The media muzzled:
Australia's 2006 press freedom report

The Media, Entertainment & Arts Alliance 2006
report into the state of press freedom in Australia

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2006 Australian Press Freedom Report

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When it comes to press freedom, the past 12 months have felt like two steps backwards for every step forward.

First, the good news: After decades of campaigning, we've finally won uniform defamation laws that focus on prompt correction of errors rather than massive payouts. We fought back proposals to enable corporations to sue and, other than in Tasmania, the right of the dead to sue.

Of course, there's plenty of time for us to be disillusioned as cases under the laws wend their way through the courts. But, in defamation at least, press freedom is better off then it was 12 months ago.

Privilege for journalists to refuse to reveal a confidential source is also closer. In April this year, the Standing Committee of Attorneys-General substantially agreed to adopt the Australian Law Reform Commission's proposal to extend the limited privilege under NSW law to all jurisdictions and to all stages of legal proceedings.

This falls short of our goal of absolute privilege for this important principle. But it's a significant improvement. At its very least, it means the law now recognises this fundamental principle of journalism.

In May this year the High Court will hear McKinnon v Treasury in the landmark case over Freedom of Information, and the Australian Law Reform Commission is reviewing sedition.

However, as this 2006 Press Freedom report catalogues, these bright points have to be seen against a much darker backdrop of continued attacks on press freedom.

On balance the last 12 months has seen a continuation of the dramatic decline in press freedom in Australia. Indeed, attacks on the media are becoming less subtle as governments, courts, police, gangs of thugs and large corporations openly contravene rights of free expression to manipulate, hide and block the release of information into the public domain.

In a serious step back, new sedition clauses were pushed hastily through Parliament as part of the *Anti-Terrorism (No 2) Act*. This act also restricted coverage of security operations with threat of jail and widened the ability to chase down confidential sources. This year, the parliament expanded wire-tapping powers which, again, place journalists' sources under threat.

The review of ASIO's powers conducted last year failed to provide any relief for media workers and the government has now rejected the limited proposals that were recommended. It remains a ludicrous fact that misuse of ASIO powers by an agent attracts a two-year jail term. Reporting that misuse will attract a five-year term.

Our secret service agency remains free from the public scrutiny that is essential in a democratic society.

On the streets, journalists are too often becoming the targets of thugs and gangs, in a violent reflection of the climate of hostility to the media encouraged by government actions.

Questioning, challenging, probing: that's what our democratic society needs from its media. But as this 2006 report shows the decline of press freedom in Australia continues to stand in the way.

This report is about more than documenting that change. It's about fighting back. Read the report and join the fight.

Christopher Warren, federal secretary, Media, Entertainment & Arts Alliance

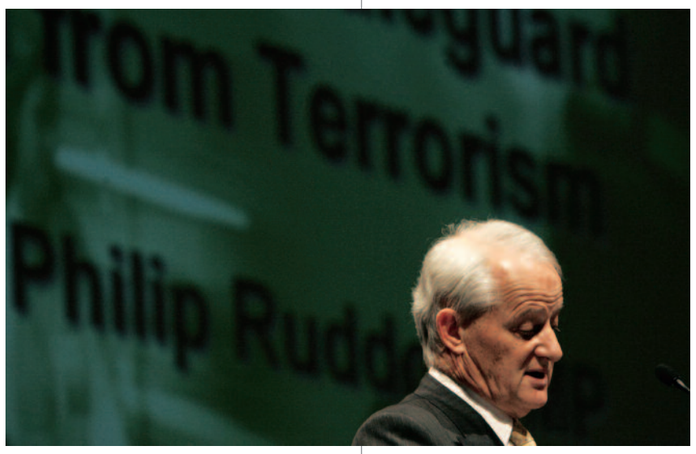
2.0 Legislation and the Courts Wind Back Press Freedom

"While we need a national legislative response to terrorism, any new laws must strike a balance between national defence and security, and important public values and fundamental human rights. We must not pass laws that damage the same democratic freedoms we are seeking to protect from terrorism." – George Williams[1]

2.1 Anti-Terrorism Act 2005 – Sedition

One of the largest legislative impediments to press freedom came in the form of the *Anti-Terrorism (No.2) Act 2005* passed through Parliament in December 2005.

During a rushed Senate inquiry numerous media organisations made submissions conveying their concern that the new legislation would threaten freedom of expression and change the nature of public debate. Despite these concerns and the recommendations of the Senate inquiry, the law passed with only token amendments. Democratic freedoms of speech were compromised in the name of national security.



Federal Attorney General Philip Ruddock opens the 4th Homeland Security Summit and Exposition in Canberra, July 12, 2005. Photograph by Andrew Taylor/*The Sydney Morning Herald*

The threat of severe fines and jail sentences prevent journalists from reporting details of detention orders and investigating possible miscarriages of justice, while increased police powers to seize documents and information relating to "serious crimes" threaten the media's ability to protect sources. Arcane sedition provisions potentially block criticism or scrutiny of the government, without any benefit to national security.

Reporting on preventative detention orders could cost a journalist five years in prison. Police can use a preventative detention order to hold a person for 48 hours without charge if they suspect the person will participate, or plans to participate, in an "imminent" terrorist act.

The law clearly states that the subject of the order, and their lawyer, face five years jail if they disclose any information pertaining to the detention order. The person detained is permitted to contact one family member, but only to say they are safe and cannot be contacted for the time being.

Any third party who reports unlawfully disclosed information – that a person has been detained, the length of the detention or any other information relating to the order – also faces five years imprisonment. There is no defence of public interest where a journalist reports miscarriages of justice.

The legislation also gives 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 if it will help in the investigation of a "serious offence", including information pertaining to the identity of a confidential source. The fine for refusing to comply is $3300. A journalist who discloses that they've received a notice, or the contents of it, will incur an additional fine of $13,200 or two years imprisonment or both.

But possibly the greatest threats to press freedom, are the new sedition provisions within the legislation. "Seditious intention" for the purpose of this law is broadly defined as anyone who "urges":

- the overthrow of the Constitution or Government
- interference in Parliamentary elections
- violence within the community
- a person to assist the enemy
- a person to assist those engaged in armed hostilities[2]

The Bill initially had no defence for artistic, journalistic or academic expression. At the eleventh hour the list of defences "for acts done in good faith" was extended to include "(f) publishes in good faith a report or commentary about a matter of public interest".[3]

Even with this minor concession, there remains a very real fear that the law, which poses a possible sentence of seven years in jail, will have a silencing effect on many in our industry.

Cartoon by Lindsay Foyle

Throughout history, sedition laws have been used more to curb freedom of speech than to deter acts of terrorism. As Robert Manne noted in *The Age* on November 5, 2005, the use of sedition laws in Australia has been political in nature.

"Peter Lalor and his followers at the Eureka Stockade were charged with sedition and the editor of *The Ballarat Times* was found guilty of sedition for praising the revolt and spent three months in prison.

"Australia wheeled out sedition laws to break the Industrial Workers of the World (the Wobblies) in World War I and to imprison communist union officials such as Lance Sharkey after World War II. Sedition charges were even laid in Queensland against anti-Vietnam War demonstrators in the 1960s."[4]

The Alliance, together with other media groups including the Australian Press Council, Fairfax, News Limited, AAP and West Australian Newspapers Limited waged a campaign against these laws. Government members, including George Brandis MP and Malcolm Turnbull MP, joined the media in calling for sedition laws to be abolished. They argued that the laws are unnecessary and that matters covered by the sedition provisions can be dealt with under other legislation, including the *Crimes Act* and anti-

Unknown unknowns

BY LIZ JACKSON

How has the world of journalism changed since September 11? Well, anti-terror laws have been springing up like mushrooms. Their provisions are broadly worded, their scope is often hard to determine, but their maximum penalties are easily understood, and sobering. For example, five years jail for breaching the secrecy provisions of section 34VAA of the *Australian Security Intelligence Organisation (ASIO) Act 1979*, as amended in 2003.

These provisions were my first encounter with the anti-terror laws. *Four Corners* was preparing a story on the alleged terrorist Willie Brigitte and his alleged co-conspirator, Faheem Lodhi (also known as Abu Hamza). ABC Legal provided us with the following advice in relation to what we intended to disclose:

"It is understood that Hamza [Lodhi] *has recently been the subject of a warrant for his interrogation in relation to suspected terrorist activities under 34D of this legislation. Section 34VAA provides that where a warrant has been issued under s34D it is an offence to disclose information that indicates… the fact that a warrant has been issued…"*

We couldn't confirm that Faheem Lodhi was subject to a recent questioning warrant. It would have been an offence for his lawyer to tell us this, and for us to disclose it in the event that we somehow could confirm it.

The legal advice went on to warn that we were also prohibited from disclosing any *"operational information"* gained as a direct or indirect result of the warrant, and that the definition of *"operational information"* was extremely broad; it would cover virtually any information ASIO had had or used, any plan, or method of operation in relation to Faheem Lodhi. This was a worry.

On balance however, the judgement was that it was safe to publish because we were able to source a substantial amount of what we had uncovered from Brigitte's interrogations in France (as opposed to as a result of warrants in Australia). And as we expected, there was no problem. Nobody except Faheem Lodhi's lawyer, Stephen Hopper (and presumably Faheem Lodhi himself) took exception. Hopper's view was that while the ABC could feel confident nobody would pursue us for outing an alleged terrorist, if he tried to defend his client he'd also lay himself open to breaching the ASIO laws, and he did not expect that the same generosity of legal interpretation would be applied to him.

Corrective Services personnel surround Faheem Lodhi while arriving at Central Local Court in Sydney, December 14, 2004. His case continues in 2006 in the Supreme Court. In March 2006, the Supreme Court made orders that the court be closed during the evidence of ASIO witnesses or testimony relating to ASIO's actions. Photograph by Mick Tsikas/AAP Image

Since then, more anti-terrorist laws and amendments have been passed, many of which place restraints on what can be reported by the press.

The point of the above story is to illustrate that the laws have not been without effect on the fairness of the journalism we produce. Because what we are often unable to include is the account of those who are the primary target of these laws, who are unable to even confirm to us why they can't talk.

Take the new powers of "preventative detention", the secret detention of persons who have not committed a criminal offence and may not even be suspected of being about to do so. There are stiff penalties for detainees and their lawyers if they tell unauthorised people about such a detention. Were a journalist to report this, they too would be subject to a possible five years in jail. But the concern is not primarily that journalists will be jailed, it's far more likely that given the penalties for disclosure, we simply will not be told.

It's the freedom of the media to tell the full story, not the jailing of the journalist that is at stake.

To borrow a phrase or two from US Secretary of Defence, Donald Rumsfeld: *"There are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns – the ones we don't know we don't know"*.

We need to be free to report the "unknown unknowns".

Liz Jackson is a Walkley Award-winning journalist with ABC-TV

Throughout history, sedition laws have been used more to curb freedom of speech than to deter acts of terrorism.

vilification legislation.

Following these submissions, the Attorney-General was sufficiently concerned about the provisions on sedition in Schedule 7 of the Act to announce they would be reviewed after the legislation had been enacted.

The Australian Law Reform Commission (ALRC) has received a reference from the federal Attorney-General to review sedition laws. The reference is to consider whether:

- the amendments effectively address the problem of "intentionally urging others to use force or violence against any group within the community", or against Australians or our defence forces overseas; and
- "sedition" is in fact the appropriate term to identify this type of conduct.

However, concerns about the sedition provisions adopted last year go well beyond a change of name. The real question is this: do the amendments unacceptably restrict freedom of speech in Australia?

