



SUPPRESSION DEFAMATION
DECRYPTION METADATA
IMPUNITY

THE PUBLIC'S RIGHT TO KNOW

THE MEAA REPORT INTO THE STATE OF
PRESS FREEDOM IN AUSTRALIA IN 2019





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FOREWORD

BY PAUL MURPHY, CHIEF EXECUTIVE, MEAA

The public's right to know is a key tenet of a healthy, functioning democracy — and it is one of the responsibilities of open and transparent government. It's also a cornerstone principle of journalism.

Increasingly, however, governments are denying that essential democratic ingredient. More and more, they are looking to operate in secret, shroud their activities and suppress all the information about them, discourage freedom of information searches, pursue and punish whistleblowers and place barriers in the way of journalists seeking to tell the truth of what governments are doing in our name.

In Australia, waves of new laws are passed in the name of “national

security” but are really designed to intimidate the media, hunt down whistleblowers, and lock-up information. We saw it when attempts to control asylum seeker boats sailing to Australia, a customs and immigration issue, became militarised as Operation Sovereign Borders.

Suddenly the Navy was conscripted into “protecting” our borders from leaking sailing vessels and handfuls of pitiful refugees fleeing persecution, terror and war. Immigration officers became black-uniformed troopers in the newly named “Border Force”. And even though the high-ranking Defence Force officer held regular press conferences, little was ever said because the militarisation of immigration activities meant the military could simply cloak everything

as “on-water matters” — refusing to say anything in order to defend national security. And so the public was kept in the dark.

What began with a muzzle regarding “on-water matters” soon extended to asylum seeker detention centres on Manus Island in Papua New Guinea and on Nauru. The governments of those countries wouldn't comment on what took place in the Australian taxpayer-funded centres and new laws were implemented to punish any workers or aid agencies or their contracted organisations from talking openly about what they saw there. Journalists were refused access to the centres and their detained inmates.

Some refugees have managed to bypass the bans. MEAA is proud to have worked with Behrouz Boochani, a Kurdish journalist and refugee from Iran, who has determinedly produced outstanding and award-winning journalism from Manus. MEAA remains concerned that Behrouz's courageous reporting, including his recent prize-winning book, places him in danger which is why we are campaigning to #FreeBehrouz so that he can resettle in safety in Australia. MEAA does so with the aim to bring more attention to all who are subject to Australia's immigration detention regime and ensuring the public's right to know.

Australia's national security assault on press freedom has also worked to criminalise legitimate journalism in the public interest. The various tranches of national security legislation unleashed by the government in recent years, when applied to journalists and their journalism, clearly have little to do with protecting the nation and more with making sure the public is kept in the dark. Prison terms for reporting on the activities of government agencies and for handling certain information are now enshrined in law.

And journalists' sources continue to be targeted. While new laws seek to provide some whistleblowers with protection, and only when placed under certain conditions and in defined circumstances, government is also willing to hound whistleblowers in court. The court actions mounted against Witness K and lawyer Bernard Collaery for revealing events that took place 14 years earlier, the threat of 161 years in prison being faced by Richard Boyle and the charges against former Defence Force lawyer David McBride all demonstrate that even when whistleblowers have told their stories to journalists and the public finally learns



THE PUBLIC'S RIGHT TO KNOW

the truth, the truth tellers will still be pursued and punished.

Meanwhile, the government continues to equip itself with new weapons in the attack on whistleblowers. Having used the metadata laws to capture everyone's telecommunications data, Journalist Information Warrants allow at least 21 government agencies to secretly access journalists' and media organisations' data for the stated purpose of identifying a journalist's confidential source — thus placing the journalist in breach of their ethical obligation to protect the source's identity.

The government has now embarked on new laws to decrypt encrypted communications. Again, the claim is made that this is in the name of national security but the government's powers could put journalists at risk should sensitive, and potentially damaging, information land in their hands. The backdoor mechanism to break encrypted communications weakens the overarching system of encryption, creating a loophole that could easily be targeted by hackers and online criminals, and risk the safety of journalists.

The hasty response to the Christchurch shooting also demonstrates the government's ill-thought-through use of badly drafted legislation. The Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019 has led to concerns about the lack of defences for individuals who may be whistleblowers or media companies who are publishing atrocities that they are trying to draw to the world's attention. The law means whistleblowers may no longer be able to deploy social media to shine a light on atrocities or raise awareness of human rights abuses.

Journalism is being criminalised and whistleblowers who seek to expose wrongdoing are being punished — all for having the temerity to aid in the public's right to know.

Overseas issues continue to challenge press freedom everywhere. It is not such a great leap for powerful people to dismiss news stories they don't like as being "fake news" to declaring journalists and media outlets "enemies of the people". From there it is a simple step for governments to arrest journalists, shut down media outlets or silence journalists forever.

The past year has also seen the murder of journalist Jamal Khashoggi in the Saudi Arabian embassy in Istanbul. The brutality of the killing and the failure of governments to react (claiming that their trade deals with the Riyadh regime are worth more than a journalist's life) prove that governments continue to provide impunity for the killing of journalists.

The relentless harassment of Filipino editor Maria Ressa, a Time magazine person of the year; Myanmar's imprisonment of two Reuters correspondents for investigating a massacre of Rohingya men; the jailing of 68 journalists in Turkey and 47 in China — all these are indicators that show that governments will do almost anything to muzzle the media.

Closer to home, the trolling, abuse and harassment of journalists online continues to be a concern. Journalists are increasingly required to maintain an online social media presence to, in part, promote their own work and that of their colleagues and employers. Too often, the response from others is hate speech and threats of violence. More needs to be done to ensure the laws that should protect people from being menaced or harassed by someone using the internet or telephone are fully enforced.

This issue, together with the case of a former *Age* journalist being awarded \$180,000 in damages for post-traumatic stress, anxiety and depression, also signal that media employers must do much more to look after the welfare, health and safety of their journalist employees.

This year marks a decade since the 2009 Ampatuan Massacre in the Philippines — the single greatest atrocity against journalists — where 58 people were killed, among them 32 media workers. The massacre happened because the Philippines was already mired in impunity over journalists killings — when one murder goes unpunished, the killers must have thought, would anyone really protest the murder of 32? They are almost right, because a decade on we are still waiting for justice, and dozens of the suspects including senior police and the military are still on the run.

Australia's own sorry toll of nine journalists killed with impunity continues to scar our history. The

failure of successive governments and police to fully investigate these murders and to bring those responsible to justice is damning.

There has been some good news on several long-standing press freedom issues.

In our courts, the principle of open justice is trampled on as jurisdictions across the country issue a barrage of suppression orders. However, the George Pell trials highlighted the suppression order issue — both for why orders are sometimes needed and also why many judges are misusing the system either to punish the media or to placate the powerful — many orders are simply nonsensical and poorly defined. MEAA has long called for suppression orders to be reformed and the Vincent Review of Victoria's problems and recommendations for solutions points the way.

MEAA has long campaigned for reform of the uniform defamation law regime. It is finally being reviewed after more than 13 years of bloated damages. Powerful people launch defamation actions and win enormous payouts without having to demonstrate they actually have a reputation, let alone one that has been damaged. The review has raised the question of whether corporations should be allowed to sue — MEAA argues that handing over this kind of power to wealthy businesses will only further erode the public's right to know.

There are welcome discussions taking place about improving diversity in our newsrooms, in the journalism they produce and the opinions they publish and broadcast. Diversity must reflect the audience the media serves. Gender diversity as well as cultural and religious diversity can only make Australian journalism better.

Locking up information, punishing those who tell the truth and placing as many barriers in the way of information getting out — all these are increasingly tainting Australian democracy. It's time to push back this tide of secrecy, intimidation and harassment — not least because it is getting dangerously out of control.

The public's right to know must be upheld and championed by all those that value it.

IT'S TIME TO PUSH BACK THIS TIDE OF SECRECY, INTIMIDATION AND HARASSMENT

A photograph showing two men walking on a paved path. One man is wearing a light blue blazer and the other is wearing a dark jacket. A dark car is partially visible on the right side of the frame.

Jamal Khashoggi enters the Saudi embassy in Istanbul

IN THEIR OWN WORDS

“THERE CAN BE NO PRESS FREEDOM IF JOURNALISTS EXIST IN CONDITIONS OF CORRUPTION, POVERTY OR FEAR.”

INTERNATIONAL FEDERATION OF JOURNALISTS

UNESCO observatory of killed journalists — “1319 journalists killed since 1993.”¹

The last words of Saudi journalist Jamal Khashoggi — “I can’t breathe... I can’t breathe! I can’t breathe!”²

General Maher Mutreb, of Saudi Crown Prince Mohammed bin Salman’s security team, to Saudi officials — “Tell yours: the thing is done, it’s done”.³

US President Donald Trump — “It could very well be that the crown prince had knowledge of this tragic event – maybe he did and maybe he didn’t.”⁴

Eric Trump — “I think it’s tough: you can’t have journalists getting murdered... [But] Saudi Arabia has been actually been friends of the US in many ways. They are ordering from us. Massive, massive orders... hundreds of billions of dollars’ worth of arms and things which will create tens and tens of

thousands of jobs... What are you going to do, are you going to take that and throw all of that away?”⁵

Fahrettin Altun, communications director for Turkey’s President Recep Tayyip Erdogan, on Khashoggi’s murder — “The world is watching.”⁶

Committee to Protect Journalists — “Even as Turkish President Recep Tayyip Erdoğan has been the fiercest critic of Saudi Arabia for the murder of Khashoggi, his government continued to jail more journalists than any other on the planet.”⁷

Kabul journalist Saifulrahman Ayar after nine colleagues were killed at the site of a suicide bomb blast — “I was near the blast site when the office called me and [asked me] to cover the incident. It was minutes after the first explosion. I was metres away when the second explosion occurred among the journalists. The second attacker was acting like a journalist

and had a camera. I am injured in my leg, I was confused, then I saw that I’m in hospital. I told them to let me go because I want to cover the attack on my colleagues.”⁸

Afghanistan Agence France-Presse photographer Shah Marai’s message to a colleague confirming he was working at the site of the first bomb, just before the second killed him — “No worry man, I am here.”⁹

Milo Yiannopoulos, two days before the Capital Gazette group shooting, in what he says is his “standard response” to a request for comment — “I can’t wait for the vigilante squads to start gunning journalists down on sight.”¹⁰

Capital Gazette group reporter Phil Davis after five of his colleagues were killed by a gunman — “There is nothing more terrifying than hearing multiple people get shot while you’re under your desk and then hear the gunman reload... He didn’t have enough bullets for us. It was terrifying to know he didn’t have enough bullets to kill everyone in that office, and had to get more.”¹¹

Capital Gazette reporter Rachel Paecella — “As one of six survivors of our nation’s only newsroom mass



President Donald Trump and reporters *Official White House photo by Joyce N. Boghosian*

shooting, seeing generalised media-bashing tweets from the president makes me fear for my life. His words have power, and give bad actors justification to act.”¹²

Trump a week after the Capital Gazette shooting — “Fake news. Bad people... I see the way they write. They’re so damn dishonest. And I don’t mean all of them, because some of the finest people I know are journalists really. Hard to believe when I say that. I hate to say it, but I have to say it. But 75 percent of those people are downright dishonest. Downright dishonest. They’re fake. They’re fake. They make the sources up. They don’t exist in many cases. These are really bad people.”¹³

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Trump to CNN journalist — “You are the enemy of the people.”¹⁴

“The *New York Times* reporting is false. They are a true ENEMY OF THE PEOPLE!”¹⁵

“The *New York Times* had no legitimate sources, which would be totally illegal, concerning the Mueller Report. In fact, they probably had no sources at all! They are a Fake News paper who have already been forced to apologize for their incorrect and very bad reporting on me!”¹⁶

More than 400 US news outlets join the *Boston Globe’s* campaign for a free press — “Today in the United States we have a president who has created a mantra that members of the media who do not blatantly support the policies of the current U.S. administration are the ‘enemy of the people’.”¹⁷

Report — “Infowars editor Paul Joseph Watson tweeted out a video of the incident that was doctored to make it look like [CNN reporter Jim] Acosta chopped the woman’s arm with his

hand. Less than an hour later, [White House press secretary Sarah Sanders] tweeted out the doctored video, writing, ‘we will not tolerate the inappropriate behaviour clearly documented in this video’.”¹⁸

Trump supporter attacks a BBC camera operator at a Trump rally — “Fuck the media! Fuck the media! Fuck the media!”¹⁹

Report — “United States added to list of most dangerous countries for journalists for first time.”²⁰

PEN America’s law suit against Trump — “[President Trump] has directed retaliatory actions and threats at specific news outlets and journalists whose content and viewpoints he views as hostile to him or his Administration, directly harming those organisations and their employees, including Plaintiff’s members.”²¹

Email sent to a laid-off BuzzFeed US journalist — “The edited image shows two bodies hanging from a tree next to the words ‘Day of the Rope’, a far-right meme about their desire to execute journalists. Underneath..., where the scrolling cable news ticker would usually appear, it reads “JUST KILL THEM. MAKE AMERICA GREAT AGAIN.”²²

Amnesty International — “[In the US and UK] one abusive tweet is sent to a female politician or journalist every 30 seconds.”²³

Neo-Nazi Blair Cottrell — “I might as well have raped [female journalist] on the air, not only would she have been happier with that but the reaction would’ve been the same.”²⁴

Then Senator David Leyonhjelm about a journalist — “What a bigoted bitch.”²⁵

Phone messages left for a journalist by a right-wing extremist — “I’m going to torture you to an absolute delight little Lukey Luke. Absolute delight. And I have people looking at you right now, staring at you from across the fucking street from where you live. Enjoy this motherfucker. You’re dead, and baby, I’m catching up with you.”

“Pity you weren’t home, but at least we know where you live so we’ll be saying ‘G’day’.”

“... stamp your fucking teeth into the sidewalk.”²⁶

Facebook comments sent to a journalist — “Go kill yourself before I do.”

“When she leaves her house, there’s no guarantee she’ll come back home. I’m glad to see she lives in my city. I guess I have to be patient till I get to jump on her head and beat the fuck out of her. Patience will avail. I’ll get my chance.”²⁷

Voicemail left for the same journalist — “Back off you fucking scumbag dog c... or you’ll be the one copping the fucking brick to the head.”²⁸

A Coalition staffer’s texts to a Canberra Press Gallery journalist — “You are an unethical journalist...” “... hope her family dies of vicious cancel [sic]... I mean that... painful cancer for a vicious feminist C...” “A c... Let her come to my home.... Slap her on her bitch face.”²⁹

Far-right activist Avi Yemeni doxxes a journalist’s phone number on Facebook — “See this taxpayer-funded ABC employee? He smears the country that gave his peasant family refuge. Feel free to let [him] know what you think.”³⁰

Messages sent to the journalist following the doxxing — “You are the lowest of low scum. Eyes open fucker, you never know what is around the corner.”

“Muslim scum. I will spit on your face if I see you in the street, dog.”
 “So you hate white people. Why don’t you try and do something to me. My skin is milky white. Does that upset you? What are you going to do about it? I’m a trained killer with an IQ north of 140. That’s just a fact. So naturally I’m not afraid to be confrontational with a piece of shit degenerate like you.”
 “Go fuck yourself you disgusting piece of excrement and I hope that when you die they bury you face down so that you can’t scratch your way out again.”³¹

Yemeni tells the journalist why he doxxed him — “The purpose of me putting your [mobile] number online was so people can reach you directly. If I just tagged your pages, your Twitter and your Facebook or whatever, who cares, you just ignore those. If you get a bunch of people telling you what you think, SMS your phone, you weren’t going to be able to ignore that.”³²

NSW Police — “Publishing the personal information of an individual is a breach of the *Privacy and Personal Information Protection Act 1998*. Under the *Commonwealth Criminal Code Act 1995*, it is a crime to menace, harass

or cause offence using the internet or telephone. Those who feel they are a victim of technology facilitated abuse, which include the offences of stalking or intimidation, should report this to police.”³³

MEAA’s Digital Committee — “The Committee stands in solidarity with Osman Faruqi and Rashna Farrukh who have stood up for a diverse media this week at great personal cost. In light of the events in Christchurch, it has become even more apparent the role the media has in magnifying extremism and hate speech. Cultural diversity in our newsrooms is vital to ensuring we do better in reporting issues of race and religion, and makes for a stronger media.”³⁴

Unmoderated comments published mistakenly by *The Australian* — “So, their ABC headquarters building is a fire risk. That’s good to know.”
 “WHAT!!! Are we saying that ABC Ultimo could become a towering inferno? Hurry up with the matches.”
 “Quick.....anyone got a match?”
 “Matches... where did I put them?”³⁵

Bob Katter to a Sky News journalist

— “You need a big hiding for ever mentioning anything of that nature.”³⁶

Barrister Steve Stanton to a journalist reporting on a NSW ICAC-related court case — “I see you are still as ugly as ever.”³⁷

Communications Minister Mitch Fifield — “From time to time, I have raised factual errors in ABC reporting, but have always respected the legislated operational and editorial independence of the ABC. I have never involved myself in staffing matters, nor am I aware of any member of the Government who has sought to do so. The operations of the ABC are entirely matters for the board and management of the ABC which, by law, the Minister does not have a role in. Questions about the ABC’s board and management are matters for the ABC.”³⁸

Report — “Almost all the directors of the ABC’s eight-member board were appointed directly by the minister for communications Mitch Fifield and some were appointed after being rejected by the merit-based nominations panel... Documents... show that of the five most recent appointments, all were direct recommendations by Fifield.”³⁹

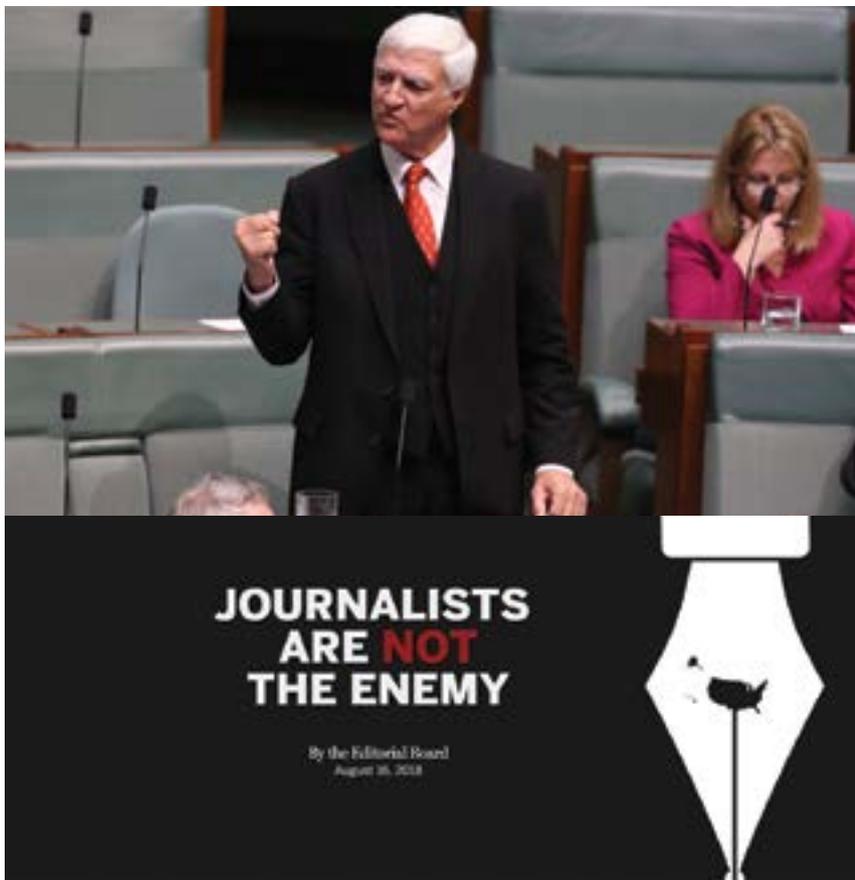
Report — “Nothing against [Ita] Buttrose, but the serial flouting of the *Australian Broadcasting Corporation Act* by Communications Minister Mitch Fifield, who seems determined to ignore all recommendations of an independent nominations panel established by law to ensure appointments are at arm’s-length, should surely be a cause for public concern.”⁴⁰

Report — “Communications Minister Mitch Fifield has made another complaint to the ABC – the sixth in five months...”⁴¹

Report — “Funding for the ABC has been cut by \$84m... Savings from the ABC cuts will be redirected to other spending measures within the Communications and Arts portfolio... including \$48.7 million for the commemoration of the 250th anniversary of James Cook’s landing in Botany Bay.”⁴²

Report — “The government plans to introduce legislation to add a requirement to be ‘fair and balanced’ to the *ABC Act*... The move is part of a deal Senator Fifield reached with One Nation which guaranteed support for sweeping media reforms passed by the Senate last week.”⁴³

Report — “The ABC has been ordered by Federal Communications Minister Mitch Fifield to reveal what it is paying its top



Top: MP Bob Katter *Andrew Meares Fairfax Photos*, **Bottom:** The Boston Globe’s press freedom campaign *The Boston Globe*;

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Health Minister
Greg Hunt
*Justin McManus
Fairfax Photos*

on-air personalities, in what amounts to a win for One Nation. The national broadcaster has been directed to 'voluntarily' cough up the salaries of all staff being paid \$200,000 or more by the end of next month. If it does not do so, Senator Fifield will push for a change to the *Australian Broadcasting Corporation Act* to force the disclosure.⁴⁴

Report — "Communications Minister Mitch Fifield established a review into whether the ABC and SBS enjoy unfair advantages in the marketplace due to their public funding. The 'competitive neutrality' review had been agreed to many months before, in a deal with One Nation to pass the government's media ownership reforms."⁴⁵

Report — "Senator Fifield justified another efficiency review into the national broadcaster as four years — the time since the last one — was 'an eternity' in the media industry."⁴⁶

Young Liberal Mitchell Collier on privatising the ABC — "There are several ways we could privatise the ABC — we could sell it to a media mogul, a media organisation, the government could sell it on the stock market. Privatising it would... enhance, not diminish, the Australian media landscape."⁴⁷

Report — "It was left to Communications Minister Mitch Fifield

to make it clear the Government would not 'alter the ownership arrangements of the public broadcasters' but, perhaps reading the room, he did not offer any sort of defence of the ABC or why it should exist."⁴⁸

Report — "The call to sell the public broadcaster, put by the Young Liberals and carried by adults who should know better, was pure self-indulgence. The sale will not happen. The motion was cheap theatre. Even so, it says a lot about the state of Australian politics today."⁴⁹

Report — "Communications Minister Mitch Fifield... has close links with and remains a member of the [Institute of Public Affairs]."⁵⁰

Report — "Institute of Public Affairs Parliamentary Research Brief – *20 Policies to Fix Australia*... The ABC must be privatised."⁵¹

Health Minister Greg Hunt — "As a journalist, I would hope that you believe in freedom of speech. What does freedom of speech mean to you?... I've answered your question, now you answer my question. Will you just once answer a question from me? Here's your chance. What does freedom of speech mean to you as a journalist? Your audience is listening, here's your chance. Or are you afraid to stand up for freedom of speech?..."

You're a journalist, I'm a parliamentary representative. You ask questions that you want to present as a game but this is a real discussion about freedom of speech and this was your chance and I hope you run this in full... You haven't answered any of my questions."⁵²

The Chinese Embassy's head of media affairs Saxian Cao to a "60 Minutes" producer — "Take this down and take it to your leaders! You will listen. There must be no more misconduct in the future. You will not use that footage."⁵³

Business Council of Australia president Grant King seeks to stop reporting of a protest in a Senate hearing — **Chair (Senator Ketter)**: I note that a protest just occurred...

King: I'm seeking assurance that this does not play in the media. It has nothing to do with the inquiry...

Chair: This is a free country, Mr King. I can't stop individuals from doing what they've done...

Senator Keneally: Mr King, can I clarify? Are you asking this committee to ask the media not to run footage of that protest? **King**: I don't believe that that protest has anything to do with the inquiry.

Jennifer Westacott, BCA chief executive: As one of the people whose personal security and personal names are at risk here, I think that's extremely frustrating...

