



# Secrecy and red tape

THE STATE OF PRESS FREEDOM  
IN AUSTRALIA 2009



THE MEDIA,  
ENTERTAINMENT  
& ARTS ALLIANCE

**PRESS  
FREEDOM  
2009**

**2009 Australian Press  
Freedom Report**



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## INTRODUCTION

As we were preparing this year's report into the state of press freedom in Australia, we were given a sharp reminder of how precious freedom of expression can be, and how easily it can be denied. Fijian military dictator Commodore Frank Bainimarama told Radio New Zealand that freedom of speech "causes trouble" and must be curbed to allow his military government to do its work. The tragedy being played out in Fiji only goes to underscore how swiftly human rights can be obliterated.

We are fortunate in Australia that there has been some progress in tipping the balance in favour of the public's right to know. The Rudd Government has made good progress reforming areas critical to press freedom. But for genuine reform to take place more must be done.

A cloak of secrecy envelopes the activities of government. There is an assumption that information held by government should be kept confidential. While some changes announced in the past year will help to break down that culture, many of the Rudd Government's reforms only go half way, preferring to keep some areas hidden by falling short on full disclosure.

For instance, the Government followed up on its 2007 election promise to abolish conclusive certificates and has released draft Freedom of Information reforms that indicate a commitment to open government and access to information. But rather than rethinking the outdated concept of Cabinet secrecy, it still wants to keep Cabinet papers hidden from view for two decades. The Australian people have a right to know how the major decisions of government are thrashed out.

There has been progress on providing protection for journalists who attempt to shield the identity of their sources. But the proposed law leaves it to judges to determine if the court will uphold privilege rather than presuming in favour of journalists.

The proposed protection for whistleblowers only covers issues of public health and safety issues but not the exposure of corruption and maladministration. While there has been recognition of some rights for whistleblowers, it is just as crucial that the rights of the media are recognised.

In late December last year the Government announced an overhaul of the anti-terror legislation, including removing many archaic seditious provisions. Until the exposure draft legislation is released later this year, it's unclear if a new definition will permit legitimate dissent and allow journalists, photographers and cartoonists to do their jobs.

The cloak of secrecy is not confined to governments. In the courts, there has been an explosion in the use of suppression orders suggesting an urgent need for a review of their use. Calls for new legal restrictions relating to privacy would only barricade legitimate information away from proper public scrutiny.

The Alliance has welcomed the Australian Law Reform Commission's review of Australia's secrecy laws in which we have stated that the release of information held by governments or public service agencies should be automatically subject to a public interest test.

Media employers have worked with the Alliance through Australia's Right To Know coalition to strip away areas kept secret by legislation and government action, to examine how journalists can better fulfil their duty of informing society about itself. In the current economic climate, with many areas of the media under cost pressures, we believe employers also have a duty: to demonstrate a commitment to the investment and proper resourcing of quality journalism.

Finally, it is worth remembering that, just a year ago in Perth, we were horrified at a raid on *The Sunday Times* by 27 police officers from Western Australia's Major Fraud Squad. In September last year we saw Australian Federal Police raid the home and car of a journalist with *The Canberra Times*. Our two colleagues Gerard McManus and Michael Harvey must carry criminal convictions because they carried out their professional responsibilities and respected confidences.

Clearly, there is much still to be done in the name of press freedom in Australia and advancing the public's right to know. Highlighting the work still to be done is what this report is all about.

**Christopher Warren, Federal Secretary,  
Media, Entertainment & Arts Alliance**



*"Clearly, there is much still to be done in the name of press freedom in Australia"*

## THE STATE OF PRESS FREEDOM IN AUSTRALIA 2009

### Secrecy

In one of his first actions after inauguration as the 44<sup>th</sup> President of the US, Barack Obama sent memos<sup>1</sup> to executive heads of departments and agencies calling for the development of an Open Government Directive, to promote transparent, collaborative and participatory government under his administration. At the heart of that commitment is the presumption in favour of disclosure, recognising that “in the face of doubt, openness prevails”.

There has been no such “Obama moment” in Australia.

To the contrary, there are still 335 separate state and Commonwealth laws containing secrecy clauses<sup>2</sup>. These range from general secrecy provisions, such as the *Crimes Act (1914) (Cth)*, to taxation information, census and statistical information, defence and security information, electoral information and information

In addition, the release of documents that would disclose the deliberations of Cabinet or Executive Council is prohibited. Some Acts even prohibit the release of commercial information deemed to be “in confidence” (the *Australian Wine and Brandy Corporation (Annual General Meeting of the Industry) Regulations 1999* prohibit persons appointed as tellers for the annual general meeting of the corporation from disclosing any information about the amount of any levy or charge imposed on, the voting rights of, or the number of votes cast by, an eligible producer. The penalty is a fine of \$1000 for a person or \$5000 for a corporate entity.

In his 1991 essay on secrecy in Australia, Professor Paul Finn (now a Federal Court Justice) wrote: “When one amalgamates the plethora of statutory provisions, regulations, codes, administrative instructions and common law rules one is left in almost every Australian jurisdiction with an ill-fitting, sometimes unintelligible mosaic of prescriptions and proscriptions. For the individual official the consequence of this can be conflicting, sometimes quite unacceptable, legal demands: the trivial can be criminalised, the important left in a state of lamentable uncertainty.”<sup>3</sup>

In March 2009, the Alliance made a submission to the Australian Law Reform Commission’s review of secrecy laws, calling for a review of the different types of secrecy provisions to replace these contrasting and overlapping provisions with a general presumption of openness, except in specific circumstances relating to the public interest.

The ALRC report and recommendations are due to be delivered to the Attorney-General on October 31, 2009.

**It is paramount that secrecy provisions must be tempered with the general principle that government information is held in trust for the Australian public**

*The Bill requires all government agencies to adopt the “push” model involving proactive publication*



Special Minister of State, Senator John Faulkner, released draft FoI reforms at Australia’s Right To Know conference  
ANDREW TAYLOR. COURTESY FAIRFAX PHOTOS

### Freedom of Information

On March 24, the Special Minister of State, Senator John Faulkner, addressed a Sydney conference organised by the Australia’s Right to Know Coalition, of which the Alliance is a partner.

Senator Faulkner announced draft legislation<sup>4</sup> for the reform of Australia’s federal Freedom of Information laws. *The Freedom of Information Amendment (Reform) Bill 2009*, which was released as an exposure draft, requires all government agencies to adopt a “push” model, involving the proactive publication of government information rather than, as has been common hitherto, a “pull” model by which information is only released if requested and only then after an exhaustive FoI search process.

The FoI process as laid down by the Freedom of Information Act (1992) had become, in the words of an ALP policy document, *Government information: Restoring trust and integrity: “sclerotic; its objects ignored in favour of narrower interpretations by government and the courts, and its exemptions, charges and procedures arguably abused”*<sup>5</sup>.

The first 18 months of FoI searches under the Rudd Government revealed how sclerotic the process had become. Searches have taken longer, have been more expensive and more requests have been denied than in previous years.

The Draft Bill announced by Senator Faulkner aims to address this situation by:

- Establishing two new statutory positions – Information Commissioner and FoI Commissioner – and bringing them together with the Privacy Commissioner in a new Office of the Information Commissioner.
- Promoting a pro-disclosure culture across the Government.
- Introducing a new information publication scheme requiring agencies to proactively disclose more information to the public – and giving the Information Commissioner a key role in assisting agencies and monitoring their compliance with the scheme.
- Reduction of the *Archives Act’s* 30 year rule for access to all documents to 20 years, and bringing forward access to Cabinet notebooks from 50 to 30 years.

- Abolishing all FoI application fees; the abolition of all charges for a person seeking access to their own information; a charge-free first hour of decision making time for all FoI requests (journalists will have a five-hour free decision-making period).
- Introducing a single, clear pro-disclosure public interest test, and ensuring that factors such as *embarrassment to the government, or causing confusion and unnecessary debate*, can no longer be relied on to withhold access to documents.
- Introducing a strong new “objects” clause in the FOI Act, which emphasises that information held by Government is a national resource, reinforcing that the aim of the FOI Act is to give the Australian community access to information held by Government.

The new act is due to take effect from January 2010 along with changes to the Archives Act to allow the phased-in release of cabinet records after 20 years, instead of 30 at present, with cabinet diaries to be available after 30 years not 50.

**The Alliance applauds the reforms. As noted below by journalists working at the coal-face of FoI searches, the regime could be enhanced further and we urge Senator Faulkner to take note of some of the recommendations of the ALRC that have not made it into the draft legislation.**

### Protecting Whistleblowers

The *Report on Whistleblower Protection* from the House of Representatives Standing Committee on Legal and Constitutional Affairs chaired by Mark Dreyfus QC, Member for Isaacs, was released on February 20, 2009<sup>6</sup> and called for new legislation, to be called the *Public Interest Disclosure Act*, with the primary purpose of promoting accountability and integrity in public administration.

### WHISTLEBLOWER'S PROTECTION PLAN



LINDSAY FOYLE

### Conclusive certificates meet their end

MICHAEL MCKINNON

By mid-year and maybe as early as the May Budget session, an odious secrecy power of the Federal Government will be taken out, shot and buried when the Senate passes a relatively small bill on abolishing use of certificates in the *Freedom of Information Act*.

Conclusive certificates have lurked in the 1992 *FoI Act* so a minister could deny access to any document too embarrassing for the public. Rarely used, a certificate was still a ministerial stamp against document release when truth absolutely had to be hidden.

Commonwealth Treasury secretary Dr Ken Henry said their use was justified to stop Governments being embarrassed. Success is not embarrassing, particularly for politicians who will spend a lot of taxpayer funds to tell the public about even lacklustre performance.

Failed policies, poor policy advice, waste, poor administration, corruption and kickbacks, sweetheart deals or pork barrelling are all embarrassing and cost votes. FoI was first introduced in the 1770s because elected governments will confuse political interest with the public interest, so citizens needed legal right of access to information and the courts or tribunals act as the independent umpire on access.

When the government blocks a FoI request for “embarrassing” information including, for example, how much extra income tax is collected when inflation pushes workers into higher tax brackets (bracket creep), the only option is the appeal process – internal appeal and then the Administrative Appeals Tribunal.

In the AAT, public interest arguments for and against release of documents are weighed and balanced. But a conclusive certificate means the tribunal could only look the public interest arguments favouring secrecy. So even in an admittedly far-fetched hypothetical scenario where a Treasurer was just using extra cash from bracket creep to bribe voters at election time rather than reforming an inefficient system, damning documents could be

kept secret if a certificate was issued by a minister. The AAT would not be able to look at the public interest in the truth getting out; it can only look at arguments favouring secrecy.

A failed High Court challenge by *The Australian* newspaper (McKinnon v Treasury) had also left no doubt any legal appeal was hopeless, precisely as certificates were intended and designed. Other issues locked away from in secrecy with certificates included documents about income tax reform, industrial relations reform, the legality of David Hick’s incarceration, and Reserve Bank board minutes.

The Treasury battle, along with other certificate cases, had prompted the Mark Latham-led ALP Opposition, through then shadow attorney-general Nicola Roxon, to promise their abolition. The Rudd Government retained the commitment in its election platform as well as a promise of broader reform of an FoI Act relatively unchanged since 1982. Special Minister of State John Faulkner’s bill to abolish had cleared the hurdle of a Senate committee with backing from the Coalition Senators and will therefore be passed in May or June.

The end of certificates comes despite immediate bureaucratic resistance when the Rudd Government was elected. Commonwealth Treasury documents prepared for Treasurer Wayne Swan, obtained through FoI by the Seven Network, show bureaucrats argued to keep certificates but failed.

The death of certificates represents real and positive change and various State Governments have or intend to abolish certificates in their FoI laws. The new proposed FoI laws are also a positive improvement while imperfect. And under those reforms, all AAT appeals will consider the public interest factors favouring disclosure as well as factors favouring secrecy.

*Michael McKinnon is FoI editor with the Seven Network*

## Queensland's FoI reforms

SEAN PARNELL

The Freedom of Information (FoI) reforms deemed crucial to presenting Queenslanders with a revitalised Labor government are set to be implemented within months. When Premier Anna Bligh took the State's top job from Peter Beattie in late 2007, the first decision of her new Cabinet was to order a wide-ranging review of the State's 15-year-old FoI Act.

Bligh appointed Dr David Solomon – a barrister, author, journalist, academic and former chair of the Electoral and Administrative Review Commission (EARC) – to head a three-member review panel which handed down a 415-page report nine months later. Duly critical of the existing FoI Act, the panel described their recommendations as “not merely an upgrade of the legislation, but a new model” to be known as Right to Information, or RTI.

Solomon emphasised the need for cultural change, whereby the government would go from releasing information only after a “pull” from the media or others, to routinely “push” information into the public arena. Documents released to applicants under RTI would be routinely posted on websites for everyone to see. Individual taxpayers would also be able to access their own information outside RTI under a process administered by a state Privacy Commissioner who would work alongside the Information Commissioner.