The Alliance has written a submission in response to the ALRC's Issues Paper, calling for sedition laws to be abolished entirely. On balance, we believe that sedition has limited impact on national security but promises to irreversibly damage press freedom and public debate.

Suppression policy is riddled with holes

BY RICHARD ACKLAND

IF YOU are a journalist slaving away over your hot computer writing stuff about judicial proceedings or, indeed, the splendour of the judicial apparatus, the chances are you're on the Supreme Court's e-mail distribution list to be notified about suppression orders.

Maybe it just seems that there are more of these orders than there really are, because every week or so another one pops into the inbox, usually a crisp little note to the effect that a judge has ordered that the names of witnesses, the accused, the relatives of a victim or sometimes the case itself are not to be mentioned in any way by the media. No reasons are provided in these messages. Rarely is there a notification that says an open-ended suppression order has been lifted.

According to a count done by the Supreme Court there have been 59 suppression orders made by judges in the past 19 months, an average of just more than three a month.

That is the bald statistic, but behind that lies the fact the media have been prevented recently from providing full reports in some significant trials and appeals, including gang rape cases, a gang warfare case, a refugee compensation case against the Commonwealth, proceedings in the Medical Tribunal, the names of the father and his baby who were attacked on the street, the medical condition of an accused, the identity of the siblings of a murder victim and the publication of a photo of an alleged terrorist.

The orders have been given for a range of reasons, such as back-to-back trials involving the same accused, protecting the identity of witnesses because of fear of reprisals, or continuing police surveillance operations.

Some reasons seem perfectly sound, others quite flaky. But all of that is just the tip of the iceberg. There are literally thousands and thousands of cases each year where legislation stymies full reporting. For instance, there is legislation that seeks to protect children involved in criminal proceedings, either as witnesses, victims or, rather more broadly, if they are just "mentioned in any criminal proceedings".

To publish or broadcast the name of anyone in such a way as to connect the person with criminal proceedings would be a breach of the law, with fines and jail lying in wait as the penalties. This applies even where the person is no longer a child or is now dead. While the intention of the legislation doubtless sprang from a worthy protective ideal the consequences of a net cast so wide can be bizarre.

Strictly speaking a newspaper cannot publish the name of the woman serving a life sentence for the murder of her children because to do so would identify the dead children. A notorious case involving the abduction and death of a young boy in the early 1960s cannot be mentioned for the same reason. And a most important case involving government legislation aimed at life incarceration for the youngest offender ever to be sentenced in NSW also is off limits, even though he is now an adult.

In sexual assault cases involving anyone under 18 years of age (officially a child) the court will be cleared of the media and there will be no reporting of the case. Under the *Children (Criminal Proceedings) Act* the court can order, at the time of sentencing, that proceedings be reported, but only if they are "in the interests of justice". From the point of view of the press it then becomes a Herculean struggle to get access to the transcript of proceedings, which inevitably is out of reach and when it does become available is utterly devoid of contemporaneous relevance.

So we live in this weird, officially ordained cocoon where we have to be content with only part of the truth about what is really going on. It can lead to a stilted world view, not to mention awkward journalism.

In many cases no suppression orders were made at the Magistrates Court level, lower down the decision-making chain. The no-publication orders only came from the Supreme Court but details of the freshly suppressed identities are still on the internet where a Google search will throw up media reports of the earlier hearing in all their glory and detail.

Senior judges have intoned at worthy gatherings about this danger, and Justice Virginia Bell has even suggested that the Crown put out an all systems alert to Internet publishers to clear their sites of stories that might upset the criminal trial process.

It's a bit like asking the innovative world to close down. Chief Justice Jim Spigelman recognised the improbability of this when recently he mentioned Fra Filippo di Strata, a Dominican friar from the Convent of San Cipriano who in the 15th century was upset about the dangers of German printing presses. Too much information would get out and it was impossible to walk down the street in Venice without armfuls of books being thrust at you. "The world has got along perfectly well for 6000 years without printing and there's no need to change now," the friar wrote (in his own hand).

Richard Ackland is a Walkley Award-winning journalist and lawyer
First published in The Sydney Morning Herald *on April 7, 2006*

2.2 ASIO and Other Anti-Terror Legislation

ASIO review

In 2005 the joint Parliamentary Committee on Intelligence and Security conducted a review of the operation, effectiveness and implications of Division 3 Part III in the *Australian Security Intelligence Organisation Act 1979*. The findings of the review, released in November 2005, do very little to remove the obstacles set in place by the law to inoculate ASIO's actions from public scrutiny.

The provisions of particular concern to journalists fall within Section 34VAA "Secrecy relating to warrants and questioning" of the *ASIO Legislation Amendment Act 2003*, passed only eight days after it was introduced to Parliament on November 27, 2003.

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 the case of arbitrary arrests or maltreatment at the hands of ASIO officers, nothing can be said to anyone for 28 days, rendering ASIO's conduct virtually immune from public scrutiny.

Similar to the new *Anti-Terrorism Act*, the subject of the warrant and his/her legal representatives present during the questioning are the most 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 does contain safeguards designed to keep a check on ASIO officers. They stipulate that an ASIO official who knowingly contravenes a condition or restriction of the warrant faces a two-year jail term. However the journalist who publishes information on this abuse of power by ASIO risks a five-year jail term – more than double that of the person who commits the original offence.

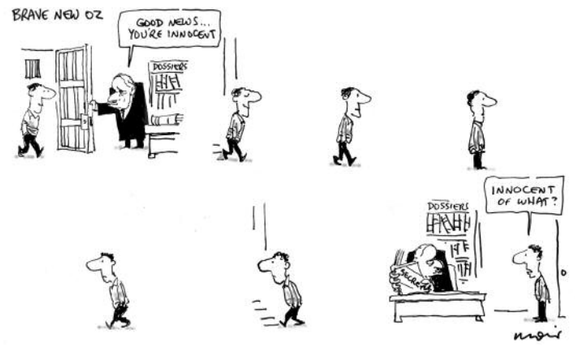
In its submission to the Committee, the Attorney-General's Department stated that there "are no specific examples of journalists not publishing stories of the secrecy provisions".[5] The Department defended the restrictions, stating that disclosing information might jeopardise an investigation, to the point of preventing ASIO from performing its duties.

It is simply unacceptable that any journalist be threatened with imprisonment for publishing something in the public interest – especially in Australia where the right to inform and be informed is a cornerstone of our democracy. If a journalist did violate the laws, it is entirely possible that, under the very same laws, their arrest could be withheld from public debate.

When the Parliamentary Committee released its findings in November 2005, it made no recommendation on this point other than to say that the penalty for disclosure of operational information be equivalent to the maximum penalty for an ASIO official who contravenes the safeguards.

The Committee did however recommend that the term "operational information" be redefined to better balance the goal of protecting national security with transparency and integrity of the system. Sub-section (a) in particular "information the Organisation has or had" completely removes from scrutiny anything ASIO has done or is doing, or has known or knows. It is hard to imagine any information or plans that would fall outside this definition. Recommendation 16 suggests the term be "reconsidered to reflect more clearly the operational concerns and needs of ASIO".[6]

The Committee also recommended that the sunset clause, due to come into effect in July 2006, be extended until November 22, 2011. The Attorney-General's Department and the Australian Federal Police, however, are calling for the sunset clause to be removed entirely. The Attorney-General is yet to announce what actions will be taken on the Review Committee's recommendations.



Cartoon by Alan Moir

In the case of arbitrary arrests or maltreatment at the hands of ASIO officers, nothing can be said to anyone for 28 days, rendering ASIO's conduct virtually immune from public scrutiny.

Phone tap laws threaten press freedom

This year has seen continued legislated threats of harsh penalties for journalists and restricted access to information. It is a trend that undermines the media's fundamental role in a functioning democracy. As the war on terror has intensified, robust public discussion about the Government's tactics in combating domestic terror threats has been gagged and replaced by a suspicious and fear-driven society.

The most recent addition to the Government's raft of anti-terror legislation is the *Telecommunications (Interception) Amendment Act 2006*, passed through the Senate on March 30. Schedule 2 (B-party interception) allows spies, police and other security

Schedule 2, B-Party Interception, in the Telecommunications (Interception) Amendment Act 2006 allows spies, police and other security agencies to tap the phones of innocent third parties who may be in contact with a person suspected of a terror offence.
Photograph by Craig Sillitoe/*The Age*

At any time police could be listening, obliterating any professional right the journalist has to protect the confidentiality of their source.

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), will have the power to access stored communications such as e-mails and SMS. This new law targets anyone who interacts with suspects of serious crime, though they themselves are not suspected of anything.

Journalists must assume their conversations with sources will be intercepted. Those journalists who do contact terror suspects for a story may have their phone tapped, giving authorities access not only to conversations with the suspect but those of other innocent sources. At any time police could be listening, obliterating any professional right the journalist has to protect the confidentiality of their source.

Despite assurances to the contrary, there is also a real threat that the authorities could use these new laws arbitrarily. Already, Australia issues 75 per cent more telecommunications interception warrants than the US. Per capita this translates to 26 times more warrants than the US. In Australia, non-judges issue 76 per cent of all warrants, whereas in the US only judges can issue warrants.[7]

This new law will not only deter confidential sources but may also lead to a culture of self-censorship. Without public faith in a journalist's promise to protect sources, much crucial information in the public interest would not come to light. Any attempt to destroy this trust will result in fewer people speaking out and the public left with nothing but government spin and media stunts.

2.3 Professional Privilege

The media has marched bravely on – one step forward, two steps back – in pursuit of legal protection to protect confidential sources. Though slow, the progress has been marked by some decisions that recognise this ethical obligation.

Parliamentary privilege

Journalists were afforded slightly improved protection in regards to publishing leaked Parliamentary information following the Senate Committee of Privileges review in early 2005. The Committee considered a proposal to extend privilege to prohibit any unauthorised disclosure of Parliamentary information, regardless of whether it obstructed the work of a Senate committee. Media groups, including the Alliance, were concerned that such a proposal when enforced would lead to increased contempt charges against journalists and would silence potential whistleblowers on matters of public interest.

The final recommendations, released in June 2005, gave Parliamentary committees more responsibility for their own internal discipline. It said that if the Parliamentary committee cannot find the source of an unauthorised disclosure, the Senate Committee of Privileges will not pursue the matter further – with the exception of where the unauthorised disclosure may adversely affect individuals named, or if it prejudices police investigations or court proceedings. Effectively, this narrows the possibilities under which journalists can be penalised for publishing Parliamentary material in the public interest and protecting those who leak it to them.

It was, however, recommended that all unauthorised disclosure and publication of in-camera evidence, regardless of whether it interferes with the Parliamentary committee's work, will be treated as a "strict liability" offence and automatically assumed to constitute contempt. According to the report, the matters in which in-camera evidence is appropriate are:

a) when matters of national security are involved;
b) where there is danger to the life of a person or persons;
c) when the privacy of individuals may inappropriately be invaded by the publication of evidence by or about them;
d) when sensitive commercial or financial matters may be involved;
e) where there could be prejudice to other proceedings, such as legal proceedings, or police investigations; and
f) where there is adverse comment, necessary to a committee's inquiry, made about another person or persons, at least until the person(s) concerned have had an opportunity to respond under privilege resolution 1 (13)[8]

The Senate adopted the resolution on August 1, 2005, and it passed through the Procedure Committee with minimal changes on October 6, 2005. According to the Senate Committee there has not been a complaint of unauthorised disclosure since the resolution passed, so it is too early to say whether it will recognise and respect journalists' responsibility to the truth, their sources and the public's right to know.