Senator Keneally: You understand we



Clockwise from top left: UNESCO world press freedom day logo; Pulitzer Prize winners - Reuters reporters Wa Lone and Kyaw Soe Oo *Reuters*; Arrest of Maria Ressa, executive editor of Rappler *Rappler*;

live in a free country. People are allowed to protest. And we have a free press.⁵⁴

Myanmar’s First State Counsellor Aung San Suu Kyi on the jailing of journalists investigating the killing of Rohingya Muslims — “They were not jailed because they were journalists, they were jailed because... the court has decided that they have broken the *Official Secrets Act*.”⁵⁵

Report — “The Pulitzer Prize for International Reporting was handed to Reuters, with a special mention for Wa Lone and Kyaw Soe Oo who are serving seven years in Yangon’s Insein Prison for ‘exposing state secrets.’ The men led an explosive Reuters investigation into the killing of 10 Rohingya men... Now, as Myanmar’s Supreme Court hears their final appeal against conviction... the pair had been inducted into the elite group of winners... ‘for expertly exposing the military units and Buddhist villagers responsible for the systematic expulsion and murder of Rohingya Muslims from Myanmar, courageous coverage that landed its reporters in prison.’”⁵⁶

Rappler editor Maria Ressa after an arrest warrant on December 2 2018 — “The arrest warrant [was] shocking but not surprising. It’s a natural consequence of this strategy of the government to try to intimidate and harass. The fact that they would go so far on such flimsy charges just shows me that the rule of law is a concept but not one that is upheld. It has been bent to the point that it is broken.”⁵⁷

Ressa after her release on bail on another charge on February 14 2019 — “We will not duck, we will not hide, we will hold the line.”⁵⁸

Ressa facing another arrest warrant on March 28 2019 — “Landing [from the US] in a short while to face my latest arrest warrant and the 7th time I will post bail. #HoldTheLine We pledge to not just hold power to account but I will mark every violation of my rights under the Constitution (like harassment cases to try to intimidate rappler.com)”⁵⁹

MEAA National Media Section committee letter to Philippines Ambassador — “The arrest of Maria Ressa on the charge of cyber libel is a shameless act of persecution by the Filipino government. Ressa is recognised internationally as a great human rights defender and a strong press freedom advocate. Journalists around the world stand as one in condemning the arrest of Maria. This arrest is a very serious threat to media freedom and journalists’ safety.”⁶⁰

International Press Institute director Ravi R. Prasad — “The arrest of Maria Ressa is an outrageous attempt by the Philippines government to silence a news organisation that has been courageously investigating corruption and human rights violations in the country.”⁶¹

Committee to Protect Journalists mission to the Philippines — “The oppressive working environment

for journalists in the Philippines is alarming. The Duterte government files case after case against Rappler while the president himself lobs sustained, often personal attacks against individual journalists. Online harassment of journalists is highly organized and vicious.”⁶²

Committee to Protect Journalists — “In its annual global survey, the Committee to Protect Journalists found at least 251 journalists in jail in relation to their work... The past three years have recorded the highest number of jailed journalists since CPJ began keeping track, with consecutive records set in 2016 and 2017. Turkey, China and Egypt were responsible for more than half of those jailed around the world for the third year in a row. The majority of those imprisoned globally — 70 percent — are facing anti-state charges such as belonging to or aiding groups deemed by authorities as terrorist organisations. The number imprisoned on charges of false news rose to 28 globally, compared with nine just two years ago.”⁶³

International Federation of Journalists (IFJ) — “2018 saw 95 journalists and media professionals lose their lives in targeted killings, bomb attacks or crossfire incidents. Yemen, India, Mexico, Afghanistan and Syria witnessed the most devastating toll. And whilst South Asia is now the world’s most dangerous region for journalists, no part of the globe was left unscathed by those who seek to silence the message by killing the messenger. The rise in killings takes place in the context of an increasing polarisation of views across the world with the rise of dangerous nationalist and populist forces in many countries and the stigmatisation of journalists and media by politicians and the enemies of media freedom.”⁶⁴

UNESCO — “Every year, May 3 is a date which celebrates the fundamental principles of press freedom, to evaluate press freedom around the world, to defend the media from attacks on their independence and to pay tribute to journalists who have lost their lives in the exercise of their profession. It serves as an occasion to inform citizens of violations of press freedom... May 3 acts as a reminder to governments of the need to respect their commitment to press freedom... Just as importantly, World Press Freedom Day is a day of support for media which are targets for the restraint, or abolition, of press freedom. It is also a day of remembrance for those journalists who lost their lives in the pursuit of a story.”⁶⁵

ATTITUDES ABOUT PRESS FREEDOM

BY MARK PHILLIPS

The widespread use of defamation, excessive court issued non-publication orders, and national security and metadata retention laws are combining to make it more difficult for Australian journalists to do their jobs, MEAA's annual press freedom survey has found.

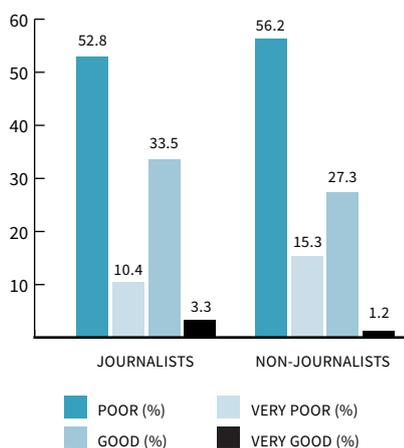
The second annual survey of 1532 people was conducted online by MEAA from February to early April.

The survey was open to all members of the public, with 386, or a quarter of the respondents (25.1 per cent), identifying as a journalist or other form of media professional. Of these 212 were currently employed, with the remainder either retired or unemployed journalists, or studying for a career in journalism.

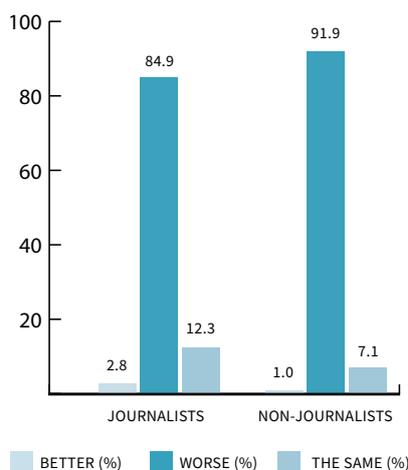
It found that that 63 per cent of journalists believe the overall health of press freedom in Australia is "poor" or "very poor" while 65 per cent say press freedom has got worse over the past decade.

Asked to assess the health of current press freedom issues, working journalists became more pessimistic. They identified the diversity of media ownership as an issue of concern, with 73 per cent giving a score of poor or very poor.

THE HEALTH OF PRESS FREEDOM IN AUSTRALIA



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



Government secrecy and lack of transparency came next with a 71 per cent rating of poor or very poor. This was followed by the impact of national security laws that criminalise journalism scoring 70 per cent, whistleblower protection scored 69 per cent, metadata retention scored 67 per cent, with political attacks on journalism on 66 per cent.

Journalist shield laws were next on 65 per cent and defamation was ranked at 64 per cent. Funding of public broadcasting came next on 62 per cent, with court suppression orders and freedom of information tied on 58 per cent.

But it was when journalists were asked specific questions about their own personal experiences that the clearest picture emerged of the impact of current press freedom constraints on their work.

Eighty per cent of journalists said Australia's defamation laws made reporting more difficult (72 per cent in 2018) and 10 per cent (up from 6.3 per cent in 2018) had received a defamation writ in the past two years. Twenty-eight per cent of journalists (up from 2018's 24.4 per cent) said they had had a news story spiked within the past 12 months because of fears of defamation action by a person mentioned in the story.

TOP 10 PRESS FREEDOM ISSUES

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

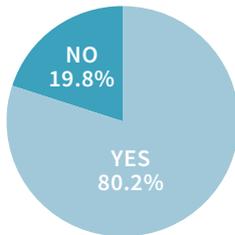
Court suppression/non-publication orders are a growing issue for journalists. Slightly under a quarter of all journalists said their work had been hindered by an order in the past 12 months. Of these, 56 per cent of respondents said they believed the court's decision was excessive. Overall, 54 per cent of journalists believed that judges are actively discouraging reporting of open courts and are taking a more aggressive view of media reporting.

These numbers were higher in Victoria, where the suppression order issue is said to be particularly acute. This has been highlighted by the controversy over the George Pell case, in which dozens of editors and journalists have been charged with contempt of court for publication of details of the case allegedly in breach of a blanket suppression order.

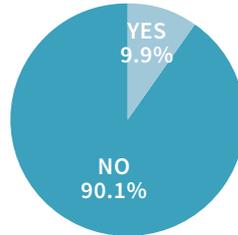
Among the Victorian working journalists 28 per cent said their work had been hindered by a court issuing an order. Of these 82 per cent said they believed the court's decision was excessive. More generally, 62 per cent of Victorian journalists believe judges are actively discouraging reporting of open courts and are taking a more aggressive view of media reporting.

JOURNALISTS' VIEWS ON PRESS FREEDOM ISSUES

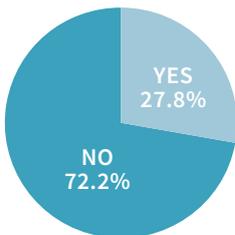
DO YOU BELIEVE AUSTRALIA'S DEFAMATION LAWS MAKE REPORTING MORE DIFFICULT?



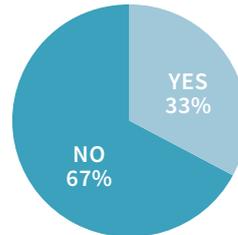
HAVE YOU RECEIVED A DEFAMATION WRIT IN THE PAST TWO YEARS?



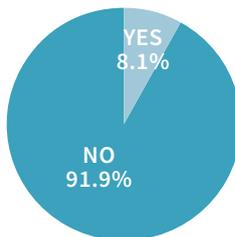
IN THE PAST 12 MONTHS, HAVE YOU HAD A NEWS STORY SPIKED BECAUSE OF FEARS OF A DEFAMATION ACTION?



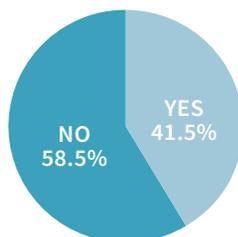
IN THE PAST 12 MONTHS, DID INFORMATION FROM A CONFIDENTIAL SOURCE LEAD YOU TO PUBLISH/BROADCAST A NEWS STORY?



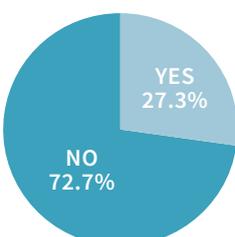
DO YOU BELIEVE LEGISLATION IN THE PUBLIC AND PRIVATE SECTOR IS ADEQUATE TO PROTECT WHISTLEBLOWERS?



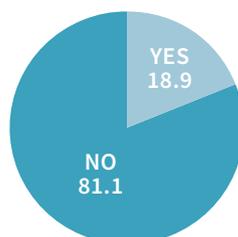
DO YOU, OR YOUR EMPLOYER, TAKE STEPS TO ENSURE THAT YOU DO NOT GENERATE METADATA THAT COULD IDENTIFY A CONFIDENTIAL SOURCE?



IS YOUR EMPLOYER KEEPING YOU INFORMED OF CHANGES TO NATIONAL SECURITY LAWS AND HOW THEY MAY AFFECT YOUR JOURNALISM?

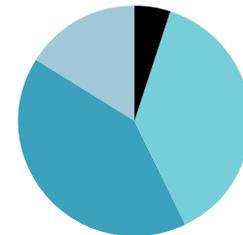


IN THE PAST 12 MONTHS, HAVE ANY OF THESE [NATIONAL SECURITY] LAWS AFFECTED YOUR ABILITY TO PRODUCE YOUR JOURNALISM?



HUNTING FOR WHISTLEBLOWERS BY SECRETLY ACCESSING JOURNALISTS' METADATA

HOW CONFIDENT ARE YOU THAT YOUR SOURCES WOULD NOT BE SUSCEPTIBLE TO BEING IDENTIFIED [THROUGH YOUR METADATA]?



A third of journalists said information from a confidential source whose identity they had protected had led to the publication or broadcasting of a news story but only 8 per cent believed legislation was adequate to protect public sector and private sector whistleblowers.

Despite more than two years of laws which allow government agencies to access journalists' computers, mobile phones and other metadata, less than half of journalists said they or their employer took steps to ensure they did not generate metadata that could identify a confidential source. More than a half (57 per cent) said they were not confident that their sources could be protected from being identified from their metadata.

Journalists say they get most of their information on press freedom issues from MEAA or from what they glean from media reports. Media companies are failing in keep their workers up to date about press freedom concerns with less than 1 per cent of responses saying their main source of information came from their employer.

Only 27 per cent of journalists said their employer kept them informed of changes to national security laws and how they may affect their journalism, although only 19 per cent believed their reporting had been hindered by Australia's national security laws.

Mark Phillips is MEAA's communications director.

THE LAW

THE YEAR IN AUSTRALIAN MEDIA LAW

A REVIEW OF AUSTRALIA'S BROKEN DEFAMATION REGIME AND THE CULTURE OF SUPPRESSION. LEGISLATURES MUST EMBARK ON COMPREHENSIVE AND BOLD REFORM, WRITE **PETER BARTLETT** AND **TESS MCGUIRE**

Our society has adapted and embraced the vast change that social media and technology have caused, but our media laws have not. The limited ability of our defamation and suppression order regimes to respond to the disruption has received much attention over the past year. Action is needed. Not mere tinkering at the edges, but reform that seeks to restore a balance between protecting reputations and freedom of speech.

DEFAMATION LAW REVIEW: A STEP CLOSER TO REFORM

NSW is now responding to the calls for review and reform.

The state government has established a national working group that includes a representative from each state and territory. In February 2019, the working group released a Discussion Paper that outlined areas of concern as well as questions for comment.

Contextual truth

A key admission from this Paper is that the defence of contextual truth in section 26 of the *Defamation Act 2005* contains a drafting error that has resulted in far more limited application than was intended.

Section 26 states that a defendant can only plead the substantial truth of an imputation that is "in addition to" the

defamatory imputations of which the plaintiff complains. In operation, this means that when a defendant seeks to rely on "substantially true" imputations, they must have not already been pleaded by the plaintiff, and where they are absent, the plaintiff has the ability to amend their statement of claim adopting those imputations. This renders the defence futile.

Qualified privilege defence

When it comes to the qualified privilege defence, the Discussion Paper states it has been successfully established on "a number of occasions". This is whilst acknowledging that the majority of successful defendants were not media organisations.

There has been confusion surrounding the approach to this defence — whether it is the jury or trial judge who decides if a publication was "reasonable" in the circumstances (the third element of the defence). Notably, in *Gayle v Fairfax Media Publications Pty Ltd (No 2)* [2018] NSWSC 1838 Justice McCallum reversed her previous view (held in *Davis v Nationwide News Pty Ltd* [2018] NSWSC 669) that the question of reasonableness is to be determined by the jury.

This new approach allows for judges to demand an exceptionally high standard for the steps and considerations that a journalist should take in order to be deemed "reasonable". The court often

treats the considerations that "may" be taken into account as independent hurdles that must be overcome. The defence has rarely succeeded at trial. The reality is that for journalists, the stringent demands of the defence make it available in theory only. It has left media lawyers reluctant to plead it as a defence altogether.

The working group should not be hesitant on this issue — the qualified privilege defence requires reform to allow journalists to publish matters that the public have an interest in receiving.

Multiple publication rule

The Discussion Paper also wrestles with the debate surrounding the calls to reform the "multiple publication rule" to a "single publication rule". Currently, although section 5(1AAA) of the *Limitations Act 1958* (Vic) provides that an action in defamation must be brought within one year from the date of publication, where it is an online publication, the multiple publication rule operates to allow this one year period to restart each time it is downloaded.

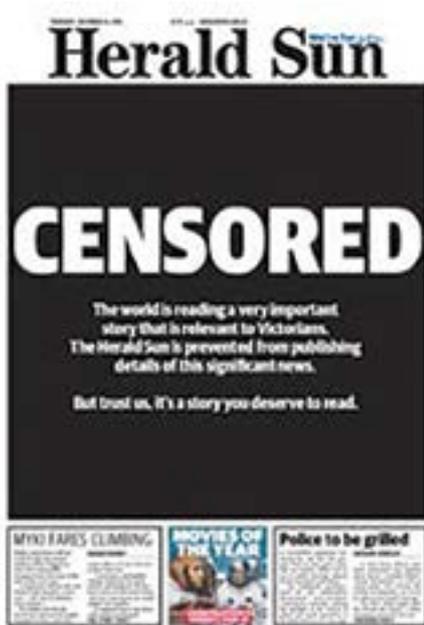
This means the limitation period is effectively open-ended. The ability to bring an action years after the original publication presents concerns that defendants will face evidentiary challenges where proof may have been lost or destroyed.

To address this, reforms could follow the UK approach which has introduced the "single publication rule" to ensure consistency between print and online publication limitation periods. This would mean plaintiffs are prevented from bringing actions in relation to a publication, years later. Under this model, the court would still retain discretion to extend the time limit for actions for defamation where appropriate.

Other reforms

This review presents an opportunity to deliver substantial changes to the defamation regime. Other necessary reforms include:

- Introducing a UK-style "serious harm" threshold for a defamation claim to filter out trivial and spurious matters. It won't help the mainstream media though.
- Implementing a provision that clearly sets out the standard of particulars that are required to be met to substantiate a justification defence in the Federal Court, which standard would be less than that suggested in the recent *Chau Chak Wing v Fairfax Media* case.



- Whether there is actually a cap on damages. In the Rebel Wilson case the judge ruled that the cap can be exceeded if there is a finding of aggravated damages. As Judge Judith Gibson has noted, this interpretation was never envisioned by the drafters of the legislation. Hopefully Shadow Attorney-General Mark Dreyfuss, with his background in leading defamation cases (*Lange*, *Hore-Lacey*), will see the benefit of introducing Federal legislation. The 2005 Act was a compromise produced by all of the States and Territories. We need a clear message to the Judiciary, not another compromise bill.

Many of the defamation cases being instituted are being issued in the Federal Court. This is a move away from juries and possibly trying to avoid the long delays in the delivery of some judgments, especially in the Supreme Court of NSW.

For media defendants it was another year of depressing judgments and rulings from both the Federal and NSW Supreme Court.

The Peter Gregg and Craig McLachlan actions were stayed after they were charged. However, at that time the media defendants had incurred substantial costs.

Costs are a huge issue. *The Australian* newspaper successfully defended the action brought by Atkinson Prakash Charan. Charan appealed. While *The Australian* also succeeded on appeal, it advised the Court of Appeal that it had already incurred \$1 million in costs in the first instance trial.

There appear to be an unprecedented number of actions against the media.

THE CULTURE OF SUPPRESSION UNDER QUESTION

When a jury found George Pell guilty of five child sex offences on December 11, the media was suppressed from reporting on what was described as “the nation’s biggest story”. Media outlets criticised the suppression order as censorship. This drew national attention to the issues of granting suppression orders in the modern world.

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

This also drew attention to Victoria’s status as the leading suppression state – where the highest numbers of suppression and non-publication orders are issued in Australia. This is despite the introduction of the *Open Courts Act* in 2013 which sought to make orders suppressing the dissemination of information on court proceedings, issued only where truly necessary. Unfortunately, the Vincent Review found that the *Open Courts Act* had not had the impact of significantly decreasing the amount issued. This trend has continued.

As of December 8 2018, Victorian courts had issued 443 suppression or non-publication orders over the course of the year. This is according

to Gina McWilliams, senior legal counsel at News Corp, who keeps the official tally. McWilliams reports that by contrast, New South Wales courts issued 185, South Australia issued 179, the Northern Territory only 69, Queensland issued 18, and Tasmania, Western Australia and the ACT all issued only one. Clearly Victorian Judges have a different view of “open justice” than the judges in the rest of the country. Further action needs to be taken to ensure the so-called *Open Courts Act* actually fulfils the intentions of Parliament.

In response to the attention this has drawn, the Andrews government has asked the Victorian Law Reform Commission to review contempt of court laws and enforcement of suppression orders. The Victorian government has also introduced amendments to the *Open Courts Act* to implement seven of the Vincent Review recommendations. These changes will mandate that courts provide reasons for making suppression orders, and clearly outline the basis, scope and duration, with a view to reducing the amount granted. They do not go far enough. A clearer message needs to go to the judiciary in Victoria.

Following the Pell trial, the Law Council of Australia has now called for a national review to work towards implementing uniform rules regarding suppression orders and to modernise the regime to account for the internet and social media.

The NSW Law Reform Commission is also looking at whether the current laws affecting suppression orders

and the reporting of issues affecting children strike the right balance. It is also looking at whether such laws are effective in the digital environment.

Certainly the issue of suppression orders in the state of Victoria is totally and utterly out of hand.

CONTEMPT

An interesting year.

The Victorian Director of Public Prosecutions sent some 100 letters to the media, asking why they should not be prosecuted for contempt over the Cardinal Pell conviction. While some international media and social media had reported Pell's conviction, Australian media was restrained by a suppression order, pending Pell's scheduled second trial. It is interesting to note that Mr Justice Vincent (retired) has actually queried whether the Pell suppression order was justified. He has, after 50 years of experience, far more faith in juries than the trial judge. He referred to the Walsh Street murder trial where the accused were found not guilty despite wide publicity.

Australian media reported that a high profile person had been convicted but could not name that person. In response to the DPP letter, some media responded in a conciliatory manner and have been advised that no contempt proceedings would be taken. The DPP has taken contempt proceedings against 36 media companies and individuals. This is unprecedented in the history of contempt actions in Australia.

Craig Dunlop of the *NT News* escaped a conviction for contempt after footage of a one-punch attack was posted to the *NT News* website, despite a court direction not to post it online. The Chief Justice was not convinced that Dunlop was involved in the uploading. Blogger Shane Dowling was not so lucky. He was convicted of contempt and sentenced to jail. Little is known about the conviction as the judgment is suppressed.

The *Australian* newspaper was fined \$155,000 after it pleaded guilty to *sub judice* contempt following the publication of an article on John Setka.

The Victorian Law Reform Commission is looking at contempt laws generally. In an era of social media, the reference is timely. It follows many previous reports by State Law Reform Commissions. The VLRC is due to report by December 31 2019.

(The author Peter Bartlett is an advisor to the VLRC on the reference.)

THE STIFLING OF #METOO?

For the past few years, the world has watched on as waves of women have come forward to level allegations against high profile men to say that they, too, were sexually harassed or assaulted. It has been a powerful movement that has shone a light on the prevalence of such abuses of power. It revealed the reluctance many women felt towards reporting their experiences to authorities and engaging the justice system.

Unfortunately however, in Australia, it can mean that both those that dare speak out and those that report it, can find themselves on the receiving end of a defamation law suit. This has been demonstrated through many recent high profile cases.

Last year then Leader of the NSW Labor Party Luke Foley threatened to sue the ABC for publishing ABC journalist Ashleigh Raper's account detailing an incident of sexual harassment. Ms Raper had not wanted to speak out about the event but an MP revealed the details under parliamentary privilege. Although Foley abandoned the defamation claim, it sent a message that those that publish accusations are at a high risk of legal action.

Similarly, Geoffrey Rush initiated the proceedings against the *Daily Telegraph* after the paper published allegations of inappropriate behaviour towards a young actress. The trial descended into a brutal he said-she said, with Rush's barrister accusing the actress of telling "disgusting lies". Rush has also argued he is entitled to special damages between \$4,834,749 and \$20,300,783 based on lost future income. The court's decision is highly anticipated.

The present concern is that the trend of those accused threatening defamation, combined with the difficulty the defendant faces in proving a truth defence for incidents that are usually without witnesses, and the lack of support those making accusations receive from the court, may silence our media from publishing the accounts of women. This is not in the public interest. Both the media, and victims, should be able to speak out without fear of facing an unwinnable defamation lawsuit when it comes to matters of sexual harassment or assault.

Peter Bartlett is a partner and Tess McGuire is a graduate with the law firm MinterEllison



SHARING ABHORRENT VIOLENT MATERIAL

The media industry is being caught up in the Coalition's haste to respond to digital platforms airing a live video stream by the Christchurch shooter. It has claimed that in choosing to punish and penalise social media's digital platforms for airing any future abhorrent videos, the hastily drafted legislation called the *Criminal Code*



A Muslim woman brings flowers to a makeshift memorial near Christchurch's Masjid Al Noor mosque. | Jason South Fairfax Photos

*Amendment (Sharing of Abhorrent Violent Material) Bill 2019*⁶⁶ has also swept up legitimate news reporting.

The operators of web sites that host “abhorrent violent material” online face steep fines and even possible prison sentences. The legislation was introduced to the Senate on its final day of sitting on April 3 2019 and was passed in the lower house on April 4 with bipartisan support. The aim was to have the law in place before the Parliament rose prior to a federal election being called.

The *Sydney Morning Herald* reported: “An individual could face jail if their social media service or online platform recklessly provides access to or hosts offending material and they do not ‘expeditiously’ put a stop to it. A

company could face a fine of up to 10 per cent of annual global turnover for the crime. A jury would determine whether a platform’s response time is reasonable.”⁶⁷

Law Council of Australia president Arthur Moses told ABC Radio: “The government has tripped over itself to try to legislate quickly before the election... If you are going to use this type of legislation to deal with the consequences of hate speech, which is really what this is where you have acts of violence being perpetrated on members of the community, there are two things that you need to be careful about.