RTI applications – which would be expedited by government, and be less costly to applicants – would face fewer obstacles and be bolstered by a prevailing public interest test, which has existed

in the past but been rendered useless. RTI would also have a much broader scope.

Not only would all Cabinet documents be released after 10 years, but after every Cabinet meeting, the premier would have to decide what not to make public and release an edited Cabinet agenda along with any non-confidential documents.

Bligh was immediately supportive, saying she believed the new model reflected “the right balance between the legitimate privacy of our citizens, the public interest, and effective government”.

Cabinet opted to support the vast majority of recommendations, but balked at the idea of wholesale changes to existing fees and charges. And while the Cabinet exemption in FOI laws would be lifted after 10 years, the broader Cabinet confidentiality clause would not be lifted for 20 years – not 10 as Solomon had suggested, and definitely not retrospective as he anticipated.

Nonetheless, Bligh's push for FoI reform inspired other jurisdictions and led the Rudd Government to propose a similar model, albeit one that betters Queensland on several fronts.

While Queensland's draft RTI legislation was still out for consultation, Bligh called an early election which saw the Labor government returned for a historic fifth term. The consultation period ended 10 days after the election and Bligh's office is hopeful the RTI regime will be in place sometime in mid-2009.

*Sean Parnell is FoI Editor and Queensland political reporter with The Australian newspaper*

## New FoI laws still fall short

MATTHEW MOORE

Given the pig-obstinate refusal of the Howard Government to reform of sclerotic Freedom of Information laws, it's hardly surprising the Rudd Government's draft FoI bill was so warmly received when unveiled by Special Minister for State John Faulkner.

Not only was there a firm timetable to get an amended Act up and running early next year, with an information commissioner in place, there were improvements beyond those promised by the ALP in Opposition. Progress indeed.

Applications that now cost \$30 will be free, so too the \$40 requests for internal reviews, as will appeals to the new information commissioner. For journalists, and members of NGOs, the first five hours of decision making that would now cost \$150 will also be free. And applications will at last be acceptable by e-mail.

These changes all go beyond the 106 changes recommended by the Australian Law Reform Commission (ALRC) 13 years ago, which gathered dust when the Howard Government put the whole lot in the bottom drawer.

But as FoI experts like Peter Timmins have combed through Faulkner's draft bill, they've discovered plenty of instances where the planned changes fall short of what the ALRC recommended.

In contrast to Britain, Parliament has been excluded from the Act altogether despite the ALRC's view the public should be entitled to find out how parliamentary departments spend public money. You might be able to file an application by email, but departments will still have 30 days to respond, not the 14 recommended, and there was no movement on the recommendation you should only pay for documents you receive, not those to which access is denied.

No movement either on a recommendation requiring heads of agencies to create “such records as are necessary to document

adequately government functions, policies, decisions, procedures and transactions”. This recommendation, designed to stop bureaucrats simply using post-it notes or backroom conversations to keep deliberations confidential, was ignored without discussion.

There are plenty of other examples of how the legislation could have gone much further to create a more open administration, but this is a cautious government and much of the reform proposals reflect that.

And as Faulkner has rightly observed, changing the law is part of the process but the bigger challenge is changing the culture in government to one that favours disclosure.

Right now, public servants do what their political masters want. That is, hire the best lawyers to argue for the narrowest possible interpretation of the law. They fight hard and mostly they win.

That culture will only change by constant example from the top. Despite Faulkner's promise to change the culture to one that is pro-disclosure, we have seen little of the fight so far. He has pledged to send a memo to every department head advising them of the new law and the new responses he wants from them. That's a start, but it will need a lot more effort than that if we are ever to force public servants to change the way they think. The government should start by using its right under the existing law to order release of a document the administration says is exempt under existing FoI laws. New South Wales Premier, Nathan Rees, has done it several times to send a signal to his public servants, Rudd should show he's serious and give it a try too.

*Matthew Moore is Freedom of Information Editor for The Sydney Morning Herald*

The report called for a two-stage process of internal and external reporting with the Commonwealth Ombudsman to oversee of the administration of the Act. The Dreyfus Report proposed that, in certain circumstances, disclosures made to third parties such as the media, legal advisors, professional associations and MPs, should be protected.

However the proposed reforms do not go far enough in providing protection for whistleblowers, limiting protection for disclosures to the media about issues relating to public health and safety but not matters relating to corruption and maladministration.

This limitation still severely curbs the public's right to know and is open to misinterpretation and confusion and doesn't provide sufficient protection to anyone exposing corruption or wrongdoing, even when the problem has been ignored internally. The Alliance believes that full protection should be given to anyone who brings to light information which is in the public interest.

Dreyfus subsequently asked interested parties to explain how law could assure potential whistleblowers that they would be protected<sup>7</sup>.

**The Alliance, and other critics of the committee's recommendation<sup>8</sup>, believes that the legislation needs to be framed with a public interest test as a basic principle. Anyone choosing to go public with important information is not doing so lightly and they need to be afforded adequate protection to ensure that the public's right – and need – to know is truly assured without any overhanging threat of prosecution.**

## Shield laws

In March 2009, Attorney-General Robert McClelland told Parliament that amendments to the *Evidence Amendment (Journalists' Privilege) Bill 2009* would help provide protection for journalists who attempt to shield the identity of their sources<sup>9</sup>. The changes will apply to all cases involving commonwealth law, whether heard in federal, state or territory courts.

He said the amendments would try to balance the need to inform the public through the use of confidential sources, which has led to journalists being charged for refusing to disclose their identity, and the public interest in the administration of justice. It would be up to the courts to determine the balance between these two competing interests.

The amendments would provide "guided discretion" through an objects clause that would be inserted in the evidence law. Judges would have to consider the potential harm disclosure of identity could cause to both the source and to the journalist. Where the harm outweighed the desirability of the evidence being given "the court must uphold the privilege," McClelland said.

The judicial flexibility would extend to national security cases. "The greater the risk of prejudice to national security and the greater the gravity of that prejudice, the greater the weight the court would give to this factor," McClelland said.

The Alliance, which welcomes the proposed amendments, would prefer to see amendments that saw an presumption in favour of protecting journalists and their sources as the proposed changes may not have been sufficient to have protected *Herald*

*This limitation severely curbs the public's right to know and is open to misinterpretation*



Attorney-General Robert McClelland released draft shield laws to protect journalists.  
JESSICA SHAPIRO. COURTESY FAIRFAX PHOTOS

## Convicted for doing your job

GERARD MCMANUS



*Herald Sun* journalists Gerard McManus and Michael Harvey. PAT SCALA. COURTESY FAIRFAX PHOTOS

The personal consequences of a journalist living with a criminal conviction for contempt of court can be seriously inconvenient, but insignificant compared to the potential suffering faced by whistleblowers.

Not being able to go to Disneyland or being grilled by a befuddled insurance company over the “circumstances” of a criminal conviction which can make you ineligible for a policy, are two such inconveniences.

During Kevin Rudd’s trip to Peru late last year for the APEC conference I was not able to obtain a visa to the United States for a stopover in Hawaii en route to Peru. But a last-minute change of schedule meant I ended up in Hawaii for refuelling anyway on the return flight to Australia.

An official from the US Immigration Department had been worded up about my arrival on US territory and was there to greet me at Honolulu Airport. I was requested to sign a piece of paper to say that I would be leaving the US immediately.

My colleague Michael Harvey and I have discounted working in the United States in the short term.

Regrettably this inability to travel to the US also affects an innocent third party, Michael’s wife, Cynthia Banham. Cynthia is a highly respected Fairfax journalist specialising in defence and foreign affairs, but she would not be able to work in the US without Michael going with her.

The circumstances of our case are well documented. During pre-trial hearings for a public servant who was charged with leaking documents, Michael and I refused to disclose the source of a *Herald Sun* story on veterans’ entitlements. On June 25, 2007 Michael Rozenes, chief judge of the County Court of Victoria, ruled that a journalist has no legal protection even when standing by their

code of ethics. “Courts in Australia and England have made clear statements to the effect that journalists are not above the law,” Justice Rozenes said in his judgment. “Until that law is altered, if it is ever to be, then journalists remain in no different position than all other citizens. A determined and sustained stance not to comply with a lawful requirement demonstrates the need for general and personal deterrence and the need for denunciation of contempt.”

The Rudd Government has made some steps to ensure the predicament faced by Michael and I does not have to be repeated.

In any case refusing to disclose a source is a journalistic occupational hazard likely to result in heartburn, if not threat of jail, during a normal career.

However, the real issue is a deeper one.

More important than shielding journalists is the need to give whistleblowers some form of protection – particularly in circumstances when their actions are necessary and for the public good. Under recommendations made by a Parliamentary Committee chaired by Mark Dreyfus, the only circumstances where a public servant can pass on information to the media are those where public health and safety are at risk. Corruption, gross negligence, theft, kickbacks, maladministration and mismanagement must never be reported and any public servant who does so and is caught can still go to jail.

While the Harvey/McManus case attracted a lot of attention, the real object of the government of the day was to put fear into the public service never to leak to the media.

Such an attitude is counter-productive and leads to bad government and cover-ups of mistakes.

The flipside of a failure to protect whistleblowers is to give cover to incompetent and corrupt public servants and their political masters who oversee their departments.

This is neither good for the public service, nor the country.

*Gerard McManus is a Canberra-based journalist with the Herald Sun*

*Sun* reporters Michael Harvey and Gerard McManus who received criminal convictions for refusing to identify their source for a story on veterans' entitlements.

*At least seven federal Acts provide for substantial penalties for those who breach their provisions*

The Alliance believes the Commonwealth Bill does not acknowledge the tilt in the balance in favour of journalist-source confidentiality protection that exists in other countries' shield laws particularly in light of the Alliance Code of Ethics which requires that where confidences are accepted they are to be respected in all circumstances, which is qualified by the Guidance Clause which states: "Only substantial advancement of the public interest or risk of substantial harm to people allows any standard to be overridden"<sup>10</sup>. The proposed Commonwealth shield law should incorporate an overarching statement of the spirit of the law that favours journalist-source confidentiality protection.

### Anti-Terror, ASIO and Seditious Legislation

On 23 December 2008, the Attorney-General, Robert McClelland, tabled in Parliament the Rudd Government's response to outstanding reviews of national security and seditious legislation. One of the key recommendations of the ALRC on seditious legislation, which the Government has accepted, is that federal seditious laws be amended, dropping from the title of the offence the word "seditious" and instead adopting "urging violence"<sup>11</sup>.

The legislation will be updated and its obsolete and never-used provisions enacted in the 1920s for the proscription of "unlawful associations" will be repealed. The amended legislation will include an offence of urging violence against a group or individual on the basis of race, religion, nationality, national origin or political opinion.

However there is still considerable concern about aspects of the package of anti-terror laws and amendments that were introduced in the past six years. Irene Moss, in her *Report of the Independent Audit into the State of Free Speech in Australia*<sup>12</sup> on behalf of Australia's Right To Know coalition, said: "Australian anti-terrorism laws have been designed to significantly reduce the judicial watch on the executive power inherent in their operation. Even where such oversight

### A year of great pain and little gain

MICHAEL FRASER

*Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?*

- John Milton, *Areopagitica*

According to Reporters Without Borders' *Press Freedom Round-Up 2008*<sup>14</sup> and the International Federation of Journalists' *Perilous Assignments - Journalists and Media Staff Killed in 2008*<sup>15</sup>, last year saw 60 journalists killed, some 673 were arrested, 929 were physically attacked or threatened, 29 were kidnapped and 253 media outlets were censored. One blogger was killed (the first), 59 arrested, 45 physically attacked and 1740 websites were blocked or suspended.

And a citizen journalist, Chinese businessman Wei Wenhua, was killed.

The year 2008 also saw online censorship in 37 countries, including China (93 websites), Syria (162 websites) and Iran (38 websites). Thirty-one journalists and media staff were killed in the Asia-Pacific region in 2008. After the Middle East, ours is the most dangerous region for journalists. Over the past 12 years more than 1,100 journalists and media staff have been killed at work.

#### Media Challenged

According to the Media Alliance report into the Future of Journalism, *Life in the Clickstream*<sup>16</sup>, networked information and communications technologies and constantly changing ways that consumers use them to communicate through news sources, blogs and social networking are disintegrating journalism and disrupting sluggish media business models.

More paid advertising is going online. Metropolitan newspapers' advertising revenues are forecast to fall by 12.9 per cent this year.

Media companies are facing debt and falling revenues and share prices. Generally, Australian media companies' shares fell 50 per cent or more in the year since November 2007. The Audit Bureau of Circulation says readership of weekday dailies here has fallen 21 per cent between 1993 and 2005.