Protecting whistleblowers

In August, two *Herald Sun* journalists, Michael Harvey and Gerard McManus, faced contempt charges for refusing to reveal the key source of an article that revealed plans to reject a $500 million boost to war veterans' pensions. Following publication of the story, senior public servant Desmond Patrick Kelly was charged, and later found guilty of leaking the document. The journalists refused to answer any questions relating to the identity of their source during Kelly's preliminary hearing in the Melbourne County Court. Charges against the two were referred to the Supreme Court for a judicial review and are still awaiting outcome.

Just prior to this case, the 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.

Internationally there has been a trend towards trapping journalists in court with the threat of contempt if they don't release the identity of their confidential sources. The imprisonment of *New York Times* journalist Judith Miller, the questioning of Matthew Cooper of *Time* magazine, and British freelance journalist Robin Ackroyd brought before the High Court to give evidence relating to an article published six years ago, are just some examples from the past year. On March 14, 2006, the Tokyo District Court ordered a reporter for *Yomiuri* newspaper to reveal the identity of a source from an article published in October 1997, that claimed a US company and its

Internationally there has been a trend towards trapping journalists in court with the threat of contempt if they don't release the identity of their confidential sources.

Herald Sun journalists Michael Harvey (left) and Gerard McManus outside the County Court in Melbourne, Wednesday, November 9, 2005. The pair were charged with contempt of court after refusing to disclose their source of information in an article relating to war veterans benefits.
Photograph by Julian Smith/AAP Image

Investigative journalism strangled

BY KATE MCCLYMONT

In our cut-and-paste times where the immediacy of a war zone can be beamed live into the evening news bulletin, investigative journalism sometimes seems like an old-fashioned skill.

Not that there is anything particularly mysterious about investigative journalism or its practitioners. The same skills required for daily journalism are required for investigative journalism. The only difference is that the latter requires time, patience and the willingness to commit to the hard slog of assembling and sorting through facts.

These days investigative journalism is being strangled by a combination of budget restrictions and by-line junkies.

With the decline in newspaper circulation and diminished advertising revenues, editorial budgets have been slashed.

Content Providers, as we have become known by the bean counters, are so flat out covering daily news that there's not the luxury of time to spend on a longer investigation.

A journalist covering a major round such as health, transport or education, cannot possibly take three days off, let alone three weeks, to do an investigative story in their subject area. Due to time constraints, journalists are relying on whistleblowers to do the job that investigative journalists might once have done.

Budget cuts have also brought inevitable job pressures. The rise of by-line junkies has been fuelled by bottom lines which lead journalists to feel that their by-line must be in the paper every day to provide validation and/or job security.

The increasing cost of litigation is also having an effect on investigative journalism. Most news organisations have legal departments with their own budgets. A major defamation case can exhaust the budget and lead to reluctance to run potentially problematic stories down the track.

Those involved in the industry know how financially and emotionally exhausting legal actions can be. Take the award-winning *Four Corners* journalist Chris Masters. While his groundbreaking program on corruption in Queensland, *The Moonlight State*, ran for 45-minutes, Masters spent the next 13-years embroiled in legal actions stemming from it.

Another stumbling block for investigative journalism is the rise of spin. Increasingly, PR flacks are hampering contact with key people further up an organisation's food chain. This is particularly the case in law enforcement and prosecution organisations, where contact with the media is largely forbidden. In the past journalists could ring police officers for an off-the-record chat. Nowadays such contact is largely re-directed towards media units, who want to tightly manage any release of information.

Only recently the head of a major corporate watchdog gave a newspaper interview. The manager of his PR department came down on him like a ton of bricks. By being frank and admitting some failures in procedure, the corporate chief was "off message". He was strongly advised by his PR flack not to make the same mistake again. So much for free speech.

Not that all is gloomy on the investigative journalism front. Great yarns still appear in the major newspapers and magazines. On reading them you know how much legwork has gone into that particular story. But it makes you wonder how many brilliant tales will remain untold due to the lack of resources to bring them to the reader.

Kate McClymont is a Gold Walkley-winning reporter for The Sydney Morning Herald

Heard in the highest court

BY MICHAEL MCKINNON

On May 9, 2006, the Federal Treasurer Peter Costello will walk to the dispatch box and address Parliament on the latest Budget details after wooing the media all day in the budget lockup. The Treasurer will no doubt tell journalists Australia still has the best of possible tax systems furnishing as evidence the findings of a lightweight five-week inquiry that was largely prepared by Treasury staff.

But just over a week later on May 18, a three-and-a-half year battle to find out the real truth about Australia's tax system will also have its day in Canberra – before the full bench of the High Court of Australia.

In hearing McKinnon v Treasury, the High Court will not only judge how conclusive certificates should work but also address the issue of public interest at the heart of Freedom of Information laws that offered such hope for more accountable government when introduced in 1982. Any chance for improving FoI may have to rest with the High Court as the government has steadfastly ignored recommendations for improvement from the Australian Law Reform Commission, the Administrative Review Council, the Commonwealth Ombudsman and the Senate Legal and Constitutional Legislation Committee.

The High Court appeal arose from two FoI applications lodged with Treasury in late 2002 relating to tax-bracket creep and the First Home Buyers Scheme. Both requests were refused and internal appeals were unsuccessful and before the appeal could be heard at the Administrative Appeals Tribunal, Costello issued two conclusive certificates starting document release was against the public interest. Instead of deciding on the public interest arguments for and against release, the AAT had to "determine the question whether there exist reasonable grounds for the claim that disclosure of the document would be contrary to the public interest".

Costello justified the certificates by claiming seven public interest arguments against release first used in the Howard re Treasurer case in 1985. Those arguments have been the bane of successful FoI applications by journalists since then as they have been used again and again to keep documents secret. The AAT appeal was lost. A Federal Court appeal was lost on a split two-one decision but on February 3, 2006, the High Court granted leave to appeal.

In his decision handed down late in 2004, the AAT president and Federal Court judge, Justice Garry Downes, found that there was a public interest in the smooth functioning of government without interference. Justice Downes' approach to the case allowed him to effectively discount expert witnesses. These included former senior bureaucrats who gave evidence that the arguments used in the 1985 Howard re Treasury case were simply wrong. Also discounted was expert evidence that the Treasury data would allow a precise assessment of how much money the federal government was really giving back from bracket creep with its election tax cuts.

While the High Court will judge whether Justice Downes used the right processes in hearing the appeal, the broader issue of public interest will also be under examination. If the High Court were to finally dismiss the Howard arguments as secretive and paternalistic and contemptuous of the public and the public's right to be informed in a democracy, the door would be opened for far more successful use of the "legal right to know" by journalists and the broader community.

Michael McKinnon is Freedom of Information editor for The Australian

In hearing McKinnon v Treasury, the High Court will not only judge how conclusive certificates should work but also address the issue of public interest at the heart of Freedom of Information laws.

Japanese affiliate had been required to pay tax penalties after being investigated by both Japanese and US tax departments. In a landmark decision, the Tokyo High Court overturned the decision three days later.

These cases work together with laws like Parliamentary Privilege to stymie journalists' pursuit of information. More importantly they intimidate potential whistleblowers, whose confidence relies on a journalist's ability to uphold the promise of anonymity.

Uniform privilege

In February 2006, the Australian Law Reform Commission and its New South Wales and Victorian counterparts released the long awaited report into Uniform Evidence Law. The findings recommend that the professional confidential relationship privilege for journalists in the *NSW Evidence Act* be applied to all jurisdictions. The report also recommends that this apply to any compulsory process for disclosure, such as pre-trial discovery and subpoenas.

Attorney-General Philip Ruddock argued that the case against *Herald Sun* journalists Harvey and McManus be dropped on the basis that a shield law protecting journalists would likely be introduced on the back of the ALRC report. However, the Attorney-General's submission to the ALRC review said that the Federal Government does not want any shield law to protect any communications that are made "in furtherance of the commission of a fraud or other serious criminal offence".[9] This broad exemption could have rendered the law useless for the many journalists who publish details of documents leaked by federal public servants – a crime punishable under the *Crimes Act* with a two-year jail sentence.

The Alliance wrote to all attorneys-general urging them to quickly enact the legislation – without broad reaching exemptions – to avoid further unnecessary contempt cases against journalists refusing to reveal confidential sources. The Standing Committee of Attorneys-General (SCAG) meeting in April 2006 agreed to implement the ALRC's recommendation.

2.4 Freedom of Information

Cartoon by Chris Slane

A shroud of bureaucratic and governmental secrecy continues to envelop freedom of information in Australia. In 2006, the ongoing McKinnon case epitomised the ways in which Freedom of Information laws have come to defeat their purpose.

News Ltd lodged an appeal to the Full Bench of the Federal Court, after the Administrative Appeals Tribunal in 2004 accepted Treasurer Peter Costello's use of two conclusive certificates to block *Australian* FoI editor Michael McKinnon's access to Treasury documents under FoI.

In August 2005, a 2-1 split Federal Court dismissed the appeal. It found 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-free card.

The *Freedom of Information Act 1992* allows ministers to use "conclusive certificates" to protect documents – usually where the disclosure of a document will threaten national security or is against the public interest. In McKinnon's case, Costello used conclusive certificates to exempt documents relating to the impact of bracket creep on income tax cuts and the First Home Buyers' Scheme. He argued that disclosing these documents would inhibit the Government's ability to communicate openly with its ministers and staff, and could potentially confuse or mislead the public.

West Australian Senator Andrew Murray, in a speech in Canberra on November 9, 2005, said of the McKinnon case: "Conclusive certificates are a bad idea, especially if the discretion granted is shielded from judicial review, which should incline to openness, not to secrecy.

"Instead of giving reasons as to why it is not in the public interest to release information, the minister responsible can issue a conclusive certificate… This device allows the Government to prevent the electorate from being fully informed about issues which impact upon it economically and socially. The information the newspaper requested was and is of real importance to everyone in Australia, and is a matter of genuine public interest."[10]

The case has been granted leave to appeal to the High Court with a hearing on May 18, 2006, in Canberra. In granting leave, the three judges unanimously felt that the issue went to the heart of government accountability and was a test case on FoI.

Freedom of Information legislation exists in all states and territories and at a national level. The purpose of this legislation is to give citizens and journalists access to personal and government documents. However the legislation has provided a number of barriers for journalists seeking access to non-personal information.

Lengthy time delays, excessive costs, extension of exempt document categories and passive resistance by some government departments have watered down the effectiveness of laws set in place to allow greater public scrutiny of decisions and actions by governments and the bureaucracy.

While the situation varies according to jurisdiction, the Australian system overall is more restrictive than in the US, Britain and Sweden where access to most government documents is guaranteed within 24 hours.[11] Statistics indicate that in Australia, 44 per cent of non-personal requests take 60 days or more to process[12] – a major concern for media working to tight deadlines.

One purpose of creating the legislation, according to section three of the *Commonwealth Act* introduced in 1982, was to improve government decision-making by making it more accountable to the public it was affecting. Looking particularly at the McKinnon case and the cumulative effect of various flaws in the legislation, few could say this commendable aim has been fully realised.

2.5 Uniform Defamation Laws

In a landmark achievement for Australian press freedom, uniform defamation laws were introduced in all Australian states on January 1, 2006. Representing the culmination of three decades of debate, the new scheme synchronises a tangle of state laws and provides a strong foundation for free expression.