“Number one: you need to ensure that in relation to hate speech, you need to give some mechanism under the legislation to direct social media companies to take the hate speech

off, so you don’t have anything to livestream. That’s the first issue. That hasn’t been thought through in this legislation. Secondly, and importantly, we are very concerned about this impacting on media freedom. Our media are the guardians when it comes to public interest,” Moses said.

“The difficulty with this legislation is that it doesn’t provide defences for individuals who may be whistleblowers or media companies who are publishing atrocities that they are trying to draw to the world’s attention,” Moses said.

Greens Senator Jordon Steele-John warned that the legislation could curtail the sharing of content on social media that shows human rights abuses. He told the ABC: “If we don’t have public interest safeguards, there is a definite



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possibility it could be used to take down videos of refugees being mistreated on Manus Island.”⁶⁸

Moses had earlier said⁶⁹ that any measure to combat weaponising of social media should be sensible and not make unreasonable demands of social media companies. “A machine cannot easily pick up the difference between a computer game and online live streaming. The algorithms may need time to be developed, assuming they can be,” he said. “Parliament making social media companies and their executives criminally liable for the live streaming of criminal content is a serious step which needs to be thought through carefully, including what defences will be available.

“Bad and ineffective legislation is enacted when it is a knee-jerk emotional reaction to a tragic event. The job of our parliamentarians is to approach their task in a mature and considered manner so effective and valid laws are enacted,” Moses said. “Parliamentarians should not rush this through, but rather use the time to consult so we get this right. The Law Council will carefully consider the draft legislation when it is provided with a copy and will work with the Parliament to ensure the proposed legislation is able to be complied with, proportionate, fit for purpose, and appropriately calibrated.”

ABC Radio also spoke to Fergus Hanson, the head of International Cyber Policy Centre at the Australian Strategic Policy Institute, who said: “There are issues around definitions so we don’t know, for example, how quickly companies have to remove the information. It’s very hard to reach lots of companies outside Australia’s jurisdiction. It sets up a new super censor in the eSafety Commissioner who has this right to issue notices to anyone.”⁷⁰

News Corporation told *The Sydney Morning Herald* that it was concerned the legislation “criminalises” reporting of news. “We support the intent of the legislation. Making the digital platforms liable for what they make available to

the world is overdue. However, this law goes beyond this. While we have worked with the Government to try to minimise the impact, this law risks criminalising news reporting and provides significant powers to the eSafety Commissioner to take down news content.”⁷¹

Labor has said it will refer the legislation to a parliamentary committee if Labor wins government at the federal election. “Shadow Attorney-General Mark Dreyfus said the legislation could harm security cooperation with the United States, encourage invasion of internet users’ privacy, undermine whistleblowing activity, and does not actually include the promised power to jail social media executives.”⁷²

Attorney-General Christian Porter’s office said the law had been designed carefully so as not to affect the ability of news media to report on events which are in the public interest within their existing licensing standards. “What Facebook did was so appalling that I don’t think Australians want to wait around for it to happen again while we commission an Australian Law Reform [Commission] report over 18 months.”⁷³

Independent MP Dr Kerryn Phelps told the House of Representatives during the debate on the Bill.⁷⁴ “A key concern with the bill as drafted is that whistleblowers may no longer be able to deploy social media to shine a light on atrocities committed around the world, because social media companies will be required to remove that content for fear of being charged with a crime. Social media can and has been used, including by media organisations and whistleblowers, to draw attention to violent atrocities occurring overseas or criminal conduct by a foreign government, such as injuring or killing its own citizens.

“The legislation may have a chilling effect on the potential for social media users and media organisations who use social media providers to perform this important public service function. Whistleblowers may unfortunately be prevented from being able to tell these important stories through such

providers. Similarly, this may influence the social media platforms and methods that media organisations are able to use to communicate important public interest pieces. If people on social media seek to shine a light on an atrocity or criminality, this is where the bill bites, as there is no defence for social media providers who choose not to remove violent content because the provider believes the material is in the public interest. So the bill could, in effect, lead to censorship of the media, which could undermine the very potential of the fourth estate to hold governments to account,” Phelps said.

“... We need to consider how to provide a public interest defence for those who may be captured by the proposed offences but honestly believe, on reasonable grounds, that they are acting in the public interest in not removing particular material from social media in order to expose criminal content that should be brought to the public attention. Consideration could be had to modelling such a public interest defence of similar defences that already exist in other legislation, such as Commonwealth whistleblowing legislation or the *Public Interest Disclosures Act 1994 New South Wales*, which provides protection to public officials who report public sector wrongdoing in particular circumstances.

“Any government or, indeed, any major party seeking to govern, should be mindful of passing rushed legislation without consulting stakeholders, including the affected industry, or considering the broader implications. It is much better to get this legislation right than to pass flawed laws that will lead to unintended consequences,” Phelps said.

Susan Benesch, founder of the Dangerous Speech Project at Harvard’s Berkman Klein Center for Internet and Society, told the *New York Times*, that the legislation “would likely encourage increased censorship and takedowns by companies. The platforms would likely move their offices out of countries that pass such laws, to protect them from prosecution.”⁷⁵

MEAA supports the principle that social media platforms are held accountable for content but MEAA chief executive Paul Murphy said there were concerns that legislation is being rushed in such a complex area without proper consideration to ensure it doesn’t impinge on media freedom.⁷⁶ MEAA believes the legislation should be sent to a Parliamentary Committee to allow proper consultation and consideration.

“BAD AND INEFFECTIVE LEGISLATION IS ENACTED WHEN IT IS A KNEE-JERK EMOTIONAL REACTION TO A TRAGIC EVENT.”

ARTHUR MOSES, PRESIDENT, LAW COUNCIL OF AUSTRALIA

George Pell
Jason South
Fairfax Photos



SUPPRESSION ORDERS

The widespread use and misuse of suppression orders by the courts has been a major press freedom issue for many years and has been mentioned in several MEAA annual press freedom reports.⁷⁷ But the suppression order surrounding the trials of George Pell has sparked unprecedented discussion.

The Pell trials' suppression order was issued on Monday, June 25 2018 by the Melbourne County Court Chief Judge Peter Kidd in the matter of Director of Public Prosecutions v George Pell. "The prosecution had applied for the suppression order to prevent 'a real and substantial risk of prejudice to the proper administration of justice' because Pell originally was to face a second trial on separate charges."⁷⁸

It is important to note that no media organisations challenged the suppression order.

Just three days earlier, on Friday June

22 2018, the Victorian Director of Public Prosecutions Kerri Judd QC writing an opinion piece in the *Herald Sun* said:

As Director of Public Prosecutions, it is my responsibility to ensure that the prosecution of serious criminal offences is fair. I must also ensure prosecutions proceed in a manner that will not put the safety of any person at risk or cause undue distress or embarrassment to children, victims of sexual offences and victims of family violence.

Our justice system is open and transparent. Anyone can walk into our courts and watch justice at work. The media reports extensively on criminal justice hearings and the courts are doing more to communicate the work they do.

Sometimes the unrestricted reporting of a case by the media will compromise the right to a fair trial, lead to national or international security concerns or lead to the inappropriate identification or location of vulnerable members of our society.

In these situations it is my duty to either apply for or support the making of a suppression order.

A suppression order will often prevent the media reporting certain aspects of a prosecution such as the name of a witness or the methodology used by police to detect crime. It will sometimes delay the media reporting on a case so as to ensure a jury hearing a separate future trial does not receive information that could unfairly impact upon their deliberations. However, in almost all of these cases, any suppression order obtained will not put a blanket prohibition on the media reporting the proceeding...

Orders are only made by judges when they are necessary and appropriate, and they only remain in force for a specified period.

Victoria has led the way in maintaining and distributing a database of suppression orders through our courts to all media outlets.

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I will continue to apply for suppression orders as they play an important role in the administration of criminal justice. I will continue to balance requirements for open justice, a fair trial, protecting the community from danger, enabling the police to properly investigate and detect crime and the protection of vulnerable victims and witnesses.⁷⁹

On September 20 2018, a five-week trial was declared a mistrial after the jury failed to reach a verdict. A retrial began on November 7 2018 and resulted in a guilty verdict on December 11 2018 – as with the trial, this verdict remained subject to the suppression order and could not be reported.

BREACHING THE ORDER

However, the verdict result subsequently leaked. The Guardian said: “Some international media outlets – who were unlikely to have been in court – published or broadcast the news. These international outlets included the Daily Beast, the *Washington Post* and several Catholic websites.”⁸⁰

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

The *Australian* said: “More than 140 international news reports about Cardinal George Pell’s guilty verdict were published within 24 hours of his conviction last December, despite strict suppression orders.”⁸¹

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

For instance, the *Washington Post* said this on December 12 2018:

“Cardinal George Pell has been found guilty in Australia of charges related to sexual abuse, according to two people familiar with the case and other media reports, becoming the highest-ranking Vatican official to face such a conviction.”⁸²

The following day the *Washington Post* discussed⁸³ media organisations that had breached and observed the suppression order, saying that the order “has proved futile against the internet” before explaining its own actions:

An Australian court’s gag order and the forces of the Information Age collided on Thursday in a largely futile effort to keep news about the conviction of a high-ranking Vatican official from reaching readers. While some U.S. and British news organizations, including the New York Times, did not report on the conviction of Australian Cardinal George Pell on the judge’s order, social media and other news outlets defied it.

The Times’ deputy general counsel, David McCraw, said the newspaper is abiding by the court’s order in Australia ‘because of the presence of our bureau there. It is deeply disappointing that we are unable to present this important story to our readers in Australia and elsewhere... Press coverage of judicial proceedings is a fundamental safeguard of justice and fairness. A free society is never well served by a silenced press.’

The Associated Press and Reuters news services – two of the largest news organizations in the world – also did not report the news about Pell. Both services have bureaus in Australia that could face potential liability.

An AP spokeswoman, Lauren Easton, issued a brief statement reading, ‘AP is working to report the story while complying with the gag order.’ She declined further comment.

A Reuters spokeswoman, Heather Carpenter, also issued a statement but declined to comment further. ‘Reuters is a global news organization with nearly 200 locations around the world – including in Australia – and is subject to the laws of the countries in which we operate,’ she said.

The Washington Post reported Pell’s conviction on Wednesday. But its story was removed from Apple News, the news aggregation app owned by Apple Inc. that is available in the United Kingdom, U.S. and Australia.

NPR, the Daily Beast and the National Catholic Reporter, among others, also reported Pell’s conviction.

The suppression order led to bizarrely

curtailed reports in the Australian media, but did little to stop the news from emerging on social media.

A story in the Sydney Morning Herald published Wednesday, for example, didn’t refer to the name, position or even gender of the person involved. One... story began, ‘A very high-profile figure was convicted on Tuesday of a serious crime, but we are unable to report their identity due to a suppression order. The person, whose case has attracted significant media attention, was convicted on the second attempt, after the jury in an earlier trial was unable to reach a verdict. They will be remanded when they return to court in February for sentencing.’

Courts in the Australian state of Victoria – where Pell’s trial took place – issued nearly 1600 suppression orders between 2014 and 2016 after Victoria enacted a law protecting court proceedings in 2013, according to a review of the practice by a retired Australian judge, Frank Vincent. Victoria accounted for about half of all the orders issued in Australia, according to the [Sydney] Morning Herald.

The orders restrict what journalists can report about certain cases, and when they can report it.

But the gag rule has proved futile against the Internet. By Wednesday afternoon, Pell and the charges against him were the subject of thousands of tweets and shared posts on Facebook. The posts included links to websites where the news was available.

‘The social-media age has really made this approach untenable in my view, especially in cases like this where there is genuine international public interest in the verdict and conviction involving a prominent figure in the hierarchy of one of the world’s most powerful institutions,’ said Julie Posetti, an Australian-born journalist and academic who is a senior research fellow at the Reuters Institute for the Study of Journalism in Great Britain.

Since a gag order suppresses professional news reporting but not social-media sharing, it may have the unintended consequence of elevating ‘unverified rumour and gossip’ over actual journalism, she said.

In a statement, Washington Post executive editor Martin Baron said the order would not deter The Post’s reporting. ‘This story is a matter of major news significance

THESE NEWS STORIES COULD BE FOUND WITHIN SECONDS UTILISING SEARCH ENGINES



Chief Judge of the
County Court Peter Kidd
Joe Armao | Fairfax Photos

involving an individual of global prominence,' Baron said. 'A fundamental principle of The Washington Post is to report the news truthfully, which we did. While we always consider guidelines given by courts and governments, we must ultimately use our judgment and exercise our right to publish such consequential news. Freedom of the press in the world will cease to exist if a judge in one country is allowed to bar publication of information anywhere in the world.'

Baron was formerly editor of the Boston Globe and oversaw its coverage of sexual abuse allegations against priests in the Boston archdiocese in 2002. The stories won a Pulitzer Prize and were the basis for the movie Spotlight, which won the Oscar for best picture in 2016.⁸⁴

The *New York Times* also weighed in on the use of a suppression order in the Pell trials: “The slow-moving case — charges were filed in June — has been a test of both Australia’s justice system and the Vatican’s efforts to hold clerics accountable after decades of abuse scandals. It is occurring in a country where defamation law favours plaintiffs, where criminal law protects defendants more than it does in many other countries, and where a number

of legal standards restrict reporters’ ability to publish information related to criminal cases.”⁸⁵

Lawyer Justin Quill, whose law firm Macpherson Kelley acts for News Corporation publications, was reported in *The Australian* as saying: “The problem is, with this unusual case that attracts such international notoriety, the international media organisations published. That meant individuals in Australia, on Facebook and Twitter and other social media, were talking about it and the only people who were not talking about it were the mainstream media in Australia. This case is the perfect storm to demonstrate the law hasn’t kept up with developments in social media.”⁸⁶

The *Australian* also reported: “Peter Bartlett, who represents *The Age* and several international media outlets such as the BBC and CNN, which did not report on the conviction for Australian audiences... said suppression orders had become common in Victoria: “Suppression orders are simply out of control. That said, it’s understandable why the Pell suppression order was made, because clearly reporting of the conviction

in the first trial would prejudice the second trial if it went ahead.”⁸⁷

Interestingly, the breaching of the suppression order with news of the guilty verdict provoked at least one significant response. On December 13 — the same day as overseas media was reporting the outcome — the Vatican, now presumably aware of the verdict, announced that Pope Francis had removed Pell from his inner circle of advisers — the Council of Cardinals. “Two other council members — the newly retired archbishop Cardinal Laurent Monsengwo Pasinya of Kinshasa, 79, and Chile’s Francisco Errázuriz Ossa, 85, who has been accused of concealing abuse while archbishop of Santiago — were also removed from the group of nine on the council, which is known as C-9.”⁸⁸

Lawyer Justin Quill commented again on the issue of international reporting of the verdict:

When Pell was found guilty the mainstream media wasn’t permitted to tell the Australian public what had happened, while the international media were openly reporting it on the internet where it could be downloaded by Australians.

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Then, private Australian citizens took to social media — Facebook and Twitter in particular — to talk about the case and spread the very news that the mainstream media weren't allowed to — and didn't — talk about.

The Herald Sun waited until Tuesday [after the lifting of the suppression order on February 26 2019] to report on this case. International media and some citizens did not.

This is not a criticism of the judge in this case but rather a demonstration that the law has not kept up to date with what technology allows people to do.

The laws of contempt and suppression orders have been around for decades. When the front page of the newspaper was the only real source of news, the law made sense. But we live in a different world and this case demonstrates that.⁸⁹

CONTEMPT

In February 2019, up to 100 individuals and media organisations were sent a letter over breaching the Pell trials' suppression order. "Victoria's director of public prosecutions, Kerri Judd QC, has written to as many as 100 individual publishers, editors, broadcasters, reporters and subeditors at the media giants News Corp Australia, Nine Entertainment, the ABC, Crikey and several smaller publications, accusing them of breaching a nationwide suppression order imposed during the case."⁹⁰

Judd asked some recipients of the letter to reply by 15 February as to why they should not be charged with contempt of court. All the publications which referenced the Pell case, even obliquely, were targeted because there was blanket suppression on any information about the case.

Some of the alleged breaches were considered to be more flagrant than others. As many as 30 people at the Herald Sun and the Age received letters — even those who were not involved or who were not working on the day.

When the judge was made aware of the breaches he told a closed court they were of a serious nature and certain editors faced imprisonment... [see more detail below]⁹¹

The outlets which published or broadcast pieces in relation to the trial included the Herald Sun, the Age, Macquarie Media, Nine News in Melbourne, an ABC radio program outside Melbourne and News Corp's The Australian. Private Media's Crikey website published a wrap of how the newspapers covered the Pell verdict,



with snapshots of the front pages. The small website alone received five letters from the DPP.

The Herald Sun published the most dramatic piece: a black front page with the word CENSORED in large white letters. "The world is reading a very important story that is relevant to Victorians," the page one editorial said. "The Herald Sun is prevented from publishing details of this very significant news. But trust us, it's a story you deserve to read."

Importantly, a key cohort of court-reporting journalists did not receive "please explain" letters from DPP Judd:

A group of eight court reporters who attended both Pell trials every day, who included journalists from Guardian Australia and ABC News, did not breach the suppression order.⁹²

Reacting to the Judd letter regarding the breaching of the Pell trials' suppression order, *The Age* reported: "In a response to Ms Judd, lawyer Justin Quill, who is representing 53 media clients including those at *The Age*, writes that the 'virtually identical' letters represent a scatter-gun approach and threatening so many journalists without specifics is 'inappropriate and disturbing'.

"Mr Quill writes that the allegations are wholly without foundation and notes that many of those who received letters had no involvement in the publication of the articles in question, and were greatly distressed. 'It is difficult to understand your letters as anything other than a concerted and strategic attack on the media, rather than an upholding of the law'.⁹³

The Age later reported: "The day after



George Pell's lawyer Robert Richter leaves the County Court Jason South, Fairfax Photos

The Age and other media published their stories, a court hearing was held, without notice to the media, between Judge Kidd, Ms Judd and Pell's defence lawyer Robert Richter, QC. The transcript was subsequently made available to the media.⁹⁴

County Court Chief Judge Kidd's response to the breach of the order was swift. The Guardian said:

When the judge was made aware of the breaches he told a closed court they were of a serious nature and certain editors faced imprisonment.

The local online articles were removed when editors read Kidd's angry comments in a transcript sent to media outlets. Nine's The Australian Financial Review, which published Kidd's angry comments, also received two letters from the DPP.

Kidd told the court the publications had potentially breached the law, brought improper pressure upon the court and had committed a "potentially egregious and flagrant" contempt of court.

"A number of very important people in the media are facing, if found guilty, the prospect of imprisonment and indeed substantial imprisonment, and it may well be that many significant members of the media community are in that potential position," Kidd said on 13 December.

Rival news organisations have been working together to respond to the charges. Lawyers for Nine's the Age and News Corp's the Herald Sun have prepared a joint response to the DPP, a source said.

Addressing Pell's defence barrister, Robert Richter QC, Kidd said the media were "operating on a misinformed basis that it's OK to print everything and anything apart from the name of your client".

Discussing the Herald Sun report, Richter said although Pell's name was not mentioned, the reference to "a very prominent Australian figure" meant the "connection cannot fail to be made".

"I am told it was on Wikipedia last night – I haven't seen that but it was apparently removed this morning – and so it really is a matter for showing cause if there is one," Richter said.

Kidd said he believed some of the articles were designed to put pressure on the court, a tactic he labelled "breathhtaking".

The Age reported after the suppression order was lifted on Tuesday that its lawyer Justin Quill was representing 53 media clients including those at The Age.

Quill wrote to the DPP saying that the "virtually identical" letters had distressed the staff, represented a scattergun approach and were "inappropriate and disturbing".

"It is difficult to understand your letters as anything other than a concerted and strategic attack on the media, rather than an upholding of the law," Quill wrote.

A spokeswoman for Nine Entertainment said Quill was representing all the Nine outlets, News Corp and smaller websites like Mamamia. "Like a large number of media outlets, we received these letters," she said. "We deny all the allegations made by the DPP."

The Melbourne broadcaster Jon Faine, who has not been sent a letter, mentioned the suppression order on his ABC program

this month without referring to the specifics of the case.

Faine said when suppression orders were "properly used" any breaches must be prosecuted. "This week, a large number – I am told 70 – media outlets and journalists across Australia and some overseas – including sadly one ABC program – have been asked to show cause why they ought not be proceeded against for a clear breach of a suppression order from one of our courts.

"Editors and publishers as well as journalists could well go to jail. This mass prosecution could lead to a test of the powers of the courts in the digital age, to control the flow of information that can interfere with the administration of justice.

"Judge-alone trials – instead of juries – in publicity sensitive matters are part of the answer and must be adopted urgently."⁹⁵

On March 26 2019, a total of 36 journalists, editors and media organisations were named as having been summoned to appear in the Supreme Court of Victoria on April 15 over alleged breaches of the suppression order. The Director of Public Prosecutions called for "orders for imprisonment". No overseas media organisations were summoned.⁹⁶ There was also no action taken against global search engines or social media platforms over their publication of information in breach of the order.

The Guardian reported on the April 15 hearing: "Prosecutors agreed to a more comprehensive statement of claim, which will be provided to the court by 20 May. The defence was ordered to file its response to that statement by 21 June. The case will next return to the court on 26 June."⁹⁷

FIXING THE SUPPRESSION PROBLEM

It is important that MEAA's position on the press freedom implications regarding the use of suppression orders is understood.

MEAA accepts the use of non-publication/suppression orders in situations where they are properly formatted and where they are demonstrably required for the administration of justice. However, as MEAA has stated before in recent press freedom reports,⁹⁸ the courts have been responsible for misusing suppression orders.

Indeed, the former Victorian Supreme Court judge Frank Vincent's review of



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Victoria's *Open Courts Act 2013*⁹⁹ was scathing in its findings about the use of suppression orders. It found particular fault among the courts themselves, noting their failure to acknowledge and adapt to the impact of technological change — change that in reality makes some suppression orders not fit for purpose.

More attention needs to be given to the education of judges with respect to their obligation not only to comply with the provisions of the Open Courts Act but with its objectives and, of course, to the validity of the foundational propositions upon which orders are regularly made.

In common with other institutions that have been developed over a long period to meet the varying needs of the community, increasingly rapid changes in the social and technological environments within which it must function have presented a wide range of issues for the legal system.

Some of the traditionally-accepted propositions upon which its operating principles and rules have evolved have not withstood the scrutiny and investigative analyses of more recent times. Adaptation of the system to accommodate these new challenges has been slow and patchy. The courts, in particular, can be seen to have experienced difficulty in responding to the substantial changes that are required to address them.

This is evident in the manner in which the issues posed by applications for suppression orders and related areas have been approached. The making of some suppression orders has been based essentially upon a number of traditionally accepted and largely-unquestioned propositions of dubious validity inherited through the common law concept of binding precedent.¹⁰⁰

The Vincent review examined the data relating to the issuing of suppression orders in Victoria. The review found that the courts were clearly making orders improperly and against the spirit of the principle of open justice intended in the *Open Courts Act*:

*The data collected in the course of the Review revealed that, between the period 1 January 2014 and 31 December 2016, Victorian courts and tribunals made 1594 orders with the effect of suppressing information under various sources of power, with 1279 orders made under the *Open Courts Act*.*

There does not appear to be a significant overall decrease in the number of suppression orders made since the Act's passage.

In 12% of suppression orders made under the Act, and in clear breach of a basic and simple provision of the Act, there was no ground specified at all, general or specific.

In 22% of suppression orders under the Act, "blanket bans" were imposed that either failed to identify what was to be suppressed or more commonly stated that the order covered the "whole or any part of the proceeding", although there appears to be at least some justification for this result.

While there was a problem with the duration period for orders it was not as bad as feared. The review found that most appropriately stated their period of duration; only 7 percent of orders were not sufficiently specific as to their date of expiry and "there appears to be no substance to the complaint that orders were too frequently being made for a period of five years".

The complaint that there was insufficient notice of orders was difficult to establish:

It was not possible to establish the degree to which courts and tribunals met their obligation to give interested parties such as media organisations notice of applications for suppression orders.¹⁰¹

The review came down harshly on the courts and judges' responsibility for the situation:

Viewed as a whole, these levels of both formal and substantive non-compliance are both surprising and unacceptable.

Although the absence of grounds and specific subject matter does not of itself indicate that orders should not have been made or that their terms were inappropriate, they raise doubts, which were reinforced in six consultations conducted with stakeholders and the examination of individual transcripts and audio recordings conducted in the review, as to the level of awareness of a number of members of the judiciary of their statutory responsibilities and their appreciation of the fundamental importance of transparency in our legal processes.¹⁰²

It's worth remembering two comments made by Victorian judges about the

media. In a speech delivered to the Melbourne Club on November 13 2009 (prior to the *Open Courts Act*), former Victorian Supreme Court Justice Betty King boasted that she was "probably responsible for the majority of suppression orders imposed in Victoria in the last three years"¹⁰³ and that for every worthy media report there were equally reports that were "inaccurate, salacious, mischievous, morally indefensible and just plain prurient".¹⁰⁴

In October 2015, Victorian Chief Justice Marilyn Warren¹⁰⁵ (who left office in October 2017) wrote about the media's challenging of suppression orders:

It needs to be remembered that the media has its own interests here: it wants to attract readers, viewers and online participants. Crime sells.