Globally, more than 2200 journalists lost their jobs in 2007 and then 12,000 were put out of work in 2008 – a collapse. The Alliance estimates the number of Australian journalists fell 13 per cent since 2001, from 8500 to around 7500.

Blogs will not replace the loss of credentialed journalists in genuinely fulfilling the public's right to know. Fair, unbiased, high quality journalism governed by media regulation, professional standards and the Alliance Code of Ethics earns the public's confidence. It is a necessary element, the fourth estate, of a pluralistic representative democracy.

The Universal Declaration of Human Rights 1948, Article 19 guarantees that:

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

Britain, Canada and New Zealand have a Bill of Rights recognising the right to freedom of speech. We do not, though it is implied to some degree, in our constitution.

Australia is currently ranked 28th (up from 35<sup>th</sup>) in the Reporters Without Borders world press freedom rankings<sup>17</sup>. Despite the improvements, we still stand just below Suriname and Trinidad and Tobago and happily just above Japan and Slovenia.

*Professor Michael Fraser is the director of the Communications Law Centre at the University of Technology, Sydney*

**The Alliance urges the Government to examine and review all provisions of its anti-terror legislation**

is permitted, the laws restrict the media's ability to report and curtail the ability of people to communicate with journalists and others," she wrote.

"While we discern general acceptance (including among media organisations) that threats from terrorism require a solid response, the essential issue is the extent to which it is reasonable to sacrifice basic freedoms in the cause of defending them."

Moss went on to warn that even what we know of the use of the laws is questionable.

"The effect of anti-terrorism legislation means we are almost certainly unaware of the number of cases in which the legislation has been applied and the extent to which reporting on them has been prevented.<sup>13</sup>"

The audit found that there at least seven federal Acts that provide for substantial penalties for those who breach their provisions and warned about the vagueness of broad definitions in the laws. These include the *Criminal Code Act 1995* which is vague in its definition of terrorism; the *Australian Security Intelligence Organisation Act 1979* which provides for the issue of warrants to question and detain people (which Moss says clearly includes journalists) where it is reasonably believed the warrant "will substantially assist the collection of intelligence that is important in relation to a terrorism offence"; and Section 9A of the *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Act 2007*.

The *ASIO Legislation Amendment Act 2003*, which holds that the subject of an ASIO warrant and his/her legal representatives can expect a jail term of up to five years for unauthorised disclosure of ASIO information opens up liability to anybody who discloses information "recklessly". There is nothing in the Act to suggest that a "public interest" argument for publishing operational information is defensible against the charge of "reckless" disclosure.

The legislation rightly contains safeguards designed to keep a check on excesses by ASIO officers, but while it provides for a two-year jail term for an ASIO official who knowingly contravenes a condition or restriction of the warrant, it stipulates a five-year jail term for any journalist who reports on this abuse of power by an ASIO agent.

**The Alliance applauds the Government's commitment to overhaul Australia's outdated sedition laws but urges the Government to examine and review all provisions of its anti-terror legislation that impact on the public's right to know important information about the security of the country. Clearly there are areas where disclosure of sensitive intelligence information could jeopardize the security of the public, but the release of information pertaining to national security should be subject to a public interest tests.**

**Suppression Orders**

In November last year the Standing Committee of Attorney's-General (SCAG) met in Brisbane to discuss, *inter alia*, the harmonisation of suppression orders between States and Territories.

Ministers agreed to develop draft model provisions to enable harmonised legislation governing suppression/non-publication orders, and agreed to further work being undertaken on a legal and administrative framework for a national electronic register of suppression/non-publication orders.

This is a step in the right direction, but does not address the still pressing problems presented by a cumbersome, inconsistent and often vague system governing the issuing of non-publication orders by Australia's courts.

A report prepared for Australia's Right To Know (ARTK) by Prue Innes, formerly chair of the Alliance Ethics Panel and a member of the Australian Press Council, found that about 600 suppression orders are handed out each year.<sup>19</sup>

Some suppression orders are now so broad that the public has been effectively shut out of some major drug trafficking, murder and terrorism trials. Others have been issued on flimsy grounds such as protecting the identity of public figures to save them from embarrassment when they break the law.

The Alliance, while acknowledging that some suppression orders are necessary, believes that the number of suppression orders, and the fact that some orders are now so restrictive and far-reaching, requires a review of their use by the courts. Recent examples of suppression orders included:

- An order suppressing the name of a well-known director of a public company who put prostitution services on his corporate credit card,
- An order which meant it was two years before the media could report that gangland killer Carl Williams was found guilty of murder,
- The suppression of the identity of swimmer Brooke Hansen's coach, charged with sexual offences – even though her name was public,
- The suppression of a witness's name in a terrorism trial, although there was no safety issue: his evidence was known to the defendants and his plea bargain with US authorities public on the internet,

- Occasions where a court has suppressed a suppression order, so the public cannot even know a gag is in place.

The Alliance believes that, in line with its recommendations regarding other types of secrecy laws, suppression order should be:

- subject to a public interest test,
- narrow in scope and clearly defined, and
- subject to a clearly specified time limit.

Further, the Alliance believes that electronic transcripts should be easily available to the media when requested and, preferably at no cost.

Courts should erview the ban on the use of small tape recorders by journalists covering court cases.

Judges should provide a copy of sentencing remarks to the media and copies of sentences and decisions should be posted on court websites as quickly as possible after delivery.

**The Alliance believes that far too much emphasis is always placed on the perception that journalists sometimes make mistakes when covering courts. The adoption of measures to make it easier for journalists to cover courts would mitigate against the possibility of errors with an obvious benefit to the whole community.**

### **Defamation and Strategic Litigation Against Public Participation (SLAPPs)**

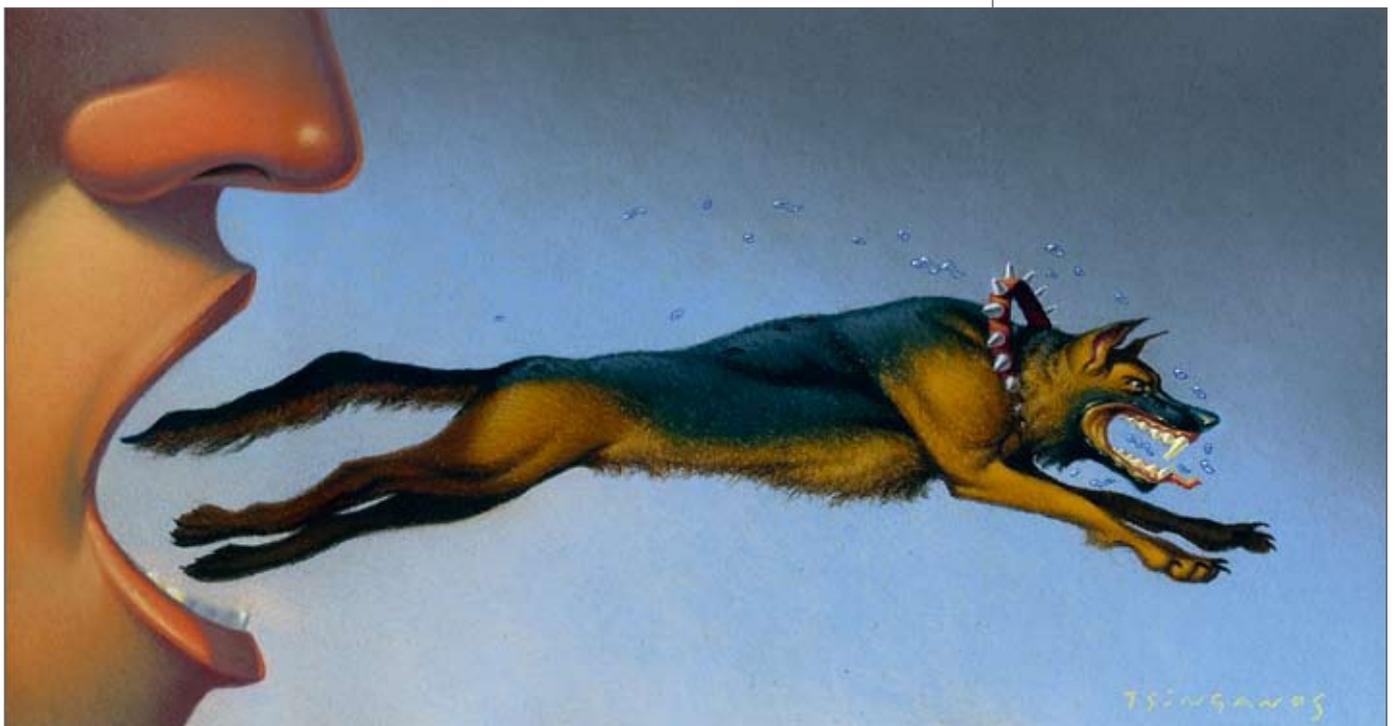
On April 19, 2009, a landmark judgement in the Victorian Supreme Court clarified the defence of honest opinion/fair comment providing vital guidelines for media companies to use when publishing opinion. The decision by Justice Kaye considered the effect of the High Court decision in *Channel Seven Adelaide Pty Ltd v Manock*, and several other cases. Justice Kaye's analysis and decision now provides clear guidelines for the media in how they should plead the defence of honest opinion.

The decision ensures that plaintiffs are protected from defendants "hijacking" trials by pleading and relying on "false issues" which do not meet the sting of the plaintiff's imputations, whilst also ensuring a defendant is not prevented from pleading a meaning which differs from that pleaded by the plaintiff.

Justice Kaye's decision has followed a mixed year for media organisations defending themselves in defamation suits. It is encouraging to note that, under the uniform defamation legislation, there were several positive results for media companies using the defence of truth.

In *Osborne v Fairfax*, *Fawcett v Fairfax* and in *Habib v Nationwide News*, justification defences were upheld. In the latter case in the NSW Supreme Court, Peter McClellan, Chief

*The adoption of measures to make it easier for journalists to cover courts would mitigate the possibility of errors*



JIM TSINGANOS

**The ACT law aims to discourage civil proceedings that interfere with public participation**

Judge at Common Law, overturned a jury's findings that *Daily Telegraph* columnist, Piers Akerman's had defamed Mr Habib with his assertion that the former inmate at Guantanamo Bay had knowingly made some false statements.

The cyclist Mark French was awarded \$350,000 from Triple M in Melbourne which had called him a "drug cheat" in a judgement which upheld a defence of fair comment but found malice.

Seven settled with Mercedes Corby after a high-profile defamation case. A NSW Supreme Court jury found that Ms Corby had been defamed in a series of news and current affairs stories broadcast by Channel Seven which portrayed her as a drug trafficker. The terms of the damages settlement are confidential and Channel Seven has not disclosed the amount of money paid to Mercedes Corby.

In *Buckley v Herald & Weekly Times* in the Victorian Supreme Court, Justice Kaye struck out a comment defence and found that jury could not reasonably conclude that the ordinary reasonable reader of the articles would understand the parts of the articles were comments by the respondents which could form the basis of fair comment in respect of them.

On August 27 2008, the ACT Legislative Assembly passed legislation originally introduced by the Greens in 2005 to protect public participation<sup>20</sup>. The ACT law aims to discourage civil proceedings that interfere with public participation. The legislation recognises the importance of public participation and the effect of SLAPP suits in trying to silence people who would otherwise engage in public debate and protest. The Greens are planning to introduce similar legislation in every state and territory parliament.

**The year in the law**

PETER BARTLETT

The greatest challenge to the media over the last 12 months has come from the economy, not the courts or politicians. Reduced advertising has resulted in redundancies and cuts in discretionary expenditure. Pressures are building on reporters, and even media lawyers are not immune from these market forces.

On the legal front, there have been some positive moves. We've seen a federal Bill seeking to strengthen journalists' protection of sources, draft legislation to reform the FoI Act and a parliamentary report into protecting whistleblowers – these are all positive developments. But the past 12 months have also seen plenty of disappointment.

**Privacy**

The pressures for a tort of privacy or an extension to an action in confidentiality are building. These pressures have been assisted by the recent publication of the photographs, alleged to be of Pauline Hanson. The Australian Law Reform Commission (ALRC) released its Privacy Report in August 2008. It recommended the introduction of a cause of action for "serious invasion of privacy". This recommendation is surprisingly wide and appears to have been heavily influenced by a fear that the development of a common-law tort of privacy would lead to "piecemeal and fragmented privacy protection".

The ALRC has not recommended a public interest or fair comment defence, which it had originally proposed. By simply designating "the public interest" as something for the courts to consider when determining whether an act is highly offensive puts defendants in a significantly weaker position than having a specific public interest defence designated to protect freedom of speech.

If implemented, the ALRC's recommendations will have significant consequences, particularly for the media. The proposed remedies are extensive, including damages, an injunction restraining publication, an apology, an account of profits and a corrections order.