Prior to 2006, each Australian jurisdiction had its own distinct defamation laws. Offences, defences and penalties varied from state to state. The lack of consistency

Representing the culmination of three decades of debate, the new defamation scheme synchronises a tangle of state laws and provides a strong foundation for free expression.

created real problems: litigants took advantage of jurisdictional differences to maximise their prospects in court, and editors chose not to publish information for fear of where it might end up. However, while the problem was clear, disputes over the content of a national scheme stymied attempts at reform.

The issue was returned to the agenda of the Standing Committee of Attorneys-General (SCAG) in July 2002. In July 2004, both SCAG and federal Attorney-General Philip Ruddock released draft uniform laws. While the SCAG model allowed each state to implement laws separately, Ruddock's model replaced state laws with a single federal law. Critically, it was accompanied by an ultimatum: if the states could not agree on a uniform scheme by January 1, 2006, the federal scheme would be imposed.

Faced with a deadline and an unpopular federal model, SCAG produced a final draft in November 2004. This draft was endorsed by state and territory ministers in November 2004, and came into operation in every Australian state on January 1, 2006. The Australian Capital Territory effected its new laws on February 23, 2006 and the Northern Territory passed its proposed laws on March 28, 2006.

The uniform scheme makes several key changes to Australian defamation law, aimed at simplifying procedures and strengthening free expression.

First, it imposes restrictions on bringing a defamation action. Actions must be brought within one year of publication, instead of six. Corporations – except for non-profit organisations and small businesses – are barred from suing for defamation. Except in Tasmania, actions can no longer be brought on behalf of a deceased person. Furthermore, a single trial will be held regardless of the number of defamatory "imputations".

Second, the legislation sets up a new Offer of Amends procedure aimed at resolving defamation cases out of court. Publishers who 'offer amends' in the form of corrections, a written apology, or compensation are protected from subsequent prosecution. Refusal of a reasonable offer of amends provides a defence to a defamation action.

Third, the new laws make it easier to raise defences against defamation proceedings. Truth alone is now a complete defence in all states, with defendants no longer required to prove the additional requirement of "public interest". A new defence of "contextual truth" is available where the information published is substantially true. In all jurisdictions other than South Australia, the ACT and the Northern Territory, the law provides for the reintroduction of a jury verdict in defamation cases.

Finally, the legislation imposes new controls on awards of damages. Damages are capped at $250,000 unless there are aggravating circumstances. Exemplary and punitive damages are abolished in civil defamation proceedings.

Overall, these changes will provide greater leeway to journalists, writers and artists, and will reduce reliance on litigation to resolve defamation disputes. They also go someway in alleviating the threat of SLAPP (strategic litigation against public participation) writs, increasingly being used by large companies to intimidate or silence critics, and which have been used against the media. The uniform defamation scheme has garnered the support of media organisations for striking a successful balance between individual rights and freedom of expression.

2.6 Internet Restrictions

Criminalising Internet usage

The Federal Government recently legislated to criminalise certain Internet usage, despite the likelihood that this will undermine press freedom. The *Criminal Code Amendment (Suicide Related Material Offences) Act 2005* came into effect on January 6, 2006. The act makes it an offence to use the Internet to incite, counsel or promote suicide. In introducing this legislation, the Government stated that its primary aim was the protection of vulnerable Internet users, specifically teenagers, who may be targeted by unscrupulous individuals. However, in its submission before Parliament the Government did not provide evidence that this is a real problem within Australia.

The legislation is unclear. It does not clearly identify the types of material that may be classed as "promoting" suicide, or which might "counsel" an individual to suicide. Various submissions made while the legislation was under debate highlighted that, of the different sectors likely to be affected, the media is a prominent example. Journalists must often engage with suicide-related material in the course of their work; including reports on suicide rates, suicide prevention and euthanasia.

Euthanasia advocacy and debate is largely perceived as the true impetus behind this legislation. In the US in 2005 Terri Schiavo, a brain-damaged Florida woman, died after courts allowed her husband, Michael Schiavo, to order that her feeding tube be removed. Many senior US politicians joined a debate that was prominently reported in the media in the US and internationally, both on and offline. However

Unclear definitions within the Criminal Code Amendment (Suicide Related Material Offences) Act 2005 may mean the work of journalists who report on suicide and euthanasia could be caught by the legislation. Photograph by Cathryn Tremain/*The Age*

under the new Australian law, reporting on similar cases may become more difficult.

An assessment of the law also highlights that "suicide" is not clearly defined and may encompass any self-harm issue, including eating disorders and self-mutilation, further extending the category of prohibited material.

Journalists and media organisations are likely to suffer under this legislation, not merely because of the content that they publish, but through their reliance on Internet technology to reach their readership. In their assessment of the legislation, Electronic Frontiers Australia concluded that individuals who upload material, or publish on websites or blogs, or even those who may reproduce another's work for the purpose of assessment, might come within the scope of the Act.[13] Publications that have web-based copy alongside hard copy are at risk. If the content is uploaded by a website administrator or organisation, rather than the author of the article, this does not negate the potential criminal liability. The Act makes provision for organisations as well as individuals. If an organisation breaches a provision, they face a fine of approximately $550,000, whereas an individual faces a fine of $110,000. In a worrying trend, there was pressure on the Government to incorporate a 10-year prison term alongside the fine.

As the Australian Federal Police (AFP) undertakes its regulation, enforcement of the Act has the greatest potential to infringe upon the right to privacy of the press. The AFP's authority to act is conferred by the Australian Broadcasting Authority. If an individual or an organisation is suspected of being in breach of the Act, they can be placed under surveillance, including having their e-mails accessed and phone calls tapped. Furthermore, a suspected breach of the Act may result in the issuing of a search warrant and the seizure of computers. For a media organisation such seizures and access to confidential information would not only be a breach of privacy, but could utterly undermine their operations. In an area as politically sensitive as euthanasia, journalists need to be at the forefront of reporting matters in the public interest, free from government intervention and the threat of heavy fines.

Journalists and media organisations are likely to suffer under this legislation, not merely because of the content that they publish, but through their reliance on Internet technology to reach their readership.

Corporations and the fourth estate

BY MICHAEL WEST

The growing power of the corporation poses a significant threat to freedom of the press. While the investigative reporting spend in Australian media is stable at best, the rise in political donations, attrition litigation, million-dollar PR and advertising budgets, and the swelling ranks of lobbyists make it hard to get to the bottom of complex corporate machinations. The recent law reforms which prohibit big companies suing for defamation come as a relief.

Unfortunately, they weren't in force last year when *The Australian* published The Mine Shaft, a story about Tasmanian gold miner Allstate Explorations and its banker Macquarie Bank.

The Allstate story took three months to get in the paper. Anticipating legal action from Macquarie Bank, we wrote and rewrote the piece, toning down the language and stripping out strong adjectives. It was legalled and legalled again.

The Bank declined to answer any questions before publication, a common tactic with corporates. We put written questions to them anyway.

Then, after publication, the writ arrived. It was filed in the ACT.

As the defamation suit is live, albeit moving at a painfully slow pace through the system, I won't go into the subject matter here. Suffice it to say that Macquarie was banker to the promising Tasmanian gold miner, Allstate. It is a lucrative company now though still in administration after five years. The profits go to Macquarie.

While Macquarie has its action against us, shareholders in Allstate have taken their own legal action against the administrator of the mine which has yet to be determined. It's an expensive mess.

In the Allstate case, aggrieved shareholders who want their mine back have not had a good run with Australia's statutory authorities. The corporate watchdog, ASIC walked from its investigation. Shareholders complained to the Ombudsman. Yet, after 18 months, the Ombudsman has been unable to respond. It has written to tell the complainants that ASIC refuses to answer questions. ASIC also stonewalled on FoI applications by shareholders.

With no joy from the courts or the regulators, Allstate creditors and shareholders have taken at least found solace in the press. Firstly, our story in *The Australian* helped illuminate their plight. Despite the action from Macquarie, Paul Steindl and Adam Shand at the Nine Network's *Sunday* show displayed great courage in running the Allstate story too. Their story made the same claims as ours. They received no writ, although the bank was still demanding an apology weeks after the story ran, they stood firm.

I had never fully appreciated the importance of a strong and free press in the democratic process before the Allstate kerfuffle. The principle seemed a commendable one, if not a bit notional and airy-fairy. Allstate really brought it home. Even with the resolute commitment to freedom of the press from the editors of *The Australian* and from the Nine Network, the high point has been the affirmation from the media community via the Walkley Awards.

Allstate was by no means the most enjoyable read in last year's financial press, and frankly few would have understood it anyway. For the judges and the Walkley Foundation to award the gong to a story under legal challenge is a testament to their commitment to important, hard investigative stories. It was a win for the democratic process and the community's expectation that truth should prevail against powerful corporate interests.

Michael West is a Walkley Award-winning journalist with The Australian

Internet censorship

A parody of John Howard's website, johnhowardpm.org was closed down in March 2006 on government orders. The Prime Minister's office complained that the parody site, containing a "speech" reflecting on the Iraq war, was too similar to the real thing. Advice from the Federal Police High Tech Crime Centre also stated that the site might harbour some malicious intent.

Melbourne IT had registered the site on behalf of its creator, social commentator Richard Neville, but closed the site a day after it went live following the complaint. There was no consultation with Neville.

The High Tech Crime Centre said it had issued the advice because the website allegedly breached registration rules. Neville, however, disputes this saying that he paid for the URL using his own credit card and the name R. Neville was displayed on the site.

As Internet communication continues to flourish, it is increasingly important that technology providers and companies respect the principles of free speech. Already we have seen on a much more severe scale the creation of the great firewall of China. During 2005, Google agreed to comply with the Chinese Government's stringent content regulations in order to gain access to the Chinese market. It followed Microsoft's participation in the closure of Chinese journalist Zhao Jing's blog. Prior to that, Yahoo! provided personal information on one of its clients, helping the Chinese Government to convict a Chinese reporter for revealing state secrets.

While Australia has not yet seen this level of Internet censorship, the closure of Richard Neville's website due to government pressure is of great concern for the future of this medium.

3.0 Government Actions Restricting Press Freedom

3.1 Interviewing Prisoners

Cartoon by Peter Sheehan

The Dreyfus affair, the Birmingham Six, the Maguire Seven, the Guildford Four, Lindy Chamberlain. All miscarriages of justice. But journalists investigating a miscarriage of justice face a roadblock if they seek to interview prisoners.

In Queensland, the Department of Corrective Services has a policy that says media access to a prisoner will not be granted if the purpose of the interview is "to investigate issues related to the offender's guilt or alleged innocence". In fact, it is a criminal offence.

On December 22, 2005, award-winning documentary filmmaker and former ABC producer Anne Delaney was placed on a 12-month, $750 good behaviour bond in the Brisbane Magistrates' Court for "interviewing" a prisoner at the Brisbane Women's Correctional Centre. Under section 100 of Queensland's *Corrective Services Act 2000,* Delaney had been facing two years jail.

She has lodged an appeal and is seeking that her conviction be set aside and the charge dismissed.

Delaney's case dates back to April 24, 2005, when she was apprehended while visiting a prisoner convicted of manslaughter. Their discussion was to ascertain whether there were grounds for a film on a possible gross miscarriage of justice.

Delaney had spoken to the Corrective Services department prior to visiting the prisoner. She did not conduct a formal interview during the visit, which lasted 35 minutes. There was no notebook, pen or tape recorder. Delaney maintains that her meeting with the prisoner did not give her any information she was able to use for a story and that she had no intent to publish anything from the meeting.

Lawyers for Delaney argued at the hearing that section 100 operates to maximise "positive media coverage and outcomes of the Department's activities, rather than to provide a truthful and accurate account of the corrective services system and its treatment of prisoners".

