources – a fundamental ethical ideal which safeguards journalistic integrity in the eyes of the public.



The Telecommunications (Interception) Amendment (Stored Communications) Bill 2004, allows the Government to obtain a warrant to access stored communications including SMS, mms (multimedia messages), email and voicemail messages. Photograph by Louise Kennerley/Australian Financial Review

so as to include almost anything that ASIO has done or is doing, or has known or knows:

(5) **Operational information** means information indicating one or more of the following: information that the Organisation had or had; a source of information (other than the person specified in the warrant mentioned in subsection (1) or (2)) that the Organisation has or had; an operational capability, method or plan of the Organisation.

It is hard to see what information or plans that ASIO has that would not fall under this definition of 'operational information'. Thus this section effectively gags any debate about ASIO's activities when a warrant has been issued, which is an untenable situation.

Fortunately, there has been no reports of journalists arrested for disclosing 'operational information.' But if any journalist did violate the disclosure rules, it is entirely possible that their arrest might also be withheld from public debate under the very same legislation.

There is a limited safeguard (Section 34NB) that is ostensibly designed to keep a check on ASIO staff acting under the authority of a warrant. The safeguards stipulate that an ASIO official who *knowingly* contravenes a condition or restriction of the warrant faces a two-year jail term. However, it is disproportionate sentencing that journalists who tell the story of this abuse of ASIO power in an effort to foster healthy public debate into counter-terrorism, risk five years in jail – more than twice as long as for the original crime.

This legislation also has extensive application. Given ASIO's intricate connections with many aspects of the domestic 'war on terror', it can significantly restrict public discussion of the Government's tactics in combating domestic terror threats.

To inoculate ASIO from public scrutiny about their activities – and to have the potential to jail journalists who attempt to shed light on ASIO's activities – is fundamentally undemocratic. Journalists and the media fulfill an important monitoring role and they should be granted access to at least some of the information that relates to an investigation by ASIO.

Indeed, it would serve ASIO to be more transparent in their activities. Openness may help engender public support for the 'war on terror' instead of establishing an opaque system whose internal operations are withheld from public view and criticism.

2.2 Raft of anti-terror legislation

There have been other counter-terrorism legislative changes which also threaten journalistic independence. These include the *Criminal Code Amendment (Terrorist Organisations) Bill 2003*, passed by the Senate on March 4, 2003, and the *Anti-Terrorism Bill (No. 2) 2004*, which prohibits association with a terrorist organisation, may, potentially, be used to impede journalists reporting on terror groups.

Most concerning to journalists, however, is the *Telecommunications (Interception) Amendment (Stored Communications) Bill 2004*. This Bill, which received royal assent on December 14, 2004, allows for the Government to obtain a warrant to access stored communications, including sms, mms (multimedia messages), email, and voicemail messages. This poses a serious threat to the anonymity of journalists' sources – a fundamental ethical ideal which safeguards journalistic integrity in the eyes of the public.

Exposing a journalists' electronic communications with a banned organisation may not only undermine the anonymity of their sources, but it may also expose that journalist to prison time for 'associating with a terrorist organisation.'

2.3 Freedom from information

It is not only ASIO and anti-terror legislation that is posing limitations on the ability of journalists to gather information. Freedom of Information (FoI) legislation, paradoxically, provides a number of barriers for journalists seeking to access non-personal information.

The *Freedom of Information Act 1992* is, in theory, intended to allow greater public scrutiny of decisions and actions made by governments and the bureaucracy.

However, in practice the legislation fails to hold authority accountable and has often been referred to as 'Freedom From Information'.

Between 2002 and 2003, 92 per cent of all requests made under FoI were made by individuals for personal information. The small percentage of applications for other information is indicative of the difficulties faced by journalists in using this legalisation.

Through lengthy time delays, excessive costs and the expansion of exempt document categories, the Government has watered down the legislation's effectiveness and thwarted attempts by the media to gain access to important documents.

Under the legislation applications must be processed within 30 days. A further delay of 30 days can be incurred when a review is sought. Statistics indicate that 34.68 per cent of FoI applications for non-personal information take more than 30 days to process and 17 per cent take more than 60 days to process.¹

Costs for FoI applications can run into thousands of dollars. According to Labor's Robert McClelland, charges notified by the Howard Government in response to FoI requests jumped from \$309,689 in 1998-99 to \$825,779 in 2001-02.²

In the Act there are 20 clauses exempting documents from release and ministers can also use a 'conclusive certificate' to protect documents. The use of 'conclusive certificates' - where a minister believes the disclosure of a document will threaten



Cartoon by Peter Sheehan

The cost of 'free' information

BY MALCOLM FARR

If Australia was as impregnable as the vaults of unclassified information in the Defence Department, well, we wouldn't need a Defence Department.

If the flow of undocumented visitors into Australia was as tightly controlled as the flow of information out of the Immigration Department, there'd be no need for border patrols.

Treasury officials treat information as if it was their own money; the Health Department can prescribe all sorts of reasons not to explain how billions of dollars in taxpayer funds are being spent.

The Federal public service routinely clamps down on the release of information and upgrades its efforts whenever the importance of the data to voters is greatest, such as when Australia helps invade Iraq.

Never has there been so many decisions, so much detail and paperwork in existence, and such a small proportion available to voters.

Journalists now are familiar with excuses for governments and arms of government withholding facts: it's too complicated for lay-people to understand; it's a matter of communication between senior figures which cannot be divulged; there are privacy issues involved; national security could be harmed.

Often, too often, it's bunkum.

The objective is news management and manipulation - and even censorship - with the only motive being a need to protect political assets and personal job security.

Michael McKinnon of *The Australian* is the most successful journalist currently using Freedom of Information laws to break open the files of bureaucrats.

For more than two years, McKinnon has been demanding from Treasury officials documents relating to the effect of bracket creep on personal tax, and whether the First Home Buyers' Scheme fuelled the housing boom.

The requests have been blocked, with Treasurer Peter

Costello issuing 'conclusive certificates' stating release of the documents would be against the public interest.

After appearing in the Administrative Appeals Tribunal, McKinnon on May 4, 2005 will take his case to the full bench of the Federal Court in Sydney.

If successful there, he will have strongly challenged a 20-year-old precedent established when John Howard, then an Opposition MP, lost a case against Treasury.

McKinnon believes Howard v Treasury imposed seven "appalling and cynical public interest arguments" impeding the release of information.

In an interview, he pointed to one reason presented by Costello: that release of a document on income tax options would not make a valuable contribution to the public debate, and had the "potential to undermine the public integrity" of the Government's decision-making process.

"The Treasurer's argument hinges on the notion that unless material will make a contribution to the public debate of which the Treasurer and Treasury approve, or in terms with which they concur, then it must not be released," said McKinnon.

Don't think Costello isn't taking this seriously. He has twice used 'conclusive certificates' against McKinnon's FoI inquiries, at a total bill to taxpayers of \$630,000 in legal costs. Foreign Minister Alexander Downer has spent \$170,000 on a separate FoI request.

We have the most accessible politicians in the developed world with the Prime Minister, Treasurer and Foreign Minister interviewed almost every day.

We should not confuse this with the idea that we thus have the most open politicians.

News management is a multi-million dollar part of Government operations and its prime aim is to restrict the flow of information, not enhance it.

Malcolm Farr is Chief Political Reporter for The Daily Telegraph

national security or is against the public interest - has been of major concern.