MEAA believes these remarks traduce the media to purely commercial entities while failing to acknowledge the public's right to know. The narrow view expressed by the former Chief Justice may go some way to explain some of the difficulties the media confronts with the suppression orders issued by Victorian courts.

The Vincent review suggested both the judiciary and the media had played a part in creating the suppression order mess:

There can be little doubt that the approach of the judiciary to the restriction of dissemination of information has been heavily influenced by a justifiable concern about the frequency with which decisions and information concerning cases and individuals involved in them have been inaccurately, selectively and unfairly presented in the media.

The existence of some tension between the judiciary and the media is inevitable as they endeavour to perform their respective roles. No institution or group of human beings is likely to be entirely comfortable when their operations are subjected to external criticism or adverse comment.

However, and providing that it is accurately and fairly presented, exposure of what is happening is essential to ensuring accountability.¹⁰⁶

As strongly recommended by MEAA in its submission to the review,¹⁰⁷ Vincent said there is a need to open a dialogue

SUPPRESSION ORDERS ARE 19TH CENTURY TOOLS INCAPABLE OF CONTAINING 21ST CENTURY PUBLISHING



Attorney-General Christian Porter
Dominic Lorrimer, Fairfax Photos

between Victoria’s courts and the media to both “clear the air” and develop workable solutions to the problem:

*The review has not been concerned with attributing or distributing levels of responsibility for this mutual distrust but with its possible impact upon the operation of our legal system and what is happening in the courts. It is for this reason that the recommendation is made that the Department of Justice and Regulation establish a mechanism to facilitate discussion between the courts, legal practitioners and the media of their differing perspectives and legitimate expectations.*¹⁰⁸

The Pell trials and the subsequent breaching of suppression orders have clearly demonstrated the problems with Australia’s suppression order regime.

MEAA believes suppression orders are 19th century tools responding to the age of the printing press but now are proving incapable of meeting the challenge of containing 21st century borderless digital publishing platforms such as Twitter, Facebook, Instagram *et al* and internet search engines such as Google, as well as the global access to news via the web sites of myriad

overseas media outlets. The means of immediate global news distribution is impossible for a single court in an Australian city to effectively contain using an antiquated and ill-suited method like a judge’s non-publication order. The issues surrounding the Pell trial have signalled that it is high time the whole regime of non-publication orders be examined in a national context and why a 19th century judicial relic is wholly unsuited to today’s world.

In discussing the Australia-wide issues arising from the Pell trials’ suppression order, the Law Council of Australia acknowledged that, while Australian court reporting is of an excellent standard, it is virtually impossible to quarantine jurors from instantaneous social media postings or second-hand reporting overseas that is quickly accessible via a search engine.

The Law Council has called for national uniformity of suppression orders and an examination of whether such laws need to be reviewed in the digital era. Council president Arthur Moses said he will ask Attorney-General Christian Porter to refer the matter to the Australian Law Reform Commission (ALRC) for an inquiry.

At its core, this issue involves striking the right balance between open justice including the public interest in court reporting, and the right of the individual to a fair trial. In an age of digital communication and globalisation, uniformity of suppression orders across Australia should be considered and we need to recalibrate the balance. This is important in order to ensure that suppression laws are fit for purpose and promote open justice.

Suppression orders should operate in a consistent manner across Australian jurisdictions — which does not currently happen — to ensure that the right balance is achieved between open justice and the need for suppression. Media reporting of cases that come before our courts is central to open justice — it means that not only is justice done, it is also seen to be done. Open justice is one of the fundamental attributes of a fair trial and this means wherever possible, media should be able to report on matters that come before our courts.

While suppression orders and closed hearings are appropriate in particular cases, such as family court hearings and when hearing evidence from child witnesses, or where an accused may

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otherwise be unable to obtain a fair hearing, their need should always be balanced with the broader public interest in open justice.

The internet has no borders, so something that is suppressed in Australia can be reported in other countries by journalists who have not been present in the court room. Our journalists are amongst the best trained and respected in the world and informed reporting of our legal system maintains public confidence in the judiciary and the courts.¹⁰⁹

MEAA's condemnation of the excessive use of suppression orders was made clear in its a detailed submission to the Vincent review.¹¹⁰ MEAA welcomed that the review took on board so many of MEAA's recommendations.

The Vincent review recommended:

If adopted, the broad features of the suggested framework governing the making of orders would result in a situation where:

a. The power to make orders would be restricted to circumstances where there were no existing statutory restrictions on disclosure of the information involved. (This should assist in reducing

the number of unnecessary orders and direct attention to what may be required in the circumstances.)

b. The making of orders would be approached in the understanding that the principle of open justice is fundamental to our legal system through the insertion of a preamble to the Open Courts Act and the recognition that orders constitute exceptions to open justice, where necessary in the circumstances of the case. (This is intended to address the current treatment of the principle of open justice as nothing more than a statutory presumption in favour of transparency.)

c. All orders, whether by application of a party or on the court's own motion, would be treated as interim for a period of five days after which, in the absence of an application for it to be set aside or varied, it would operate according to its terms. (This recommendation is directed to ensuring that, as far as is practicable and consistent with the purposes of the order, an opportunity must be afforded to those concerned to object to its making or terms.)

d. The court or tribunal would be required in the absence of good reason to the contrary to transmit

all orders for inclusion in a central, publicly accessible register. (This, it is considered, would be far more satisfactory an arrangement than the present one under which each body separately informs 7 media organisations or individuals on an email list of notice of an application for suppression or the contents of an order.)

e. A judge making an order would be required to address each ground on which it is made and prepare a statement of reasons for doing so, including the justification for its terms and duration. As far as practicable in the circumstances, this would be publicly available. (This is of special importance where the order is made on a general 'interests of justice' ground but it is principally directed to ensuring that there is both formal and substantive compliance with the statutory obligations and the principle of open justice.)

f. Interested parties (such as media representatives) would be able to appear to object to the making of an order or its terms. The judge would be able to secure the assistance of the Public Interest Monitor as contradictor to assist in this process. (The objective

of this recommendation is to ensure that the necessity for an order is properly considered and that its terms are clear, an important consideration in the event of a possible breach.)

g. Entry of the order on the register, supported by the reasons for its making, would be regarded as sufficient notice to any who may wish to disseminate the information that the order had been made. (A central register would also be of value in the overall monitoring of the use of suppression orders and in their enforcement.)

h. Orders intended to expire at the completion of a proceeding would continue in effect until the period allowed for appeal had also passed. In the event that an appeal had been instituted the order would remain in force until revoked or varied by the appellate court or on the completion of that proceeding. (This recommendation is made to simplify the process by avoiding the necessity for applications for continuance of orders in these situations.) **i**

i. The distinction between proceeding and broad suppression orders would be removed. (What is important is that the purpose, terms and duration of an order are clearly identified, not whether the order relates to a single proceeding. Removal of the distinction would produce a simpler structure and avoid the complexities and necessity for several orders to be made that can occur under the current provisions.)

j. Enforcement of orders would be more realistic. (The reduction in the overall number of orders, the clarification of their terms and duration and the establishment of a single central register to which the media and others who wish to disclose protected information would be expected to have recourse, should substantially improve the position. At present, the Director of Public Prosecutions encounters difficulty at all of these levels.)

k. The Public Interest Monitor should be required to report annually on the operation of the system. (This should involve any issues identified by the Monitor when acting as contradictor and more generally from the data obtained from the central register.)¹¹¹

MEAA supports the Vincent report's recommendations.

The Act is now subject to two tranches of amendments¹¹² implementing most of the Vincent review's recommendations. Of the first tranche: "The Bill will require that suppression and closed court orders only be used when necessary, such as where publication of information would be unfair, or risk harming victims or other parties. Under

the proposed amendments, courts will have to give reasons for making suppression orders, outlining the basis on which it is made, its duration, and the scope of information it covers."

The matter of resourcing the Public Interest Monitor to act as an intermediary and contradictor in the issuing suppression orders is still being considered. The Vincent review said the Monitor needed additional funding and resources necessary to perform the following functions:

1. The Monitor should be empowered, if requested by the judge to appear as contradictor, to make submissions and ask questions when the judge is determining whether orders should be made under the Open Courts Act, on what grounds and the framing of their scope.
2. Orders, once made, can be referred to the Monitor for consideration by interested parties to enable the independent consideration of the need, terms and duration of the order while maintaining the security of the underlying information. The Monitor's decision whether or not to pursue the review of an order is final.
3. If it is considered necessary in the public interest to intervene, the Monitor should be able to seek the review of the order by the judge or prosecute an appeal.
4. The Monitor would report annually to the Attorney General on the operation of the Open Courts Act.¹¹³

The Andrews Government has also asked the Victorian Law Reform Commission to review contempt of court laws and enforcement of suppression orders. The Commission is due to report to government on December 31 2019.¹¹⁴

MEAA believes that the Pell case and the Vincent review have sparked a conversation that demonstrates the urgent need to examine the use and misuse of suppression and non-publication orders in Australia.

A review of the different orders regimes across the country is required with the aim of creating a uniform national approach.

On February 28 2019 the NSW Law Reform Commission announced an "open justice review".¹¹⁵ The review would on the operation of legislative prohibitions on the disclosure or publication of NSW court and tribunal information; NSW court suppression and non-publication orders, and tribunal orders restricting disclosure of

information, and access to information in NSW courts and tribunals.

In particular, the Commission is to consider:

- a. Any NSW legislation that affects access to, and disclosure and publication of, court and tribunal information, including:
 - The Court Suppression and Non-Publication Orders Act 2010 (NSW);
 - The Court Information Act 2010 (NSW); and
 - The Children (Criminal Proceedings) Act 1987.
- b. Whether the current arrangements strike the right balance between the proper administration of justice, the rights of victims and witnesses, privacy, confidentiality, public safety, the right to a fair trial, national security, commercial/business interests, and the public interest in open justice.
- c. The effectiveness of current enforcement provisions in achieving the right balance, including appeal rights.
- d. The appropriateness of legislative provisions prohibiting the identification of children and young people involved in civil and criminal proceedings, including prohibitions on the identification of adults convicted of offences committed as children and on the identification of deceased children associated with criminal proceedings.
- e. Whether, and to what extent, suppression and non-publication orders can remain effective in the digital environment, and whether there are any appropriate alternatives.
- f. The impact of any information access regime on the operation of NSW courts and tribunals.
- g. Whether, and to what extent, technology can be used to facilitate access to court and tribunal information.
- h. The findings of the Royal Commission into Institutional Responses to Child Sexual Abuse regarding the public interest in exposing child sexual abuse offending.
- i. Comparable legal and practical arrangements elsewhere in Australia and overseas.
- j. Any other relevant matters.

A uniform suppression order regime must uphold the principle of open justice; apply sensible, practical and limited-time orders in situations where they are justifiably required; allow a properly resourced Public Interest Monitor to play the role of contradictor rather than always relying on the media to fund challenges; and to create an accessible register of orders so that all interested parties can be kept informed.

The Vincent review's recommendations show the way.



Former Victorian Supreme Court justice Frank Vincent
Joe Armao | Fairfax Photos

SUPPRESS OR NOT?

The day that Victorian County Court Chief Judge Peter Kidd sentenced Cardinal George Pell's to a maximum of six years' jail over Pell's sexual abuse of two choirboys, the University of Melbourne's Centre for Advancing Journalism organised a public panel discussion that was subsequently turned into a podcast.¹¹⁶

The Centre brought together "several experts with wide-ranging experiences of suppression orders to discuss how they affect the public's right to know and whether the laws should be reformed".

The panellists were associate professor Jason Bosland, co-director of the Centre for Media and Communications Law at Melbourne Law School; Melissa Davey, Melbourne bureau chief for The Guardian, who sat through every day of the George Pell trial; Lucie Morris-Marr, who also sat through the entire Pell proceedings covering the trial for the New Daily; and former Supreme Court of Victoria Justice Frank Vincent AO QC who conducted a review of court suppression orders and Victoria's *Open Courts Act 2015*. The forum was chaired by Centre's Dr Denis Muller.

Here are some edited excerpts from the discussion, examining some of the issues surrounding the use of suppression orders.

Vincent: "The *Open Courts Act* was designed to try and reduce the number of orders but it didn't work... There has been a culture in Victoria of the making of orders for a wide variety of reasons and without anything like adequate examination of the necessity for them, nor emphasis upon the fact that they

must always be regarded as exceptional to the concept of open justice. That was lost... lost for a number of reasons. One of them was, of course, the toxic relationship between the media and the courts. There was no doubt that the courts were very sensitive to the criticisms which were being made of the work that was being done and, on occasion, to the unfairness of the representations that were made to that work. I think that led to an unnecessary making of orders. It doesn't matter if you are a judge or in any other occupation, you don't really like being criticised very much and still less do you like being criticised if you think it is unfair. But there always had been a wider use of suppression orders in this state than in others — it was part of the culture."

Davey: "There is undoubtedly a need for a conversation about the overuse of suppression orders... There is also a really useful conversation to be had about how effective can suppression orders be in this era of social media. But it doesn't stand to reason that that means a suppression order was not beneficial and the right thing to do in this particular case. The suppression order in this case was not unprecedented, it was not special treatment; hundreds of these suppression orders are issued every year in Victoria. The key fact is in this case is that Pell was to face another trial. Think about the coverage over the past couple of weeks and just how much you've seen of Pell. Would it be possible to empanel an unbiased jury in the face of all of that coverage?"

Vincent: "My answer to that question is, quite possibly, yes. Because I have seen trials where the prejudice against the individual was absolutely enormous

and yet the jury acquitted the accused... If we, in fact, carry that argument too far we find there are certain people who can never be tried... There are many situations in which this kind of argument is raised. The reason that I have come in so forcefully against it is that works on the assumption that you cannot trust people to act impartially as jurors if they possess that kind of information. I just don't accept that and I don't accept that after 50 years of working with juries."

Morris-Marr: "I would say that what may be slightly different about this [Pell] case now is the social media access and everything that means you are getting it on your phone; those jurors might see it on Twitter. It is everywhere. It is not just on the front of the *Herald Sun* and *The Age*. They are surrounded by it."

Bosland: "The concern here was about the prejudice that might affect potentially the second trial... When we look at the law around staying a criminal proceeding on the basis of prejudicial media publicity, the bar is set extremely high. When we are looking at suppression orders, the bar appears to be substantially lower. Now you can't say: well, in one context the person will be able to receive a fair trial — the stay context. But in the other context: oh no, we have to grant the suppression order because they won't be able to receive a fair trial. Either they can or they can't. Now, if... in the situation where courts are making orders in order to protect the jury as a sort of... a convenience almost to ensure the fair trial can be obtained then that is not necessary. The test is necessity. Is it necessary or is it not necessary? You can't have a different application of that question in the two different contexts."

Davey: "Both defence and prosecution wanted the suppression order. It was by no means something that only Pell and his lawyers wanted..."

Vincent: "That is one of the defects of the way in which our system has operated in Victoria. If the crown and the defence came along and asked for suppression orders then they were almost always granted without any significant analysis by the court of the open justice principle. They could often have their own quite distinct reasons for wanting those orders made and they weren't always reasons that would be acceptable to the public."

Davey: "...The media are able to challenge suppression orders. They aren't issued and then you have no recourse. Not one media organisation

sent a lawyer to contest that [Pell trial] suppression order in Victoria. It is a bit rich to get up and say suppression orders are terrible, what a blight, when you don't even send a media lawyer to contest it."

Bosland: "The media I spoke to said that if there's going to be a case where a suppression order should be granted, this is the one... I find it remarkable that the media then, on the day of the verdict, were jumping up and down saying we've been censored. They had been censored, but they had every opportunity to go along and challenge that order."

On the letters sent by the Victorian Director of Public Prosecutions to about 100 journalists and editors asking them to show cause why they should not be proceeded against for contempt of court for breaches of the suppression order when the Pell guilty verdict was, as Muller said "hinted at", when it was brought down on December 11 2018 the suppression order was still in place:

Vincent: "...If you have orders, you can reasonably anticipate they will be complied with. If you have a system under which, once the order is made and ignored [and] there is no sanction, no consequence, well... what's the point? The DPP obviously has acted on that basis."

Morris-Marr: "Laws were broken. Contempt of court and breaching a suppression order's a serious crime and can get you five years in jail.... Fair enough. I think that is quite right."

Bosland: "I think it is overkill in some respects. My understanding is that letters were sent out to people... that were not directly involved in any breach of any order. There are four potential charges where people have to explain why they shouldn't be charged with those offences. One was sub judice contempt. Another was scandalising the court. Now I can't see for the life of me how it could be a scandalising contempt... where you publish something where you bring the authority of the court into disrepute... I can't see how anything, from what I have read, that any of the publications have done that... The other is the breach of the order and I have no doubt that some publications did that... that is engaging in conduct which undermines the efficacy of the order... I think there was overkill in the number of people that were sent letters and the fact that they each had to answer to these four charges."

WHISTLEBLOWER PROTECTION

On February 19 2019 the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018* was passed by both houses of the parliament. (MEAA made a submission to the Senate Economics Legislation Committee's inquiry into the Bill on February 22 2018.)¹¹⁷ The Act, which seeks to mandate and extend whistleblower protection to the private sector, received assent on March 12 2019.

The new Act "was introduced in response to the perceived lack of a protection scheme applicable to whistleblowers in the corporate arena, and the complexities raised by the otherwise 'confusing web' of existing whistleblower protection regimes. In summary, the Bill:

- amends the *Corporations Act* to strengthen and consolidate pre-existing whistleblower protections into a single protection regime;
- amends the *Taxation Administration Act* to create a protection regime for whistleblowers who report breaches of tax law and misconduct; and
- otherwise repeals existing financial sector whistleblower protections."¹¹⁸

The Act makes it mandatory for public companies and large proprietary companies (defined as those with revenues exceeding \$25 million per annum, gross assets of \$12.5 million or more than 50 employees) to introduce whistleblower policies.

The whistleblower policy must include:

- the protection available to whistleblowers
- the persons to whom disclosure can be made that qualify for protection, and how such disclosures can be made
- how the company will support whistleblowers and protect them from detriment
- how the company will investigate disclosures that qualify for protection under the *Corporations Act*
- how the company will ensure fair treatment of employees who are mentioned in eligible disclosures
- how the whistleblower policy is to be made available to officers and employees, and
- any other matters prescribed by the *Corporations Act* in terms of whistleblowing.

Public companies and proprietary

companies that are trustees of a superannuation entity must have a whistleblower policy from January 1 2020, and large proprietary companies must have a whistleblower policy from January 1 2021.

"There is no longer a requirement for a whistleblower to reveal their identity when making a disclosure and whistleblowers must be permitted to make disclosures anonymously. Whistleblowers can by law make a disclosure directly to the Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA). Companies should consider the circumstances in which they will contact ASIC, APRA, or the Australian Federal Police in respect of a whistleblower's disclosure.

"Penalties apply if the confidentiality of a whistleblower's identity is breached, or if an employee or officer of the company causes 'detriment' (whether through actual actions or through the making of threats) to the whistleblower, and a court has the power to order compensation in respect of the detriment suffered. The financial penalties are a maximum of \$200,000 for an individual, or \$1 million for a company."¹¹⁹

The Bill was amended to take into account concerns MEAA had with aspects of the Bill. The requirement that a whistleblower wait "a reasonable period" of time after making an initial disclosure to a regulator before making a protected emergency disclosure to a parliamentarian or journalist was removed. A whistleblower now has to ensure the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient of the substantial and imminent danger. An emergency disclosure must be based on the whistleblower having reasonable grounds to believe the information disclosed concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment. MEAA also welcomed an important change recommended by MEAA that redefined "journalist" to "cover journalists working for an electronic service operated on a non-commercial basis by a body that provides a national broadcasting service".¹²⁰

THE PUBLIC'S RIGHT TO KNOW

The Act represents a significant initial step forward in understanding and responding to the need for whistleblowers to be able to report instances of wrongdoing and ensure their concerns will be listened to and acted upon without fear of harassment or intimidation. There is still more that must be done to encourage and protect whistleblowers to feel confident that they can safely tell their story.

The role of the journalist in ensuring those stories are told and, more importantly, heard and acted upon has been crucial. Nine (formerly Fairfax) business journalist Adele Ferguson spoke of the courage of whistleblowers when paying tribute to them after being honoured in the 2019 Australia Day awards by being appointed a Member of the Order of Australia. Ferguson worked with many corporate whistleblowers when reporting on the financial services sector (leading to the Hayne Banking Royal Commission) and franchises. “With all of these investigations, none of them would have had the traction they had without whistleblowers putting everything on the line and the victims coming forward. Words fail me over how brave these people are. And they empower others to speak up and it becomes a snowball effect.”¹²¹

There are also considerable risks for the journalist. In July 2018 Ferguson had spoken “of up to seven writs facing her over a single story,¹²² of Australia’s richest woman Gina Rinehart’s legal team demanding she give up sources or face jail,¹²³ threatening phone calls and even “people lurking outside the house in dark cars”.¹²⁴

Despite the welcome move to protect whistleblowers in the private sector, prosecutions of public sector whistleblowers who have told their stories to journalists continue. It should be remembered whistleblowers, by definition, seek to expose wrongdoing. The wrongdoing may be illegal or unethical. It may be a breach of rules, regulations, policies or the law. It may be something more serious such as threats to national security or public health and safety, as well as fraud or corruption.

While the honesty of a whistleblower should be championed, invariably, a whistleblower causes embarrassment. By choosing to bring their accusations to light by contacting a third party such as a journalist they face reprisals or retaliation.

Whistleblowers in the public sector are facing devastating legal action to punish them after the fact – that is disturbing



Witness K's lawyer
Bernard Collaery *Jeffrey Chan, Fairfax Photos*

THE IMPLICATIONS FOR JOURNALISTS ARE PARTICULARLY STARK

— particularly from a government that believes in openness and transparency. At worst, governments talk big about whistleblower protection while wielding enormous power to muzzle, silence and punish whistleblowers in the public sector.

The implications for journalists in these unfair retributions are particularly stark. Whistleblowers take enormous risks to make contact with a third party in order to reveal the wrongdoing which they bring to light in the firm belief of the public's right to know. Journalists rely on whistleblowers to supply them with an important news story that is legitimately in the public interest. Journalists have ethical obligations to protect the identity of confidential sources — not least because of the retribution they may face.

But increasingly, journalists are being used in the hunting down of whistleblowers. The metadata retention regime introduced in 2015 via amendments to the *Telecommunications (Interception and Access) Act 1979* created Journalist Information Warrants. The amendments were included in the third tranche of national security laws in the fight against terrorism — as outlined in MEAA's 2015 press freedom report: *Going after Whistleblowers, Going after Journalism*.¹²⁵ The law has been created to hunt down and punish whistleblowers. The legislation specifically states that the aim of secretly accessing journalists' and media organisations' telecommunications data using the warrant is in order "to identify... a source".¹²⁶

As has been seen above, Australia has been slow to offer protections for whistleblowers. But even as legislation is drafted or amended to provide improved ways for whistleblowers to get their story out in order to promote positive change, the protections remain inadequate for whistleblowers working for government agencies.

The variance in the protections offered in the private corporate sector versus protections available for whistleblowers working for public government sector are unnecessarily cruel. Labor has pledged to bring existing private and public whistleblowing laws under a single Whistleblowing Act and establish a Whistleblower Protection Authority with a rewards scheme.¹²⁷

Meanwhile three current examples demonstrate the damage that can be inflicted on whistleblowers without sufficient protection. A fourth incident has raised concern over the press freedom implications over a government-sought extradition to the US.

WITNESS K

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

The case began only after prosecutors had sat on evidence for three years — the Australian Federal Police had begun its investigation in February 2014 and a year later had presented its brief of evidence to the Director of Public Prosecutions. Charges weren't filed until May 2018.¹²⁸ Since then the case has progressed in secrecy and slowly — partly because the court needs to protect sensitive national security material while also preserving the defendants' right to a fair trial.¹²⁹

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

Collaery came to the belief that the operation was unlawful, and helped Timor-Leste mount a case to be heard in Permanent Court of Arbitration in The Hague. Witness K had his passport seized before he could depart to give evidence.

On December 3 2013 Collaery's offices were raided by Asio on orders of then Attorney-General George Brandis.

The following day, in response to the raid and the seizure of Witness K's passport, Collaery told the ABC: "The director-general of the Australian Secret Intelligence Service and his deputy instructed a team of ASIS technicians to travel to East Timor in an elaborate plan, using Australian aid programs relating to the renovation and construction of

the cabinet offices in Dili, East Timor, to insert listening devices into the wall, of walls to be constructed under an Australian aid program."¹³⁰

The 2018 charges claim the pair illegally disclosed information in breach of section 39 of the *Intelligence Services Act*. Collaery is accused of unlawfully communicating intelligence secrets to journalists. Collaery and Witness K face the possibility of jail if convicted.