Internal Corrective Services' documents make it clear that it is Department policy to apply the law to prevent the Queensland public from knowing if someone has been wrongly convicted, or from learning about corruption inside jails.

The Alliance knows of at least two other journalists who have been found guilty of an offence under this section of the Act.

The Department completed a review of the *Corrective Services Act* in March 2005, a month before Delaney's apprehension, but despite the history of s100, there were no findings or recommendations for change. The relevant section has been on the books for 17 years.

Any law that allows a senior public service bureaucrat to stop public scrutiny of prisons is dangerously undemocratic and should be repealed. However, despite Alliance appeals, Queensland's Police and Corrective Services Minister Judy Spence says "… I do not intend to seek to repeal … section 100".

Western Australia has a similar provision, section 52(1) of the *Prisons Act 1989* that makes it an offence to communicate or attempt to communicate with a prisoner without permission of the superintendent or the chief executive officer. The penalty is $1500 or 18 months imprisonment. According to WA Justice Minister John D'Orazio "… only accredited media representatives from legitimate organisations are granted access to prisons for approved purposes".

Public scrutiny of prisons is a vital part of a functioning democracy. Journalists that are confronted with repressive laws cannot question, investigate or reveal information in the public interest.

Any law that allows a senior public service bureaucrat to stop public scrutiny of prisons is dangerously undemocratic and should be repealed.

An interview with a jail sentence

BY ANNE DELANEY

The evening before I was arrested I remember watching the ABC-TV news coverage of Joh Bjelke-Petersen's death and naively thinking, Queensland has come a long way since the days when press freedom was curtailed by Joh's government. In less than 24 hours I had reason to question how far Queensland really had come. The next morning I was arrested inside a Brisbane jail, and charged effectively for asking questions of a prisoner.

I'd been corresponding with a prisoner in the Brisbane Women's Correctional Centre who was doing time for the manslaughter of one of her six-week-old triplets. I'd undertaken extensive research on Louise MacPhee's case, and was extremely troubled by what I'd learnt.

But when I went to visit her on April 24 last year I didn't know if I was going to make a film about her case – I certainly didn't have any funding to make one. I simply went to find out what sort of person she is, and whether I trusted her.

When I entered the jail I had no camera, no recording device, not even a pen or piece of paper. It was a non-contact visit so we spoke through a glass partition. Half-an-hour into our conversation I was hauled out and confronted by two plain-clothes policemen who accused me of conducting an unlawful interview with a prisoner.

I tried to explain that I wasn't doing an interview – I was simply asking questions and had no tools of my trade and no way to document anything she said. Nor did I have any intention of publishing anything as a result of my meeting. But the Senior Sergeant kept on insisting I was doing an interview because I was asking questions. At one point I remember turning to him and asking, "So is it illegal to ask questions in Queensland?" I knew something was seriously wrong when he said, "yes".

I was taken to the local police station where we continued the 'no I wasn't, yes you were' line of questioning, until I asked the police how the *Queensland Corrective Services Act* defines an interview. "Well there is no definition of interview in the Act," said the Senior Sergeant. "So what do we do now?" I asked. "We get a dictionary," he told me.

Armed with the *Concise Oxford English* the police tried to make sense of the intricacies of section 100, and I tried to explain filmmaking 101. I left the police station in no doubt I'd been charged because of who I am and what I do.

The absurdity of the situation left me little choice but to fight the charges and I quickly learnt I was journeying into new territory – nobody had challenged this section of the law since the Act was revamped in 2001.

It took until mid-November to get my day in court. By that time I'd engaged a team of lawyers who were expert in both criminal and constitutional issues. We decided to fight the case on the facts – I wasn't conducting an interview – and on the basis that this section of the law is unconstitutional in so far as it threatens freedom of political communication. It wasn't a typical case for the Inala Magistrate's Court, more used to hearing cases of domestic violence and assault, than issues of constitutional importance.

Under cross examination by my barrister, the Media Manager of the Corrective Services Department admitted the Queensland Government has a policy not to allow the media access to prisoners they suspect might be the victim of a miscarriage of justice. Damning evidence also emerged through questioning of the Visits Manager of the Brisbane Women's Correctional Centre, and the arresting police officer. At no stage did the Visits Manager, or the police who lay in wait for me, advise me it is an offence in Queensland to ask questions of a prisoner, even though there was ample opportunity for them to do so. Rather, it emerged that the jail and the police had been instructed to allow me in, and then arrest me.

It would have been a brave magistrate to decide in my favour – a "not guilty" verdict would have effectively knocked out the section of the *Queensland Corrective Services Act* under which I'd been charged. But on December 22 I was found guilty of having conducted an illegal interview and the Magistrate found there was no constitutional point to make.

I escaped the two years jail I'd been facing, and my barrister successfully argued no criminal conviction should be recorded. I do, however, now have a criminal "history" and will remain on a Good Behaviour Bond for 12 months.

But I was disappointed in the outcome – losing this case means the Queensland Government can continue to use section 100 to prevent the media, and other legitimate researchers, from gaining access to the State's prisoners, effectively concealing what is going on inside Queensland jails.

Anne Delaney is an award-winning documentary filmmaker and former ABC producer

3.2 Move-On Powers

In an unprecedented move, police used the *Summary Offences Act* or 'move-on' laws against journalists gathered in a Sydney public park to cover the resignation of then Labor leader Mark Latham in January 2005. Those awaiting comment were threatened with arrest under Section 28F of the Act if they didn't disband.

In January 2006, the Alliance was forced to write to Queensland Premier Peter Beattie seeking assurance that police would not use similar powers against working journalists under the *Police Powers and Responsibilities Act 2000*.

This followed receipt of email correspondence between *Queensland Times* senior journalist Stephen Gray and Queensland Police Service media and public affairs officers, who suggested they could use move-on powers against journalists in the normal course of their work.

The police force's arbitrary use of this law against journalists is a blight on Australia's press freedom record. It curtails the media's ability to report what is in the public interest, effectively preventing journalists from carrying out their investigative duties in public places.

The use of police powers to harass and intimidate journalists also raises broader, serious questions about press freedom in Queensland and Australia, and the ability of the media to perform its key role in a democratic society – free from the interference of government and government agencies.

Cartoon by Matt Golding

3.3 Attacks on Our ABC

The Australian Broadcasting Corporation (ABC) is facing a slow death at the hands of the Howard Government with chronic under-funding and political "restructuring" driving Australia's public broadcaster into commercialisation and competitive irrelevance.

In the latest in a series of controversial board changes, the Federal Government plans to abolish the only staff-elected position on the ABC board. On March 28, 2006, Communications Minister Senator Helen Coonan's bill to amend the Act to affect this change passed through the Senate to a second reading without debate. It has been referred to a Senate inquiry, which will report by May 2, 2006.

In a media release issued on March 24, 2006, Senator Coonan said that the change was aimed at improving Board accountability and would bring the ABC in line with other government departments. The decision is contrary to modern trends in corporate governance, which maximise the use of independent directors, and serves to punctuate a series of conservative ABC board appointments throughout the Howard Government's term. These so-called "political" appointments have prompted protests of "board-stacking".

But board-stacking is not the only problem to beset Australia's public broadcaster. With the ABC's triennial funding review slated for this year, a Federal Government review of funding and efficiency at the ABC conducted by KPMG found that the public broadcaster is both efficient in the use of its funds and chronically under-funded. Although the Government has yet to release the KPMG final report to the public, Senator Coonan confirmed the findings in an interview broadcast on ABC's *7.30 Report* on March 14, 2006.

The report findings come as little surprise. Figures show that ABC funding has been reduced in real terms by an estimated 25 per cent in the past 20 years. In 1997, the Howard Government slashed ABC funding by $55 million (12 per cent) and has not increased it since.[14]

These funding cuts saw Australia ranked second-lowest in an OECD survey of spending on public broadcasting, conducted in 17 countries. According to a recent Macquarie Bank report, increases in Government funding of $200 to $700 million a year are required to bring ABC funding in line with its international counterparts.

Currently, the ABC operates two television stations, four national and 60 local radio stations, two digital radio stations, ABC Online, Radio Australia, podcasting and

Former staff-appointed director Quentin Dempster (left), who spoke at an ABC staff protest at the ABC in Ultimo, Sydney, over the Federal Government's plans to abolish the appointment of a staff-elected director of the ABC, March 30, 2006. Photograph by Ben Rushton/ *The Sydney Morning Herald*

Journalists told to move-on

BY STEVE GRAY

The Queensland Police Service seems determined to keep its move-on powers in reserve to be used against journalists.

In December, I was investigating an allegation of bullying by security guards in a local shopping centre for *The Queensland Times* when the same security guards ordered me from the premises. When I insisted on my right to finish verifying the story, a security guard called for police.

Aware of trespass laws, I left the premises, returned to the office and called the police media branch to inquire what action the police would have taken. I was told that police would use the move-on powers.

When the laws were introduced as part of the *Police Powers and Responsibilities Act 1997*, State Parliament was told move-on powers were being introduced specifically to "give police the power to direct troublemakers away from schools, childcare centres, railway stations, shops, licensed premises and other notified areas".

The *Police Powers and Responsibilities Act 2000* consolidated move-on powers, but also gave police a wider interpretation of circumstances in which they could invoke them.

In subsequent discussions with the police media branch I was told, "police would not treat a journalist any differently to any other person. We do not ask a person's profession before applying a law". I subsequently raised the issue with Police Commissioner Bob Atkinson who declared the laws were not intended for use against journalists legitimately engaged in their work.

However Mr Atkinson's chief of staff later confirmed what police media branch members had said in a number of conversations: none of them would give a blanket commitment that the move-on powers would not be used against journalists legitimately engaged in their work. Police would use the powers under some circumstances, they said, effectively keeping the move-on powers in reserve.

I also referred the matter to the Alliance. The Queensland Branch requested a meeting with Premier Peter Beattie to discuss the issue. His office has acknowledged state secretary David Waters' letter but at the time of going to print no meeting had been arranged.

Federal secretary of the Media, Entertainment & Arts Alliance, Christopher Warren, told *The Queensland Times* there was a disturbing nationwide trend for police to use move-on powers to restrict journalists. "The point of the move-on laws was to break up groups or gangs, it's not about journalists doing their job," he said.

In March, the Queensland Government announced its intention to significantly widen move-on powers. In the future, journalists will have to make an instant judgment whether to abandon their work or resist a move-on order and risk arrest.

Steve Gray is chief reporter for The Queensland Times

Future shocks

BY QUENTIN DEMPSTER

The Federal Government's discussion paper *Meeting The Digital Challenge: Reforming Australia's media in the digital age,* and its Digital Action Plan appear to be a regulatory protection racket mainly for Foxtel, i.e., Murdoch and Packer. In mandating the analogue switch-off to 2010-2012, the subscription (pay) television industry is given an incredible six years extra to consolidate its monopoly in multichannelling.

Six more years! This ignores the recent recommendation of the House of Representatives all-party inquiry into digital television: "The committee recommends that the Australian government remove all restrictions on multichannelling for commercial free-to-air networks on January 1, 2008."

Six more years of very expensive simulcasting in analogue and digital at a cost of $143 million (2004-05) in the ABC's case, and hundreds of millions more for the commercial broadcasters and SBS.

The Murdoch/Packer interests in Foxtel are further assisted by introducing a "use it or lose it" scheme from January 1, 2007, which would allow pay-TV in Australia to progressively de-list sports coverage from the anti-siphoning rules. Over time and through aggressive tactics similar to those we have seen employed with BSkyB in Britain, the Australian people will probably lose free access to much sports coverage on free-to-air (FTA) television.