In January 2005, News Limited lodged an appeal to the Full Bench of the Federal Court against a decision that blocked *The Australian* journalist Michael McKinnon's access to Treasury documents under FoI. The Administrative Appeals Tribunal accepted Treasurer Peter Costello's use of two conclusive certificates to exempt documents relating to bracket creep and the real value of income tax cuts, and about the First Home Buyers' Scheme - both topics of supreme public interest.

Alexander Downer also used another conclusive certificate against McKinnon to exempt the release of information relating to legal advice received by the Government on the incarceration of Australian citizens in Guantanamo Bay. The information was exempted on the grounds it may be contrary to national security.

Section 7 of the Act exempts agencies, including ASIO and ASIS, from any requirement to provide information to the public. The Defence Department is also exempt from releasing documents relating to the activities of the Defence Intelligence Organisation.

Since 2001, exemption categories in the legislation have been extended to coincide with confidentiality requirements outlined in the *Intelligent Services Act 2001* and the *Migration Act 1958*.

The culminating effect of the Act's flaws renders the law useless for journalists. It undermines the very foundations upon which it was based - to eradicate secrecy and improve decision-making.

2.4 A national defamation law

Media companies and organisations, including the Alliance, support the principle of uniform defamation laws.

The disparate system of state defamation laws has been a long-standing challenge to press freedom. The varying defences have resulted in 'forum shopping' - plaintiffs issuing writs in the jurisdictions where they would have a better chance - and a 'chilling effect' where publishers, uncertain of where the published material will end up, don't publish the material at all.

In July 2004, 25 years of defamation debate was brought to a head when Federal Attorney-General Philip Ruddock proposed a blueprint for a national defamation law.

Advocates for a uniform law, however, have opposed Ruddock's 'draft blueprint', arguing it draws together the worst aspects of the eight state and territory laws instead of striking a balance between the right of free speech and the need to protect reputation.

Three provisions in the Federal blueprints raised the ire of Australian media: retaining corporations' right to sue; providing courts with the power to dictate wording and placement of corrections; and allowing the family of the deceased to sue. Ruddock has since conceded on the family of the deceased's right to sue.

The state and territory attorneys-general, threatened with a deadline of January 1, 2006, reached a historic compromise on a model uniform defamation law at the Standing Committee of Attorneys-General in November 2004.

The states' model, favoured by media organisations, unifies the cause of action and the defences to defamation. It aims to provide 'effective and fair remedies' for those reputations harmed by incorrect information or imputations, capping damages to \$250,000 in line with awards for personal injuries. Time limits for starting litigation for libel and slander are reduced from six years to one.

The states' model wants to remove companies' right to sue, as their vast resources make it an unfair battle. It includes an 'offer of amends' which may include a correction, but the state attorneys-general argue a court-ordered correction at the end of proceedings is rendered useless and it is not a power that should be vested in the judiciary.

Yet Ruddock is still reserving the right to introduce a federal law, covering anything published or broadcast by a corporation - effectively all Australian mainstream media. The Federal Government is insisting on the inclusion of provisions regarding companies' right to sue and court-ordered corrections.

South Australia has introduced the *Defamation Bill 2005*, based on the states' model, into Parliament. The other states are finalising the details with the intention of entering a bill based on the states' model into all state parliaments by the end of this year.



Attorney-General Philip Ruddock holds a doorstop interview at Parliament House. Photograph taken by Andrew Taylor/*The Sydney Morning Herald*

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2.5 Internet restrictions

As cyberspace has continued to break down the global barriers of communication, new regulations have been introduced to challenge the traditions of a free press.

In 2002, the High Court of Australia ruled that foreign media could be sued for defamation in Australia for articles published on the internet. In October 2000, Joseph Gutnick sued Dow Jones for defamation after Dow-owned WSJ.com published an article, making several references to the Victorian businessman.

The company argued the case should be heard in New Jersey, where the article was put onto the internet. The High Court, however, ruled that material on the web is not comprehensible until it is downloaded by an individual and therefore it is the location where material is downloaded that damage to reputation might occur. Effectively this means journalists and news agencies may be liable for defamation anywhere in the world.

An annual international freedom of the press report published in 2003 responded to the Australian ruling, saying, "The novel ruling could undermine press freedom worldwide if copied by other countries"³.

2.6 Protection of sources

Protecting sources is proving difficult as courts increasingly use the threat of contempt of court to seek to compel disclosure of confidential sources.

This is a global trend in the developed world, with US courts allowing the demands of prosecutors and investigators to over-ride the important free speech issues involved.

In Australia, three journalists have been jailed for up to three months for refusing to divulge confidential sources since 1989 and others have received suspended sentences.

In NSW, the State Government enacted the *Evidence Amendment (Confidential Communications) Act* in late 1997, providing some limited protection for journalists. Despite this, on June 26, 2002 the Supreme Court ordered AAP reporter Belinda Tasker and *The Sydney Morning Herald's* Anne Lampe and Kate Askew, to divulge their sources for a story about the NRMA board. The Court supported NRMA's contention that it could not function properly in the knowledge that its board meetings were being leaked to the media. The Court also agreed that the sources had to be revealed in order to determine whether the leakers had breached the *Corporations Act 2001* (Cth).

The judge acknowledged that the leak did not cause serious harm but he insisted that "it is [the] potential for further harm that is important."⁴ Fairfax and AAP appealed the decision and fortunately the three reporters managed to escape prison terms after NRMA dropped the case.

3.0 Government actions restricting press freedom

Since September 11, 2001 legislation and the courts have not been alone in curtailing press freedom within the country. Australian governments, particularly the Federal Government, have taken a harder line on message management, treating information as commodity to be guarded at all cost – it seems most goodwill that once might have existed to open government actions to public scrutiny has long since evaporated.

3.1 Attacks on whistleblowers

The Federal Government has proved it is prepared to exercise its powers to silence whistleblowers.

Journalists faced the prospect of prosecution for revealing - or even receiving - leaked information, under the Government's proposed *Criminal Code Amendment [Espionage and Related Offences] Bill 2001*.

Then Attorney-General Daryl Williams proposed that the Bill would make it an offence to communicate "an official record of information or official information" to "a person to whom he or she is not authorised to communicate it or make it available." The definition of this 'information' would not even be restricted to

The Federal Government has proved it is prepared to exercise its powers to silence whistleblowers.



Publisher and editor of the *National Indigenous Times* newspaper, Chris Graham after the premises were raided by the Australian Federal police and documents seized. Canberra, November 11, 2004. Photograph by Alan Porritt/AAP Image

"So if some people seem surprised that I have called in the police to deal with leaks, they shouldn't be – I always have and I always will."

Dr Peter Shergold, Secretary of the Department of the Prime Minister and Cabinet

matters of security and defence. Further, for the first time, journalists could have been jailed for two years simply for having received leaked information.

Contrary to the Attorney-General's claim upon introducing the Bill to Parliament, the draft failed to address the recommendations of the 1990 Gibbs Report of the *Crimes Act*. Sir Harry Gibbs described the catchall section 70 which allowed for a two-year jail term for any government whistleblower as "wrong in principle....and seriously defective from the point of view of effective law enforcement."⁵

The draft Bill also ambiguously declared that anyone disclosing information, "intending to prejudice the Commonwealth's security or defence" would be guilty of an offence. Obviously a great deal of discretion would have been permitted in this clause.