RICHARD BOYLE

Australian Tax Office whistleblower Richard Boyle faces a staggering 161 years in prison for exposing misconduct by the ATO. He has been charged with 66 offences, including telephone tapping and recording of conversations without the consent of all parties and making a record of protected information, and in some cases passing that information to a third party. He faces the prospect of six life sentences.

His revelations, including directives to automatically seize funds from small business and individual accounts, blew the lid on alleged abuses by the ATO and prompted a joint investigation by *The Age*, *The Sydney Morning Herald* and the ABC. It also triggered the legal action being brought by Tax Commissioner Chris Jordan.

The revelations also prompted the House Standing Committee on Tax and Revenue to make 37 recommendations including to "recommend a new Tax Office charter, an appeals group headed by a second independent commissioner, the transfer of debt-recovery functions into the ATO's compliance operations and a restructure of compensation processes."¹³¹

The Tax Office had rejected an investigation request from Boyle months before he went public over allegations the agency was ripping money out of individual and small business accounts under a directive to use more heavy handed debt collection tactics. Boyle informed the Tax Office's internal watchdog that staff had been instructed to start issuing garnishee notices to meet revenue targets — a tool used to scrape money from accounts, sometimes without the account holder's knowledge. A letter from the Tax Office's senior investigator in October 2017 dismissed Boyle's concerns. "The information you disclosed does not,



Tax Commissioner
Chris Jordan
*Christopher Pearce
Fairfax Photos*

to any extent, concern serious and disclosable conduct. A disagreement with government policy is not disclosable conduct.”¹⁵²

“Mr Boyle has previously said he made a 12,000 word disclosure to the Tax Office, but claims this was rejected by tax authorities. The Australian Federal Police raided his home days before he went public and only a month after the ATO offered him a settlement to prevent him from speaking out.” The disclosure may offer Boyle some protection under the public sector’s *Public Interest Disclosure Act 2013*.¹⁵³

Boyle’s home was raided in April 2018 by the Australian Federal Police accompanied by an ATO investigator. The ABC reported: “He attempted to film the raid but the AFP officers seized his mobile phone, and the phone of his fiancée. The warrant specifically refers to Four Corners and Fairfax reporter Adele Ferguson, and alleges that Richard Boyle had illegally taken either originals or copies of taxpayer information, photos of ATO computer screens or emails. Mr Boyle said there was some suggestion from the AFP and ATO officers at his home that he had committed a crime in speaking to the media. “It’s absolutely astonishing. I’m horrified that this organisation has these powers over the community and I think things need to change,” he said.”¹⁵⁴

The *Australian’s* Robert Gottlieb

wrote: “Arguably Australia’s most significant whistleblower, the man who forced both our major political parties to alter their small business taxation appeal policies, is now set to face a court battle. That’s the cost of being a whistleblower.”¹⁵⁵

DAVID MCBRIDE

A lawyer, retired Australian Army major David McBride, is charged with theft over war crimes investigation files that were allegedly handed to journalists. He was arrested and charged on September 5 2018 by Australian Federal Police as he was about to depart Sydney airport to return to his home in Spain.

McBride’s Sydney home was raided in February 2018 — the search warrant was seeking any information relating to ABC journalists, various military files and topics and the “7.30 Report” and “Afghan files”. It’s alleged that classified Defence documents were provided to ABC journalists and then later publicly released on July 10 and 11 2017.¹⁵⁶

“On July 11, 2017, the ABC’s 7.30 program released a major investigation called *The Afghan Files*. The story was promoted as ‘Defence leak exposes deadly secrets of Australia’s special forces’. It featured extraordinary detail about investigations, including 10 incidents between 2009 and 2013 where special forces had allegedly shot dead insurgents and unarmed civilians, including children. Among the investigations mentioned were

controversial cases relating to the death of a man and his six-year-old child during a raid on his house, and the killing of a detainee who was alone with a soldier and was alleged to have tried to seize his weapon.”¹⁵⁷

In the ACT Magistrates Court on March 7 2019 McBride was formally facing five charges for leaking classified material to three senior journalists at the ABC and the then Fairfax Media newspapers.

The ABC reported: “Mr McBride has not entered pleas to any of the charges, but outside court said he was ‘not making any bones about’ his role in the events. ‘There’s no question in that I’ve told the Federal Police I did give the classified documents to the *Herald*, to the ABC, and to [journalist] Chris Masters,’ he said. ‘I’m seeking to have the case looking purely at whether the Government broke the law and whether it was my duty as a lawyer to report that fact.’ Mr McBride said he had tried internal processes within the department to bring his allegations of wrongdoing to light, but went to the press when that was not successful.”¹⁵⁸

The Guardian reported: “‘I think it was swept under the carpet,’ McBride told reporters on Thursday. ‘I eventually saw the police; they didn’t do anything about it. Finally, I saw the press, and it was published on the ABC. They’ve threatened me all along with going to jail. If I was afraid of going to jail, why would I have been a soldier?’

Unfortunately there are too many people in Canberra who are afraid. Plenty of people knew what I knew, but no one else stood up.” He said he wanted the court to simply consider whether the government’s actions were illegal.

EXTRADITION

On April 11 2019 the publisher of the WikiLeaks web site Julian Assange was arrested in London. The US government has sought his extradition. The US federal Department of Justice said Assange was arrested “pursuant to the US/UK Extradition Treaty, in connection with a federal charge of conspiracy to commit computer intrusion for agreeing to break a password to a classified U.S. government computer.”¹³⁹

“According to court documents unsealed today, the charge relates to Assange’s alleged role in one of the largest compromises of classified information in the history of the United States.

“The indictment alleges that in March 2010, Assange engaged in a conspiracy with Chelsea Manning, a former intelligence analyst in the U.S. Army, to assist Manning in cracking a password stored on US Department of Defense computers connected to the Secret Internet Protocol Network (SIPRNet), a U.S. government network used for classified documents and communications.

“Manning, who had access to the computers in connection with her duties as an intelligence analyst, was using the computers to download classified records to transmit to WikiLeaks. Cracking the password would have allowed Manning to log on to the computers under a username that did not belong to her. Such a deceptive measure would have made it more difficult for investigators to determine the source of the illegal disclosures.

“During the conspiracy, Manning and Assange engaged in real-time discussions regarding Manning’s transmission of classified records to Assange. The discussions also reflect Assange actively encouraging Manning to provide more information...

“Assange is charged with conspiracy to commit computer intrusion and is presumed innocent unless and until proven guilty beyond a reasonable doubt. He faces a maximum penalty of five years in prison if convicted. Actual sentences for federal crimes are typically less than the maximum penalties. A federal district court judge will determine any sentence after

taking into account the US Sentencing Guidelines and other statutory factors.”¹⁴⁰

On April 12 2019 MEAA wrote to the British High Commissioner, Foreign Minister Marise Payne and Opposition Spokesperson on Foreign Affairs Penny Wong raising concerns about the press freedom implications of extradition to the US. MEAA wrote:

Your Excellency,

We write to convey concerns about the possible extradition to the United States of Julian Assange, the publisher of WikiLeaks, and urge the UK and Australian governments to oppose extradition to that country.

Mr Assange is an Australian citizen and has been a member of MEAA’s Media Section – the trade union and professional association of Australian media workers – since 2007.

MEAA is concerned that Mr Assange is facing possible extradition to the United States regarding WikiLeaks’ publication of US government files nine years ago. We believe a prosecution of WikiLeaks’ personnel will have a chilling effect on the public’s right to know what governments do in the name of their citizens.

It is a principle of a free press that the media have a duty to scrutinise the powerful and to hold them to account. The media report legitimate news stories that are in the public interest.

WikiLeaks was established in a way to allow whistleblowers seeking to publicly expose wrongdoing to upload material anonymously and with no possibility of being traced. This is common practice among media organisations around the world – using technology that allows whistleblowers to submit material to a media outlet anonymously and confidentially.

On April 5 2010 WikiLeaks revealed US military gunsight video showing US military helicopters killing two Reuters war correspondents, Saeed Chmagh and Namir Noor-Eldeen, in Iraq on July 12 2007.

The publication of US diplomatic cables in November-December 2010 was done with the full collaboration of numerous media outlets in several countries including the Sydney Morning Herald and The Age in Australia, The Guardian in the United Kingdom, The New York Times in the US, El Pais in Spain, Le Monde in France and Der Spiegel in Germany. None of these media outlets

have been cited in any US government legal actions as a result of the publishing they have done in collaboration with WikiLeaks.

In 2011 the WikiLeaks organisation was awarded the Walkley Award for Most Outstanding Contribution to Journalism – in recognition of the impact WikiLeaks’ actions had on public interest journalism by assisting whistleblowers to tell their stories. The judges said WikiLeaks applied new technology to “penetrate the inner workings of government to reveal an avalanche of inconvenient truths in a global publishing coup”.

Extradition of Mr Assange and prosecution by the United States would set a disturbing global precedent for the suppression of press freedom.

*We welcome the provision of Australian consular assistance. We urge that he be provided with medical assistance if required. The Australian and UK governments should publicly oppose the extradition of Mr Assange to the United States.*¹⁴¹

Human Rights Watch also expressed concern at the press freedom implications. “Prosecuting Julian Assange for acts often associated with publishing news of public importance – including sensitive or classified information – has potential to open a dangerous precedent for every news organization,” said Dinah PoKempner, general counsel at Human Rights Watch. “The Trump administration’s open hostility to ‘mainstream media’ has contributed to an increasingly dangerous environment for investigative journalism worldwide.

“There is a real danger that the Assange case could become a model for governments that seek to punish media for exposing evidence of abuses,” PoKempner said. “The US government should be especially careful not to stretch concepts like ‘conspiracy’ in ways that could criminalize newsgathering globally and make it harder to expose critical information, including about human rights abuses.”¹⁴²

On April 14 2019 the International Federation of Journalists’ Executive Committee resolved: “The IFJ Executive Committee supports our Australian affiliate MEAA in its opposition to US moves for the extradition of Julian Assange. Any extradition and prosecution by US authorities would be a clear attack on the principles of press freedom. We call on the UK and Australian Governments to oppose any US extradition application.”

THE WHISTLEBLOWER DILEMMA

BY ANNA LANE AND EMILY HOWIE

Journalists have always relied on whistleblowers to report stories that expose corruption and misconduct behind the closed doors, often within our government-run institutions.

However in the era of overwhelming government secrecy and mass surveillance, whistleblowers are paying higher prices than ever for speaking out while journalists and media organisations navigate a minefield of new laws that criminalise more and more types of speech and publication.

Urgent reforms to disclosure laws are needed to protect the important role of whistleblowers and freedom of the press in our democracy.

THE IMPORTANCE OF WHISTLEBLOWERS TO AUSTRALIAN DEMOCRACY

Whistleblowers are a cornerstone of the fight against corruption and are key to ensuring that governments, companies, and public services are held accountable. In Australia, whistleblowers have exposed the false pretences on which we've gone to war,¹⁴³ police misconduct,¹⁴⁴ corruption,¹⁴⁵ dangerously inadequate clean-up of nuclear waste,¹⁴⁶ the medical malpractice of surgeons,¹⁴⁷ and cruel treatment of asylum seekers in immigration detention.¹⁴⁸

Whistleblowers are often the confidential sources that journalists use in their important democratic work shining a light on wrongdoing behind closed doors and a vital element of a properly functioning free press.

However the landscape in which journalists and whistleblowers operate is changing fast and speaking out increasingly carries huge risks, including jail time.

A raft of new national security laws and mass surveillance capabilities has created an environment that criminalises more and different types of

dealing with government information, whilst at the same time massively increasing the government's ability to monitor communications.

Added to this, instead of being praised for exposing corruption or misconduct, there is a worrying tendency to shoot the messenger.

CRACKDOWN ON WHISTLEBLOWERS

Two current cases illustrate the dangers for whistleblowers even where the wrongdoing they expose would be unconscionable to many Australians.

In 2004, Australia's international intelligence authority, ASIS, bugged East Timor's cabinet room and ministerial offices in order to obtain an unfair advantage in sensitive negotiations over an oil and gas treaty.¹⁴⁹ Despite international law putting the oil and gas reserves almost entirely within East Timor's boundaries, the negotiations resulted in Australia sharing in oil and gas reserves in the Timor Sea worth over \$40 billion.¹⁵⁰ The deal greatly benefited Australian mining giant Woodside Petroleum. Later, the then Foreign Minister Alexander Downer accepted a lucrative consultancy position with Woodside.

Witness K was the Australian spy who installed the listening devices. Witness K and his lawyer, Bernard Collaery, are now facing criminal charges for their role in exposing Australia's secret mission to spy on the East Timorese government.

More recently, former ATO employee Richard Boyle blew the whistle on the ATO's reckless debt collection practices that put low income people at risk. He is now facing 161 years imprisonment.¹⁵¹ On *Four Corners*, Boyle revealed that the ATO was seizing money from the bank accounts of taxpayers, regardless of their personal circumstances.¹⁵² Boyle's revelations led to crucial changes inside ATO as to how it treats small businesses and vulnerable taxpayers. However, the personal consequences for Boyle have



been devastating. He has had his home raided, he lost his job and he now faces charges for 66 offences.¹⁵³

The punitive approach to whistleblowing is particularly pronounced in the immigration space, where the Government has come down hard on media outlets and workers in immigration detention centres. Workers from charity Save the Children were investigated by the Australian Federal Police after alleging that children held in the Australian-run detention centre on Nauru were subject to sexual assault and abuse. The then Immigration Minister Scott Morrison put further fuel on the fire, alleging the bad faith on the part of those workers, claiming that the allegations "may have been fabricated as part of an orchestrated campaign, involving service provider staff".¹⁵⁴

The Australian Government has referred a range of media outlets reporting on its asylum seeker policies to the AFP in an attempt to uncover their sources and to investigate and potentially prosecute the whistleblowers involved.¹⁵⁵

The Government's crackdown on whistleblowers is starkly contrasted



The Australian Government has referred a range of media outlets reporting on its asylum seeker policies to the AFP. | *Angela Wylie Fairfax Photos*

with its apparent willingness to leak information to serve its own purposes. In 2017, Human Services Minister, Alan Tudge, released the personal details of a blogger who wrote an opinion piece criticising Centrelink’s automated debt recovery system.¹⁵⁶

Just last month, a classified ASIO briefing on asylum seekers was leaked to, and published by, News Corporation in the midst of the Medevac Bill debate. The use of classified ASIO information to support a political attack was widely condemned and the Department of Home Affairs referred the matter to the AFP for investigation.¹⁵⁷

STATE OF THE LAW

In this difficult environment for journalists and whistleblowers, in the last few years the parliament has passed new laws criminalising speech on national security issues and giving massively increased surveillance powers to law enforcement.

The incentives are all wrong. Instead of encouraging the exposure of wrongdoing, together, these new laws only further deter whistleblowers from coming forward and threaten with

prison time both whistleblowers and the journalists who report their stories.

Criminalising dealing with information

Australia has hundreds of secrecy laws that restrict access to government information, including laws that criminalise disclosure of government information.

Last year, the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* (Cth) (the Espionage Act) added a new and very worrying espionage offence into the Criminal Code. Under that law, put very simply, it is now an offence to “deal with” any information that “relates to”, is “connected with” or is “of interest or importance to” Australia’s national security or political or economic relations with a foreign country.

The maximum penalties for these offences are extraordinarily high — life imprisonment where the act is intentional or 25 years if the act is reckless.

In effect, these offences place onerous restrictions on journalists, particularly those who report on or

investigate government or international relations. Before it was passed, three independent UN human rights experts condemned it for violating freedom of expression, stating that they were “gravely concerned that the Bill would impose draconian criminal penalties on expression and access to information that is central to public debate and accountability in a democratic society.”¹⁵⁸

There is a real risk the espionage laws will have a chilling effect on advocacy and unnecessarily deter reporting by journalists and news organisations who will rightly be worried about falling foul of the law.

In 2013, the Guardian and the Australian Broadcasting Corporation (ABC) were the first to publish the news that Australia had carried out a surveillance operation targeting the then Indonesian President Susilo Bambang Yudhoyono and his wife Kristiani Herawati. The reporting was based on the Edward Snowden leaks.¹⁵⁹

If a similar story were to arise again, journalists, news organisations and sources will need to consider whether disclosure and publication of that



THE PUBLIC'S RIGHT TO KNOW

information could constitute espionage. Would publication of the information be “reckless” as to prejudicing Australia’s economic or political relations with Indonesia?

If the Snowden leak happened today, the journalists, editors and the brave whistleblowers involved would potentially risk up to 25 years to life imprisonment.

Mass surveillance

As more and more laws criminalise speech on matters of public interest, the Government has also given law enforcement agencies new mass surveillance powers allowing them to track the confidential sources of journalists.

Australian metadata retention laws passed in 2015 require telecommunications companies to retain customers’ metadata for a period of two years with a stated objective of providing law enforcement agencies with “an irrefutable method of tracing all telecommunications from end to end” and enabling them to “prove that two or more people communicated at a particular time”.¹⁶⁰

Respected Canberra press gallery journalist Laurie Oakes called the metadata threat to journalists and their sources “the great press freedom issue of the internet age”.¹⁶¹

The retention of metadata enables governments to trace communications between a whistleblower and a journalist, jeopardising the confidentiality of the source and providing a basis for prosecuting breaches of secrecy laws, like the espionage law.

Journalists’ metadata is meant to be more protected by the requirement that law enforcement agencies obtain a Journalist Information Warrant under Division 4C of the *Telecommunications (Interception and Access) Act 1979*. But in practice, the secret application process for warrants means that the journalist and any news organisation concerned will never know that a warrant has been granted, nor will they be given an opportunity to be heard. At least two Journalist Information Warrants have been granted since they were introduced.

In fact, the retention of data itself creates the possibility for unauthorised access to journalists’ metadata. In 2017 the AFP illegally accessed the metadata of a journalist, with no repercussions for

the breach whatsoever.¹⁶²

In practice, an enforcement agency doesn’t need to access a journalist’s metadata in order to uncover the source for a story. The agency can simply access the data of people in the government department or agency from where the leak is coming and see who contacted the journalist.

Authorisation for this search is provided by the same agency that seeks the information, and can be provided so long as “it is reasonably necessary for the enforcement of the criminal law, a law imposing a pecuniary penalty, or the protection of the public revenue”.¹⁶³

Another law introduced last year, the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (TOLA Act), introduced unbelievably broad and intrusive new powers under which designated communications providers can be compelled to assist government agencies, including by decrypting information that is otherwise unintelligible.¹⁶⁴

Requests for technical assistance can be made in a broad range of circumstances, for example so long as the requesting authority is enforcing a law punishable by minimum three years imprisonment or is safeguarding national security.¹⁶⁵

Whereas metadata laws allow law enforcement to see who journalists are speaking with, the TOLA Act could allow agencies to also access the content of those communications.

The Australian Human Rights Commission states that “the effect of the TOLA Act is to permit inappropriately intrusive, covert and coercive powers, without effective safeguards to adequately protect the human rights of law enforcement targets and innocent third parties.”

These laws were designed to protect the community from terrorists, organised crime and child sex offenders. But without proper safeguards, there is nothing to stop law enforcement agencies from using these laws to muzzle journalists and expose their sources.

LAW REFORM TO PROTECT WHISTLEBLOWERS

The *Public Interest Disclosure Act 2013* (Cth) (PIDA) is Australia’s whistleblower protection law. Whilst it is a step in the right direction, it leaves too many whistleblowers unprotected. The PIDA should be an instrument

that balances the right to know with the public interest in security of government information.

Instead it sets up a slow internal disclosure process that may take months to play out before a disclosure can be made publicly. The Act seems to allow a Minister, the Speaker of the House of Representatives or the President of the Senate to effectively prevent external or public disclosures being made under the protection of the Act.

A would-be whistleblower is deprived of the protection of the Act where any of these office-holders is “taking action” in response to an internal disclosure.

Urgent disclosures can only be made under the emergency disclosure provisions. Yet the emergency disclosure provisions only apply to disclosures that relate to “substantial and imminent danger to the health or safety of one or more persons or to the environment” and it would be for the individual to assess whether their disclosure falls within those provisions — and if they’re wrong they face jail.

The PIDA badly needs to be strengthened to clarify the emergency disclosure provisions so that disclosures can be made in the public interest in a timely way. It should also expressly protect whistleblowers that reveal violations of human rights, or that would promote accountability for such violations.

Finally, an independent mechanism should be empowered to oversee the internal disclosure procedures and disclosures regarding intelligence information.

Journalists play a critical role in the free press and the maintenance of a healthy democracy. Their sources are required to take greater and greater risks in order to expose the truth.

There is a real risk that Australia’s secrecy laws and law enforcement agencies’ massively increased surveillance powers will have a chilling effect on public interest journalism that could damage our democracy. We need to guard against the expansion of secrecy laws and mass surveillance powers and urgently reform whistleblower laws to ensure that truth can come to light in the public interest.

Anna Lane is a secondee lawyer and Emily Howie is the director of legal advocacy with the Human Rights Law Centre

Louie Douvis Fairfax

DEFAMATION

On February 22 2019 a decision the Federal Court, in a defamation action brought by Australian businessman Chau Chak Wing against the former Fairfax newspapers, demonstrated the urgent need for an overhaul of Australia's outdated defamation laws: the defence of qualified privilege was rejected by the court.

Chau was awarded \$225,000 in damages, plus \$55,000 in interest. The figure is at the lower end of the scale compared with recent defamation payouts, including Rebel Wilson's \$600,000 win, and is within the statutory cap of \$389,500 on general damages for non-economic loss. Nine, as the new publisher of the former Fairfax newspapers, is appealing the decision.¹⁶⁶

MEAA Media federal president Marcus Strom said: "MEAA members believe that this decision is the latest in several cases involving defamation actions against experienced, responsible journalists reporting on matters the public has a right to know about. Journalists must be able to fulfil their duty to the communities they serve. The defamation system is stacked against Australian journalists. It makes their job of shining a light into public interest matters all the more difficult," he said.

Strom added that defamation actions have a chilling effect on legitimate public interest journalism. "The system has become unworkable. In fact, our current laws inhibit the public's right to know and rather than guaranteeing fairness, Australia's defamation laws are being used as a weapon to threaten and attack legitimate reporting. MEAA

members have identified Australia's current defamation laws as one of the biggest barriers to their ability to publish stories in the public interest.

"Media outlets and their employees are tied up for months or years on costly legal proceedings. The damages being won threaten the viability of media businesses. Plaintiffs can be awarded vast sums of money without ever demonstrating they have a reputation, let alone one that has been substantially harmed. The old regime did not anticipate the nature of modern digital journalism/publishing nor the massive disruption that has taken place in the media industry," Strom said.¹⁶⁷

MEAA chief executive Paul Murphy added: "The regime needs to be updated, particularly in relation to digital publishing, to bring it in line with international best practice and remove areas where the uniform laws have not proved successful or where it is inconsistent or does not work as intended. Also, criminal defamation must be repealed and removed from the statutes."¹⁶⁸

In the wake of the Chau Chak Wing decision, the *New York Times* wrote a story: "How Australia became the defamation capital of the world."¹⁶⁹ In the article, senior lecturer with the University of Melbourne's Centre for Advancing Journalism, and a former NPR and BBC correspondent based in Beijing, Louisa Lim wrote:

In the decade I spent reporting from China, the most immediate obstacles to journalism were often physical. They took many forms: barricades blocking access to certain places; men in military buzz cuts

trailing me; plainclothes thugs stationed in front of the homes of people I planned to interview; and of course, the threat of police detention...

Then I moved to Australia. To my surprise, writing about China from Melbourne proved no simpler. But there, I was hobbled by different forces, namely Australia's oppressive and notoriously complex defamation laws. The challenges of such reporting were underlined recently by an Australian federal court, which awarded nearly \$USD200,000 (to a Chinese-Australian businessman, Chau Chak Wing, after finding that a 2015 Sydney Morning Herald article about him was defamatory.

Mr. Chau, a billionaire property developer, was born in China, immigrated to Australia decades ago and is an Australian citizen. The judge ruled that the article, which alleged that Mr. Chau, who has been a major political donor in Australia, was involved in bribing a United Nations official, used language that was "imprecise, ambiguous and loose, but also sensational and derisory".

The judgment, against one of the country's biggest media companies, underlines how badly broken Australian defamation laws are. These laws are impeding journalism on matters of vital national interest, including China's growing and controversial influence, and they have made Australia the defamation capital of the world.

The case is extremely complex, but one aspect of it underlines the law's inconsistency.

Some of the most serious allegations against Mr. Chau were repeated in the

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Australian Parliament by Andrew Hastie, a Member of Parliament. His comments were reported in the media, under the cover of parliamentary privilege, which protects lawmakers and the journalists reporting on them from being sued for defamation...