These measures will entrench Australia in a monopoly pay television system, committing consumers to expensive monthly fees without competitive choice

For the once-only cost of around $100 per set-top box, consumers could be receiving up to 35 standard definition fully commercial and public FTA channels with a capacity, when needed, for the exceptional picture quality of high definition. That's $100 once only, compared with $50 to $100 per month for Foxtel's offerings. Internet broadband also carries significant monthly subscription costs.

FTA multichannelling is extraordinary technology. It could transform rural and regional Australia through low-cost digital cameras and desktop editing for both commercial entities and the public broadcaster. On national public network channels we could have English and other languages channels, technical and further education channels as well as kids, youth, history, documentary and innovative comedy, sport and entertainment channels.

The discussion paper gives the Australian public heavy-handed regulation, which will intolerably slow the move to digital, and all the enterprise, innovation, creative, educational and business opportunities the digital revolution will bring.

The preferred options in the paper would inhibit the growth of web television by requiring domestic operators to apply for a broadcast licence when web TV is already available from international broadcasting sources.

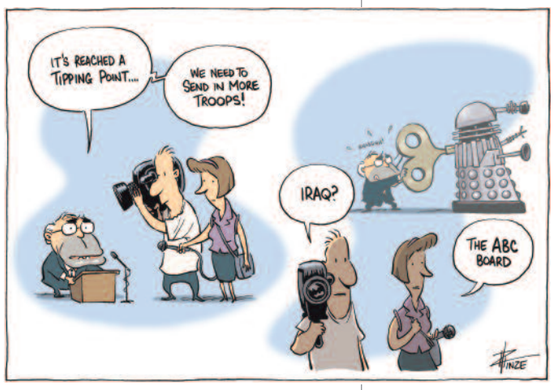
The Government has no mandate to impose advertising on the ABC or to marginalise its role in Australian media or to remove its independence protector, the staff-elected director.

Although the national broadcasters appreciate the plan to remove genre restrictions on their second digital channels, there is little prospect for innovation in content, (other than time-shifting and recycling of existing programs) unless the ABC and the SBS have the wherewithal to run with original ideas.

What the ABC needs for its survival as a mainstream player in a digital Australia, is a government that finally puts a stop to ABC board-stacking as a part of adversarial politics.

What we are witnessing through the failure of the reforms to seize the opportunities of the digital revolution now, amounts to the technological betrayal of the people of Australia.

Quentin Dempster is a Walkley Award-winning journalist, author and broadcaster based in Sydney



Cartoon by David Pope

A Federal Government review of funding and efficiency at the ABC conducted by KPMG found that the public broadcaster is both efficient in the use of its funds, and chronically underfunded.

40 ABC shops, on no more than two-thirds of the budget that the commercial channels spend on television alone.

Australian drama has taken the brunt of chronic under-funding. While production budgets have reached critical lows, the cost of developing and producing innovative local programs has soared. As a result, the ABC's broadcast of new Australian drama has fallen from 103 hours to 13 hours a year, in just four years – the equivalent of just 3.5 minutes per day.

The ABC has played a crucial role in bringing us high-quality independent programming with a uniquely Australian perspective. Unlike commercial broadcasters, the ABC's Charter requires it to broadcast programs that "contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community". This includes top-class news and current affairs programs, and programming catering to children, rural and indigenous audiences. Lack of funding is seriously undermining the ABC's capacity to keep performing this community role.

The problem is compounded by major changes taking place in communications technology. With Australia on the brink of the digital era, all broadcasters face the challenge of adapting to new technologies to remain competitive and relevant to modern consumers. The ABC has been a frontrunner in introducing new communications technologies such as online services, radio streamlining and cross platform content. However, without sufficient resources its ability to respond to the next wave of communications technology is uncertain.

In a controversial move, Senator Coonan recently suggested that the ABC consider introducing advertising to alleviate the funding shortfall. The spectre of a commercialised ABC has been universally opposed in both political and industry circles.

While advertisers have already voiced a keen interest in tapping ABC TV's mainly A/B demographic, commercial broadcasters are unlikely to welcome a new rival for advertising dollars. Some Coalition MP's have voiced support for the introduction of limited advertising, citing SBS's successful transition in 1991. However, Liberal and National party members have joined with Labor to strongly reject the idea, saying there is no need for advertising on the ABC when the Government has a $14 billion budget surplus.

The crucial concern is that advertisements will undermine the ABC's independence and fundamentally change the public broadcaster's character. Advertising would be a cosmetic solution that sidesteps the deeper issues of government under-funding.

3.4 Cross-Media Ownership

Federal Communications Minister Helen Coonan holds a press conference in Sydney, Tuesday, March 14, 2006. Minister Coonan unveiled a plan that recommends the removal of cross media and foreign ownership restrictions.
Photograph by Jeremy Piper/AAP Image.

Sweeping changes to media regulation were flagged in September 2005 when Communications Minister Senator Helen Coonan delivered a speech to the National Press Club in Canberra. With a majority in the Senate, the Howard Government was free to push through its long held vision for a deregulated media market favouring a handful of major players.

The plans for media reform were formally announced on March 14, 2006 – submissions on the proposals closed on April 18. The plans addressed changes to the rules on media ownership and those pertaining to digital technologies. Despite months spent creating it, the discussion paper *Meeting the Digital Challenge: Reforming Australia's media in the digital age* failed to address these future challenges.

Both nationally and internationally, evidence suggests that quality, pluralism and diversity in the media can only be achieved through diverse ownership. However, the proposed reforms to ownership aim to tear up the 20-year-old cross media and foreign ownership restrictions and, in their place, encourage a free-for-all of merger activity among the major media players in television, print and radio. The paper reduces the minimum number of commercial media players in a city to just five and, in a region, to just four. In Sydney and Melbourne the proposed reforms could more than halve the number of independent voices from the existing 12 or 13 to five.

When former treasurer Paul Keating introduced cross-media laws in 1987, heavy merger activity took place and two out of three free-to-air channels ended up in receivership, Fairfax went into receivership and News came close.[15] We can expect the same to happen again at the cost of consumers and jobs.

The deregulation of ownership laws also means that big owners will increasingly require their newsrooms to service print, web, radio, telephone and television sets.[16] The result will be a narrow spectrum of daily stories and topics covered. News becomes a re-packaged commodity. Media concentration will only exacerbate this.

Media-specific foreign ownership rules in the *Broadcasting Services Act 1992* may be removed, as will newspaper-specific foreign ownership restrictions in the *Foreign Investment Policy* under the *Foreign Acquisitions and Takeovers Act 1975*. According to the discussion paper, the Federal Government could also take over the power to allocate free-to-air television licences from the independent Australian Communications & Media Authority. This gives the Government complete control over the creation of new television players in this country. The moratorium on a new commercial television licence will not be extended when it expires on December 31, 2006, although the Government does not intend to issue a fourth licence.

The paper also aims to treat media assets like any other business: subject to the same competition rules and foreign investment policies. It fails to recognise the unique role media businesses play in our society. They are a vital pillar of the democratic process and, as such, play a crucial role of informing the community. Fewer media players cannot perform that function properly.

The paper leaves the implementation date for these media ownership changes open. They could take effect in 2007 along with changes to allow new licences for digital services on reserved spectrum to be allocated. Alternatively they could be implemented

Cartoon by Peter Nicholson

The proposed reforms to ownership aim to tear up the 20-year-old cross media and foreign ownership restrictions and, in their place, encourage a free-for-all of merger activity.

In the hands of a few

BY LINDSAY FOYLE

Some might think of media as a means of mass communication, only related to newspapers and broadcasting. But the Internet has added to the mix and Communications Minister Senator Helen Coonan says it is one of the fastest growing industries in Australia. She's probably right if the new radio licences, cable television and seemingly countless web sites are taken into account.

However, the information in the media is coming from fewer and fewer people. Fewer people in Australia own more newspapers every year. Wire services are replacing the people who once worked on the papers and there seems to be less radio stations running independent news broadcasts now than 20 years ago. Television still runs news, but who watches more than one broadcast a night?

There used to be three or four newspapers in every major city in Australia. Now you're lucky if you can find one. And the number of people employed to produce each newspaper is less than half it was when most readers where born. This is in an industry Helen Coonan says is growing fast.

When a newspaper vanishes there are less people reporting what is happening. The public is poorer because they get less information to form their views. When a newspaper reduces staff, it reduces the opportunities to research and those left have little choice but to react to news. In-depth reporting is the first casualty. Does the public miss what it is not getting? Look at circulation figures of newspapers and make your own judgment. If circulation is going up then the drop in quality isn't being missed. If it is going down it might have something to do with the lack of variety the increased use of syndicated stories, features and sections. A quick look at *The Advertiser*, *The Herald Sun*, *The Daily Telegraph* and *The Courier-Mail* and the same familiar features are in them all. *The Sydney Morning Herald* and *The Age* aren't far behind.

In what Coonan describes as one of the fastest growing industries in Australia there is less variation in newspapers than at anytime in our history. Newspapers used to employ two or three cartoonists. One drawing political cartoons, one drawing sport cartoons and the third getting a go when the others were on holidays. Now it's not unusual for the major newspapers to employ just one. When that cartoonist goes on holidays cartoons from interstate newspapers are run. Great for the syndicated cartoonist, who gets new readers. Not so good for the industry because a new cartoonist is denied the opportunity to get readers.

Does any of this matter? Do we need more people involved in producing more outlets for news and information? Some of the richest people in Australia think not. They made their money in the media and they want to make more. But for a democracy money isn't the important factor. Information is. If we are to have a thriving democracy we must have a thriving media. That will only happen with diversity of media ownership.

Lindsay Foyle is cartoonist with The Australian *and is a past president of the Australian Cartoonists' Association, winner of the 2005 Walkley Award for Outstanding Contribution to Journalism*

with the proposed Digital Action Plan in 2010 to 2012 – the forecast switch over from analogue to digital.

The paper effectively postpones tough decisions regarding multichannelling, high definition television, anti-siphoning and digital conversion until the proposed switchover period. Given the pace of technological development it is safe to assume we will have a very different media environment by that stage. As media ownership is shaken out we can expect that new issues for press freedom will arise as media owners jockey for a position in the digital spectrum.

4.0 Safety

There were several instances of physical assaults on members of the media in 2005 – most notably during the Cronulla, Lakemba and Macquarie Fields riots and following terrorism raids in November, 2005.

Sydney's Macquarie Fields riots over four nights in late February 2005, followed the crash of a stolen vehicle during a high-speed police pursuit in which two passengers were killed. Seven News cameramen Brad Smith was allegedly attacked after the funeral of one of the accident victims, when he confronted a man who had been urinating on a news van. Smith said he was punched in the head before a second man threw a bottle at him hitting him on the elbow and causing a deep cut that required stitches.

Cumberland Newspaper Group photographer Dean Dampney told *The Walkley Magazine* about the final night of the riots: "… I flashed up a park as 20 or so rioters ran in the opposite direction. One of the last of the fleeing rioters stopped in his tracks, my heart stopped. He moved towards me with a cold certainty and I stood my ground feeling it was safer than to run. Then in a tense stand-off, with his friends in tow, he wrestled the camera from my shoulder. I turned around and went home. I had a fitful sleep. Then drove back to work the next day as in a dream and uncertain as to how they'd react to the news of me losing their $10,000 camera."[17]

Channel Seven cameraman Matt Rose allegedly suffered two cuts to his face. Daniel McCarthy, Rose's sound recordist, and a Herald Sun photographer, Craig Borrow, said they were also punched.