Fortunately, a coalition of media organisations and press freedom groups campaigned against this legislation and the provision of the Bill directed at journalists was withdrawn. However, the Bill failed to provide any protection to whistleblowers as had been recommended in the Gibbs Report.

Since then, the Government has embarked on a significant campaign to intimidate whistleblowers by using the full investigatory powers to identify confidential sources.

The Senate Privileges Committee in 2002 investigated the leaking of a Senate committee's report to Annabel Crabb, journalist 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 Senate Privileges Committee did not find the journalist or the publication in contempt.⁶

However, in March 2005, a new inquiry was referred to the Standing Committee of Privileges. It will look at proposals to prohibit any unauthorised disclosure of parliamentary committee proceedings, evidence or draft reports, regardless of whether it obstructs the work of a Senate committee.⁷

In another attempt to intimidate whistleblowers, Federal police raided the *National Indigenous Times* on November 11, 2004 with a warrant to seize two leaked cabinet-in-confidence documents about an Aboriginal welfare plan. The story, which was also picked up by the *Australian Financial Review*, detailed the Government's tough new plan to monitor 'good behaviour' in indigenous communities.⁸

Five Australian Federal Police (AFP) officers arrived at the *NIT* at 8.30am and searched the office for over two hours. They eventually left with six documents. While the AFP is not obliged to reveal who orders its raids, various sources confirmed that the office of the Prime Minister and Cabinet sent them in.

The Prime Minister's office simply stated it was not the first time the unauthorised disclosure of cabinet documents was referred to police.⁹

Six days after the *NIT* raid, Secretary of the Department of the Prime Minister and Cabinet, Dr Peter Shergold, boldly professed that he would continue to call on the police to deal with leaks. He labelled the scrutiny of a free press as "democratic sabotage". He said: "Leaking blows apart the Westminster tradition of confidentiality upon which the provision of frank and fearless advice depends. So if some people seem surprised that I have called in the police to deal with leaks, they shouldn't be – I always have and I always will."¹⁰

Since the *NIT* raid, the paper has been working on another hard-hitting story about Aboriginal affairs and the Crime Commission. The paper questioned the Government about the story and received, the very next week, a notice of audit from the Australian Bureau of Circulation. While not forced to take part, the Federal Government – the paper's biggest advertiser – will withdraw all advertising if they don't.

Centrelink and the Department of Education Science and Training soon after withdrew their advertising, saying the advertisement copy contained mistakes. Time will tell if the paper will survive the Government's campaign against it.

Melbourne radio station 3CR was raided by the Australian Federal Police on March 22, 2005. Three AFP officers entered the station with a warrant to seize an interview, recorded previously with Rob Stary, lawyer for terrorist suspect 'Jihad Jack' Thomas. The warrant was issued because Stary, during the interview, had apparently contradicted statements made in court. Obtaining the interview through these means was excessive and unnecessary - a blatant attempt at media intimidation.

In May 2004, Victorian Labor Senator Jacinta Collins asked the Minister for Justice and Customs upon notice how many investigations, for each year between 1997 and 2004, the AFP had conducted into suspected leaks of information in

respect of Federal Government departments and agencies. She also asked how many AFP staff hours were spent on investigating these suspected leaks and what other costs the AFP incurred in relation to the investigations.

Senator Elliston responded in August 9, 2004 that the AFP had conducted 111 investigations between 1997 and 2004. Total staff hours amounted to 32,987 between 2000 and mid 2004 and the total cost incurred for that period, including witness expenses, was \$183,118.¹¹

3.2 No longer 'your ABC'

A standard test of the attitude of any government to press freedom is its approach to public broadcasting. Here, the Federal Government has maintained a hostile approach to the national broadcaster through attritional de-funding, board stacking and campaigns to stereotype, vilify and smear all public broadcasters as 'left wing' and 'anti-American'.

On funding, the Howard Government has flatly rejected the ABC Board's triennial funding submissions in 1997, 2000 and 2003. This has followed a now established pattern of de-funding the national broadcaster. Since 1985, the ABC's operational base funding has declined by 30 percent in real terms¹². Although the Government Coalition parties proclaimed a rhetorical commitment to the ABC in their 2004 election manifesto, they proposed yet another inquiry into the 'adequacy and efficient use' of current levels of funding. The terms of reference and personnel to conduct this inquiry are soon to be announced.

Following a sustained 'bias' attack on the ABC in recent years, the Government parties also are committed to establishing a new regime of external investigation of 'bias and balance' by both public broadcasters - the ABC and the Special Broadcasting Service (SBS). The method of appointment, powers and qualifications for the new bias and balance monitors have still to be revealed.

ABC journalists and program-makers are subject to the following internal and external accountability legislation, codes, processes and bodies: The *ABC Act*; ABC Board editorial policies; ABC Code of Conduct (requiring upward referral of contentious content before broadcast; management supervision of content from network editors to program executive producers; legal vetting before broadcast); defamation and contempt laws in federal, state and territory jurisdictions; (internal) Complaints Review Executive; the Independent Complaints Review Panel; external appeals to the Australian Broadcasting Authority; audience complaints; parliamentary scrutiny via Senate estimates and questions with and without notice in the House of Representatives and the Senate; ANAO audits of ABC performance, accounts and corporate governance.

And following a pattern set by the Labor Party in government, the Liberal/National parties have stacked and politicised the ABC Board through patronage appointments. The most recent appointment, News Corporation columnist Janet Albrechtsen, was particularly contentious because of the conflict of interest issue it raised and the fact that Ms Albrechtsen was in active dispute with the ABC's *Media Watch* program over her methods.

The Government has rejected a Senate Committee's recommendation that in future ABC Board appointments follow the Nolan rules of public advertisement and merit selection on agreed criteria and with a balance of qualifications.

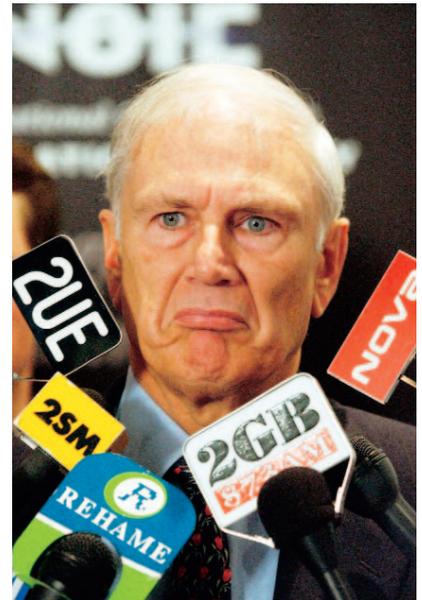
The vilification of ABC journalists continues.

Queensland Liberal senator, Santo Santoro, asked ABC Managing Director Russell Balding in an Estimates Committee hearing in 2003 to explain comments made by Max Uehtritz (then head of ABC news and current affairs) that the US military were 'lying bastards'¹³. Senator Santoro also claimed an 'anti-US bias' in a *Four Corners* program on post-war Iraq and questioned the scripts of radio presenters and reporters on ABC Radio's *AM* program¹⁴.

Senator Alston submitted 68 complaints about the *AM*'s Iraq war coverage which he said revealed an endemic left wing bias. The ABC's Complaints Review Executive conducted a line-by-line investigation into the Minister's complaints. It upheld two of the 68. Because of Senator Alston's dissatisfaction with this result, MD Balding referred the 68 to the Independent Complaints Review Panel which found for the Minister on 15 more. Still not satisfied, Senator Alston took a revamped list of 43 complaints to the Australian Broadcasting Authority which upheld six and found that the ABC had breached impartiality guidelines four times in its coverage of the Iraq War.