The judge also rejected arguments that the article was in the public interest. This "qualified privilege" defence has never been successfully used in a case regarding the media, according to a leading defamation law expert.¹⁷⁰

The judge found that the conduct of Fairfax Media, the owner of The Sydney Morning Herald at the time, and the journalist... was unreasonable.¹⁷¹

Lim went on to say:

The current system is unworkable. Australia's unique legal situation arises out of its lack of a Bill of Rights or any explicit constitutional guarantee of freedom of speech.

Against this backdrop, Australia's defamation law tends to privilege the right to reputation over freedom of expression. Defending an action is often far costlier than settling, making the law especially punitive for media companies.

A handful of high-profile defamation cases can effectively serve as a brake on free speech... As a result, the Australian public is less informed and less able to monitor its own institutions. National security is also at risk, especially since these defamation laws could be weaponised by authoritarian states, wielding the heightened threat of lawsuits as a cudgel to silence reporting about their activities.

Justice is supposed to be blind, but this legal battlefield favours those with financial means, impoverishing principles like freedom of the press. The ultimate damage will be to Australia's democracy.¹⁷²

There is a remedy in development. Finally, after 13 years of operation, Australia's uniform national defamation regime is undergoing a much needed review and revamp. The review came after many years of discussion at the Council of Attorneys-General, spurred on in the wake of the Senate Select Committee report into the Future of Public Interest Journalism.¹⁷³

In its submission to the Committee's inquiry,¹⁷⁴ MEAA said defamation actions require media companies to "lawyer up" at enormous expense with the potential for costly damages and costs to be awarded against them. Defamation has evolved into an

immense threat to media businesses, and to press freedom itself.

There is a dire need for reform of Australia's uniform national defamation legislation that allows people to be paid tens of thousands of dollars damages for hurt feelings without ever having to demonstrate they have a reputation, let alone one that has been damaged.

The immense cost burden not only has a dire economic effect on media organisations already struggling with profitability in the wake of digital disruption but there is also a considerable "chilling effect" on public interest journalism that intimidates journalists and media organisations from reporting legitimate news stories in the public interest and applying scrutiny to the rich and powerful because they fear their journalism may result in costly, lengthy litigation.

When the law can be used to muzzle the media in such a way, both democracy and press freedom have been suppressed.

The uniform national defamation law regime commenced operation in January 2006 by agreement among the states at the Council of Australian Governments (COAG). Only the states are signatories to this COAG agreement, the federal government is not a signatory. Any changes to the law must be agreed by all of the states.

The regime does not have a review clause. However, in 2011, after five years of operation the NSW Department of Justice undertook a review of its own *Defamation Act*. Seven years went by before that review was finally tabled in the NSW parliament on June 7 2018.

Meanwhile, at the end of 2015, the meeting of Australia's attorneys-general that together make up COAG's then Law Crime and Community Safety Council (now renamed the Council of Attorneys-General) once again took up the issue of a uniform defamation law review and the need for update "below the line".

The NSW Government was still to finish its 2011 review — but, despite the delay, NSW was to be entrusted with being the template for a broader discussion among all the jurisdictions so that the uniform defamation legislation could be updated.

COAG reacted swiftly. The day after NSW tabled the review of its own Act, on June 8 2018, COAG agreed to the establishment of the NSW Defamation Working Party "with a view to developing any required amendments

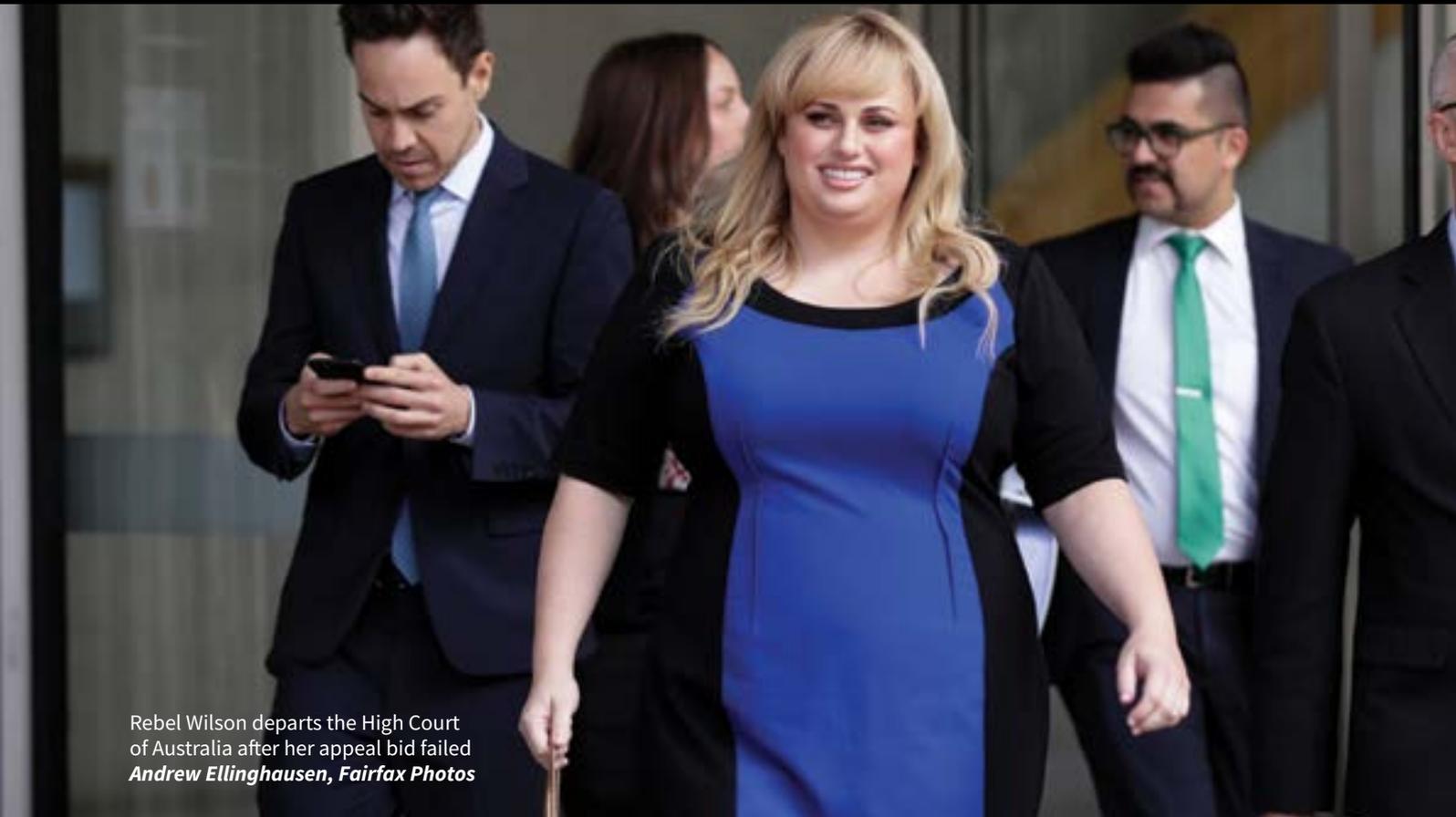
to the Model Defamation Provisions for Council of Attorneys-General consideration and endorsement."

The Defamation Working Party would consider the findings and recommendations of the statutory review of the *Defamation Act 2005 (NSW)*, with a view to developing any required amendments to the Model Defamation Provisions for Council of Attorneys-General consideration and endorsement.¹⁷⁵ The Model Defamation Provisions that were originally drafted in November 2004 by the former Standing Committee of Attorneys-General. These provisions were used as the legislative template for the creation of the uniform national defamation regime that became operational from January 1 2006.

In mid-November 2018, Australia's Right To Know media industry lobbying group (of which MEAA is a member) wrote to the NSW Attorney-General with a formal letter setting out recommendations for changes to defamation law. The recommendations were formulated by ARTK with input from in-house counsel at News Corp and Fairfax.

On February 26 2019 the Defamation Working Party released a 43-page discussion paper for public consideration.¹⁷⁶ The paper also includes some enlightening statistics (quoting the Centre for Media Transition, University of Technology Sydney 2018 report: *Trends in Digital Defamation: Defendants, Plaintiffs, Platforms*¹⁷⁷) which reviewed defamation actions and decisions heard in all states and territories over the five years to 2017 (with a comparison to 2007):

- NSW was the preferred forum for defamation actions and more matters reached a substantive decision in NSW than in all other jurisdictions combined (95 cases for NSW, compared with 94 cases in all other jurisdictions).
- As well as the 189 cases with substantive decisions located through searches, there were 609 related decisions (for example, separate rulings on evidence). There were also 322 other matters in the system, including appeals from earlier decisions and preliminary decisions on new matters. The [NSW Act review's] report acknowledged a complete picture of legal action on defamation would include other matters that were the subject of summary dismissals and the many matters settled before a claim is filed in court.
- Of the 189 cases: 51.3 percent were digital cases, only 21 percent of



Rebel Wilson departs the High Court of Australia after her appeal bid failed
Andrew Ellinghausen, Fairfax Photos

the plaintiffs in judgments could be considered public figures, and only 25.9 percent of the defendant “publishers” were media companies.

- Overall, about a third of plaintiffs were successful.
- Of the 87 awards of damages, 38 were for \$100,000 or more.
- The number of defamation cases — that is, matters for which there was a substantive decision in that year — was almost the same in 2017 as it was in 2007 (30 compared to 29 cases). The number of decisions was the same: 131 in each year.

The Centre’s report also found:

- There were 16 cases involving Facebook posts, 20 involving emails, four involving tweets and two involving text messages.
- There were 37 cases involving websites not affiliated with media organisations, Facebook or Twitter;
- There were three cases (all relating to search results) in which Google was the defendant.

Using the Centre’s data, it is also striking to see how the amount of damages has blown out (noting that the damages may be reduced on appeal).

- 2013 the highest amount awarded was \$300,000 in an action in NSW.
- 2014 in NSW: \$350,000.
- 2015 in Queensland: \$775,000.
- 2016 in NSW: \$480,000.

- 2017 in Victoria \$4.56 million (Western Australia also recorded an outcome of \$1,849,549 plus interest of \$773,866).¹⁷⁸

The 2017 Victorian damages amount was in the case of *Wilson v Bauer Media* with the court’s findings handed down on June 15 2017. It actually totalled \$4.75 million, because it was made up of \$3.9 million for economic loss, \$650,00 for non-economic loss and \$180,000 in interest. Wilson initially sought \$7 million in compensation over the eight articles, which she earlier described in court as a “malicious, deliberate take-down” of her.¹⁷⁹

As noted by defamation lawyers Peter Bartlett, Dean Levitan and Adelaide Rosenthal in the 2018 MEAA press freedom report:¹⁸⁰

[Actor Rebel] Wilson brought claims for loss of earnings in the 18 month period from May 2015 to December 2016, resulting in, what she determined, was a gross loss of \$6.77 million.

Ultimately, the jury of six established that each of the defendant’s publications conveyed defamatory imputations in the terms alleged by the plaintiff and they rejected the defences of justification, triviality and qualified privilege raised by the defendants. Dixon J concluded that special damages amounted to approximately \$3.9 million in the form

of the loss of a chance of a new screen role in the period following the release of Pitch Perfect 2. Further and perhaps most critically, Dixon J assessed general damages, including aggravated damages, at \$650,000. In doing so, Dixon J was prepared to lift the statutory cap of \$389,500 that ordinarily applies for non-economic loss...

The seminal consequences of this decision is the apparent risk that journalists and media publishers will be conscious of the risks of such a high windfall against them before preparing and publishing vital pieces of journalism.

A decision that may serve to stifle free speech and unsettle the integrity of journalism is a decision worth seriously questioning.

Judges like to talk about the scales of justice. Be in no doubt, the scales of justice are tilted in favour of the plaintiff.

Subsequently, a year after the first finding an appeals court slashed the defamation payout to \$600,000. On June 14 2018, the *Australian Financial Review* reported the court:

- *set aside the entire amount awarded to Wilson for economic loss, saying trial judge Justice John Dixon had wrongly drawn inferences about the “grapevine effect” of the articles...*

THE PUBLIC'S RIGHT TO KNOW

- The sum for economic loss was wiped out. The court criticised Justice Dixon for accepting that Ms Wilson lost the opportunity to be cast in Hollywood movies at basic remuneration of \$5 million.
- “The judge relied upon evidence of Ms Wilson,” it said, “and upon evidence of her principal United States agent and another independent Hollywood agent as to what they expected, hoped and assumed would have occurred after Ms Wilson’s success with Pitch Perfect 2. He relied also upon his assessment of the trajectory of Ms Wilson’s career... it followed that the judge’s award of damages for economic loss had to be set aside.”

The court reassessed her damages for non-economic loss, including aggravated compensatory damages, at \$600,000 — \$50,000 less than the original judgment. It said Bauer had proved there were faults in the way the case had been conducted and Justice Dixon’s reasoning on “aggravated circumstances”. Bauer also argued he also should have stuck to the \$389,500 statutory cap that media companies have previously relied on, but the court rejected that challenge.¹⁸¹

Wilson attempted to appeal her case before the High Court of Australia but the court dismissed the case on November 16 2018.¹⁸²

Returning to the Working Party’s discussion paper, it goes on to say: “The Model Defamation Provisions attempt to strike a balance between protecting individuals from reputational damage from defamatory publications, while also ensuring that freedom of expression is not unduly curtailed, and that information in the public interest is released. National consistency is also a key policy objective and, as noted above, one that continues to be important.”¹⁸³

The discussion paper sets out a series of questions about the Model Defamation Provisions with a view to gathering public opinion on whether the provisions should be amended. An example of some of the questions raised in the discussion paper is the highly contentious issue of whether corporations should be allowed to sue for defamation. The February 2019 discussion paper outlines the background: *Division 2 of the Model Defamation Provisions sets out the parties that*

have a cause of action for defamation. Clause 9 provides that a corporation has no cause of action unless it is an excluded corporation at the time of the publication, being a corporation which is not a public body and:

- (a) whose objects for formation do not include obtaining financial gain for its members or corporators; or
- (b) which is not related to another corporation, and employs fewer than 10 people.

Public bodies, such as local government bodies or other government or public authorities established by statute, cannot sue for defamation.

The paper then asks: “Should the Model Defamation Provisions be amended to broaden or to narrow the right of corporations to sue for defamation?”¹⁸⁴ For the record, MEAA believes corporations should not be able to sue for defamation — in any circumstances.

The discussion paper then goes on to ask additional questions about the original Model Defamation Provisions:

- Do the policy objectives of the Model Defamation Provisions remain valid?
 - (a) Should the Model Defamation Provisions be amended to include a ‘single publication rule’?
 - (b) If the single publication rule is supported:
 - should the time limit that operates in relation to the first publication of the matter be the same as the limitation period for all defamation claims?
 - should the rule apply to online publications only?
 - should the rule should operate only in relation to the same publisher, similar to section 8 (single publication rule) of the Defamation Act 2013 (UK)?
 - Should a jury be required to return a verdict on all other matters before determining whether an offer to make amends defence is established, having regard to issues of fairness and trial efficiency?
 - Should amendments be made to the offer to make amends provisions in the Model Defamation Provisions to:
 - require that a concerns notice specify where the matter in question was published?
 - clarify that clause 15(1)(d) (an offer to make amends must include an offer to publish a reasonable correction) does not require an apology?
- provide for indemnity costs to be awarded in a defendant’s favour where the plaintiff issues proceedings before the expiration of any period of time in which an offer to make amends may be made, in the event the court subsequently finds that an offer of amends made to the plaintiff after proceedings were commenced was reasonable?
- Should clause 21 (election for defamation proceedings to be tried by jury) be amended to clarify that the court may dispense with a jury on application by the opposing party, or on its own motion, where the court considers that to do so would be in the interests of justice (which may include case management considerations)?
- Should the Federal Court of Australia Act 1976 (Cth) be amended to provide for jury trials in the Federal Court in defamation actions unless that court dispenses with a jury for the reasons set out in clause 21(3) of the Model Defamation Provisions — depending on the answer to question 7 — on an application by the opposing party or on its own motion?
- Should clause 26 (defence of contextual truth) be amended to be closer to section 16 (defence of contextual truth) of the (now repealed) Defamation Act 1974 (NSW), to ensure the clause applies as intended?
 - (a) Should the Model Defamation Provisions be amended to provide greater protection to peer reviewed statements published in an academic or scientific journal, and to fair reports of proceedings at a press conference?
 - (b) If so, what is the preferred approach to amendments to achieve this aim — for example, should provisions similar to those in the Defamation Act 2013 (UK) be adopted?
 - (a) Should the ‘reasonableness test’ in clause 30 of the Model Defamation Provisions (defence of qualified privileged for provision of certain information) be amended?
 - (b) Should the existing threshold to establish the defence be lowered?
 - (c) Should the UK approach to the defence be adopted in Australia?
 - (d) Should the defence clarify, in proceedings where a jury has been empanelled, what, if any, aspects of the defence of statutory qualified privilege are to be determined by the jury?
- Should the statutory defence of honest

THE SYSTEM HAS BECOME UNWORKABLE AND THE LAWS ARE HOPELESSLY OUT OF DATE

opinion be amended in relation to contextual material relating to the proper basis of the opinion, in particular, to better articulate if and how that defence applies to digital publications?

- Should clause 31(4)(b) of the Model Defamation Provisions (employer's defence of honest opinion in context of publication by employee or agent is defeated if defendant did not believe opinion was honestly held by the employee or agent at time of publication) be amended to reduce potential for journalists to be sued personally or jointly with their employers?
- Should a 'serious harm' or other threshold test be introduced into the Model Defamation Provisions, similar to the test in section 1 (serious harm) of the Defamation Act 2013 (UK)?
- If a serious harm test is supported:
- should proportionality and other case management considerations be incorporated into the serious harm test?
- should the defence of triviality be retained or abolished if a serious harm test is introduced?
 - (a) Does the innocent dissemination defence require amendment to better reflect the operation of Internet Service Providers, Internet Content Hosts, social media, search engines, and other digital content aggregators as publishers?
 - (b) Are existing protections for digital publishers sufficient?
 - (c) Would a specific 'safe harbour' provision be beneficial and consistent with the overall objectives of the Model Defamation Provisions?
 - (d) Are clear 'takedown' procedures for digital publishers necessary, and, if so, how should any such provisions be expressed?
- Should clause 35 be amended to clarify whether it fixes the top end of a range of damages that may be awarded, or whether it operates as a cut-off?
 - (b) Should clause 35(2) be amended to clarify whether or not the cap for noneconomic damages is applicable once the court is satisfied that aggravated damages are appropriate?
 - (a) Should the interaction between Model Defamation Provisions clauses 35 (damages for non-economic loss limited) and 23 (leave required for further proceedings in relation to publication of same defamatory matter) be clarified?
 - (b) Is further legislative guidance required on the circumstances in which the consolidation of separate defamation proceedings will or will not be appropriate?
 - (c) Should the statutory cap on damages contained in Model Defamation Provisions clause 35 apply to each cause of action rather than each 'defamation proceedings'?

- Are there any other issues relating to defamation law that should be considered?

Public responses to the discussion paper will be considered from April 30 2019. By September 2019 a principle agreement containing Model Defamation Provisions will be put to the Council of Attorneys General. The model provisions will be exposed to public consultation in December 2019. The approved model law is to be enacted from June 2020.

MEAA's issued a brief explanatory document setting out what it wants to see from defamation reform. It said: "Australia's defamation laws are hopelessly out of date. Since January 1 2006, Australia has had a substantially uniform defamation regime operating in every jurisdiction by agreement between the state, territory and Commonwealth governments.

"But the system has become unworkable. In fact, our current laws inhibit the public's right to know and rather than guaranteeing fairness, Australia's defamation laws are being used as a weapon to threaten and attack legitimate reporting. MEAA members have identified Australia's current defamation laws as one of the biggest barriers to their ability to publish stories in the public interest.

"The laws are having a chilling effect on press freedom. Media outlets and their employees are tied up for months or years on costly legal proceedings while awaiting a legal outcome. The damages being won threaten the viability of media businesses. Plaintiffs can be awarded vast sums of money without ever demonstrating they have a reputation, let alone one that has been substantially harmed. The old regime did not anticipate the nature of modern digital journalism/publishing nor the massive disruption that has taken place in the media industry."

When MEAA conducted its first press freedom survey (of 1292 people) in May 2018, it found:

- Seventy-two per cent of respondents said Australia's defamation laws make reporting more difficult.
- While only 6.3 per cent of respondents said they had received a defamation writ in the past two years, almost a quarter (24.4 per cent) said they had had a news story spiked within the past 12 months because of fears of defamation action by a person mentioned in the story.
- The regime needs to be updated,

particularly in relation to digital publishing), to bring it in line with international best practice and remove areas where the uniform laws have not proved successful or where it is inconsistent or does not work as intended. Also, criminal defamation must be repealed and removed from the statutes.

MEAA added that recent defamation cases (Rebel Wilson, Chris Gayle, Chau Chak Wing) show that court decisions can be at odds with what the public and MEAA members expect from defamation proceedings.

MEAA and ARTK have suggested the review take account of international best practice, including recent amendments adopted in the UK, to update the law and ensure consistent application across all publishing mediums, particularly digital publishing, which has grown dramatically since the defamation regime was created in 2006.

As such, the changes MEAA is seeking include:

- Introduce a single publication rule (similar to the UK *Defamation Act 2013*) that applies to first publication of the material regardless of the medium;
- Introduce a serious harm threshold test;
- Provide for presumption in favour of trial by jury;
- Replace the public interest defence with a version similar to the UK *Act*;
- Restore a defence of contextual truth (similar to section 16 of the old *Defamation Act 1974*);
- Clarify that a "correction" is the correction of any false statement and does not require an apology;
- Clarify the maximum damages amount, fixing the upper limit of a range of damages and the maximum to apply to only certain proceedings;
- Amend the law so that the plaintiff can only bring one set of proceedings;
- Repeal all criminal penalties for defamation;
- Companies should not be able to sue in any circumstances;
- Acknowledge journalist privilege by extending shield laws to ensure confidential source protection;
- Plaintiffs should be prevented from suing journalists individually in circumstances where the journalist's employer/publisher would be a co-defendant;
- Foreigners looking to sue in Australia must show a real connection to the jurisdiction where they have brought the claim.

Australian Federal Police
Commissioner Andrew
Colvin **Andrew Ellinghausen**,
Fairfax Photos

NATIONAL SECURITY

JOURNALIST INFORMATION WARRANTS

On Thursday April 13, 2017 telecommunications and internet service providers were required to collect and retain user data for two years thanks to the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* which was passed in the parliament with bipartisan support. The metadata retention regime is a particular concern for journalists who are ethically obliged to protect the identity of confidential sources. Clause 3 of MEAA's *Journalist Code of Ethics* requires confidences to be respected in all circumstances.¹⁸⁵

The new regime secretly circumvents these ethical obligations. Under the system, the granting of a

Journalist Information Warrant allows at least 21 government agencies to access a journalist's telecommunications data or their employer's telecommunications data for the express purpose of identifying a journalist's confidential source. The warrant could be used to identify and pursue a journalist's source (without the journalist's knowledge); including whistleblowers who seek to expose instances of fraud, dishonesty, corruption and threats to public health and safety.

The warrant will be granted where the Minister believes that the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the

source. If this warrant is granted, it remains secret and the journalist is unable to challenge it. Further, the warrant can last up to six months and grants access to data up to two years old.

MEAA and media organisations have repeatedly warned politicians of the threat to press freedom in these laws. At the last minute, parliament created a so-called "safeguard" : the Public Interest Advocate. However, the scheme is no safeguard at all; it is merely cosmetic dressing that demonstrates a failure to understand or deal with the press freedom threat contained in the legislation:

The Journalist Information Warrant

AN AFP OFFICER ACCESSED A JOURNALIST'S DATA WITHOUT A WARRANT

scheme was introduced without consultation.

- It operates entirely in secret with the threat of a two-year jail term for reporting the existence of a Journalist Information Warrant.
- Public Interest Advocates will be appointed by the Prime Minister. Advocates will not even represent the specific interests of journalists and media groups who must protect the confidentiality of sources.
- There is no comprehensive reporting or monitoring of how the warrants operate.
- Journalists and media organisations will never know how much of their data has been accessed nor how many sources and news stories have been compromised.

The warrants allow the government agencies to access:

- Your account details.
- Phone: the phone number of the call or SMS; the time and date of those communications; the duration of the calls; your location, and the device and/or mobile tower used to send or receive the call or SMS.
- Internet: the time, date, sender and recipient of your emails; the device used; the duration of your connection; your IP address; possibly the destination IP address (if your carrier retains that information); your upload and download volumes; your location.

The 21 government agencies include the anti-corruption bodies that already have star-chamber powers, as well as Border Force, the Australian Securities and Investments Commission and the Australian Crime Commission, and state and federal law police forces.