The ALRC recommendations go too far. That said, there are occasions when the media crosses the line. The alleged Pauline Hanson photographs are a perfect example. The case of *Jane Doe v ABC* is another. The ABC had inappropriately disclosed the victim of a sexual assault. But I would argue that the number of alleged breaches of privacy, as reported to the Australian Press Council, the Australian Communications and Media Authority and other

reporting agencies, do not justify the introduction of such a tort. It is like cracking a nut with a sledgehammer.

We've also seen, in December 2008, that a plaintiff could recover damages for mere distress caused by a breach of confidence (*Giller v Procopets* in the Victorian Court of Appeal). In making that finding the Court had to rely on English authorities like *Campbell v MGN* and *Douglas v Hello!*. But politicians should think carefully about the effects the ALRC's recommendations will have on freedom of speech and whether such drastic reforms are needed, before deciding to proceed with legislation.

**Contempt**

Last year I warned that judges in Victoria were concerned that the media were pushing the boundaries. The number of prosecutions since then has certainly proved my point. Most of the contempt prosecutions in the 2008 have been in Victoria where there were probably more contempt actions in a year than in the previous 10 years combined.

The *Herald Sun* was fined \$25,000 when it identified a gangland informer contrary to a suppression order. The Nine Network was fined \$15,000 after Judy Moran named four witnesses protected by suppression orders. Nationwide News and Queensland newspapers had contempt charges dismissed when the Supreme Court held that suppression orders do not apply to publications outside Victoria. Meanwhile, the Herald and Weekly Times and Seven lost an appeal from a conviction for multiple breaches of the *Children and Young Persons Act* after they identified a child who divorced his parents. The *Herald Sun* and *The Age* were each fined \$10,000 in separate proceedings, after a man on trial was linked to the gangland wars.

WIN Television took the record for fines in 2008: \$50,000 after it breached a non-publication order. The ABC was fined for breaching a suppression order in the same case.

The *Herald Sun* successfully defended one prosecution. In one of the few cases outside of Victoria, Fairfax also successfully defended a prosecution in NSW. In Tasmania the *Advocate* was fined \$5000 after publication resulted in a trial being aborted.

**Defamation**

While there were several high profile defamation cases in the past year, they were fewer in number.

## Australia's "Star chambers": anti-corruption bodies and their powers of coercion

Australia's patchwork of anti-corruption watchdogs: the Independent Commission Against Corruption in New South Wales; the Crime and Misconduct Commission in Queensland; Western Australia's Corruption and Crime Commission as well as the Australian Building and Construction Commissioner and Victoria's Office of Police Integrity, inter alia, retain a variety of coercive powers which – if used against journalists – could put them in the invidious position of being called to reveal information about their confidential sources, contrary to the Media Alliance Code of Ethics.

The Alliance continues to lobby for the introduction of shield laws to protect journalists from such pressure. The ability to respect confidences and the sources of stories from whistleblowers is at the heart of journalists' ability to reveal important information about corruption and maladministration.

Late last year the Queensland Government amended the *Crime and Misconduct Act (2001) (QLD)* to "close a loophole" that has hampered the Crime and Misconduct Commission in its investigations. However one of the results of this amendment is that journalists can no



MARK ARMSTRONG

It's worth noting that a defence of qualified privilege succeeded in *Aktas v Westpac Banking Corporation* (dishonoured cheques) and in *Fraser v Holmes* (politics). Fraser had been ordered to pay \$70,000 at the first instance. Now while they were not media cases, they are interesting as both defendants can count themselves rather lucky as the record of media companies being successful in using the qualified privileged defence has not improved.

There was a mix of cases under the new defamation legislation and from the pre-uniform defamation era. The Nine Neteork settled a case for \$300,000 brought by a highway patrolman. John Coates, the president of the Australian Olympic Committee, recovered \$360,000 from Harbour Radio. Actor Judy Davis was awarded \$140,000 against Nationwide News – and while there were two articles that were discussed, the judge held that the *Uniform Defamation Act* confined the plaintiff to one award.

A similar decision took place in Victoria recently in *Buckley v Herald and Weekly Times*. However, should an action proceed, Pauline Hanson is likely to claim several caps, in separate proceedings, possibly in separate States.

Meanwhile, Seven settled with Mercedes Corby after a jury found 29 of 31 imputations conveyed were defamatory.

Canberra again showed that it was a happy hunting ground for plaintiffs when Frank Lewincamp, a former director of the Defence Intelligence Organisation, was awarded \$375,000 against ACP Magazines. It is believed that claims against other media were subsequently settled. In a rare Canberra win for the media, Nationwide News successfully defended a claim brought by Macquarie Bank.

Mountaineer and author, Tim Macartney-Snape, recovered a substantial \$448,500 against the ABC, Romzi Ali recovered \$275,000 against Nationwide News (over supporting terrorism allegations), Raymond Patrick Coull recovered \$80,000 against Nationwide News (wrongly accused of assault) and cyclist Mark French recovered \$350,000 against Triple M Melbourne (accused of being a drug cheat). Interestingly, the jury in the French case upheld the fair comment defence but found malice. French has other claims pending against other media companies. The defence of comment was struck out by the Victorian Court of Appeal following the High Court's decision in *Channel Seven Adelaide Pty Ltd v Manock (Hore-Lacy v Cleary and Allen & Unwin)*.

Similarly, under the defence of truth, there were positive albeit rare results for the media in *Osborne v Fairfax*, *Habib v Nationwide News and Fawcett v Fairfax*, when justification defences were upheld.

## Injunction

*Underbelly* was a quality television series, the likes of which we see produced in Australia all too rarely. Sadly, but for understandable reasons, the series could not be seen (albeit legitimately) by Victorians until long after the rest of Australia saw it.

The gangland murders resulted in many charges, many trials, many suppression orders and a number of people under witness protection. The murders also created a minefield for the media and media lawyers. Justice King issued an injunction to prevent the series being seen in Victoria until a trial was concluded. Her decision was upheld in the Court of Appeal.

## Suppression Orders

Suppression orders continue to be a problem, especially in Victoria. Twenty were issued in Victoria in just one week in March 2009. Of those 20, 11 were issued in the Magistrates Court, five in the County Court and four in Supreme Court.

Looking at them in detail, seven orders suppressed a report of the whole of the proceedings and any information derived from the proceedings, one order suppressed the whole of the proceedings until another trial concluded, one order suppressed the identification of children, one suppressed previous convictions and the fact that the person had been charged, nine orders suppressed the defendant's address, two suppressed anything to identify witnesses and one order made under the Serious Sex Offenders Monitoring Act suppressed the identity or whereabouts of the accused. Only one order had a time limit.

In this climate of financial crisis, media outlets are not challenging suppression orders as often or as rigorously as they did previously.

## Conclusion

Australia is very lucky to have quality new and traditional media. The Walkley Awards for Excellence in Journalism and other journalism awards in each state confirm that.

But even in this tough economic environment the media must continue to challenge any attack on freedom of speech and the public's right to know. If it fails to do so, further inroads will be made on the basic freedoms of a civilised democratic society.

*Peter Bartlett is a partner with Minter Ellison Lawyers*

longer refuse to identify the sources of confidential information. The Alliance met with Queensland's Attorney-General Kerry Shine to highlight journalists' concerns over the development and urged him to introduce shield laws to protect journalists from being forced into such a fundamental breach of their code of ethics. Mr Shine noted at the time that it was CMC policy not to coerce journalists into giving up their sources, but the Alliance believes a "policy" to be inadequate and continues to press for this to be adopted in law.

A statutory review of Western Australia's Corruption and Crime Commission conducted last year has failed to address journalists' concerns at the watchdog's coercive powers. Over the past two years at least six journalists have been called in front of the CCC.

In February 2009 the Australian Building and Construction Commissioner, through the Australian Government Solicitor, issued subpoenas against Specialist News, publisher of *Workplace Express*, and News Ltd's *Maribyrnong Leader* publication for all notes and records used in articles on the Westgate Bridge dispute in Melbourne. Subpoenas were also issued to a hire company, Victoria Police and VicRoads. Specialist News had until March 4 to produce:

- any audio or written records of interviews conducted with the CFMEU's (construction and general division) Victorian branch secretary and the AMWU's Victorian branch secretary, and anyone else;
- any film, electronic or digital footage or images taken;
- any notes taken relating to the article;
- any notes taken preparing for the interviews, and researching and writing the article, including drafts of the article;
- any correspondence between any person in connection with the article;
- the relevant page of any document that identified the author or authors of the article;
- the relevant page of any document that identified the person or persons who interviewed Bill Oliver and Steve Dargavel for the article<sup>21</sup>.

## Shooting the messenger

ANDREW MAIN

Psst! Want to start a panic among business journalists? That's easy: start talking about rumourtrage.

That grim tag, coined by Australian Securities and Investments Commission (ASIC) chairman Tony D'Aloisio in the darkest days of 2008, refers to the practice of people starting rumours so they can exploit the sharemarket. Positive rumours aren't the target: they're part of a scam called "pump and dump" whereby stock promoters get their clients into specific stocks and then talk them up. That was a bull market play whereas D'Aloisio's target is a more devious bear market wheeze whereby short sellers, those pariahs of the sharemarket, cook up negative information about a stock after already selling the shares they didn't own, in the hope of buying the shares back for less and making a nice profit on the way through.

What's that got to do with journalists? As often happens they've accidentally become collateral damage in the battle between the regulator and the real target, professional short sellers.

Two commentators, Adele Ferguson of *The Australian* (my employer) and Elizabeth Knight of the *Sydney Morning Herald*, got caught in the backwash after floating ideas that caused some corporate chiefs to feel upset, but nothing is likely to come of those events because they're not actually the target of Project Mint, the rumourtrage campaign which is being run by ASIC Commissioner Belinda Gibson. Indeed both commentators are savvy, experienced business reporters with a good handle on the power of the written word.

There was a bit of Fairfax versus News sniping in print when those two were mentioned in despatches, given that each group fielded one accusation, but the chatter ignored the fact that ASIC's real aim is to find people who actually make money from rumours. Neither commentator is remotely in that category.

Richard Macphillamy, the Bondi broker who was rubbed out by ASIC (on March 23) for 18 months, had reportedly sent an email out to 32 clients on September 17 last year, a vile day on world markets being two days after the collapse of Lehman Brothers. He wasn't found to have done anything dishonest so his punishment was not

at a heavy end of the scale. Macphillamy is appealing the decision.

There are journalists who've sullied the profession: for instance Foster Winans, who wrote the *Heard On The Street* column on the *Wall Street Journal*, went to jail briefly in 1985 for tipping off his stockbroker on a regular basis before publication. He made \$US30,000 and blew his career to smithereens.

To fall seriously foul of Gibson's ASIC jihad, a reporter would have to float a rumour by arrangement with a market manipulator, with the clear intent to make a profit, in the same way that Winans acted all those years ago.

Don't think it can't happen here: the usual tactic is for stock manipulators to get reporters in with a "story" about a stock that they say is about to drop in price because of X circumstance. It might be in a bar, over lunch, an accidental confidence spilled that the reporter jumps on as a scoop. That's what we're trained to do, so it's a cynical exercise in harnessing our nose for a yarn. There's not a big leap then required to imagine a dishonest manipulator (that's easy- they all are because market manipulation is a breach of the *Corporations Act*) offering a financial inducement to a reporter who's already flown with a couple of the contact's previous ideas.

It's not quite a Soviet-era honey trap but almost.

But like most things, avoiding the pitfalls comes down pretty much to the journalist's common sense. If you're the business reporter or commentator, you check your facts as far as you can and you believe a story you've been given to be correct, you won't feel the regulator's hot breath. If however you've developed a new best friend who's showering you with largesse and peppering you with stock-specific negative stories that just HAVE to get a run, there should be a flashing light going off in your head.

And if the regulator doesn't get you, the market will because it's self-correcting: any journalist who floats incorrect rumours for any length of time finds the phone going very quiet indeed. It's called reputation, and if you lose that you might as well give journalism away.

*Andrew Main is business editor of The Australian*

Victorian Senator Gavin Marshall raised the issue matter during a Senate Estimates hearing on February 26, raised the issue with ABCC Commissioner John Lloyd, calling it an “enormous thing to get a journalist or news organisation to provide evidence to you because you didn’t like an article about you, it’s a bit extraordinary, really”.

*Workplace Express* editor, David Vincent, commented that in this case he had decided to comply with the subpoena, but warned that, had the notes contained off-the-record comments or any matters that raised ethical concerns over the protection of journalists’ sources, then the publication would have objected to the handing over of the material.

Vincent added that *Workplace Express* was concerned about the ABCC pursuing media organisations, as such demands for production of material had the potential to infringe media freedoms, particularly for a small media organisation with limited resources to mount a challenge.

In a statement at the time, the Alliance said: ‘By their actions, the ABCC have launched a direct attack on press freedom in this country. It’s time the extraordinary powers of these modern-day Star Chambers were given a serious examination. By attacking press freedom they are attacking the oxygen of democracy in this country.’