The report said that the breaches related to "tendentious language in connection with a controversial matter".¹⁵

The report, released in early March 2005, failed to recognise the vested interests of



Former Communications Minister Richard Alston submitted 43 complaints to the Australian Broadcasting Authority about left-wing bias in ABC's *AM* coverage of the Iraq war. The ABA upheld six of those and found the ABC had breached its own impartiality guidelines four times. Photograph by Mick Tsakis/AAP Image

The report, released in early March, failed to recognise the vested interests of the complainant, Richard Alston, or give due weight to the pressures that journalists face on a daily basis especially when covering conflict.



Cartoon by Andrew Dyson

the complainant, Richard Alston, or give due weight to the pressures that journalists face on a daily basis especially when covering conflict.

Linda Mottram, the former presenter of *AM* specifically named in Alston's complaints, in her submission to the ABA said: "It would simply be negligent for the ABA to develop no framework to explain how it has assessed the pivotal matter of governmental and military information and propaganda in war and the consequent issues for reporters. That would show a lack of historical understanding of one of the constant and most controversial themes of journalism, given the long history of management of information by governments in times of conflict."¹⁶

All this pressure appears to be intimidating ABC management. In July 2004, the ABC refused to provide archived footage to an independent filmmaker documenting the refugee crisis.

Director of Enterprises at the ABC, Robyn Watts, said that former Defence Minister Peter Reith had to grant permission before she authorised the sale of footage featuring him to Judy Rymer. Rymer was making a documentary on the treatment of refugees called *Punished not Protected*. Russell Balding said the decision was made to "...protect the integrity of the ABC and its reputation as an impartial and independent public broadcaster."¹⁷

In another case, the ABC refused to sell to filmmaker, Liam Ward, a soundbite of then Immigration Minister Philip Ruddock for his documentary, *Refugee – a recipe in six steps*. Both of these films were deemed 'political statements' and therefore subject to the veto of the politician featuring in the material.

The ABC has since reversed this policy.

When is a question too tough?

BY LINDA MOTTRAM

During a drive from Baghdad to Babylon, in Iraq, a few years back, my information (sic!) ministry minder asked me what a journalist does. I answered that in democracies, journalism means raising all questions about everything, to help clarify and expose, primarily with the goal of keeping decision-makers honest. Defying the climate of fear and brutality, and appearing to snub the propaganda that served as journalism in Saddam Hussein's Iraq, my minder whispered his reply. I'd like to be a journalist, he said.

With this among other experiences in mind, it was breathtaking to see the Australian Broadcasting Authority cursorily dismiss well-argued cases to find that I had committed four breaches of ABC editorial guidelines during my time as presenter of the national broadcaster's *AM* programme.

Certainly it found, in considering the remaining complaints of former Communications Minister Richard Alston, that *AM* had delivered a high quality of coverage overall. But the barbs in the report were saved largely for the un-named presenter. There are greater threats to journalists elsewhere but Australian journalists should, I believe, take the ABA's ruling in the Alston matter seriously.

The ABA's findings essentially now proscribe anything considered by the powerful to be too tough. They mean that a government 'briefing' reporters on some situation or policy or other can from now on expect no analysis of the 'briefing'; that is of propaganda, or spin, where it might be found. Forget expertise, experience and democratic responsibility, the ABA's findings mean that the words as they are spoken by those who speak for the powerful are all that should be reported. The findings also mean that asking unpalatable questions where someone powerful is offended by those questions is not allowed, even where the intention is clarity. Forget expertise, experience and

democratic responsibility.

The ABA produced this result by putting on blinkers. It failed to mention the very particular interest of the complainant, Richard Alston, as a Minister for Communications in a government prosecuting a war. Instead, the ABA attempted to appear aloof and thus credible by comparing the Minister's complaints to what "ordinary, reasonable listeners" might have thought. Richard Alston was far from such a listener. And virtually none of those listeners registered any complaint of *AM*'s war coverage.

The ABA also failed to explain how it views the complex issue of propaganda and reporting. Without this framework, we can't understand how it reached key decisions.

Finally, the ABA showed no sign of understanding that it had become a pawn in another domestic political game. At the time he complained, Richard Alston was not so much firing a salvo at *AM* as at ABC Chairman Donald McDonald. They were on poor terms, over a number of matters, from ABC funding to who should be ABC Managing Director, to the comment by Max Uechtritz, then ABC Director of News and Current Affairs, about military spin-doctor being "lying bastards". *AM* was caught in the middle and only *The Australian* newspaper's Errol Simper (March 17, 2005) put that context on the ABA final report into the Alston complaints.¹⁸

Much has been unsatisfactory and worse in this drawn out process, but for now, I offer an apology to my former Iraqi minder for misleading him about journalism and democracy.

Linda Mottram has reported for the ABC from some 20 countries and is a former presenter of the flagship AM program.

3.3 Criminalising the fourth estate

Governments and their agents have also been prepared to use other laws to harass and intimidate journalists.

Journalists were harassed by Australian Protective Services officers during the Woomera detention centre crisis on January 26, 2002. For a week, the media contingent had been reporting from their designated area which was outside the front gate, 800 metres away from the centre proper.

The media obliged when asked by lawyers for the detainees to move behind a hessian lined fence because they felt that the media's presence was inciting detainee violence. Yet, despite this cooperation, APS officers moved the media another 200-300 metres further away which was too far for filming. This was a clear attempt to muffle public debate over the Government's treatment of asylum seekers.

Natalie Larkins, from ABC Radio, refused to move behind the new perimeter and was arrested by the APS, ensuring that the incident received even more publicity. Larkins was charged with trespass on Commonwealth land. This is the first time such legislation has been used against a journalist in Australia.

All charges against Larkins were dropped in the South Australian Magistrates Court. The incident also provoked widespread condemnation in the media.



APS officers take names of the various media representatives with local police taking ABC radio journalist Natalie Larkins into custody for allegedly trespassing on Commonwealth land. Woomera, January 28, 2002. Photograph by Rob Hutchison/AAP Image

Photojournalists and press freedom

BY ANDREW MEARES

"If your pictures aren't good enough, you're not close enough" declared renowned war photographer Robert Capa.

His epitaph still resonates today as photojournalists face increasing challenges to press freedom.

In a heightened security environment, access for photojournalists is increasingly constrained by police powers, political interference, corporate control and community misunderstanding.

It is the photojournalist's duty to document history – that is, if they can get 'close enough'.

Some areas of concern:

Accreditation

In August 2003 the rigorous National Visits Media Card (NVMC) accreditation system was introduced.

The then Attorney-General Darryl Williams explained "The Australian Government is concerned not only to protect the safety of visiting foreign dignitaries but also the security of media working in close proximity."

In practice, the identity-checked, large laminated passes have made it easier for police and security officers to corral and control media to designated areas, limit media representation and in some cases, prevent photos being taken.

The NVMC web site currently advises:

"Please note: The card does not automatically invite the holder to any special consideration or closer proximity to visiting dignitaries or access to associated events."

Recent incidents validate this advice and suggest photojournalists would gain better access without the pass.

When Prime Minister John Howard escorted Indonesian President Susilo Bambang Yudhoyono to a boat alongside the Sydney Opera House, a wall of armed police officers blocked the corralled photographers, preventing the moment being documented, while members of the public, who had not undergone any security clearance, happily posed with the leaders taking photos with their camera phones.