ASIO doesn't have to front a court or tribunal; it can apply for a Journalist Information Warrant directly to the attorney-general.

A journalist can never challenge a Journalist Information Warrant. Everything about Journalist Information Warrants is secret. Even if someone should discover a warrant has been issued, reporting its existence will result in two years jail.

In short, journalists and their media employers will never know if a warrant has been sought for their telecommunications data and will never know if a warrant has been granted

or refused or how many of their news stories and their confidential sources' identities have been compromised.

Subsequent to the revelation of the access to a journalist's metadata without a warrant, an audit by the Commonwealth Ombudsman found that Australian Federal Police did not destroy all copies of phone records it obtained unlawfully, without a warrant, for the purpose of identifying the journalist's source.¹⁸⁶

On February 28 2017 the director-general of ASIO told a Senate Estimates hearing that ASIO had been granted "a small number" of Journalist Information Warrants.

On April 28 2017 MEAA issued a statement regarding the revelation an Australian Federal Police officer has been able to access a journalist's telecommunications data without being granted the necessary Journalist Information Warrant.¹⁸⁷

The ombudsman contradicted AFP commissioner Andrew Colvin's statement in April 2017 that confirmed a breach had occurred within the professional standards unit and that the accessed metadata had been destroyed. An audit of the AFP's records carried out by the ombudsman on May 5 2017 "identified that not all copies of records containing the unlawfully accessed data had been destroyed by the AFP".¹⁸⁸

Of particular concern is this statement from the ombudsman's report: "With regards to how the breach was identified, based on our understanding of the events leading up to the voluntary disclosure to our Office, it appears that an external agency initially prompted the AFP to review the relevant investigation, resulting in consideration of the relevant legislative requirements."¹⁸⁹ For the AFP to need an external agency to remind it to comply with the law is disturbing.

The ombudsman found that there were four main contributing factors for the breach:

- At the time of the breach, there was insufficient awareness surrounding Journalist Information Warrant requirements within the Professional Standards Unit (PRS);
- Within PRS, a number of officers did not appear to fully appreciate their

responsibilities when exercising metadata powers;

- The AFP relied heavily on manual checks and corporate knowledge as it did not have in place strong system controls for preventing applications that did not meet relevant thresholds from being progressed; and
- Although guidance documents were updated prior to the commencement of the Journalist Information Warrant provisions, they were not effective as a control to prevent this breach.

The failure to destroy the accessed data came down to a lack of technical know-how. The Ombudsman suggested that in future cases, the "AFP, when destroying information, seek assistance from its technical officers to ensure that the information is destroyed from all locations on its systems".

The ombudsman's report states that: "At the time of drafting this report, 190 authorised officers were delegated to issue metadata authorisations. Fifty-four of them could issue metadata authorisations under a Journalist Information Warrant."

The ombudsman recommended: "The AFP should consider the relevant training and experience of officers who may temporarily act in higher positions which have been delegated to issue metadata authorisations. These officers are not subject to mandatory metadata training and would have infrequently, if at all, issued metadata authorisations."

The lack of proper capability, oversight, management and understanding of the requirements of the law, outlined in the Ombudsman's report, is worrying. After all, the legislation is designed for a single purpose: to enable the government to go after whistleblowers after their stories have been told by the media. Its aim is to bypass the ethical obligations of journalists by trawling through their telecommunications data and that of their media employer, to enable a government agency to hunt down, persecute and prosecute a confidential source after a news story has been published or broadcast.

The use of legislation in this attack on press freedom, legislation that was passed by the Parliament with bipartisan support, should be deeply troubling for any advocates of freedom of expression and press freedom.

THE PUBLIC'S RIGHT TO KNOW

The bungling application of the law by the national police force so soon after being enacted is more worrying still.

MEAA has campaigned strongly against the ability of government agencies to access journalists' and media companies' telecommunications data in order to hunt down and identify confidential sources. MEAA chief executive Paul Murphy responded to the news that the AFP had not adhered to the need to get a warrant before trawling through a journalist's telecommunications data: "Despite all of the requirements put in place before a Journalist Information Warrant can be granted, the system has failed.

"This is an attack on press freedom. It demonstrates that there is very little understanding of the press freedom concerns that we have been raising with politicians and law enforcement officials for several years now," he said.

"The use of journalist's metadata to identify confidential sources is an attempt to go after whistleblowers and others who reveal government stuff-ups. This latest example shows that an over-zealous and cavalier approach to individual's metadata is undermining the right to privacy and the right of journalists to work with their confidential sources," Murphy said.¹⁹⁰

In January 2019 the Commonwealth Ombudsman released another report on the compliance of the Journalist Information Warrants provisions.¹⁹¹ The report noted the AFP's 2017 failures and the subsequent investigations by the Ombudsman into the failure and the Ombudsman's recommendations.

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

"During the inspection our Office considered and assessed:

- all applications for Journalist Information Warrants since the first non-routine inspection;
- all Journalist Information Warrants

issued to the AFP since the first non-routine inspection; and

- each authorisation made under an expired or revoked Journalist Information Warrant since the first non-routine inspection [conducted on May 5 2017]."¹⁹²

The Ombudsman found that the AFP was still not complying with its requirements under the law. "At the September 2018 inspection, we noted two exceptions to adherence with the conditions of a warrant but were otherwise satisfied the AFP had appropriately applied the Journalist Information Warrant provisions in the instances we inspected."

The Ombudsman's describes the first exception: "The Integrated Public Number Database (IPND) is a telecommunications industry database containing all listed and unlisted public telephone numbers and can be searched after making an authorisation to access telecommunications data. During our inspection, we identified instances where IPND searches provided data results beyond the date range specified in the warrant conditions..."

"We note the AFP's proactive approach to mitigating privacy intrusion by drafting warrant conditions. In future we suggest the AFP also ensures any warrant conditions can be given practical effect before they are finalised. Following the inspection, the AFP advised that its guidance on obtaining Journalist Information Warrants will be updated to require officers to consider the impact of warrant conditions prior to issue. AFP also advised that it has begun using this issue as an example in training; highlighting the need to ensure restrictions placed on warrants or authorisations are compatible with telecommunication request systems."

Of the second exception, the report says: "Under an authorisation for telecommunications data, an agency can access various types of information from carriers, including subscriber information. Subscriber information is information held by a carrier relating to those who are subscribed to its services including details such as the subscriber's name and address. During our inspection, we identified three authorisations for access to subscriber information where the requests did not

limit the date range for results as per the warrant conditions."¹⁹³

Because of the secrecy surrounding the use of the warrants it's not known how much damage may have taken place where a journalist's telecommunications data and their ethical obligation to protect confidential sources may have been compromised by the AFP's failure to adhere "with the conditions of a warrant".

The Ombudsman's 2019 report also noted: "Although the AFP has made progress, one suggestion from our October 2017 report has not been implemented. Specifically, we had suggested that PRS staff undergo supplementary induction training relating to telecommunications data, shortly after commencing in the section. We will continue to monitor the AFP's compliance with telecommunications data legislation through our routine inspections. We will also use those inspections to assess the AFP's progress in implementing our remaining suggestion."

The Ombudsman's report says: "In our October 2017 report, we suggested the AFP implement a supplementary induction training package that PRS (professional standards unit) new-starters must complete prior to commencing with PRS if the formal induction is likely to be delayed. We suggested this supplementary training package cover roles and responsibilities for telecommunications data, and specifically highlight the higher thresholds for applications relating to journalists. At our second non-routine inspection, this suggestion had not been implemented by the AFP. PRS staff still do not complete formal telecommunications data training until they are formally inducted into PRS, which may occur many months after they commence.

"Given that we identified training for PRS staff as a particular risk in our October 2017 report, we are concerned this suggestion has not yet been acted on.

"Following the inspection, the AFP proposed to introduce a mandatory online training program for requesting officers in 2019. The aim of this training will be to foster a heightened awareness of the Journalist Information Warrant provisions under the Act for

BECAUSE OF SECRECY IT'S UNKNOWN HOW MUCH DAMAGE WAS CAUSED

all requesting officers, including those in PRS. In December 2018 the AFP also updated PRS's New Starter Induction Checklist. This new checklist is to be completed when staff commence in PRS and records their acknowledgement of general guidance material related to telecommunications data as well as specific information about the Journalist Information Warrant provisions...

"Our Office notes the AFP's progress in addressing the issues raised in our October 2017 report. We will continue to monitor the AFP's implementation of the outstanding suggestion through our routine inspections, the results of which will be included in our Annual Report to the Minister."¹⁹⁴

On April 4 2019, the Parliamentary Joint Committee on Intelligence and Security commenced three statutory reviews on the mandatory data retention scheme and the amendments made by the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*.¹⁹⁵ The review will focus on the following aspects of the legislation:

- the continued effectiveness of the scheme, taking into account changes in the use of technology since the passage of the Bill;
- the appropriateness of the dataset and retention period;
- costs, including ongoing costs borne by service providers for compliance with the regime;
- any potential improvements to oversight, including in relation to journalist information warrants;
- any regulations and determinations made under the regime;
- the number of complaints about the scheme to relevant bodies, including the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security;
- security requirements in relation to data stored under the regime, including in relation to data stored offshore;
- any access by agencies to retained telecommunications data outside the TIA Act framework, such as under the Telecommunications Act 1997; and
- developments in international jurisdictions since the passage of the Bill.

The committee is accepting submissions with a deadline of July 1 2019 and the committee must report by April 13 2020.

DECRYPTION

On July 14 2017 MEAA issued a statement expressing alarm at a government push to force tech companies to "break", or decrypt, encrypted communications.¹⁹⁶ "The announcement seems to show scant understanding or consideration of how this might be achieved, or any concern for the potential consequences," MEAA said.

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

MEAA chief executive Paul Murphy said: "For more than 15 years now, we have seen government introducing anti-terror laws that erode press freedom, persecute whistleblowers and attack journalists for simply doing their job.

"Laws that are meant to protect the community and go after terrorists are being used to muzzle the media, cloak the government in secrecy, hunt down and identify journalists' sources, and imprison journalists for up to 10 years for reporting matters in the public interest," he said.

"As recently as April [2017], the Government failed to bring the Australian Federal Police to heel when it revealed that it had illegally accessed a journalist's telecommunications data without a warrant. Even the subsequent investigation by the Commonwealth Ombudsman into how that breach occurred is a secret under the *Telecommunications (Interception and Access) Act*," he said.

"There is real concern that government agencies could once again misuse their powers to go after whistleblowers, to go after journalism. The government must take immediate steps to protect human rights and press freedom before it indulges in granting agencies any more anti-terror powers. There will be appalling consequences if extreme powers such as those being sought by the Prime Minister and Attorney-General are misused to persecute journalists and their sources. After all, that's what happened just three months ago," Murphy said.

The Parliamentary Joint Committee on Intelligence and Security received nearly 100 submissions to its inquiry into bill. Virtually all of the submissions raised serious concerns about its impact.

The MEAA submission dated October 19 2018¹⁹⁷ stated that MEAA was gravely concerned that the proposed legislation is neither reasonable nor proportionate. The legislation as it stands carries too few safeguards and exceeds the threats it seeks to manage. It typifies the sledgehammer to crack a walnut approach that is now commonplace in Government attempts to bolster national security and community safety.

MEAA's journalist members are especially concerned that warrants and orders may be issued in cases where matters of public interest have been reported through the provision of information by confidential sources and which attract penalties under the Commonwealth Crimes Act. The breach of such a confidence by a journalist offends the Code of Ethics and endangers coverage of issues deserving public scrutiny.

"We call upon the Committee to set the proposed legislation aside so that a proper period of consultation — including with the news media industry — can occur. At a bare minimum, we seek the incorporation of exemptions for persons engaged in journalism and the media industry to ensure that matters of public interest can continue to be reported without fear of government agencies seeking warrants and orders to pursue journalists that shine the light on matters of public interest."

The MEAA submission focussed on three issues:

Computer Warrants

Under the proposed legislation, a law enforcement agency may apply for a warrant to covertly search electronic devices and access content. The warrants permit the search of electronic devices to determine whether it is relevant and covered by the warrant, which seems to be a process of reverse logic. We are concerned that the test for enhanced search warrants of 'suspecting on reasonable grounds that evidential material is held in a device' will allow fishing expeditions into the communications activity of an ever-escalating number of citizens, including MEAA's members.

THE LATE WASHINGTON POST EDITOR, BEN BRADLEE

“First, we do consult with the government regularly about sensitive stories and we do withhold stories for national security reasons, far more often than the public might think. The *Post* has withheld information from more than a dozen stories so far this year for these reasons.

Second, we don't allow the government — or anyone else — to decide what we should print. That is our job, and doing it responsibly is what a free press is all about. Trouble starts when people try to sweep a lot of garbage under the rug of national security...

The role of a newspaper in a free society is what is at issue here. Governments prefer a press that makes their job easier, a press that allows them to proceed with minimum public accountability, a press that accepts their version of events with minimum questioning, a press that can be led to the greenest pastures of history by persuasion and manipulation.

In moments of stress between government and the press — and these moments have come and gone since Thomas Jefferson — the government looks for ways to control the press, to eliminate or to minimise the press as an obstacle in the implementation of policy, or the solution of problems.

In these moments, especially, the press must continue its mission of publishing information that it — and it alone — determines to be in the public interest, in a useful, timely and responsible manner — serving society, not government.”²⁰⁵



“Although the Government asserts that a computer access warrant does not authorise the addition, deletion or alteration of data, the explanatory materials also state that such adjustments can be made ‘where necessary to execute the warrant’,” the submission said.

Assistance Orders

These can be issued by a judicial officer to require a device owner to provide access to the device where it is reasonably suspected that ‘evidential material’ is held on a device. The penalty for refusing to assist authorities will increase to a maximum of five years’ imprisonment. These measures are not confined to what may be considered serious risks of harm to community safety, but to all forms of misconduct. It is inappropriate to compel members of the community to permit access to personal information without some regard for the severity and nature of an offence.

Technical Assistance Orders

The legislation seeks the introduction of Technical Assistance Requests (TAR), Technical Assistance Notices

(TAN) and Technical Capability Notice (TCN). These apply to communications providers operating in Australia.

TARs are voluntary and are issued at agency head (or delegate) level. If the request is acted upon by a provider, that provider and their agents are granted civil immunity.

The TAN is a compulsory order requiring a provider to give assistance wherever capable of doing so. TANs are issued by security and law enforcement agency heads or their delegate(s).

TCNs are also compulsory orders may only be issued by the Attorney General. The distinction between a TAN and TCN is that the TCN can require a communications provider to build a capability or functionality to provide the assistance sought. A TAN can only seek the application of mechanisms that already exist.

Notices must be for the purpose of enforcing criminal laws, protecting public revenue or safeguarding national security. Each exercise must be reasonable and proportionate.

There needs to be much more careful consideration of the risks this legislation poses.”

The Bill had its second reading debate on December 6 2018 and was passed by both houses with some amendments considered in the Senate on the last sitting day for 2018. It received assent on December 8 but as the parliament rose two days earlier, the Act was referred to the Parliamentary Joint Committee on Intelligence and Security by the Senate for an inquiry into the entire act as well as the government’s amendments.

On February 12 2019, the Committee chair Andrew Hastie MP explained to the House of Representatives that the Senate had called for a review of the Act.¹⁹⁹

The deputy manager of Opposition business Mark Dreyfus subsequently told the House: “On the morning of 6 December 2018, the last parliamentary sitting day of 2018, the government introduced 173 amendments to the Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 in response to the Parliamentary Joint Committee on Intelligence and Security’s 17 recommendations, which had been delivered only a day earlier in the committee’s report of 5 December. The government’s amendments did not fully implement the committee’s recommendations...”

“We do not suggest that the full implementation of all of the committee’s recommendations would address all of the concerns that have been expressed by stakeholders about the measures that were introduced by the access act. To the contrary, the reason why Labor insisted that the access act be referred to the committee for an immediate inquiry is that the committee did not have enough time to properly consider the access bill,” Dreyfus said.²⁰⁰

The digital rights group Electronic Frontiers Australia (EFA) called the enacted legislation a serious threat to investigative journalism.²⁰¹ Board member Justin Warren told a Melbourne Press Club forum: “It becomes a question about consent and control over who has access to what information under what circumstances.”

EFA warned the legislation could put journalists at risk, should sensitive, and potentially damaging, information land in their hands — a situation

familiar to any journalist with a scoop. The backdoor mechanism weakens the overarching system of encryption, creating a loophole that could easily be targeted by hackers and online criminals, a point the tech world widely agrees upon. If damaging information is involved, this can absolutely risk the safety of journalists.

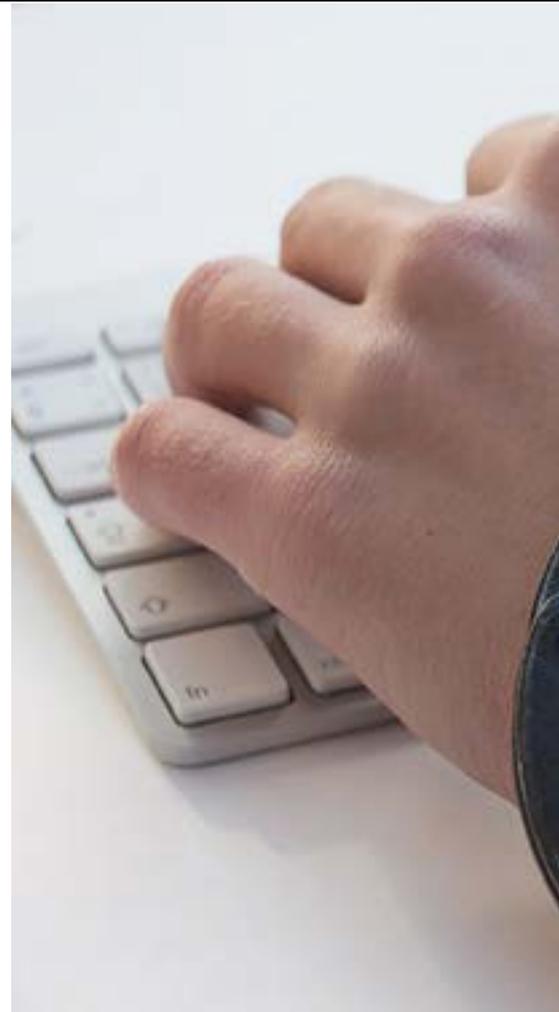
Journalists should also be wary of assuming benevolence on the government’s part in surveillance efforts, they said. The legislation contains additional provision of assistance to foreign governments, which could open up journalists to scrutiny from governments beyond Australia. “It comes down to trust, and another part of that trust question is with which government... It’s called jurisdiction shopping,” Warren told the Press Club.²⁰²

According to the EFA, the legislation is a further shameful step of encroaching government surveillance. The government already had a range of existing powers sufficient for security surveillance. “We haven’t heard from police why the existing powers are inadequate, other than hand waving... they haven’t specifically articulated the gaps in the existing legislation that prevent major crime [from being addressed],” Warren said.

“The striking thing to me, and in conversations with others... is that foreign intelligence organisations are not keen on it, because they understand that creating weaknesses in the system actually create problems, because if it leaks, as they always do, then criminal enterprises, terrorists, *etcetera* will get a hold of it,” Warren said. They know that, but they’re at a little bit of a disadvantage because the nature of their work means that it is done in secret, and they try very hard to be seen as nonpartisan.”²⁰³

The Parliamentary Joint Committee on Intelligence and Security has commenced a review of the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* and will report by April 3 2019. The committee had received 66 submissions by February 22 2019.

On March 27 2019, Labor committed to amend Australia’s encryption laws and would seek three changes to the encryption regime: prohibit the injection of “systemic weakness” into companies’ systems, strengthen judicial warrant requirements, and commission an inquiry into the economic effects of the laws.²⁰⁴



ESPIONAGE AND FOREIGN INFLUENCE

On June 28 2018, just hours before the Parliament rose for its winter break, the Senate rushed through two crucial pieces of legislation. The Guardian wrote: “The Senate has passed laws that amount to the most significant overhaul of Australia’s security and foreign interference laws in decades — creating new espionage offences, introducing tougher penalties on spies and establishing a register of foreign political agents.”²⁰⁶

The Bills, the *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* and the *Foreign Influence Transparency Scheme Bill 2017* (FITs) were introduced to the Parliament on December 7 2017 and then went to committee for inquiry



during which time many submissions were made. MEAA reported its concerns at length in the 2018 report into the state of press freedom, *Criminalising Journalism*.²⁰⁷

MEAA, together with Australia's Right To Know media industry lobbying group, made numerous submissions to both inquiries. MEAA was particularly concerned with the implications of the Espionage Bill.²⁰⁸

Once the inquiries concluded and subsequently reported, the Bills passed following the acceptance of many amendments.

MEAA welcomed many of the recommendations in the Parliamentary Joint Committee on Intelligence and Security report into the Espionage Bill.²⁰⁹ It was clear that the concerns raised by MEAA, media organisations and many civil society bodies were justified, given the Committee made 60

recommendations for changes to the Bill in its 400-page report.

MEAA chief executive Paul Murphy commented: "We said from the outset that this was a poorly drafted Bill and thanks to the detailed submissions of many organisations, those failings have been pointed out to the Committee and the Parliament. In response, the recommendations clearly seek to implement sensible and proper improvements to the Bill and MEAA welcomes those changes."

However, MEAA remained concerned that there is still no media exemption recommended by the inquiry, only changes to a defence and one that overly relies on the Attorney General of the day agreeing to prosecute or not.

MEAA said: "The failure of the Committee's report to allow for a media exemption means that this Bill would enable the Australian Parliament

to further legislate to criminalise journalism. The report still recommends a journalist receive a lengthy jail term for having reported and published or broadcast a legitimate news story. That would make Australia one of the worst countries in the free world for criminalising journalism, and would mean Australia joins the rogues' gallery of countries that use national security laws to jail journalists such as Turkey, Egypt and China."

Recommendation 2 of the report still states that the Bill would create an offence of causing "national embarrassment". Murphy noted "As the late *Washington Post* editor Ben Bradlee said: "national security powers should not be used to cover up national embarrassment. Journalists must be allowed to scrutinise government in order to inform the community and maintain a healthy, functioning democracy. Laws that curtail the media's ability to do that, and that impose jail terms for legitimate journalism, are attacks on press freedom and democracy. The Australian media has regularly shown that when it comes to stories about national security, it has been extremely responsible."

Murphy added that while defences were offered for media organisations' editorial and administrative support staff as well as legal advisers, there was little protection afforded to whistleblowers and others who work with journalists.

MEAA also noted that the report, in recommendation 41, still sought to impose limitations on the right to freedom of expression. "This is a dangerous step that has far-reaching and very dangerous implications for free speech and press freedom in Australia," Murphy said.

"This Bill, while it has been improved, is still flawed and irresponsible. Bad laws should never be rushed through Parliament. This report makes 60 recommendations but this is still not a good Bill. MEAA urges all parties to redraft the Bill and then allow for extensive consultation and feedback from civil society to ensure that the extensive powers being granted to government are responsible, uphold and protect press freedom, and respect the public's right to know."

THERE WAS LITTLE PROTECTION AFFORDED TO WHISTLEBLOWERS

THE INDUSTRY REDUNDANCIES

There has been some abeyance in the mass redundancies at the larger media outlets. Disturbingly, redundancies have taken place at smaller digital workplaces as they transform from an initial establishment and growth phase only to find that advertising revenue is insufficient to maintain profitability. As a result, some digital-only new media businesses that had earned respect among their media peers are now making talented young journalists redundant.

In January 2019 BuzzFeed Australia said it would cut a quarter of its workforce as a result of a worldwide savings push. MEAA said: “These cuts at a digital disrupter like BuzzFeed — with a seemingly successful, diversified business model, a global audience reach in the hundreds of millions, innovative content strategies and a thriving focus on public interest journalism — highlight the crisis facing journalism around the world and the ongoing risks to public interest reporting if even those media players successfully engaging large and younger audiences feel they can no longer afford sizeable workforces or dedicated newsrooms.

“In a few short years, BuzzFeed Australia established itself as a key player on the national media scene, breaking key national interest stories, garnering four Walkley nominations for excellence in journalism, becoming a respected incubator of talent and a journalistic innovator.

“MEAA welcomes experiments and new initiatives aimed at finding financially sustainable models that fund public interest journalism. BuzzFeed is an important part of that mix. However, hardworking journalists in London, Sydney, LA and New York shouldn’t bear the brunt of the failed experiments of tech investors. We need an industry that employs, trains and supports journalists at startups.”²¹⁰

MEAA members expressed anger and concern at the way these redundancies were being conducted. Several rival organisations sent messages of support to colleagues at BuzzFeed. MEAA called on the company to ensure all entitlements were paid

in full to its “hard-working staff, who have demonstrated the utmost dedication to the BuzzFeed brand, and properly recognise those efforts with fair, reasonable and above-award redundancy payments, in line with what their colleagues overseas have received”.