In late 2008 the Australian Securities and Investment Commission (ASIC) launched Project Mint to investigate “rumourtrage” – the spreading of false rumours designed to affect the price of stocks. In January 2009 it launched an investigation into “rumourtrage” after a complaint by Consolidated Media about business commentator Elizabeth Knight’s ‘s column in the *Sydney Morning Herald*<sup>22</sup> – there has never been a suggestion the column was written with any financial motive. ASIC refused to confirm if there is an investigation on the grounds of confidentiality.

In November 2007 Corporate Law Minister Senator Nick Sherry told that National Press Club that rumourtrage, or the spreading of false information, would become illegal under a suite of measures to improve the working of the market<sup>23</sup>. He noted that some forms of rumourtrage were already outlawed under section 1041E of the *Corporations Act 2001*.

*There is a real danger that journalists may be caught up in a crackdown on rumourtrage*

**There is a real danger that journalists may be caught up in a crackdown on rumourtrage when they are simply doing their job by reporting relevant information and opinion and providing legitimate comment and analysis<sup>24</sup>.**

## Privacy

The March 2009 publication of photographs incorrectly purporting to be Queensland political candidate Pauline Hanson has triggered considerable debate on the issue of privacy and coincided with recommendations made by the Australian Law Reform Commission that there be a statutory tort of privacy. The Australia’s Right to Know coalition is opposed to any new privacy action, or tort, on the basis that existing laws protected people’s privacy.

At the Australia’s Right To Know conference in March 2009, News Limited chairman and chief executive John Hartigan said he absolutely agreed that if there were no legitimate public interest in the private affairs of a private citizen, then that information should remain private<sup>25</sup>. “But I don’t agree that a self-appointed few should dictate what is and is not in the public interest,” he said.

Hartigan said he acknowledged that the media was far from perfect. “The media does make mistakes, as some of our newspapers did last week,” he said. But he said mistakes happened because journalists were fallible like everyone else. “Very, very rarely in my experience are these episodes motivated by malice or an arrogant disregard by the media,” Hartigan said.

## Copyright

There is an increasing concern regarding web piracy and the media, particularly regarding copyright regarding online content. Media companies are preparing to combat the “theft” of news stories being “lifted” from their web sites and republished by rivals without attribution, acknowledgement or linking back to the source. In April 2009, US news agency the Associated Press announced it intends to take legal action against websites that publish stories from the AP or its member newspapers without permission<sup>26</sup>. AP says it will protect “news content from misappropriation online.”

“We can no longer stand by and watch others walk off with our work under misguided legal theories,” AP chairman Dean Singleton told the company’s annual meeting. AP will work with Internet portals and other partners who legally license content too “pursue legal and legislative actions against those who don’t.” The company also intends to develop a rights management system for its text content.



ANDREW WELDON



A new day dawns on Grandview Court where the Kinglake community lost many lives and homes in Victoria's Black Saturday bushfires. PENNY STEPHENS, COURTESY FAIRFAX PHOTOS.

### **Lack of Access**

The Senate has launched an inquiry examining the public's right to access sports news and whether the commercial broadcast rights holders of sporting events can limit access through the use of media accreditation. There is a danger that one outcome of the inquiry could be the creation of a digital "anti-siphoning list"<sup>27</sup>. The inquiry came after Agence France-Presse, Reuters and AAP boycotted coverage of an Australian cricket Test series after they refused to sign accreditation documents restricting how images and videos gathered could be used.

The dispute between rights holders and media has been simmering for several years. In 2006, Cricket Australia threatened to ban journalists from Fairfax Media and News Limited from covering the Ashes series after both groups refused to sign accreditation documents.

The AFL and NRL have expressed concern that news organisations link their online news stories to unauthorised footage posted on web sites.

In December 2008 the Alliance complained that NT Power & Water Corporation (P&W) was refusing to deal with the *Alice Springs News*. The Alliance believes that the decision of the Corporation to meet requests for comments with silence is short-sighted in the extreme and was at odds with a publicly-owned utility which should operate in an open and transparent manner in the best interests of the local community.

In February 2009 an ABC TV *Lateline* crew was detained and had their footage confiscated under Victoria's *Coroner's Act* after they were found inside the restricted zone of bushfire-ravaged Kinglake. The ABC said: "The crew was filming interviews that had been prearranged with local residents to continue coverage of the aftermath of the bushfires. The footage has been confiscated by police. They were interviewed and released without charge."

In March 2009 The Victorian Royal Commission into the Black Saturday bushfires decided to exclude journalists from a series of community consultations. The Alliance hopes that the Commission may reconsider this to provide an opportunity for the bushfire victims to tell their stories to the Australian people.

### **Confiscated Assets**

In late 2008 the West Australian Director of Public Prosecutions Robert Cock froze the assets of author Kingsley Flett's company, Flett Media, under the state's *Criminal Property Confiscation Act*, claiming the publisher's advance for *Shadow Warrior*, a book on former SAS soldier turned armed robber David Everett, qualified as proceeds of crime<sup>28</sup>.

Flett's lawyer Colin Chenu filed an objection to the order, telling the court in March 2009 that the decision to freeze the assets of an innocent person writing about a crime was unprecedented. "As far as I know this is the first time money which has been earned by a person who didn't commit an offence but wrote about the commission of an offence has had their property frozen or the proceeds frozen," Chenu told AAP.

"If you extend it (the confiscation act) in that way then that means any innocent person who simply writes a non-fiction account of any criminal activity could be liable to have any money derived from the commercial exploitation of that writing or that broadcast or telecast confiscated," Chenu said. "So, extending that to its natural consequence means that a newspaper article, for example, which reported the commission of a crime and from which was derived anything of monetary value would be liable to confiscation." Chenu added that the Nine Network's *Underbelly* and Truman Capote's *In Cold Blood* were examples of true crime stories to which the law could be broadly applied.

There were calls for Australia Council-provided public funding for the magazine *Art Monthly Australia* be withdrawn after the magazine published a cover of a mixed-media artwork featuring a photograph of a naked child<sup>29</sup>. The magazine's editor Maurice O'Riordan said the cover was in protest at the closing of photographer Bill Henson's exhibition of naked children<sup>30</sup>. In March 2009, the magazine again published three pictures of nude girls but editor O'Riordan said they had been found to comply with the Australia Council's "children in art" protocols, even though they "were starker than last year's image"<sup>31</sup>. The protocols demand that naked images of children be considered by the Classification Board to ensure they are not obscene. Anyone who photographs children needs parental permission before the pictures can be exhibited and must declare the photographs did not involve exploitation of the subject.

## Censorship

The Rudd Government is attempting to implement a mandatory internet filtering censorship scheme as part of a 2007 election promise. The Government says that it is only targeting sites that have "illegal" content - particularly child pornography. Some opponents of the scheme fear the Government's censorship proposal could, either deliberately or accidentally encompass sites that are not illegal.

The Australian Communications and Media Authority has allegedly threatened the host of an online broadband discussion forum with a \$11,000-a-day fine over a link, published in the forum, to a page that had been blacklisted by ACMA.

It is believed that up to 1400 sites (although in some reports the numbers vary) are on the ACMA blacklist which has subsequently been leaked. Of those on the list, less than half are thought to be classified as R18+ and X18+, which while they are legally viewable under the classification scheme, would become blocked under the internet filtering censorship plan. The Government has said it was considering expanding the blacklist to 10,000 sites and beyond.

Reporters Without Borders has placed Australia on its "watch list" of countries imposing anti-democratic internet restrictions that could open the way for abuses of power and control of information.

Similarly, online search engine Google has raised the prospect that Australia is joining a group of countries that use internet filter censorship to stifle democracy and freedom of expression<sup>32</sup>.

**The Alliance believes that censorship is best left to the existing body, the Office of Film and TV Classification to determine, under the existing laws, what is and what is not deemed acceptable.**

## Government Interference

Last month the Legislative Council of Western Australia released the report of its select committee inquiry into the police raids on *The Sunday Times*<sup>33</sup>. The offices of *The Sunday Times* were raided in April 2008 by 27 officers of the Fraud Squad after the newspaper ran a story by reporter Paul Lampathakis revealing that the then Labor state government was planning to spend \$16 million for advertising designed to help get Labor re-elected in a state election that year.

The select committee found that: there had been no direction given to the West Australian Police into the alleged leak of confidential Cabinet information to *The Sunday*

*The Alliance believes that censorship is best left to the existing body to determine*



The Rudd Government is attempting to implement mandatory internet filtering censorship. LOUIS DOUVIS, COURTESY FAIRFAX PHOTOS.



Three of the 27 police officers from WA's Major Fraud Squad that raided the offices of *The Sunday Times* on April 30, 2008 search the desk of journalist Paul Lampathakis. THEO FAKOS. COURTESY OF *THE SUNDAY TIMES*

*Times*, by any Minister, Parliamentary Secretary or Member of Parliament or their staff.

However it also found stated that a simple notice to produce documents under the *Corruption and Crime Commission Act 2003* would have been as effective as a search warrant. The report went on to recommend that the WA Attorney-General should continue to pursue the introduction of shield laws for journalists and that Lampathakis should be excused having to answer a question put to him by the committee as to who had leaked him the information. Lampathakis had refused to answer the question when called as a witness to the inquiry in July 2008 and was threatened with punishment under section 7 of the Parliamentary Privileges Act 1891 and section 59(2) of the Criminal Code, which carries a penalty of two years' imprisonment and a fine of \$24 000.

In February 2008 the Government banned reporters from *The West Australian* newspaper from press conferences and media releases when then WA Attorney-General Jim McGinty branded the newspaper's reporting as "unethical".

### The ABC and SBS

Adequate funding for the ABC and SBS remains a concern for the Alliance. In 2009 the Rudd Government will make its triennial funding commitment as part of the May

## The day we were raided

PAUL LAMPATHAKIS

On the day of last year's police raid on *The Sunday Times*, I told a Sydney radio station that I was astounded that this had happened in WA. Perhaps naively, I never dreamed there would be such an extreme response from a state government that came in on a platform of accountability, to a story that I believed was simply letting taxpayers know how \$16 million of their cash was being used.

I had revealed to readers in February 2008 that the then Labor state government was planning to spend \$16 million for advertising designed to help get Labor re-elected in a state election that year. These weren't going to be ads to recruit more police or teachers, just propaganda to make the Government more palatable to voters.

But that bread and butter political reporting was rewarded with the arrival of 27 police officers at our office on April 30, 2008.

They blocked exits, searched colleagues' belongings and spent hours tearing apart my desk, sifting through, and confiscating, my personal documents, tapes and emails, to find the source of a story that was clearly in the public interest. This defies any concept I have ever had of a democracy.

The government had called the police and the Corruption and Crime Commission to investigate how I had obtained such accurate information about its plans and the police conducted the raid.

To be subsequently threatened in July last year with jail and fines for failing to reveal my sources for the story to a powerful parliamentary select committee, really made me feel like I was living in some eastern bloc country during the 1980s.

But in recent years, the democratic principle of freedom of the press seems to have been eroded in WA. Other reporters have been hauled before the secretive Corruption and Crime Commission, under threat of jail for just doing their job. My harassment was just the most public expression of how bad things got over here.

It was also the second time that year that the police had come looking for me to find the source of a story that had embarrassed the WA government.

In April, I had written about the fact that a major city hospital, Royal Perth, was leaving old computers with personal patient details still on them in an open skip bin in a laneway used as a busy city short-cut, 40m from a main street.

Instead of thanking us for revealing a serious glitch in security and fixing it, then attorney-general Jim McGinty falsely told TV stations that I "stole the computer in order to fabricate a story". The information that was passed to us by a concerned and frustrated whistleblower was accurate, but McGinty was more concerned about political deflection, than practical remedy.

So a few days after that story ran, police came to our office looking for evidence of a theft that had never occurred, wasting resources of an already over-extended police force on an investigation that was always going to go nowhere. But security was subsequently quietly upgraded at the hospital.

This is the type of environment that journalists delving into political issues have had to become accustomed to in recent years in WA.

And nothing has changed legally with the change of State Government last year that would protect journalists from this type of treatment.

However, I doubt that any WA government in its right mind would try to instigate such a raid again – at least for the next few years - because of the resulting huge outcry about the event that unified the public and competing news outlets.

But the legal conditions that allowed the raid to happen still exist and the CCC can still secretly interrogate journalists if it wishes.

Having shield laws would be a pivotal step towards having a better functioning democracy where we are able to communicate to the public what the Governments we have elected are up to. Journalists aren't asking that the law be changed so that we can protect serial killers, fraudsters, or terrorists. It's a matter of us being able to legally keep confidential the identity of those who give us information for stories which are in the public interest.