Similar zealous security measures were applied during the visit to Australia by HRH Crown Princess Mary of Denmark.

Photojournalists understand the benefits of accreditation process - what they don't understand is why after undergoing an identity and security check procedure the media card proves to be of little benefit.

Coverage of Federal Parliament

Photographers must comply with subjective, punitive guidelines to report, fairly and accurately, the proceedings of the Australian Parliament for the Australian public. Unlike other press gallery journalists, access to Parliament for photojournalists is severely restricted and controlled. Photojournalists have been banned from Parliament for simply reporting the news.

Australian Defence Force

Ever since the 'children overboard' incident in 2001, relations with the ADF have remained tense and politicised. The increasing prevalence of denying photojournalists access to military events and personnel yet releasing 'official' photos is a concerning trend.

Community perception

Increasing community awareness and misguided hostility and suspicion towards photography represent difficult challenges for photojournalists. The negative publicity associated with 'paparazzi' photographers and much publicised court cases involving offensive behaviour perpetrated with cameras, has tarnished the perception and understanding of professional photojournalism. Photojournalists must be able to continue to work freely in public spaces. Ironically, perhaps an independent certified accreditation pass, not unlike the NVMC, would go some way to alleviate community concerns.

Andrew Meares is the Photo Editor (News) at The Sydney Morning Herald.

As debate about cross media ownership has continued, the last four years has seen a convergence of media that indicate on a small scale what will occur once the present restrictions are relaxed.

The use of the *Summary Offences Act* or 'move on' laws against journalists covering former Opposition Leader Mark Latham's retirement on January 18, 2005 was unprecedented and displayed a blatant abuse and misuse of the law. NSW police threatened to arrest journalists under Section 28F of the Act. Those involved were awaiting comment from Mr Latham following his resignation announcement.

3.4 Cross media ownership limiting diversity

When it comes to media ownership, government policy should have one goal: to protect and promote diversity.

The Government proposal to deregulate restrictions on cross media ownership may have dire consequences for this diversity. The debate over the *Media Ownership Bill* and its possible threat to press freedom will come to a head in July this year when the Coalition Government takes control of the Senate.

The experience in both Australia and overseas suggests that diversity of opinion, comment and news sources only results from diversity of ownership. In this way, the current package of media ownership rules work. While the package may not be perfect, the rules do serve their purpose of preventing further concentration of what is already a highly concentrated media industry.

Indeed, they have ensured that media ownership is more diverse than it was prior to the introduction of the rules in 1987.

The rules have ensured the existence of five major commercial forces in the media: three major print groups – plus two substantial regional groups - and three commercial television networks, with Kerry Packer's Publishing and Broadcasting having interests in both print and television.

As debate about cross media ownership has continued, the last four years has seen a convergence of media that indicate on a small scale what will occur once the present restrictions are relaxed.

The second largest magazine group, Pacific Publications, was largely taken over by the second largest television network, Channel Seven. Two players, Foxtel and Optus, dominate pay television. The four highest rating on-line news services are owned by existing players: ABC On-line, Fairfax, News and ninemsn. There was speculation in early 2005 that Fairfax had intentions to buy out the 57.5 per cent stake in Ten Network Holdings, from Ten's major shareholder, Canadian company CanWest Global Communications Corp.

The media will be watching closely to see what happens after July 1, 2005. At present there are several Liberal backbenchers and members of the National Party who oppose the Bill's provisions. Preservation of cross media ownership rules is not a lost cause. Media organisations will continue lobbying to maintain or increase more media players.

Disturbingly, within the existing groups there has been reduction of diversity through concentration of operations. For example, the O'Reilly group has consolidated aspects of its editorial operations in regional 'hubs' which produce papers for three or four surrounding towns. The Fairfax group has been canvassing the possibility of further merging operations between *The Age* and *The Sydney Morning Herald*.

3.5 Access to information cut as police go digital

Police jurisdictions across Australia are gradually implementing secure digital technology for radio communication lines. The new technology replaces the old analogue system and prevents unauthorised access to sensitive information.

For the media, the move to digital systems means scanning police radio communications is no longer possible.

Rather than finding an adequate alternative to information dissemination, the Queensland Government in 2004 accepted a number of recommendations by the Crime and Misconduct Commission (CMC) that severely curtail press freedom.

It was recommended police be able to withhold information about certain job types, including those dealing with mentally ill persons, hospital/institution absconders, indecent acts and suspect terrorist activity. Other job types, including sieges, hijacks and bomb threats, would be released after a one-hour delay. Finally, the Police Communications Centre duty officer would have authority to withhold or exclude a job from release at their discretion.¹⁹

Police failure to coordinate an effective alternative to the scanners will create an environment where journalists are unable to report the news in real time (a harsh restriction for photographers and camera crews who rely on pictures) and will diminish media's role in setting the news agenda, with media units having greater discretion over the information released.

Victoria will implement the digital technology in late 2005. The media is concerned that if the newsroom has to increasingly rely on a centralised media unit to advise them of events, many will go unreported. This has serious consequences not only for press freedom but also for public safety.

The majority of journalists pride themselves on thorough, accurate and responsible reporting. The recommendations made by the Queensland CMC suggest that certain information should be kept from journalists to protect sensitive police investigations.

Police reporters are aware of the legislation and the delicate issues involved and usually act with discretion when reporting on crime. There have been few, if any, incidents where journalists have ruined police operations by publishing or broadcasting material irresponsibly.

3.6 Free Trade Agreement heralds less local content

In August 2004, the Australia-US Free Trade Agreement (AUSFTA) was finalised. The Australian Government conceded to protect the existing rules for local content on commercial television networks - 55% local content broadcast between 6am and mid night. But the final agreement bound the hands of future governments to extend the same rules to cover new media as they emerge.

For the media, this means that there are no regulations to ensure that news, current affairs, sports and documentary production on new media won't be sourced entirely from overseas.

The loss of Australian perspective in local news began in April 2004, when Channel Seven's 20-year-old London bureau was axed. Seven reached an agreement with Sky News in the UK, gaining access to its 24-hour news channel and use of its news teams. This type of outsourcing will only increase under the deregulation of content rules under the AUSFTA.

This, compounded with the small number of media owners in Australia, will lead to further homogenisation of news coverage and less Australian voices in our media.

The AUSFTA, compounded with the small number of media owners in Australia, will lead to further homogenisation of news coverage and less Australian voices in our media.

4.0 Safety

The most dire threat to Australian journalists since September 11, 2001 is the threat to their personal safety. The animosities and ethnic tensions mobilised by September 11 and its aftermath have put journalists in dangerous situations both overseas and at home. Indeed, intolerance toward journalists appears to have increased as has the readiness to lash out at the media.

4.1 Australian journalists killed

The journalism community was deeply saddened by the tragic death of Australian journalist, Paul Moran, who was working with ABC TV in Northern Kurdistan, when a taxi, rigged to explode, pulled up behind him. His colleague, Eric Campbell, was wounded in the attack, which occurred after the pair had interviewed refugees near the village of Khormal, not far from the Iranian border. Paul Moran died on March 22, 2003.²⁰

In another tragic case, sound recordist Jeremy Little was killed while working for US TV network, NBC in Iraq. He was mortally



Cartoon by Sean Leahy



John Martinkus was taken hostage by four Sunni militants and ex-Iraqi army officers while filming a report for SBS television's *Dateline* program. He was released after his captors established he was independent and not involved with the US government. Sydney, October 19, 2004. Photograph by Sam Mooy/AAP Image

wounded on July 1, 2003 when the military vehicle in which he was travelling was hit by a rocket propelled grenade in the notoriously violent Sunni-held town of Falluja. His parents, John and Anna, flew to Germany, where Jeremy had been transferred. Jeremy Little died five days later on July 6, 2003.²¹

These were the first Australian journalists killed in action since the ABC's Tony Joyce was murdered in Zimbabwe in November 1979.