In November 2005, nine men were arrested in Melbourne and charged with being members of a terrorist organisation. Following an adjournment to a bail application for two of the nine, media waiting on the street outside the court were involved in an incident with men believed to be friends or relatives of the nine men charged. Channel Seven cameraman Matt Rose allegedly suffered two cuts to his face. Daniel McCarthy, Rose's sound recordist, and a *Herald Sun* photographer, Craig Borrow, said they were also punched. Chairs and tables from a street café were overturned during the incident.

The day of the Cronulla riot, Sunday, December 11, 2005, Nine cameraman Richard Wiles was getting out of his car in Sans Souci when a gang turned on him, one allegedly hitting him over the back with a wooden stake. He needed hospital treatment.

The Sydney Morning Herald reported that at about 7pm on December 12, a media crew was involved in an altercation with some people in a crowd near Lakemba mosque. "A Channel Seven reporter, Robert Ovadia, was surrounded by a group who menaced him, spat in his face, threatened to head-butt him and told him that the media had stirred up all the trouble. Ovadia called police, who sent a patrol car. The *Herald*'s reporter at Maroubra retreated under a hail of water bombs. The Bra Boys had told the media they were not welcome."[18]

Simon Kearney, a reporter, and Chris Pavlich, a photographer – both with *The Australian* – said they were surrounded by a group also outside the Lakemba mosque. Pavlich reported he had his cameras taken from him and their digital memory cards removed. While trying to drive away their car was surrounded by a mob which began kicking and rocking the vehicle.

In January this year former Federal Labor leader Mark Latham allegedly injured a *Daily Telegraph* photographer and destroyed his camera. The newspaper claimed Latham attacked photographer Ross Schultz outside a fast food outlet at Campbelltown in Sydney's south-west. Police investigating the matter discovered the camera was later allegedly destroyed. The case is before the courts.

The protection of journalists covering war zones remains an issue. The importation of flak jackets into Australia for use by the personnel of news organisations remains prohibited, forcing many teams such as those working in Iraq to obtain their equipment overseas.

Although legislation differs from state-to-state, generally body armour such as flak jackets are prohibited under the weapons acts of each state, while federal customs legislation prevents them being taken into or out of the country.

The Alliance is campaigning to have these laws changed by granting the media special exemption from the restrictions.

Men believed to be friends or relatives of nine men who were arrested in raids across Melbourne for suspected terrorist activities were allegedly involved in an incident with the media as they left the Melbourne Magistrates court. Police raided a number of premises in Sydney and Melbourne, arresting up to 15 people in connection to terrorist activities, November 8, 2005. Photographs by Jason South/*The Age*. Images altered by the Alliance.

Under assault on the job

BY GUY WILMOTT

Vulnerability on assignment is one thing. But being targeted and physically attacked outside a court or other public place while trying to cover stories is another.

Over the last few years attacks and assaults on the Australian media have become more frequent, and more violent.

After once witnessing what can only be described as an appalling attack on a *Today Tonight* crew in Brisbane, I began wondering just how often people are charged for attacking the media. The perpetrators of these attacks are often lauded in the community for doing so.

I have been lucky – having only been caught up in a few minor scuffles. But I witnessed an all-out attack on news crews who were doing their job. It happened late at night and involved a group of about 15 balaclava-clad louts armed with bats, as well as rocks and eggs. These were thrown at the news crews. Luckily no one was hurt except for a few dents in a news crew's car.

As with police, ambulance and fire-fighters, as "the media" we are in the public eye. And, just like them, we deserve protection from violent incidents while doing our job.

In some states it seems the police will act on an assault on media only if the victim comes forward … and even then there might not be charges laid. That seems hard to believe particularly when many of these assaults are captured on TV.

If, like most of the general public, local area police commanders have seen what happened by watching news and current affair programs, then why aren't these thugs charged with common assault on the video evidence alone?

It's funny how thugs from the Cronulla riots can be rounded up on video evidence but the media seem to be fair game.

Media workers expect to be protected by the same laws that apply to everybody else.

Action must be taken before someone working in the media gets seriously hurt doing their job. It's called duty of care.

Guy Wilmott is a Walkley Award-winning photographer.

5.0 Media Attacked at Work

In addition to new industrial relations laws that strip away rights and conditions for all Australian workers, the media has been threatened with severe job cut backs and policy decisions that prevent journalists from properly carrying out their work. Fair working conditions are essential to maintain the integrity, quality and freedom of the Australian media.

5.1 Industrial Relations Laws Strip Away Rights

Prime Minister John Howard (left) and Workplace Relations Minister Kevin Andrews during a press conference in Canberra on Sunday, October 9, 2005. After a meeting with business leaders Howard guaranteed that under new industrial relations legislation existing industrial award protections would remain. Photograph by Alan Porritt/AAP Image

Fair working conditions are essential to maintain the integrity, quality and freedom of the Australian media.

The Howard Government's industrial relations regime was enacted on March 27, 2006, a week after the regulations that underpin the laws were released. The laws will strip many working rights that media workers have fought hard for. They gut awards and obliterate their relevance in the negotiation of agreements – replacing them with a standard of five minimum conditions.

The Federal Government is encouraging the proliferation of non-union individual agreements (also known as Australian Workplace Agreements), which can now ignore journalist gradings as a basis for pay rates and the six week and three days leave entitlement in most journalist awards.

The regulations include a three-page list of matters that cannot be included in a collective agreement. These matters target the right to have a union presence in the workplace such as the right of entry of union organisers, trade union training leave and bans on the use of individual contracts.

Union delegates and officials will have to jump through numerous hoops to initiate protected industrial action against recalcitrant employers or face fines of up to $33,000.

The only protection from these laws is a collective agreement that nails down proper rates of pay, and a strong union presence in the workplace itself. Further details can be found at the Alliance's campaign website: www.alliance.org.au/rightsatwork

5.2 Cutting Back Jobs

In November 2005 Fairfax announced a redundancy round that led to the loss of at least 68 editorial positions at *The Sydney Morning Herald*, *The Sun-Herald*, *The Age* and *The Sunday Age* with many leading journalists departing the company.

In July 2005, Fairfax announced that it would shift five Fairfax Business Media (FBM) magazines from the Melbourne-based *Business Review Weekly* (BRW) stable to the Sydney offices of the *Australian Financial Review* (AFR). Without any consultation, management announced that *Shares* and *Personal Investor* magazines would close to make way for a new Sydney-based AFR magazine title, while *Asset*, *CFO* and *MIS* would also be produced out of the Sydney AFR office. Melbourne-based staff who refused to make the move to Sydney lost their jobs. Sydney staff were forced to relocate to the AFR. This led to nine redundancies among FBM staff and a similar number being redeployed within Fairfax. Several freelance journalists who wrote regularly for the titles also lost work. When asked about the future of the sole remaining Melbourne-based FBM magazine, *BRW*, Fairfax management would not rule out taking similar action.

Fairfax management's pursuit of higher profits through cuts to editorial staff compromises Fairfax's integrity and editorial quality by squeezing already depleted resources. This problem was further compounded by the obscene payout of $4.5 million to outgoing chief executive Fred Hilmer and the company's attempt later in 2005 to stall negotiations for a new enterprise bargaining agreement.

Up to 50 ABC radio current affairs staff went on strike in December 2005 over the loss of an anticipated six production jobs, as part of management plans to remove studio producers. The strike forced *AM*, *The World Today* and *PM* off the air. Management's move to ditch producers would have curtailed the ability to update programs across time zones, take live feeds and include late-breaking items. Again the plans threatened to reduce the immediacy and quality of ABC radio.

At SBS, the company had a prolonged campaign of refusing to provide adequate backfill at SBS Radio when staff members took personal or annual leave. Staff members in Sydney and Melbourne were forced to cover their state counterpart's workload when they were away. The Alliance took the complaint to the Australian Industrial Relations Commission on the basis of Occupational Health and Safety but it was also acknowledged that editorial staff could not adequately prepare content for two people. This was not helped by a severe cut to program preparation time also pursued by management.

Severe staff cuts in editorial and production is a global issue. Reports of US media layoffs indicate nearly 72,000 job cuts since 2000[19]. Tribune Co., which publishes the *Chicago Tribune*, cut 900 jobs in 2005. New York Times Co. announced plans in 2005 to cut 500 staff at the *New York Times* and *Boston Globe* and a further 36 cuts at *The International Herald Tribune* were announced in early 2006. Time Inc. and Dow Jones & Co. have also announced significant cuts. At the time of going to print the BBC in Britain was planning to cut 239 jobs as they merged website, radio and technical roles into one assistant producer position.

Cuts of this nature impact on press freedom by creating heavier workloads for remaining staff and insufficient time to fully investigate stories. The immediacy expected by media consumers leaves journalists vulnerable to the convenience of pre-packaged media releases and other political stunts, opening the way for media manipulation.

5.3 Journalists Sidelined

Australia's Jana Pittman meets the press after winning gold in the Women's 400m hurdles, March 23, 2006. Photograph by Craig Golding/*The Sydney Morning Herald*

Journalists find themselves in a hard place when reporting on sport that media companies have spent millions acquiring the rights to cover.

The amount of money pumped into sport in this country rivals the GDP of some African states but despite this generosity, the people who cover it are not always so well treated.

As preparations for the Commonwealth Games came to a close in March 2006, organisers successfully lobbied the Victorian State Government to ban media coverage of rehearsals and testing events. Media organisations that breached the rules faced fines of $240,000. Melbourne 2006 chief executive John Harnden defended the media ban, saying it was partly designed to protect rights holder Channel Nine.[20]

In this instance the media found an ally in Prime Minister John Howard who said that the ban was "ridiculous" and not a matter of national security as would warrent such a restriction. He was also reported as saying that in his experience most media respected serious security issues and "We can't be penalising people for being sleuths".[21] In a partial backdown by the Victorian Government, media networks were provided with 30 seconds of edited footage from the second dress rehearsal.

In a number of instances over the past year photographers have found themselves prevented from capturing the best pictures at sporting events. During the year some sporting organisations have attempted to take copyright of photos, claiming they own the image. In a 2005 *Walkley Magazine* article AP's Mark Baker told of one attempt to force photographers to sign away their copyright before allowing them onto the field. It was later withdrawn following industry backlash.[22] At many sporting venues there are restrictions on field access and space limitations for photographers covering the event. Also of concern, according to Baker, is personal safety: "We are refused access to the player's tunnel, which is the safest and most logical exit for us from the field. I have been threatened by members of the public when leaving the field. You feel quite vulnerable when you're carrying all that equipment and an inebriated fan decides to take his frustration out on you."[23]

There have also been restrictions placed on journalists where their employer owns the product on which they report. As Patrick Smith wrote in the *Walkley Magazine* this year, journalists find themselves in a hard place when reporting on sport that media companies have spent millions acquiring the rights to cover. Information fed to the network or paper is usually one-sided and then there is the danger of the journalist second-guessing how and what management wants them to report.[24] Smith wrote of one recent example at a country race meeting where one jockey violently struck out

against another once over the finish line. The footage was telecast but the commentator for TVN remained silent. Racing network TVN had just locked in a multimillion-dollar battle for the rights to broadcast thoroughbred racing.[25]

The euphoria of Australia's qualification into the 2006 World Cup was dampened by FIFA's decision to slap severe restrictions on the publication of photos from the event. Talks between FIFA and a coalition of news organisations including the World Association of Newspapers (WAN), The Associated Press, Reuters, Getty Images, German news agency DPA and the European PressPhoto Agency, collapsed in February 2006. FIFA has banned the publication of World Cup photos on the Internet before the final whistle of a game. Only five photos per match half and two per extra time, including penalty 'shoot outs', can be published on websites regardless of time limits. There are also editorial restrictions on how photographs can be used in print. According to WAN these restrictions are being used as a condition of official media accreditation to the event. Media will face expulsion and legal action if they break the rules and news agencies will be held responsible if their clients break the embargo or publish too many photos.