If we don't have that kind of protection - which consequently protects our sources - those who know of illegalities, abuses of power or simply issues that the public has a right to know about, will be scared to speak out. You'll have fewer stories that keep those in high places accountable and journalists will continue to be targeted for merely doing their job.

*Paul Lampathakis is a reporter with The Sunday Times*

federal budget. As has been the case in past Budgets, there is no degree of certainty that the broadcasters will be properly funded to adequately meet the twin requirements of providing quality programming as well as keeping pace with changing technology.

The Alliance believes that in an environment where quality journalism in particular is being threatened by cost-cutting at commercial media outlets, there is a greater need than ever before to ensure that the public broadcasters are properly funded. The role of these public broadcasters should be to fill any gap where commercial journalism can no longer properly fund resource-rich types of journalism, particularly investigative journalism. This would ensure that the vital function of responsible journalism in strengthening democracy is maintained.

The Rudd Government has adopted a new selection process to minimise political interference with appointments to the ABC board. The first appointments under a merit-based system similar to the UK's "Nolan rules", as used by the BBC, were announced at the beginning of April this year<sup>34</sup>. The Government plans to introduce legislation to formalise the new process.

## ABC and SBS promote nation building

QUENTIN DEMPSTER

As this Press Freedom report goes to press the public broadcasters of Australia – the ABC and the SBS – nervously await the outcome of their triennial funding submissions to the Rudd Government.

Although expectations were high that sufficient funds would be allocated to enhance the contributions of both broadcasters through the digital revolution, the global financial crisis (GFC) provoked the urgent rearrangement of government spending disciplines and priorities in the months leading up to the May federal budget.

Because production costs are escalating above inflation, unless operational base funding is significantly enhanced both the ABC and SBS will have to cut their ambitious plans for FTA (free-to-air) multi-channel and broadband internet services.

Both broadcasters submitted to government a nation-building agenda: SBS with English and other languages services, the ABC with children's and education channels and continuous news services.

Unlike commercial broadcasters who fear the fragmentation of revenue-compounding mass audiences, the public broadcasters can thrive and value-add through a multiplicity of platforms and innovative content... if they have the taxpayer investment to do it.

With print journalism being downsized and commercial TV journalism in retreat, the contributions to quality journalism of both the ABC and the SBS are now more important than ever to the future of Australian journalism.

The Rudd Government has determined that analog television transmission will be switched off and all eight million Australian households will have to go digital by 2013. The public broadcasters are promising that the new content and services they create will help drive the take-up of digital set top boxes. In short, they will be in convenient lockstep with government communications policy. This underpins their pitches to government for significantly enhanced triennial funding. While the ABC is supposed to be independent of government and funded in full knowledge of that independence, this could be seen as politically clever. But with many other deserving demands on government as it confronts the GFC, will it work?

Prime Minister Kevin Rudd has denounced avaricious neo-liberal debauchery which has led to the destruction of the global financial system. On the basis of this analysis one could expect among his government's rebalancing domestic investments, a re-commitment to publicly valuable media institutions like the ABC and the SBS. But it is also known that Rudd has a reverence for Rupert Murdoch, proprietor of

News Corporation, which controls 70 percent of print media in Australia. They often meet for a chat. Even with the opportunity of presenting the Boyer Lectures last year on the ABC, Murdoch did not at any time acknowledge the great value and worth of public broadcasting in Australia, Britain or the US. In fact, his News Corp outlets in all these markets regularly unleash ranting attack dogs to vilify and smear public broadcasters.

Public broadcasters pray that Rudd remains intellectually consistent and that he and his government do not use the GFC as political cover to leave the ABC and SBS withering on the vine yet again (undoubtedly much to Rupert's amusement).

Broadcasting is morphing into cybercasting. Viewers can click to view news and current affairs programs through their broadband internet service provider. Soon news and current affairs programs can be created for an online audience first and broadcast later if required. But in spite of this new and exciting outlet free to air television will survive. It is cheap, passive and convenient in comparison to costly digital phone and broadband-accessed content.

In employment terms the majority of the 10,000 professional journalists practising in Australia have found their outlets through print - metropolitan and regional newspapers and magazines. The ABC and SBS employ only around 1000 journalists. But they are important jobs in the development of quality journalism in an era of rapid change in media. Continuous news operations for broadband cybercasting, desk top editing and other technological advances should increase the demand for skilled ABC journalists in particular in future years.

But with an expected constraint on public funding, ABC broadcasters are now fearful that these new platforms and services may be funded at the expense of traditional news and current affairs programs.

The government has adopted a new merit-selection methodology for appointments to the ABC and SBS boards. It is said this will bring to an end the practice of patronage and party political stacking of the boards by both Labor and Liberal executive governments over the decades.

Having endured relentless hostility from the Howard Government through what was described as the "culture wars", public broadcasters are hoping for a new era of enlightenment from the Rudd Government.

It remains to be seen if the enlightenment will be delivered by Kevin O7.

*Quentin Dempster is an ABC broadcaster and member of the Walkley Advisory Board.*

*Many media organisations are vulnerable in the current global financial crisis*

**Ownership, redundancies, reduction in resources**

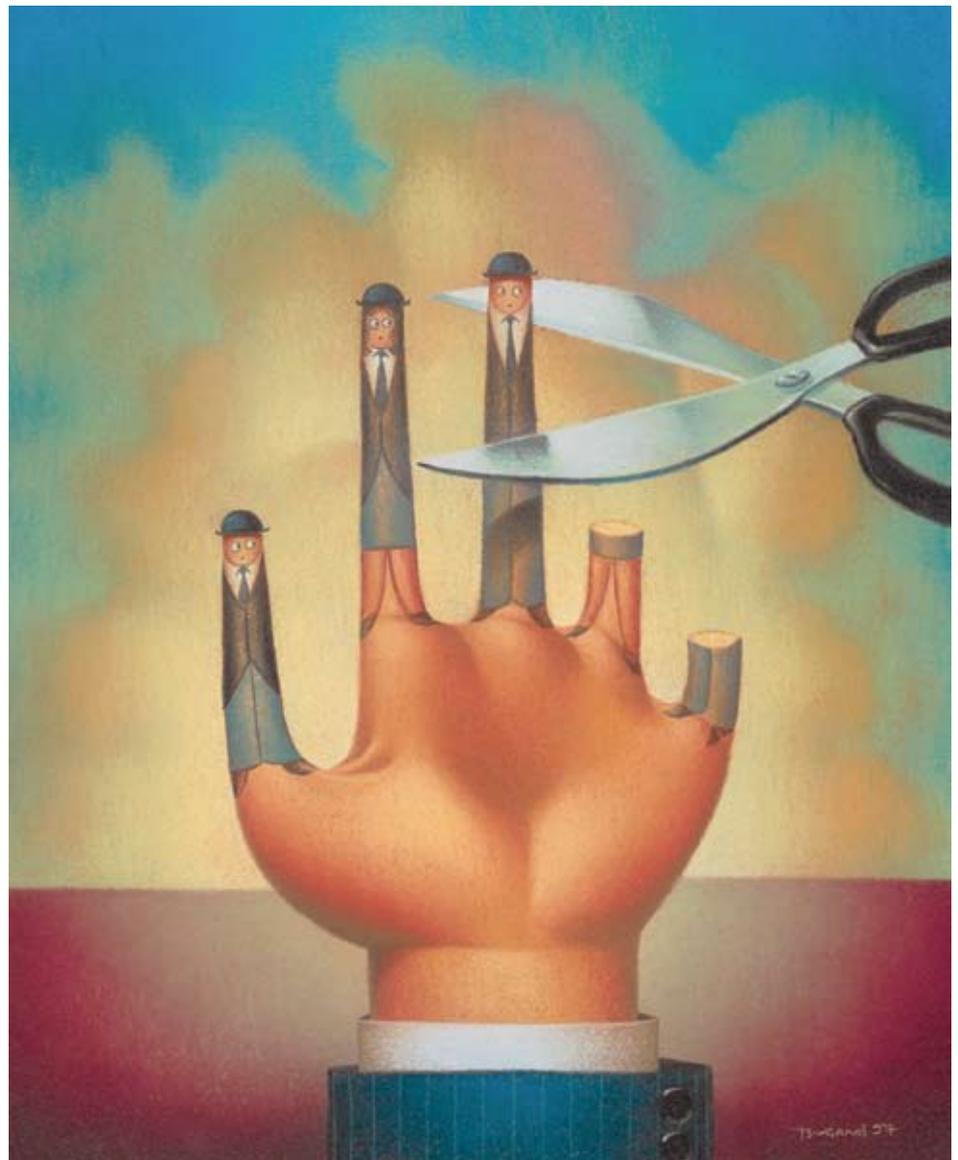
The shakeout in media ownership in the wake of the Howard Government’s relaxation of media ownership laws in 2006 continues to have enormous ramifications for Australian media. The arrival of private equity funds taking controlling stakes in Australian media, often paying high prices using considerable borrowings, have left many media organisations vulnerable in the current global financial crisis. All three major commercial television networks are now in foreign hands.

Among the moves in the past year, the Packer family has quit its long association with the media, leaving Publishing and Broadcasting Limited to private equity fund CVC Asia Pacific<sup>35</sup>.

Canadian company CanWest continues to own 57per cent of the Ten network. Analysts believe the network needs to raise funds<sup>36</sup> in the wake of a decline in ad revenue. In February 2009 Ten attempted to raise \$90m from investors but had to withdraw the offer due to lack of interest. CanWest had also declined to participate in the offer and is thought to be keen to sell its stake in Ten.

Marinya Media, the family company of John B. Fairfax, which was the largest shareholder in Fairfax Media when the latter merged with Rural Press in May 2007, has seen its stake fall from a peak of 14.7 per cent to less than 10per cent after several capital raisings<sup>37</sup>.

Seven network boss Kerry Stokes has increased his stake in West Australian Newspapers (he gained effective control of the newspaper company in December 2008), to 23.3 per cent<sup>38</sup>. Seven has recently taken up a stake in Prime as a result of the latter network’s equity raising<sup>39</sup>. Seven is half owned by US private equity fund KKR. Seven is cashed up and Stokes has said it is looking for attractive acquisitions among vulnerable media assets<sup>40</sup>.



JIM TSINGANOS

## Who funds investigative journalism?

CHRIS MASTERS

Investigative journalists are frequently forced to explain that all journalism is or should be investigative. The term has come to capture work that goes further than that usually accommodated by conventional budgets and deadlines.

I can divide this work into three phases. The first is story selection. On the surface this should not be expensive. But as I have seen the skills it takes to identify a high yield subject and calculate the resources required to dig out the facts calls for glacial patience. These skills form like invisible stalactites above news desks over a span of decades and careers.

The second phase is research. As I saw at the Australian Broadcasting Corporation, researchers were the first casualties of every new drive to cut costs. When I left the ABC I was well used to getting by with much less research support than had been available when I joined. Although crucial to the process research is not crippling expensive. It does mean a bigger phone bill. It might mean a bit more travel and it certainly means more time.

The third phase is forming the narrative. This might not seem expensive but the black arts of journalism are hard to cost and even harder to develop. The telling the story part can again take decades of training.

I have written elsewhere of my concern about a shrinking skills core in our industry. A robust newsroom is like a thermal reactor. If it is busy enough it burns with creative energy. News is unpredictable. Potentially, the most profitable round could be less Politics, Police or Health as the round devoted to reporting what is not yet known. This tends to be the beat of the investigative journalist and it tends to be another first casualty of fiscal responsibility.

Beyond the nation's shadowy secret keepers I know of few people calling for the defeat of long form journalism. Senior politicians, business leaders, judges and the like often ask me why we don't see more thorough and revelatory journalism. They proclaim recognition of the need for not just the big hit stories but also a forum that is not itself defeated by the complexity of the tale.

Through the years at *Four Corners* I noticed how whenever we did a big story the applause was a touch nervous. The next time we tried something similar the barriers to truth seemed to have been erected a little higher. While research assistance shrank the public relations ranks forming a protective screen around the people we were reporting on, seemed to grow. I never complained about fellow journalists making sure their employer got a fair go. But I did complain when they saw it their duty to obstruct my work. And I saw it as plain stupid when they further saw it was their duty to take the bullet for the boss when the report displeased.

I have no doubt the public would get greater benefit if we could find a way to channel funding that supports story killers into doing the opposite.