4.2 Blaming the messenger

Fortunately, SBS journalist, John Martinkus, survived to tell the tale of his kidnapping by Sunni militants in Baghdad on October 17, 2004. The freelance reporter, under contract to *Dateline*, was released after 24 hours when he assured his captors he had no links with the US-led coalition and had directed them to look him up on the internet. Rather than supporting Martinkus, Australian Foreign Affairs Minister Alexander

Downer wrongly accused him of venturing into an area that the Government had warned the media to avoid.²²

The spin on Iraq

BY IAN MCPHEDRAN

As American cruise missiles and laser guided bombs rained down on Baghdad during the first night of the Iraq war in March 2003, press freedom was suddenly in vogue.

After weeks of restrictions, late night visits from Ministry of Information goons and threats of expulsion or prison for breaking their oppressive rules, Saddam's regime couldn't do enough to facilitate story and photo opportunities.

While the symbols of the brutal dictatorship crumbled under a barrage of high explosive, journalists were allowed to operate satellite phones freely from their hotel rooms.

Before the war all satt phones had to be registered and logged with the Ministry and could only be used under supervision at its headquarters.

For those of us who did not log our phones, but smuggled them into hotel rooms for clandestine calls, this new freedom came as a great relief.

Prior to war, the nearest thing to press freedom in Baghdad was a game of cat and mouse where local drivers or fixers, mostly opposed to Saddam, would take huge personal risks to help reporters escape the clutches of the dreaded ministry minders.

A fresh form of censorship kicked in the day after the opening salvos when a fleet of goon equipped buses stood outside the Palestine Hotel to ferry reporters to pre-arranged scenes of carnage.

Once the buses arrived at the sites the throng would spread out and try to find out what had actually happened.

Separating truth from propaganda or speculation was a difficult task. At every site though there were credible witnesses so it was a matter of seeking them out.

It was even harder at the hospitals where wards of apparent war wounded would be shown off as evidence of American 'shock and awe' atrocities.

The daily media briefings by Information Minister Mohamed Saeed al-Sahhaf, the legendary 'Comical Ali', became epics of propaganda and spin and moments of genuine comic relief for the captive news crews.

If the first casualty of war is truth then press freedom must be regarded as collateral damage.

Reporters embedded with coalition forces were anything but 'free' and their reports reflected what they were seeing or being told through a narrow prism at moments in time.

Those of us in Baghdad were restricted not only by the Ministry of Information, but also by military intelligence, a frightened populace in a city under siege, the danger of air strikes and local reprisals.

The only truly 'free' media were the so-called 'unilaterals' who roamed around the war picking up what scraps they could despite the restrictions imposed by both sides. Sadly, some of them were killed in the process and others were captured and lucky to escape with their lives.

Those media organisations with all three areas covered had the best chance of getting to the truth.

There is no doubt that press freedom has been under attack since September 11.

Democracies and dictatorships alike have used the war on terrorism and uncertain global circumstances to crack down on the media.

At the end of the day restrictive anti-terrorism laws can have the same effect as a late night knock on the door in a Baghdad hotel.

Ian McPhedran is Defence Writer for News Limited.

He covered the Iraq war from Baghdad until he was expelled by Saddam Hussein's dying regime a few days before the city fell.

Martinkus demanded an apology, pointing out that he was actually taken from outside his hotel, across the road from the Australian Embassy in Baghdad.²³ Mr Downer refused to apologise but instead, attacked Martinkus' off-the-cuff statement that while his captors had no reason to kill him, murdered British contractor, Kenneth Bigley, could be seen as a legitimate target.²⁴

In another incident, *The Australian* journalist, Peter Wilson and photographer, John Feder were detained by Iraqi authorities in Basra on April 1, 2003. They were placed under house arrest at the Meridien Palestine Hotel with other journalists after being accused of passport violations. Their satellite phones were confiscated and they were prohibited from filing stories. They were eventually released.

Daily Telegraph correspondent, Ian McPhedran, was one of many foreign journalists expelled from Iraq in March 2003. The disintegrating Iraqi authorities said he "broke the rules" by leaving his hotel without an escort to go and see the bombed-out Information Ministry. He was ordered out of Iraq on March 31.

4.3 Safety at home

Back in Australia, an SBS camera crew was attacked outside a Western Sydney Mosque on August 16, 2002 while covering a story that epitomised the ethnic tensions that were simmering across Australia after Tampa and September 11. The journalist, cameraman and sound recordist had just finished an interview with a local senior Muslim regarding the 55-year jail sentence handed down to the 20-year-old ring leader of a series of gang-rapes in Sydney.

While filming a location shot outside a west Sydney mosque, a group of men stopped and bashed the trio. Many believed that the coverage of the case gave undue attention to the ethnicity and Islamic faith of the 14 accused and that such an approach prejudiced the verdict, sparking widespread Islamic animosity towards the media.

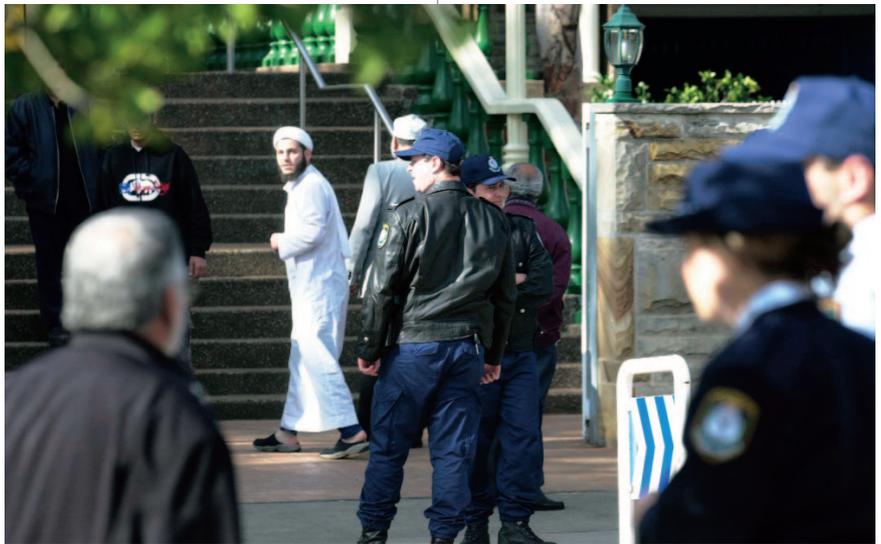
The three SBS staff suffered minor injuries in the attack. Ironically, the SBS crew was actually seeking to bring some balance to the story.

The home of Brisbane journalist, Hedley Thomas, was shot at on October 23, 2002. Thomas, of the *Courier-Mail*, was at home with his wife and two children around 11pm when four shots were fired into his West Brisbane house. One bullet missed his wife, Ruth, by centimetres as she lay in bed.