Using less to keep telling more

BY ROSS COULTHART

Times are tough in the industry, with budget cuts everywhere, and *SUNDAY* is no exception. Audiences are drifting away from traditional "analogue" media – they're time poor and, probably most importantly, they're getting used to receiving news stories when they want on their laptop or mobile phone. All of us who do what we call investigative journalism are in a struggle to justify our existence – and to make-do with whatever resources we have.

To survive, we need to find ways of doing what we do better, in a way that makes us more relevant to our audience. And believe it or not, I think there are grounds for some optimism.

For starters, the Internet is changing journalism fast and delivering programs like *SUNDAY* an extra on-line audience through the program's website, which far exceeds the raw numbers of loyal viewers who sit down to watch us each Sunday morning. Like many TV public affairs programs, we're moving towards putting as many as possible of our documentaries on streaming video on-line. And the power of a viral-marketing message via web-based Blogs – that there is a story coming that's not to be missed – is extraordinary to witness. The response we get from our viewers via the website shows there is still a real hunger out there for well-told long-form, analytical and entertaining yarns.

One recent story we made on an allegedly racially motivated hit-and-run killing in Townsville provoked an enormous response through *SUNDAY*'s website – with hundreds of viewers asking for viewing copies and offering information. In another example, when a US journalist friend of mine wrote one story for a single Boston suburban newspaper about a story we made in Iraq (featuring shocking video of US soldiers raiding a family home) we discovered an international audience we didn't know we had; hundreds of requests for viewing copies flooding in from interested readers overseas.

Maybe the best hope long-term is that the Net will allow Australian program makers to deliver scoop stories to a European or American audience, for a fee, via high-speed broadband. Because – heck – we can do it better and cheaper than they do.

In the short-term, media organisations need to be more collaborative and supportive on big 'digs' – as has long been the case in the US. The decision by *The Australian* newspaper to back its FoI editor Michael McKinnon all the way to the High Court to try to break Treasury secrecy is something we should all be supporting. Because the growing obsession with secrecy inside government and corporations, fuelled by a paranoid plague of former journalists now turned PR or crisis managers, is the single biggest problem confronting the craft.

The scoops are getting harder to get because the politicians and the corporate miscreants don't want us to get them; at the very time that diminishing budgets mean we can't spare the time and resources to investigate stories as much as we used to.

I'm involved in a project with the University of Technology Sydney's journalism school, which hopes to put information that is already publicly available, on-line for all. There is a huge amount of open-source information that we journalists don't properly use. One idea we have is to load electoral donations disclosures from local, state and federal politicians and political parties onto an on-line database for anyone to access.

Imagine if it was possible to compare political donations with all contracts awarded by the Federal Government … well it is already.

We journalists don't do enough generally to inform ourselves about the remaining rights to information we do enjoy; and we don't use it enough even when we know we can ask for it. When *SUNDAY* recently broke a story about senior government politicians who held undisclosed shares or investments in AWB, a number of journalists confessed to me that they were surprised to hear the *Corporations Act* gives the public the right to search shareholder registers. What I was surprised to learn was that there is another right under the same Act which allows us to inspect any corporation's register of relevant interests – which goes part of the way to uncovering who owns shares behind nominee or overseas front companies or trusts.

That's just the tip of an iceberg of publicly accessible information sources we all rarely use. Maybe there are ways of telling stories more cooperatively, more cheaply, and more cleverly.

Ross Coulthart is a Walkley Award-winning journalist with the Nine Network's SUNDAY *program*

6.0 Immigration and International Matters

Australian journalist ejected from airport press conference

Australian journalist Susan Ahern, working as an adviser to the Solomon Islands Broadcasting Corporation (SIBC) was asked to leave a room in which Papua New Guinea Prime Minister Sir Michael Somare and a delegation were waiting at Honiara International Airport, during a stopover on their way to New Caledonia. Somare and his delegation were travelling via Honiara, rather than Brisbane, in protest at Somare having recently been body searched at Brisbane Airport.

Ahern was there to accompany a trainee journalist whom she was mentoring and advising. A Solomon Islands police officer asked Ahern to leave the room saying that PNG authorities had advised against the presence of an Australian in the room. It is thought Ahern's removal was sought simply on the basis of her being Australian.

Iranian writer freed

On April 29, 2005, Iranian writer and refugee Ardeshir Gholipour was released from the Baxter detention centre. Gholipour had been held in detention since he arrived in Australia in May 2000. Gholipour's asylum claim had been rejected and he had been facing deportation to Iran where he feared he would face political persecution and possible death. During his detention his physical and psychological health deteriorated, leading him to attempt suicide. Appeals on his behalf from local and international groups finally led to his release.

APN Newspapers all ears across the Tasman

There are concerns that newspaper employers have allegedly been illegally listening to the conference calls of members of the New Zealand journalists' union. In December 2005, the Engineering, Printing and Manufacturing Union (EPMU), which represents staff at Australian-based APN News & Media's New Zealand newspaper operations, complained to police after phone records showed unauthorised calls were made into weekly phone conferences with staff delegates. The unauthorised calls allegedly came from a telephone number used by APN daily *The Hawke's Bay Today* and APN's regional offices in Hastings.

The calls were made at a time when the EPMU was negotiating with APN New Zealand Ltd for collective agreements covering several APN Newspapers including *Hawke's Bay Today*, *Wairarapa Times-Age*, the *Wanganui Chronicle* and the *Chronicle*. The conference calls were organised to allow authorised delegates from the workplaces to coordinate a bargaining strategy.

Alarm bells rang at EPMU when APN management representatives involved in the negotiations were aware of matters that had only been discussed during EPMU's conference calls. Phone records indicated that in nine out of 12 weeks the unauthorised caller had logged on to the call 10 minutes before its scheduled start time and was the last to log off.

The International Federation of Journalists (IFJ) has urged New Zealand police to thoroughly investigate the claims.

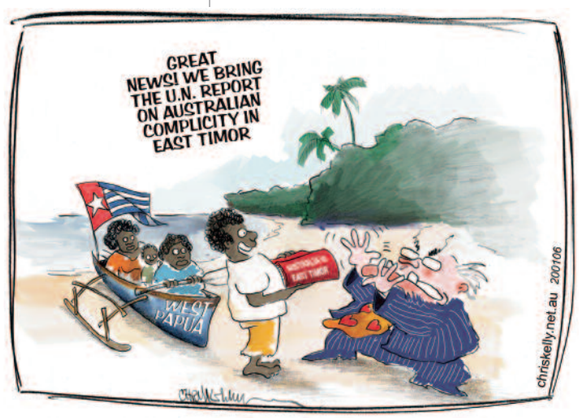
West Papua bans foreign media

A ban on foreign media in West Papua has been imposed to stifle Papuan human rights campaigning. Indonesia's Minister of Defence, Juwono Sudarsono, has claimed that the ban, which applies to all foreign media, churches and non-governmental organisations (NGOs), is required because there are fears their presence in West Papua would "encourage Papuans to campaign on issues of human rights".[26]

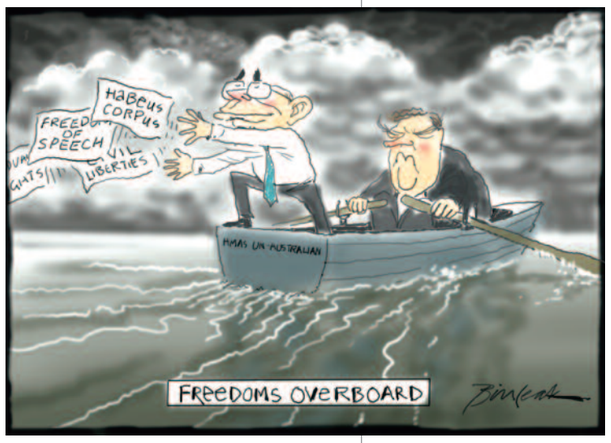
The ban has prevented any foreign journalist from having official access to the region in the past 18 months, severely restricting the media's ability to tell the West Papua story. There is also concern that the foreign media ban is a direct attempt to conceal human rights abuses from the world.

The restrictions on foreign media are in direct opposition to Indonesia's obligations since ratifying the United Nations' Covenant on Civil and Political Rights. Article 19 recognises the right to "seek, receive, and impart information and ideas through any media regardless of frontiers".

The Indonesian Government lifted a similar ban in Aceh after the December 2004 Indian Ocean tsunami.



Cartoon by Chris Kelly



Cartoon by Bill Leak

Heru Hendratmoko, the president of the Indonesian journalists' union, the Alliansi Jurnalis Independen (AJI), said: "AJI will never agree with any policy on media banning… We have to respect the people's rights wherever they live, including people in West Papua, to get access for information.."[27]

Journalists kept at bay from refugees

In January 2006, the media were initially prevented from communicating with a group of 43 West Papuan asylum seekers who were herded on to a RAAF Hercules and flown 4000kms from Cape York to Australia's Christmas Island Detention Centre. Police, immigration and customs officers prevented the group having contact with the media in Weipa in Queensland's far north, where the group were detained. The media had to keep 25 metres away from the asylum seekers, who were kept under close guard throughout the day.

Meanwhile, media visits to detention facilities remain strictly curtailed, with the Deparment of Immigration and Multiculutral and Indigenous Affairs requiring that media visits "abide by the Department's obligation to protect the identity and privacy of detainees. That responsibility includes protection from unsolicited and invasive attention, which may compromise the safety of detainees and that of relatives in their home countries". The Department's heavy-handedness has meant that journalists cannot report on the treatment and conditions at Australia's immigration centres, or speak to detainees who may wish to meet with them.

7.0 The Way Forward

Since the inaugural Press Freedom Report (*Turning Up The Heat – The decline of press freedom in Australia 2001-2005*) was launched in 2005, violations of press freedom have continued to infiltrate our legislation, courts, government policies and even public attitudes. The cumulative effect of these individual attacks compromises the obligation we have as the media to inform, question and foster democracy through public debate.

In the last year though, the media has drawn increased attention to the importance of a free press. Through submissions to Parliamentary inquiries, letters to MPs and Senators and within media coverage itself, media practitioners have raised the profile of press freedom and its vital role in a functioning democracy.

As this report documents, this has made a difference in a handful of cases. But there is more work to be done.

It is important that we continue to document these attacks.

- Tell the Alliance when you or your colleagues experience or witness an attack on press freedom.
- Talk about these attacks in your stories; let the public know when you have been prevented from accessing information due to legislation, court orders or intimidation.
- Make submissions to inquiries where the government is proposing laws that will inhibit what democratic space we have left.
- Contribute to Alliance campaigns – from defending our Rights at Work to lobbying the government for more ABC funding.
- Sign petitions; write to your local MPs and Senators.

Working together, the media has a greater chance of preventing further attacks on press freedom.

Finally, we need to make sure we don't fall into the trap of unconscious self-censorship or become apathetic to the authorities' manipulation of information. Get talking, highlight the restrictions we are facing on a daily basis and voice your opposition.

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