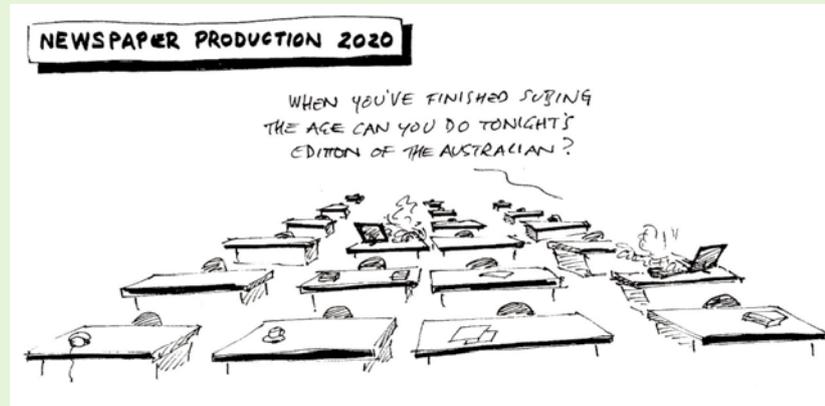
There are now fewer places in the industry for long form journalism. And operating independently is not the answer. The internet provides many more outlets for publication, but with the gates wide open and the gatekeeper asleep. Investigative journalism still requires if not demands professional process. So you need a workplace to check and run and pay for the work. But the dollars per word are such that the fewer phone calls you make and databases you access the greater the likelihood of making a profit. So there is an economic incentive to limit research. This is a great pity and readily explains why so much journalism forms around lazy opinion and pop idol reflections.

The resources required to do a little better, by accessing public information databases such as Lawpoint, and making those extra phone calls are not going to lead to another collapse of the global economy. But they do relegate freelance investigative work to something more of a charitable enterprise.

The arguments don't just apply to longer form journalism. The recent *Sunday Telegraph* Pauline Hanson photo fiasco has advanced the cause of stricter privacy laws. It could equally be argued the episode furthers the case for more investigative resources. A few more phone calls might have made all the difference.

Investigative journalism has thrown up many personal challenges over the years. I have seen again and again how it has delivered significant benefits to our industry and the broader public. My next challenge is finding a way to encourage the industry and the public to pay for it.

*Chris Masters is a freelance journalist and author. He worked as a senior reporter at Four Corners between 1983 to 2008.*



LINDSAY FOYLE



JON KUDELKA

**Short-sighted cost-cutting starves media organisations of proper resourcing for journalism**

The Alliance believes the 2006 changes to media ownership laws have allowed major Australian media assets to be picked up by foreign investment funds or has encouraged a greater concentration of media ownership. The prices paid for these acquisitions have now left major media companies vulnerable with management embarking on short-sighted cost-cutting that starves the media organisations of proper resourcing for journalism and undermines the quality of the journalism produced.

On August 29, 2008, Fairfax Media CEO David Kirk and Deputy CEO Brian Kirk announced 550 redundancies across the Australasian operations of the group. By the end of October the *Sydney Morning Herald* has lost 87 jobs, *The Age* had lost 49 journalist jobs (a loss of about 15 per cent of the editorial staff at each metro daily newspaper). Kirk departed as CEO in December 2008.

Since December 2008 News Limited has been offering redundancy to some employees, with no repercussions if they rejected the offer. In late March 2009 however, the company began targeting individual staff members, including several on *The Australian*. In addition, plans were announced to consolidate the features sections of metropolitan and Sunday newspapers under which would "result in job losses". As this report went to press, News Ltd has agreed to meet with Alliance representatives to talk about its future plans.

In July 2008 the Nine network axed its long-running *Sunday* program as well as its national evening news bulletin *Nightline*. The loss of *Nightline*, which has been running since 1993, and *Sunday*, which has been running on Nine since 1981, showed a lack of commitment on the part of the network's owners to news and current affairs. The Alliance believes the cutbacks were an inevitable corollary of the changes to media laws by the Howard Government which allowed the PBL to become dominated by CVC Asia-Pacific, a private equity fund whose only concern was their profit margins.

At the end of 2008 ABC Radio decided to axe nine specialist programs aired on Radio National to make way for programming to appeal to a more generalised audience. The plans to axe *The Religion Report*, *The Media Report* and *Radio Eye* in favour of "interdisciplinary" and "consumer focused" programming relegated public interest below budget expediencies and the chase for cheap ratings. In accordance with the ABC's charter, Radio National sought to "inform, entertain and reflect the cultural diversity of the Australian community". Axing nine specialist programs makes it the more difficult for the ABC to fulfil that charter.

In mid-April 2009 the News Limited-owned *Gold Coast Bulletin* announced 23 redundancies of which 20 were editorial staff.

**As the global financial crisis bites harder, and advertising revenue declines, it is likely more media outlets will unleash cost-cutting measures resulting in job losses that will only further erode the business, damage the masthead and give less reason for people to consume the news. If costs must be cut it is sensible practice to consult.**

**Rationalisation is short-sighted**

LOUISE CONNOR

In May, 2008, the Alliance sent a mission of five senior staff and journalists to visit US and Western European newsrooms and to examine the scale and pace of change taking place in the media, with a view to how these events would unfold and how they would affect Australia media.

During the course of the mission we spoke with academics and new media trail-blazers about experimental and citizen journalism, data mining and blogging. The mission asked: what is the impact of these changes on the way journalists work, what is the impact on the work journalists produce, and, what is the impact on the structure of the industry? We visited newspapers, online newspapers, broadcasters, non-profit organisations, academics, agencies, unions and others. The mission's findings are included in the Future of Journalism report *Life in the Clickstream*.

In summary, we found an industry and a craft deeply ill at ease with the challenges ahead. Media groups are seeking to engage online but few are successfully – financially, culturally or structurally – adapting to a digital world. It has become clear that massive job cuts among editorial staff only destroy media groups from the inside by denying the very reason people seek the media: for the quality and reliability of the news as well as the local angle on their community. The proposal to centralise features at News Limited newspapers to Sydney would only further erode the vital role a newspaper plays in serving the needs of a local readership.

*Louise Connor is the Alliance Victorian branch secretary and was a member of the Future of Journalism mission*

**Attacks on Journalists, threats and intimidation**



ANDREW WELDON

Three men were charged with assault over the bashing of TV news crews from the Seven, Nine and Ten networks crews in Bega<sup>41</sup>. The assault occurred on November 19, 2008 after the crews were covering the drowning of a father and his two sons in at Tathra. It was alleged the crews were attacked by up to 20 members of the local football team at the Commercial Hotel. The dead father had been a member of the team. Reporters Daniel Sutton from Ten and Denham Hitchcock from Channel Nine suffered cuts and bruises to the face in the fight, which spilled from the pub to the street. Police viewed CCTV footage from the hotel and arrested three men, charging them with assault occasioning actual bodily harm and affray. Sutton wrote shortly after the assault that the reporters had been at the pub to “unwind after a difficult day of work”. “Anyone who thinks journalists enjoy covering stories like this has got rocks in their head,” he wrote. “Dealing with terrible grief is one of the worst parts of our job. But sometimes it is our job.”

A photographer covering a court hearing was allegedly spat at outside a Sydney courtroom<sup>42</sup>. As a man facing firearms charges was refused bail at Burwood Local Court, one of his friends allegedly stuck a finger up at a photographer and allegedly made a slashing movement near his throat before spitting at him. Police officers subsequently took the man into custody.

In March 2009 a teenager punched a cameraman in the mouth in a brawl outside the Melbourne Magistrates Court. Associates of a man who had been remanded in custody on a charge of conspiracy to murder, allegedly pushed, jostled and spat on camera crews as they left the court, with the youth lunging at a cameraman from Channel Seven<sup>43</sup>.

**The Alliance believes that attacks on journalists in the course of their work are attacks on the freedom of press in Australia. The authorities should pursue criminal sanctions against the perpetrators of such attacks to make it clear that the community will not tolerate such behaviour.**

**Attacks on Australian Media Personnel Overseas**

Fiji: In early April the Fijian Court of Appeal found that the 2006 coup which installed Commodore Frank Bainimarama as prime minister had been illegal. In response, the Fijian president, Ratu Josefa Iloilo, repealed the constitution, sacked the judiciary and reinstated Commodore Frank Bainimarama as prime minister. The regime immediately imposed strict censorship on Fijian media, posting police and military officers at media outlets. Foreign media, including the ABC’s pacific correspondent Sean Dorney and New Zealand’s TV3 reporter Sia Aston and cameraman Matt Smith, were deported<sup>44</sup> and the ABC’s radio transmitters were shut down.

This was the latest episode in two years of instability during which several of Fiji’s top

*Attacks on journalists in the course of their work are attacks on the freedom of the press in Australia*



New Zealand 3 News reporter Sia Aston being deported from Fiji. COURTESY TV3.

## Running rings around the media in Beijing

CHRIS REASON

In the People's Republic of China, where communism has long battled journalism, we'd all expected the Olympics would help put a little PR back in the PRC. It didn't. China during the Games was, as it has always been, deeply suspicious of the world's media. And to have 24,000 accredited press in-country at the one time was simply unprecedented. A group that size hasn't visited since Japan invaded in 1937. And there were times it felt as though the warfare was only slightly less hostile.

The daily press briefings became one of the best spectator sports of the Olympics. They were hosted by the spectacularly misnamed Mr Sun, who shed less light on Olympic issues than I thought possible. He'd quickly identified the "troublesome" journalists and started avoiding their questions. They countered by getting the microphone, and refusing to let go. Sun simply stopped answering their questions, and waited for someone else to raise their hand. Then went one better - answering questions that hadn't been asked. It was sad, but enormously entertaining. But gradually, the questioning brought the briefings to a halt. First every second day, then two days out of three. We'd simply get a text message from them: "No briefing today - please enjoy the Games."

There were occasional breakthroughs. The well-publicised internet censorship scandal they called the Great Firewall of China saw the state machinery blocking journalist access to sensitive websites despite all their pre-Olympic promises to do otherwise. But after two days of worldwide negative publicity, the ban was lifted and the firewall came down. A significant victory. And not just in the Olympic precinct. Here's how insidious State control of the net was. Unlike most media who chose to stay in the Olympic Media Village, my cameraman and I opted for a hotel near Tiananmen Square - a just-in-case-policy. At the beginning of the Games, internet access in Room 659 at The Landmark was restricted. But the day the ban was lifted, it was also lifted in Room 659. They not only knew where every foreign journalist was staying in Beijing, but they could turn their internet on and off at will. Extraordinary.

It became apparent they could also turn the news on and off



JOHN FARMER

at will in local media outlets. Sometimes I'd read the *China Daily* each morning and wonder if I'd made a monumental stuff-up in my report the night before. Not a word of the yarn I'd covered would appear in print. No mention of the Olympic connections to the American tourist macheted to death in central Beijing. In fact, no mention of the machete. No mention of the banner protest on the new CCTV building, or the arrest of British journalist John Ray, or the 400 arrested in Nepal over the Tibet demonstrations. Or the faked fireworks and dubbed singing in the Opening Ceremony. The list goes on.

The western media was doing its best to expose those deceptions, while China was doing its best to present to the world a perfect Olympics, and a perfect Beijing. Perhaps we shouldn't have expected anything less: with guests coming over, doesn't everybody put out their best China?

*Chris Reason is a senior reporter with Seven News*

## Fiji's Media Freedom Battle

SEAN DORNEY

The past year has not been a happy one for the media in Fiji. The military-led Interim Government of Commodore Voreqe (Frank) Bainimarama followed up its February 2008 deportation of the Australian publisher of the *Fiji Sun*, Russell Hunter, with the expulsion of two publishers of the *Fiji Times*. Evan Hannah was taken from his home in Suva at night in May last year and driven to Nadi for a flight out of the country and his successor, Rex Gardener, was booted out in January this year.

Netani Rika, the editor of the *Fiji Times*, is a citizen of Fiji and cannot be deported. But Netani has had a torrid time. He was hauled before the courts for contempt after the *Fiji Times* ran a letter to the editor that criticised the highly controversial Fiji High Court ruling that found the President of Fiji had unwritten reserve powers dating back several hundred years to those no longer enjoyed by British monarchs which allowed him to retrospectively authorise a military coup. Rika has been given a suspended prison sentence provided he observes a two-year good behaviour bond.

But it is not his good behaviour which should be of concern. In March this year Netani Rika's car was smashed up when rocks were thrown at it outside his home in the middle of the night. Two weeks later his house was attacked by masked men who threw two fire bombs over the roof and one through a louver which they had broken.

The Fiji Police, now headed by a military man, Commodore Esala Teleni, have been unable to find any culprits. Suggestions that the military might have been behind the attacks have been mocked by the Land Force Commander, Colonel Pita Driti, who released a statement saying the military would not have used kerosene as the fire-bomb fuel. "We would use more lethal ones," he said, "if we were to be doing these and we would be causing a lot more harm than what these group of men are doing."

Colonel Driti released another statement through the Fiji Government's Information Department in late March in which he said: "The *Fiji Times* in particular is the most non-cooperative and biased news paper in the country; this news agency should be closed down immediately."

The Fiji One television newsroom and the *Fiji Times* have also been subject to several police raids - the police armed with search warrants to try to find relatively innocuous documents including some sent to every political party in Fiji by the United Nations and the Commonwealth.