It is unclear whether the attack was linked to Thomas' series of articles revealing corrupt marketeering and no-win, no-fee lawyers over the previous year. The *Courier-Mail* offered a \$50,000 reward for information about the attack and also relocated the investigative journalist and his family, amid suspicions that the assailant had been stalking them for some time.

Queensland Premier Peter Beattie was urged to launch a full investigation into the attack to put a stop to such intimidation of the Brisbane press.

To date, no-one has been arrested for the attack.



Top: People leave the Lakemba Mosque after Friday prayers and the violent attack on an SBS crew in August 2002. The team was attacked when they went to gauge the reactions in the Lebanese Muslim community to rapist Bilal Skaf's 55-year jail sentence. Photograph by Alan Pryke/News Limited

Bottom right: Cameraman Mick O'Brien being attended to in the community centre across the road from the Lakemba Mosque after the attacks. Photograph by Alan Pryke/News Limited

Bottom left: Brisbane investigative journalist Hedley Thomas and his wife Ruth Mathewson outside the Indooroopilly Police Station. The couple and their two young children relocated from their Brookfield home, which was shot at on October 23, 2002. Brisbane, October 24, 2002. Photograph by Gillian Ballard/AAP Image

4.4 Sting endangers all journalists

An undercover Federal agent seriously undermined the safety and integrity of all journalists when, in late December 2003, he posed as a freelance journalist in order to arrest a terror suspect. The agent met three times with Seky 'Zak' Mullah posing as a journalist. Mullah, 21, was arrested on December 30, 2003 after negotiating to give the undercover agent the exclusive rights to a videotape which detailed his 'final message', outlining his intentions in plotting to destroy an ASIO building.²⁵

The tactics employed by the federal agent could have potentially decimating effect on investigative journalism. Journalists rely on the good faith of the public in order to access sources and their stories.

5.0 Immigration and detention

In the last four years, the Government's policy on refugees and asylum seekers has been at the forefront of the political scene. A Federal election was fought and won following the Tampa crisis and the infamous 'children overboard' incident. Yet the restrictions on reporting immigration issues have significantly increased.

The Government has made it virtually impossible to report on the treatment and conditions within Australian immigration centres, restricting access to centres and the detainees themselves. The media has become largely reliant on official government sources for any information relating to asylum seekers. This level of secrecy does not bode well for Australian democracy and contravenes UNHCR's international media policy.



Terry Hicks (left) (father of David Hicks) and Stephen Hopper (sollicitor for Mamdouh Habib) at a press conference. Coverage of Hicks' trial was severely restricted by the US military. Sydney, May 29, 2004, Photograph by Elizabeth Hanna/AAP Image

The Government has used extensive means to prevent the media from reporting the arrival of refugee boats into Australia. When a boatload of Vietnamese arrived at Port Hedland in July 2003, 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. Canberra prevented the media from covering the event through excessive restrictions. 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 relating to the boat people. Justice Dean Mildren of the Northern Territory Supreme Court later said: "Behaviour of this kind usually implies that there is something to hide."²⁶

Internationally, journalists trying to cover immigration concerns have been seriously hampered. Australian journalists attempting to cover the trial of Australian terrorist suspect David Hicks in August 2004 could not walk short distances without a military escort. Pictures of David Hicks and audio from the courtroom were prohibited and military camera operators chose what images would broadcast via closed circuit television to most journalists covering the hearing.²⁷

Gaining access to Mamdouh Habib was equally difficult during his detention at Guantanamo Bay. However, upon his return without charge, reporting the former detainee's story was made difficult when a commercial television station bought the exclusive rights.

5.1 Journalists as refugees

Several journalists have landed in Australia, forced from their homelands by governments and militia that will stop at nothing to silence the voice of dissent in the media.

Columbian journalist Carmenza Jimenez Osorio fled her homeland with her seven-year-old son after paramilitary groups threatened to assassinate both of them. For 21 years she had worked in TV but became a target in 2001 after embarking on a documentary denouncing the grave humanitarian crisis within

her country. She went into hiding and was given temporary protection in El Salvador while she applied for refugee status in Australia.

This was granted in June 2003 but she could not get to Australia until she raised adequate funds to cover her and her son's flight costs. With no further monetary support available in El Salvador she called on the International Federation of Journalists to intervene. Jimanez Osorio landed in Melbourne on November 10, 2003.

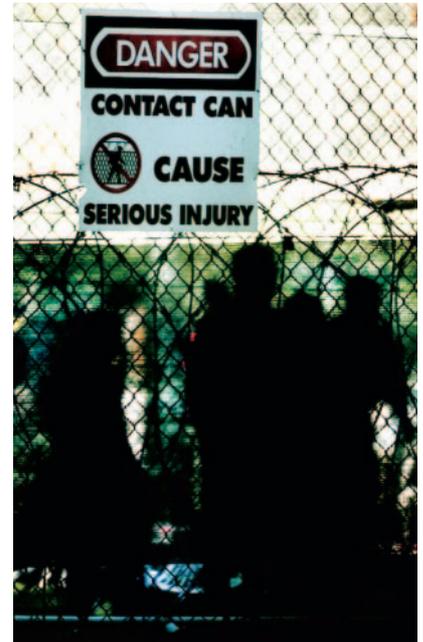
In other notable cases, the Australian Government has been openly hostile towards the cause of foreign journalists. Some have been forced to remain silent, locked away in detention centres for several years.

Cheikh Kone, a journalist from the Ivory Coast, was forced to flee there after criticising the country's electoral process and asserting the election in December 1999 was a sham. Aware the militia was after him he escaped, arriving in Fremantle in January 2001. Kone was taken to Port Hedland Detention Centre and his applications for refugee status were rejected as high as the Federal Court of Australia. He was eventually released in July 2003 and presented with an \$89,000 'accommodation' bill from the Government.

Cambodian journalist Lan Khy Try received death threats in Cambodia following a series of articles revealing government corruption and illegal logging. After his editor died in suspicious circumstances he and his wife went into hiding, seeking refuge in Australia. He and his wife were eventually released to France in early 2004.

Ardeshir Gholipour has been in Australian immigration detention since May 2000. The Iranian writer, journalist and political activist fled his home in fear of his life. He remains an inmate of Baxter after three and a half years in detention.

In November 2004, Sarath Amarasinghe, a 42-year-old journalist from Sri Lanka, joined fellow Baxter inmates in a hunger strike. His latest visa application had been refused after three years imprisonment. While in detention, Amarasinghe has produced 13 editions of the *Baxter News* – a publication detailing and criticising the inhumane conditions and abuse endured by detainees.



Refugee children playing in the visiting area at the Villawood Detention Centre in NSW. Australian journalists were effectively barred from approaching or interviewing boat people during 2003. June 9, 2002. Photograph by Kate Geraghty/*The Sydney Morning Herald*

The cost of detention

BY CHEIKH KONE

On October 26, 2000 I was forced to leave my beloved homeland, the Ivory Coast, because I had written an article that underlined the manipulation of the result of the presidential election that same year. It was my belief in democracy that led me to flee my country and spend two and a half years detained in Australia.

Fleeing by road across the border, I was put on a container ship I hoped would take me to Europe, but which instead deposited me in South Africa. After over a week on port, I stowed away in another freighter without knowing where it was bound. This vessel docked in Fremantle. The next morning I was rushed to another room where I believed I was going to be welcomed to Australia.