*Sean Dorney is the Pacific correspondent for ABC/Australia Network. On April 14, 2009, within days of filing this report, Dorney was deported from Fiji.*



Australian journalist Russell Hunter was deported from Fiji. NICK MOIR, COURTESY FAIRFAX PHOTOS.

journalists have been deported for criticising the government or its ministers.

In April 2008 Australian journalist Russell Hunter, publisher of the *Fiji Sun*, was deported by Fiji's military government this week, after his paper published stories highlighting allegations of tax evasion by a government minister Mahendra Chaudhry. In the past the paper has also been attacked for criticising the Prime Minister, Voreqe Bainimarama. Hunter was taken from his home in Suva by immigration officials and military officers who confiscated his passport and forced him to board a flight to Sydney without his wife and children.

A month later, the managing director and publisher of the *Fiji Times* Evan Hannah, was also deported<sup>45</sup> in similar circumstances. In January 2009, Hannah's replacement as *Fiji Times* publisher, Rex Gardner, was deported<sup>46</sup>. Gardner's expulsion follows on the heels of a court ruling on January 22 in which he and *The Fiji Times* were convicted for contempt of court for publishing a letter to the editor which criticised a High Court ruling upholding the legality of Fiji's 2006 military coup<sup>47</sup>.

On May 25, 2008 an Australian safety trainer working with journalists in Nepal was arrested and held in a jail in Bihar state, north-eastern India. Paul Jordan was arrested by Indian police after he visited a local market on the border of India and Nepal and unwittingly found himself 10 feet on the Indian side of the border without a visa. Jordan was in the area to conduct safety training courses under contract with the International Federation of Journalists (IFJ) Asia-Pacific office. A Nepalese colleague arrested within him was released within hours but Jordan was charged under India's *Foreigner's Act 1946* and transferred to the town of Araria for a hearing at the District Court. Despite several court hearings and commitments made by local police that they would seek to withdraw the charge because they agreed that Jordan had made an "innocent mistake", Jordan was not released until June 17, 2008.

In July 2008, Australian photojournalist Nigel Brennan was abducted while on assignment in Somalia. Brennan, 37, with his Canadian photojournalist Amanda Lindhout, Somali journalist Abdifatah Mohammed Elmi and their driver, who has been identified only as Mahad, went missing after leaving the Somali capital, Mogadishu. The Alliance remains concerned for the safety of these journalists and is monitoring efforts for their release.

In August 2008 Australian journalists reporting in Beijing for the Olympic Games were subjected to numerous restrictions on their ability to report on events in the host city. While press briefings were curtailed, pressure applied by the vast number of journalists in the city for the event managed to get numerous stories aired that otherwise would never have become known.

## Press Freedom in the Asia-Pacific Region

### A summary from the International Federation of Journalists

Asia-Pacific is the world's most dangerous region for journalists and media workers, accounting for more than a third of the global toll of journalists killed in 2008. Of the 31

*Asia-Pacific is the world's most dangerous region for journalists and media workers*



A vigil held in Colombo for murdered Sri Lankan newspaper editor Lasanatha Wickrematunge. ROBERT SHAW, INTERNATIONAL MEDIA SUPPORT

***Wickrematunge's story continues to inspire journalists worldwide***

journalists killed in the region in 2008, 23 were singled out for premeditated murder. The situation looks no better in 2009.

The Asia-Pacific office of the International Federation of Journalists (IFJ), hosted by the Media Alliance, works with partners across the region to support local journalists to meet Asia-Pacific's enormous press freedom challenges.

In the past year, the IFJ set up two new safety training programs in Nepal and Pakistan in response to the escalation of politically motivated violence and targeted attacks on journalists. The programs, modelled on the work in the Philippines, aim to equip local journalists with the skills to confront and cope with volatile situations and environments.

In addition, the IFJ assisted Pakistani colleagues with local infrastructure and support by establishing office space for the Pakistan Federal Union of Journalists (PFUJ), an affiliate, in Islamabad. The urgent need for assistance is underscored by the seven killings of journalists in Pakistan in 2008. Already in 2009, five Pakistani journalists have been killed, of whom three were murdered.

Violence against media personnel extends across the region. The risks are varied, ranging from reporting on all-out war, corruption and crime to acts of violence where the media is not the main target.

In Nepal in early January, Uma Singh, a correspondent and role model for young women journalists, was brutally murdered. An IFJ investigation concludes her murder was linked to her campaigning journalism.

Within days of the killing of Uma Singh, the campaign of violence against the media in Sri Lanka grabbed headlines around the world, as the editor of Sri Lanka's *Sunday Leader*, Lasantha Wickrematunge, was shot dead in Colombo. An editorial written by Wickrematunge anticipating his murder, which was published posthumously, is a poignant demonstration of the courage of journalists who put their lives at risk while defending press freedom.

Wickrematunge's story continues to inspire journalists worldwide. On April 6, he was named laureate of the prestigious UNESCO World Press Freedom Prize for 2009. "Jury members were moved to an almost unanimous choice by a man who was clearly conscious of the dangers he faced but nevertheless chose to speak out, even beyond his grave," said Prize Jury President and Press Ombudsman of the Press Council of South Africa Joe Thloloe. Recent recipients of this award include Lydia Cacho from Mexico (2008) and the late Anna Politkovskaya from the Russian Federation (2007).

The toll of killings in Sri Lanka had decreased from six media workers in 2007 to two in 2008. But rather than indicating improved safety and protection, the lower toll underscores that far fewer journalists are able to work in war-torn provinces.

Psychological warfare is now a pre-eminent means of shutting down independent reporting in Sri Lanka. The murder of Wickrematunge forced many independent local journalists into silence, and up to 30 journalists, journalists' leaders and media rights activists have fled the country for their own safety.

Meanwhile, the IFJ initiated a joint action in March 2009 with Article XIX, the International Press Institute and the World Association of Newspapers to deliver a statement to the 10<sup>th</sup> session of the Human Rights Council in Geneva condemning the Sri Lankan Government's anti-media activities. The statement drew international attention to the case of Tamil journalist J.S. Tissainayagam, who has been detained for more than a year on accusations of being a terrorist because of his written work on human rights issues. The charges set an alarming precedent as the Government seeks to apply draconian counter-terrorism laws to silence all criticism.

In India, six murders of media personnel in insurgent-hit states in late 2008 and the recent murder of an Assam-based newspaper editor sounded an alarm through the local media community. Meanwhile, in March 2009, an Afghan journalist Jawed Ahmad who worked as a fixer for Canadian Television (CTV) was shot dead in Kandahar less than six months after being released from 11 months' detention at the United States military air base at Bagram. Kidnappings in Pakistan and Afghanistan are now an abhorrent norm.

The hardships for journalists in the region have not, however, diminished the ambitions of local journalists in their pursuit of excellence and independent journalism.

The Human Rights Prize program in Sri Lanka, run by the IFJ with a local affiliate, the Free Media Movement, continues to encourage journalists to see their work as a public service. In 2008, the national winner of the prize was Poornima Weerasekara for her investigative reporting for the *Daily Mirror* on the Government's failure to combat human trafficking in Sri Lanka.

In Cambodia, more than 100 journalists participated in a series of workshops on ethical reporting for the Khmer Rouge trials. A charter launched at Cambodia's National Media Summit in July 2008 and the roll-out of training in regional cities as well as Phnom Penh offered Cambodian journalists the opportunity to improve their skills for fair, independent and informed reporting on the trials.

Press freedom and editorial independence have also been very much in the public spotlight in South Korea this past year. The Journalists' Association of Korea (JAK), an IFJ affiliate, has been engaged in an eight-month protest to seek guarantees of editorial independence from the broadcaster YTN, following the 2008 appointment of a former presidential aide as YTN president. Despite the sackings of staff, arrests, detentions and disciplinary actions, YTN media workers continue to hold out under the leadership of the in-house union and JAK.

The IFJ's Press Freedom in China program continues to receive support from the Alliance fund to monitor and report on press freedom violations in China. The program was initially set up to keep a watch in the lead-up to the 2008 Olympic Games, but has been extended for a year in recognition of the need to maintain vigilance now that the attention on the Olympics has faded.

**Despite weathering the scars of violence, intimidation and fear for reporting in the public interest, journalists and media activists across Asia-Pacific continue to show great courage, passion and commitment to quality journalism. For journalists across the region, the knowledge that their Australian colleagues stand with them in solidarity helps them to know their work is not in vain.**

*Deborah Muir, program manager and Anna Noonan, project coordinator - International Federation of Journalists Asia-Pacific*

## **How We Helped: The Alliance Safety and Solidarity Appeal**

The Alliance Safety and Solidarity Appeal fund provides Australian journalists with a conduit for assisting regional colleagues, by aiding projects to protect journalists and assist their families and to promote free, independent and quality journalism.

In the past year, thanks to the support of a \$6000 initial payment from the Appeal, the families of 12 children of journalists killed in Nepal during that country's decade-long civil war are receiving educational support. The Nepal Children's Education Fund was set up to provide these children, aged 5 to 13, with access to education, despite the hardship and loss of income caused by the deaths of their fathers. Now that these initial 12 children from five families are attending school, the fund's support will be extended to assist more such families.

*The Alliance Safety and Solidarity Appeal fund provides Australian journalists with a conduit for assisting regional colleagues*

The wife and children of slain Radio Nepal newsreader Dhan Bahadur Roka Magar who live in Dang in the country's mid-west. The Alliance Safety and Solidarity Appeal, through the Nepal Children's Education Fund, is assisting with the schooling of Roka Magar's children. BISHNU NISTHURI.



The Alliance fund also continues to assist the Safety Office in the Philippines run by the National Union of the Philippines (NUJP), an IFJ affiliate. The work of the office is as essential as ever, with the Philippines retaining its notoriety as the country where journalists are most likely to be murdered for their profession. Of the 10 journalists killed in the Philippines from late 2007 until March 2009, six were radio broadcasters who had reported on corruption and were killed in drive-by shootings. The Arroyo Government has been shamefully slow to act, but in 2008 it bowed to pressure by the NUJP and others to investigate some of the 62 murders of journalists during its seven-year tenure.

The appeal is co-funding a press freedom monitoring project in China coordinated by IFJ Asia-Pacific from Sydney and Hong Kong. The project has issued a report, *China's Olympic Challenge - Press Freedom in 2008*<sup>48</sup>.

### **The Way Forward**

The past 12 months has seen the Rudd Government begin to address areas of long-standing concern to the Alliance on issues relating to press freedom in Australia. The anticipated abolition of conclusive certificates and the draft reforms for a new Freedom of Information Act are welcome. However, they do not go far enough.

The Alliance believes, as we said at the Australia's Right To Know conference in Sydney on March 21, 2009, that there are four issues – legislated secrecy, freedom of information, court suppression and protection of sources – that cry out for most urgent reform. Practical legislative reform in these key areas would not only be a social good in itself. It would send a clear message that governments are committed to a genuine public right to know.

On a national level, the Government has taken steps to introduce a new culture within its departments and agencies, one that embraces and encourages openness and accessibility to information. However, the proposed new laws still maintain levels of secrecy over Cabinet papers and notes that are at odds with how the Government commitment to reforming FoI.

Government bodies, whether it be the Australian Building and Construction Commission or the WA Crime and Corruption Commission have been granted extraordinary coercive powers which, when used, threaten press freedom. The States and Territories must follow the Commonwealth Government's example regarding open government, transparency and accessibility, and should also be mindful that half-hearted attempts at cultural change amount to no real change at all.

Also overdue is a review of the use of suppression orders where the courts continue to stifle the public's to how the judicial system functions and what is heard in court cases. There is ample evidence that some orders are granted for the most flimsy of reasons and, in the current economic climate, media companies do not have the resources to mount costly legal fights to challenge those orders.

The need for adequate shield laws for journalists so they can meet their professional, and

ethical, responsibilities of protecting confidential sources is paramount as the attempts to pressure journalists, their editors and their media organisations to reveal sources and expose whistleblowers grow in ferocity and scale. What we saw with the raids on The Sunday Times should never happen again.

Whistleblowers must be protected. Protection only under certain circumstances is not good enough. Once again, governments must show a genuine commitment to openness and good governance by allowing whistleblowers to highlight flaws in the system rather than pursue the whistleblower and the journalist in a rearguard action that's true aim is to exact retribution and discourage others.

And there must be an overhaul of the anti-terrorism, ASIO and sedition laws that were issued in response to new threats in a post 9/11 world but which, at the same time, stripped the media as well as the community of fundamental human rights.

The Alliance applauds the leadership demonstrated on FoI reform, on whistleblower protection, on shield laws. But we are concerned that only half the job has been done. The Alliance, and its colleagues in the Australia's Right To Know coalition, will continue to fight for press freedom and to allow our members to do their job responsibly on behalf of the communities we serve.

*The Alliance will continue to fight for press freedom and to allow our members to do their job responsibly*

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