Instead, two very hostile individuals confronted me without introduction. With my poor English I was able to comprehend some of what they were saying. Who had told me to come to Australia? Didn't I know that coming to Australia this way was harshly punishable? In return I told them that I was a journalist who had been forced to leave the Ivory Coast because my writings had annoyed the government of the day. Within two days I was at the Port Headland detention centre, where I spent the next two and a half years.

About halfway through my detention I was so dismayed by the conditions in the Centre that I asked to start a

newsletter. After several rejections, I was allowed to write as long as the things I wrote and published were not political. But despite promising to follow these guidelines, I could not stop myself from criticising the Center's administration and the Federal Government. And so after two issues the Center's management stopped it, saying my articles were too gloomy.

Then after my release, I received a tax invoice from the Immigration Department for \$89,000 for the costs of my detention. Until I pay that money, I will be unable to leave Australia. At first I thought it was a joke, so I rang the financial branch of DIMIA. They told me that there was no mistake and I had to pay.

Between adolescence and adulthood a political ideal called democracy caught my attention. Amidst the mosaic of ideas that offered themselves I quickly became an advocate of this ideal, believing in its great strengths. But today, after spending almost three years of my life in an immigration detention centre in a so-called western democratic country I don't know what to believe in any more. But as Nelson Mandela said, freedom is not to be granted but only through struggle, my struggle is still on until I am really free.

Cheikh Kone is an Ivory Coast journalist who came to Australia as a refugee in 2001.

5.2 International governments obstruct Australian journalists

Australian journalists entering the United States have, in recent years, been harassed, detained and treated like criminals before being sent back to Australia. This treatment follows the US decision to rigorously enforce the rules forcing foreign journalists to obtain a special 'journalist' or 'i-visa' before they are permitted to enter the US.

Music journalist and commentator, Ian 'Molly' Meldrum who, after ticking the wrong box on his visa waiver form, was handcuffed and detained at Los Angeles Airport for 12 hours before being sent home. *New Idea* editor Sue Smethurst and TV presenter Ernie Dingo were also detained and sent home. Before being repatriated Smethurst was body searched and, as she says, "groped beyond belief"²⁸ by armed guards who also accompanied her to the toilet as they would a terrorism suspect.



Ian 'Molly' Meldrum leaves Melbourne Airport after returning home from Los Angeles after he was refused entry to the USA for having an incorrect visa. Melbourne, January 21, 2004
Photograph by Shaney Balcombe/AAP Image

Before being repatriated Smethurst was body searched and, as she says, "groped beyond belief"

The US visa application form uses highly discriminatory language that places journalists in the same category as drug traffickers, terrorists and Nazis. This raises a totally unjustified impediment to the free flow of information out of the US. Such treatment of foreign journalists seriously undermines America's claim to values of free speech.

These US visa restrictions pose totally impractical obstacles to journalists whose ethical code demands that they report newsworthy events, when and where they find them - often at very short notice. Such a situation may even arise while a journalist is travelling on a tourist visa and this consideration should not obstruct the public's right to know.

Not a warm welcome

SUE SMETHURST

For the past eight years I have enjoyed travelling to some weird and wonderful corners of the globe to interview the famous and at times, the infamous. But never in my wildest dreams did I imagine the story I *didn't* get, in of all places the United States, would be the one that created headlines.

I flew to America in November 2002 to interview Olivia Newton-John about breast cancer developments that could save the lives of Australian women. But fifteen hours after I arrived I was deported back to Australia and instead of returning with my story, I left with the gift that lasts a lifetime, a United States Department of Immigration and Natural Justice record.

Upon checking in at LAX airport, which I have done countless times before, I answered the standard questions before being asked to accompany the officer to a secondary inspection office to answer a few more - although I'd never encountered this before, in a climate of increased security I was more than happy to co-operate. It soon became obvious something wasn't right.

This questioning - about the interview, the publication and the types of stories I write - lasted an hour, but as more time went on, the questions became more probing - "What was my mother's maiden name?" "My father's date of birth?" "Did *New Idea* publish politically sensitive information?" "What stories had I written in the past?"

"Had I written politically sensitive stories?" "Why was I here?"

After three hours, I was officially told I was being refused entry to the United States on the grounds I didn't have the appropriate visa. While Australian tourists visiting the United States are visa-waived for 90 days, working journalists now needed a special i-visa, which I had not been aware of and did not possess.

I was then fingerprinted, had my mug shots taken and was put in a holding cell where I was body searched while my bags were checked for any items that posed a "national security threat". My eyeliner, lip-gloss and mascara were removed.

Two fully armed officers arrived at that stage, handcuffed me and marched me through the terminal, past incoming passengers, to a divisional van that took me to the main LAX detention centre. Aside from the sheer humiliation of being frog-marched past hundreds of incoming passengers, I was numb with fear, I just couldn't understand why all of this was happening and I was made to feel like a criminal. At 10:30pm I was taken by three fully armed guards to the departure lounge, but by the time I arrived back in Australia, the sense of injustice and anger was overwhelming. I couldn't believe what I had gone through.

Sue Smethurst is Associate Editor of New Idea

In November 2004, SBS journalist Bronwyn Adcock had her passport seized by Papua New Guinea authorities while attempting to board her flight home. The television reporter was investigating logging activities in PNG and reports of corruption in the Western province for the *Dateline* program. Police had questioned her earlier that day. Adcock's passport was returned after 48 hours and intervention from SBS, the High Commission and DFAT.

The Papua New Guinea Prime Minister Sir Michael Somare, a former journalist, said he was glad Adcock's passport had been seized. He said: "We have allowed so many of these so-called journalists into the country to go around making trouble."²⁹ His comments diminished hopes for the democratic future of the country.

In another incident in 2004, Australian freelance journalist Julian King, who had worked in East Timor for more than four years, was deported to Australia. King had been investigating the Government's Timor Gap oil negotiations and had been cleared of charges relating to possessing weapons and illegal documents.

The US visa application form uses highly discriminatory language that places journalists in the same category as drug traffickers, terrorists and Nazis.

6.0 The way forward

Taken as a package, these legislative changes and unprecedented enforcement of existing laws, coupled with the increased harassment and attacks on journalists, present a very real attack on press freedom in Australia. As journalists, we cannot rely on Government to protect our tradition of an open and democratic media space. We must join together to protect and defend it ourselves.

What can we do?

First, it is important we document these attacks. Tell the Alliance whenever you or a journalist you know experiences an attack on media freedom, however great or small. It is only by bringing this information together that we get an overall picture of the gradual slide of press freedom in this country over the last four years. The Alliance will be producing this report on press freedom annually to coincide with World Press Freedom Day, May 3.

Second, we must work together collectively to reverse these attacks, and defend what democratic space we have left. This means getting involved in local Alliance campaigns – from defending the funding of the ABC to protesting increased restrictions on photojournalists. Respond to press freedom alerts, make submissions, add your signature to a petition, write to your local MP, reach out internationally to journalists overseas, attend an Alliance campaign meeting or event. It all counts.

Finally, spread the word. Make sure that journalists you know understand the clampdown we are facing. Make links with civil society groups with similar concerns. Make sure that we don't slide into relaxed and comfortable reporting, exercising unconscious self-censorship for issues deemed 'off limits' by government. Get coverage for the issues in your own media outlet. It is only through highlighting these restrictions, and voicing our opposition, that we can begin to tip the balance back towards a freer media.

If we do nothing, we are sure to lose more. If we act together we can stop the decline.

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