MEAA noted that many journalists working for digital-only publications currently miss out on key protections enjoyed by their print colleagues. MEAA argued: “Journalists in the digital media deserve the same working conditions that many of our colleagues enjoy in more traditional media — conditions won and defended by union members over decades — and MEAA digital members are actively campaigning to extend those conditions in to their workplaces to level the playing field and ensure basic entitlements like the right to paid overtime, time off in lieu, shift penalties and payment for unsociable hours worked are paid to digital journalists.

For some time, MEAA has responded to the changes taking place in the industry by implementing its Good Jobs in Digital Media campaign.²¹¹ “Around the world, digital journalists are coming together to say they demand the same conditions as those working for older, print-first publications. Endless night shifts and daily bollockings do not have to be the new normal.

“Particularly in the United States over the past 18 months, there has been a wave of prominent online publications where journalists have organised with a union for better pay, conditions and respect at work. Huffpo and Vice are among the publications who have successfully unionised to secure pay and conditions that have been withheld for too long. As the union for Australia’s media workers, MEAA is committed to campaigning for a charter of digital journalist rights to be adopted at all digital media outlets.”

Job cuts still took place at traditional media outlets.

At Fairfax, in the wake of the takeover by Nine Entertainment Co it was announced that 26 journalists and other staff working for the group’s

digital platforms would be made redundant.²¹² MEAA commented: “Digital media workers are sick of it — they are innovating and attracting new audiences and advertising dollars, and are angry at the lack of protections covering them in their workplace and the lack respect for the work they do. Digital workers are unionising to get a seat at the table with their management; to negotiate decent work conditions, good pay and to have input about the future of the companies they work for.

“Despite the job cuts announced today, digital media is growing — fast. And will keep growing. And digital journalists want a say in the direction these companies are going, to share ideas at the top levels and build a sustainable career path, with good pay, fair conditions and protections for workers in digital media.”

MEAA condemned the announcement from News Corporation via a statement to the Fairfax-owned *Australian Financial Review* that at least 30 editorial positions would be made redundant. The positions were a mixture of voluntary and forced redundancies. Journalists at leading metro mastheads as well as production staff would lose their jobs. Production positions would be shifted from News to the AAP subsidiary Pagemasters.²¹³ MEAA noted that News had made sub-editors and other production staff redundant in the Northern Territory and South Australia just a few months earlier.

News Corporation did not consult with the affected staff or their unions prior to making the announcement — as required by their enterprise agreement. MEAA sought answers from News Corp management about the future of production positions in other states.

MEAA Media director Katelin McInerney said in a statement: “It is disrespectful to workers to read in a rival publication this morning that they will lose their jobs. The company should have been honest and upfront with its employees. News should have given its people the opportunity to look at other job options and ways to assist the company to meet its cost reduction targets. It’s outrageous that the company should treat loyal and long-serving specialist employees so shabbily.”

On April 30 2018 ABC News management announced it would axe 20 journalists out of local newsrooms.²¹⁴ MEAA said: “It appears the majority of those being tapped for redundancy are senior, experienced journalists.



Staff who are on the chopping block are local journalists dedicated to local storytelling. Despite assurances from management that local coverage will not suffer, it is difficult to understand how axing senior, experienced journalists out of state newsrooms is not going to have an impact.

“While MEAA understands more digital-facing roles will be created in this move by ABC to cater to audiences moving increasingly to online, our public broadcaster has to ensure it doesn’t throw the baby out with the bath water,” McInerney said.

“The ABC has a poor track record of skilling their staff up adequately to meet the challenges of digital and online news production — the redundancy rounds in 2014-15 and subsequently have seen more than 130 talented, dedicated journalists made redundant, and have been marked by widespread under-investment in skills training and a dearth of opportunities to work in new digital areas to cement those skills.

“The ABC has a duty to their audiences to ensure their senior, often older and more experienced staff are provided with opportunities to gain the skills needed to pivot to online.

“We need experienced journalists in the newsrooms of our public broadcasters, journalists whose expertise in the business of newsgathering and in investigative journalism not only benefits their audiences but also the next generation of reporters coming up the ranks,” McInerney said.

After several years of pressure from ABC union members, management finally announced in late 2017 that it would

create a dedicated annual budget for training staff. Prior to that there was no dedicated corporation-wide plan or budget for upskilling editorial staff. Staff regularly complain that access to training is incredibly difficult to balance with a 24/7 news cycle.

MEAA argued: “The ABC should be providing their senior staff, their most valuable asset, with the skills required to move news into new areas.”

Also during the year, AAP announced plans to make up to 25 editorial positions redundant before June 30 2018. It gave its staff just a week to consider their options.²¹⁵ MEAA said: “The first staff heard of the need to reorganise and make savings was at a meeting today outlining the company’s pre-determined course of action to cut about 15 percent of its workforce.”

MEAA Media director Katelin McInerney said: “Staff are telling us they are outraged that the company did not consult with them before making this decision. But to then impose a deadline of Tuesday next week simply does not allow people enough time to receive a redundancy estimate, talk to their family, or to get financial advice on their individual circumstances.”

Staff said that given the scale of editorial job losses, it is likely to be an extremely tough road ahead for affected staff. The company has stated that it will force redundancies if its target is not reached through voluntary applications.

McInerney said: “MEAA members at AAP have told management that it must extend this ridiculous deadline and meet with employees to hear their feedback and ideas for alternatives

to redundancy. Management must engage with its people earlier in future restructures so that employees are treated with respect and dignity.”

MEAA urged AAP to show compassion and courtesy by allowing staff more time to plan for their future without having an unrealistic deadline imposed on their decision-making.

Support for AAP journalists²¹⁶ came from the House Committees of MEAA members at *The Sydney Morning Herald*, *The Age* and *The Australian Financial Review* newspapers. In a joint resolution addressed to their colleagues at AAP, MEAA members at the Fairfax Media metro publications (AAP is jointly owned by Fairfax 47 percent, News Corp 45 percent and Seven West Media 8 percent) said:

We condemn the endless cuts to journalists’ numbers on the ground. These are cuts that are eroding journalism in Australia and the ability of journalists to do our jobs and protect and inform the communities we serve.

We stand with our colleagues at AAP in the face of their management’s decision to cut between 20 and 25 journalist jobs, a cut that impacts us all.

The loss of such vital newsgathering people — at a time when our organisation relies so heavily on the skills and ability of AAP journalists to fill the gaps left in our newsrooms by year-on-year job cuts — is senseless and deeply damaging.

We call on Fairfax management and the other shareholders of the AAP business to reinstate these jobs so our audiences don’t lose out. Our communities count on us to keep them informed and provide them with the real story.

The national News Corporation House Committee endorsed this motion in support of their AAP colleagues:

We call on News Corp management, a part-shareholder in AAP's business, to reinstate these jobs so our audiences — our communities that count on us to keep them informed and provide them with the real story — don't lose out.

In August 2018 the Community News Group in Western Australia announced it would be closing five of its papers from early September. The papers concerned were: *North Coast Times*, *The Advocate*, *Midland Reporter*, *Hills and Avon Valley Gazette* and *Comment News*.

MEAA said coverage of local issues, particularly local council related matters, rarely get any coverage within the state's only daily metro newspaper, and this should be of serious concern to readers seeking transparency of local government within these communities.

"As yet, there is no confirmation as to how many staff will be made redundant, and we are hopeful that a number of reporters will be moved across into other papers," MEAA said.

"While a blow to the local communities affected, it is also a concern for younger journalists, as CNG has been a wonderful training ground. Many WA journalists got their start on the CNG papers, and have gone on to work in national and international newsrooms."²¹⁷

In late March *The Courier Mail* announced the paper would be outsourcing production work. Back bench and sub-editors from *The Courier Mail*, *Sunday Mail* and magazines would be affected. All casual shifts would move to Pagemasters with the loss of nine full-time equivalent permanent roles.

In the same week, West Australian Newspapers announced it was seeking expressions of interest in voluntary redundancies. Management said its review of the company's operations had revealed what it called "excess capability. The number of voluntary redundancies being sought was unclear.

There were also job losses at the major magazines groups. In May 2018 Pacific Magazines made five positions redundant as part of a restructure of its production hub process. In July Bauer Media also made changes to its production systems with 17 positions lost (11 redundancies and six vacancies not replaced).

GENDER

GENDER PAY GAP

According to the Government's Workplace Gender Equality Agency the gender pay gap, as represented by full-time adult average weekly ordinary time earnings, in the information media and telecommunications industry fell by 0.6 percentage points in the 12 months—from a gender pay gap of 19.1 percent in 2017 to 18.5 percent in November 2018.²¹⁸

This places the industry in sixth place as among the worst performers, surpassed only financial and insurance services; health care and social assistance; rental, hiring and real estate services; professional, scientific and technical services; and the arts and recreation services industry. By contrast, the best performing industry is public administration and safety where the gender pay gap reduced by 1.7 percentage points to 5.1 percent.

The media industry is also performing worse than the national average. The agency says that on a national basis the gender pay gap has reached its lowest point in more than 20 years at 14.1 percent.

"Using the latest ABS Average Weekly Earnings trend series data, the Workplace Gender Equality Agency (WGEA) has calculated the national gender pay gap as 14.1 percent for full-time employees, a difference of \$239.80 per week."²¹⁹

GENDER DIVERSITY

On April 4 2019 the Women's Leadership Institute Australia released its 2019 *Women for Media Report: You can't be what you can't see* by Jenna Price with Anne Maree Payne.²²⁰ The report focusses its research on mainstream Australian digital media, providing a snapshot of Australia's 15 most influential news sites on four consecutive Thursdays in October 2018. Thursdays are a high traffic day with big audiences, between noon and 2pm.

The top five stories on each site were selected based on their position on the homepage. In February 2019, the research analysed the top five opinion pieces on each site across Tuesday to Saturday in one week, again between noon and 2pm. Two ordinary readers of news sites were then asked to identify what they considered to be the top stories at that time.

The authors say the research's results demonstrate the critical and ongoing

need for a stronger women's presence in the media. "Women make up 50.7 percent of the population; but the stories which appear in the media do not reflect that reality." Key findings include:

- Women account for 34 percent of direct sources quoted and 24 percent of indirect sources (sources named but not directly quoted);
- Approximately 50 percent of the sites achieved gender parity on the representation of male and female journalists; and
- Female journalists wrote 76 percent of celebrity and royals stories, approximately 40 percent of stories relating to government, politics, business, finance, law, crime and justice, and 12 percent of sport stories.

The report says: "Women are missing, still missing. We are not missing from real life, of course. We work in hospitals and schools, in laboratories and in construction and we make up 50.7 percent of the population; but the stories which appear in the media do not reflect that reality. Instead, the media reality is that women are not experts, not sources. As those sources, we are missing from news stories and from feature stories, we are missing from photos both as photographers and as subjects; and we are missing in that very influential place in the Australian media landscape, our voices are missing from opinion pieces and columns. Some organisations are trying to change that dynamic..."

The findings were stark. *What do we read when we enter the top space of those websites? We read stories about men, by men. Our snapshot showed men were quoted far more often than women and that the stories by male journalists were positioned slightly more often in the top spots on the home pages of these websites.*

Women write about royals and men write about political leaders. Men write about sport, women write about media, the arts and entertainment.

Women are also absent from the photos which accompany those top stories. Our data collection coincided with the royal visit; if photographs of Meghan Markle and female crime victims were omitted from our data set, the representation of female subjects would have been even lower. If we want those websites to reflect Australia, we urgently need more women as subjects in photographs. It might help to have more women behind the camera — just under 80 per cent of the bylines on photographs belong to men.

Women journalists occupy that important top space just under half the time but here's what the figures show: men's voices as sources are louder and prouder. Across our data set from all of the sites analysed, the average representation of female sources was just over one-third.

Only the stories on one news site quoted more women than men; and that was BuzzFeed Australia. Of the rest, the next best was 9News with women representing 45 per cent of the sources quoted. At the other end sits the Australian Financial Review, where women made up only 14 per cent of sources.

Finally, if you read an opinion piece from the two national publications, The Australian and the Financial Review, know that they will nearly always be written by men.²²¹

Gender in the newsroom matters, the report said, “if you want to read more women’s voices. Women quote more women than men do — but they still quote a lot of men... The representation of female journalists credited as authors across our news data set ranged from a low of 14 percent at *The Herald Sun* to a high of 70 per cent on BuzzFeed. Women occupy nearly half the real-estate of the top stories on the home page of our leading news sites...

“Articles co-authored by male and female journalists are also significantly more likely to use female sources (37 per cent) than articles written solely by male journalists (24 per cent). In other words, if you want more diverse sources, a good tip is to have more diverse writers. These figures show women are a good influence on gender diversity.”

But the report warned that gender diversity in the newsroom doesn’t automatically solve a lack of gender diversity in reporting. “At the other end of the spectrum in our sample, 100 percent of the sources cited by female journalists at *The Herald Sun* were male, and female journalists also used a high proportion of male sources at the *Financial Review* (82 percent), the ABC (78 percent), and *The Daily Telegraph*, *The Courier Mail* and *The West Australian* (each at 75 percent). These figures suggest that the gender of the journalist alone is not a reliable predictor of the likelihood of female sources being cited.”

MEAA contributed analysis to the report. MEAA Media director Katelin McNerney said data collected during enterprise bargaining shows there at least 6100 ongoing salaried journalists employed in newsrooms on collective



agreements nationally in major media outlets in Australia, but these figures do not tell the whole story as they don’t capture numbers in smaller and digital newsrooms for instance.

MEAA had found that despite all of these companies reporting to the Workplace Gender Equality Agency on their overall workforce gender breakdowns, these companies, with the exception of Fairfax; universally refuse to split that data into gender breakdowns in newsrooms for their employees when requested by MEAA.

McNerney told the report’s authors: “This would give management and union members much better visibility of the gender gap that exists, and identify where we need more women to be employed to even out newsrooms that skew male, as well as to identify where real pay action is needed to close the huge 21.8 percent pay gap we know exists between female and male salaries in the information, media and communications sectors.

“Further, a brief review of the management structures of salaried newsrooms shows women remain severely underrepresented in the decision-making levels and that career paths up the ranks can be difficult to see for women — and this, in turn, has a knock-on effect for hiring women and working actively to provide opportunities for women coming up the ladder. This gap in pay and opportunity persists despite female university graduates outnumbering their male counterparts for many years,” McNerney said.

The report is available from: <https://www.wlia.org.au/2019-women-for-media-report>

PARENTAL LEAVE AND SUPERANNUATION

After years of campaigning by MEAA members, Fairfax Media agreed to extend superannuation to employees on parental leave in a decision that will

have far-reaching implications for the whole media industry.

During enterprise bargaining agreement negotiations over several years, MEAA members employed by Fairfax have been urging the company to do its bit to close the superannuation gap. On May 28 2018 the company finally stumped up the money to ensure employees taking time out to have a family are not disadvantaged at the end of their career when they access their retirement savings.

MEAA said: “This terrific win has not come out of thin air. MEAA members and Fairfax Media house committee delegates have worked hard during rounds of bargaining, and then in the ‘off-season’ between agreements through the union-established Gender and Diversity working group, to keep this important issue on the company’s priority list. Today we recognise their efforts over the past half a decade — and their win will not only have a big impact for workers at Fairfax, but will blaze the trail for the whole media industry.

“MEAA members have pursued not only this important issue, but have kept the pressure on management to do the right thing by their employees — in particular their female workforce — in all areas, including closing the pay and opportunity gap, creating a more balanced approach to parental leave and now to do their part to correct the appalling gap between the retirement savings of female and male workers.

“Those dedicated MEAA members — many of whom have now left the company — should be incredibly proud of all the work they have done over the years to bring Fairfax senior management to this point where management recognises the key role it must play in combating superannuation inequity.”

MEAA welcomed the initiative — a first for a major commercial media organisation.²²²

INTERNATIONAL WOMEN'S DAY

On International Women's Day, March 8 2018, the International Federation of Journalists (IFJ) called for necessary and substantial improvement of women's representation in the media and the unions that represent them at work. "If we want to improve quality journalism, then the media must also accurately reflect society in its ranks. It is only when we have genuine equality inside our media operations and institutions that this can truly be achieved," the IFJ said.²²³

The IFJ joined a coalition of media organisations calling upon all media leaders around the globe to stand up and protect the rights of female journalists, both staff and freelancers.

The IFJ said recent research had produced alarming results.

- Female journalists are systematically paid less in the media industry — in the UK alone female journalists earn 17.4 percent less than their male colleagues.
- Almost a third of female journalists consider leaving the profession because of the threats, intimidation or attacks they endure, and these figures are even higher in fragile contexts and conflict zones.
- More than a third of female journalists avoided reporting certain stories for the same reason.
- Almost half of female journalists experience online abuse. Many of them indicate the abuse has led them to become less active or even inactive on social media, while it's a crucial part of the job.

"The voices of far too many female journalists are silenced, which leads to many untold stories. This has to stop. Media must hire a diverse workforce and adopt gender equality policies in order to stand by women journalists and to produce stories that are relevant to all groups in society: balanced representation in the newsroom is essential to effectively talk to everyone.

"That is why today we ask you, as leader and role model for the whole organisation, to:

- Show your female journalists, both staff and freelance, that you will protect their rights and support them when abuse occurs.
- Promote a culture of safety within your organisation, have zero-

tolerance policy towards all forms of sexist behaviour and gender-based discrimination.

- Carefully monitor the payment to men and women and set a target for when the gender pay gap shall be closed.
- Treat all instances of intimidation and violence against female journalists as attacks against the whole organisation, instead of leaving your employee isolated.
- Ensure that you have a system in place to act upon abuse; collect the evidence and take it to the authorities every single time.
- Set clear and transparent procedures related to content moderation, with the view of tackling abusive content swiftly while protecting the right to freedom of expression.
- Provide sex disaggregated data to monitor where women stand in the newsrooms and act upon the findings.
- In the Asia-Pacific, the #IFJWomenLead campaign is part of IFJ Asia Pacific's ongoing work to focus on the vital role that unions have in representing women journalists' rights at work.²²⁴

Releasing figures on women's representation in media unions in the region, the IFJ said that women journalists currently represent 31 percent of all members in journalist unions and media associations in the Asia-Pacific, yet they occupied just 24 percent of positions on executive committees. More work is needed and changes are happening in unions that are active and committed to a gender equality agenda.

The IFJ said despite digital disruption and massive media job losses, membership in journalist unions continues to grow in the Asia-Pacific. Women's membership also continues to grow, increasing by 20 percent since 2015 — compared to an overall growth in union membership of 7 percent.

"These are the wins the IFJ is celebrating today on International Women's Day."

Of its members, 37 percent of IFJ affiliates have already introduced gender quotas for executive bodies, and more than 40 percent of IFJ affiliates have established gender policies in place:

- In Japan, Shinburoren is introducing a gender quota — with a minimum 10 women on executive committee — to be introduced in the next 12 months

- In Nepal, the Nepal Press Union is increasing its gender quota to 30 percent and the Federation of Nepali Journalists increased its executive, with one female vice president.
- In Taiwan, while it has no quota system, the Association of Taiwan Journalists has more than 50 percent of its executive represented by women journalists
- In Myanmar, the Myanmar Journalist Association has a minimum 30 percent gender quota on its executive
- In Afghanistan, the Afghanistan Independent Journalists Association has a 30 percent quota in executive positions and at least five of its provincial branch leaders are women.

IFJ president Philippe Leruth said: "Ahead of UN Beijing+25 [the UN conference in 2020 to mark the 25th anniversary of the Fourth World Conference on Women and adoption of the Beijing Declaration and Platform for Action (1995)] we must make a difference and call on media and unions to do everything they can to advance women in the media.

"The future of journalism cannot be addressed without looking into our daily routines and leadership habits towards women. Let's make a change and look into our own structures, as unions, to make sure women are fairly represented at all levels and that we adopt strong policies securing gender equality."

WOMEN IN MEDIA

Women in Media (WiM) is a nationwide MEAA initiative for women working in all facets of the media — from journalism and media advisory work to public relations and corporate affairs.

Through the influence and backing of MEAA members, Women in Media aims to improve the working lives of women in the industry:

Industrial Aims — Women in Media campaigns to close the equity and opportunity gap for women in media, namely, superannuation for periods of parental leave, better reporting breakdowns on staff make-up, pay rates and management structure by gender and access to family violence leave.

Advocacy — Women in Media works directly with media companies, educating senior management on the need for greater support for women in the media, the need for sponsorship and

THE MEDIA MUST REFLECT SOCIETY IN ITS RANKS

mentoring within organisations and creating a best-practice environment to ensure women are able to fully and equitably contribute to their industry — be it news, public relations, communications or creative freelance.

Mentoring — The national mentoring program draws together senior industry figures to offer women in the early stages of their career support, advice and the benefit of their experience.

Events — Women in Media holds events that focus on women’s issues including panel discussions, keynote addresses, professional development and Q&A sessions that aim to bolster confidence, offer networking opportunities, training and the chance to hear from women in senior positions in the media industry.

Research — Women in Media commissions important research regarding gender and women’s participation in media industries.

In 2016 it produced the *Mates Over Merit* report²²⁵ which found:

- Discrimination remains rife, with policies “on paper, not in practice”: Only 11 percent of respondents rated them “very effective”.
- 41 percent of women said they’d been harassed, bullied or trolled on social media, while engaging with audiences; several were silenced, or changed career.
- Only 16 percent of respondents were aware of their employer’s strategies to deal with threats.
- Almost half (48 percent) said they’d experienced intimidation, abuse or sexual harassment in the workplace.
- A quarter of the women who’d taken maternity leave said they’d been discriminated against, upon return to work. Some said they’d been put on the ‘mummy track’.
- One in three (34 percent) said they didn’t feel confident to speak up about discrimination.
- There’s evidence of an entrenched gender pay gap (reinforced by research from the Workplace Gender Equality Agency of a 23.3 percent gap in the sector).

MEAA is using the report’s findings to work with media employers to “fully harness the incredible potential of their female workforce”. Strategies include audits and action on the gender pay gap; improved procedures to deal with social media harassment; and anti-discrimination policies to be put into practice.²²⁶

CULTURAL AND RELIGIOUS DIVERSITY

On March 28 2019, in the wake of the Christchurch shootings MEAA, in partnership with Media Diversity Australia (www.mediadiversityaustralia.org), hosted an Australian media industry forum examining the reporting of hate crimes and extremism. The event was moderated by former Race Discrimination Commissioner Dr Tim Soutphimmasane. Speakers included journalist and author Amal Award, Crescent Foundation and Media Diversity Australia board member Talal Yassine, 10 daily news editor Rashell Habib, ABC head of editorial policies Craig McMurtrie and national editor of *The Age* and the *Sydney Morning Herald* Tory McGuire.

The panel discussed the need for more diverse newsrooms; newsroom editors and producers needing to listen to diverse communities when reporting hate speech, and the importance of strong union membership so that journalists can collectively push back and report ethically as they are obligated to do by MEAA’s *Journalist Code of Ethics*.²²⁷

MEAA has also been working with Media Diversity Australia to develop other workshops and forums in order to understand the diversity barriers in newsrooms and how to develop and better support the push for greater diversity in Australian media.

At the launch of the organisation in October 2017, journalist Waleed Aly, a member of Media Diversity Australia’s advisory board, said Australian television is “incredibly narrowcast, what some TV people in America call affectionately a ‘snowfield’... Where does diversity turn up on our screens? Reality TV — mostly because you can’t stop brown people cooking.” According to Mumbrella, he noted that this diversity does not translate onto panel shows, comedies or scripted dramas.²²⁸

Media Diversity Australia’s chair and co-founder Isabel Lo said: “There is no doubt that mainstream media in Australia is facing a crisis of sorts... In the face of transforming business models, news leaders are viewing the diversity issue as secondary priorities. We believe diversity is central to audience reach. Who are we trying

appeal to? Newsrooms should be reflecting the vibrant and complex nature of the Australian people.”²²⁹

Director and co-founder Antoinette Lattouf said: “We’re advocating for a media that looks like Australia, one that truly represents the Australians you see in this room and when you walk down the street. A media that looks and sounds like Australia. It’s not just the faces you see on television; it’s the stories and the perspectives. That’s what we think really needs to shift.”²³⁰

Media Diversity Australia is a nationwide not-for-profit organisation run by journalists and communications professionals that works to make news media more reflective of all Australians. The organisation provides:

- support and networking opportunities for journalists and media professionals from culturally and linguistically diverse backgrounds;
- conducts empirical research about ethnic and cultural diversity in Australian media;
- works in collaboration with media outlets on policies and strategies;
- fosters inclusive discussion that respects different viewpoints;
- recognises the importance of Aboriginal and Torres Strait Islander roles in the media; and
- stimulates public discourse on issues related to cultural diversity including religion, gender, disability, income, age, geography and socio-economic backgrounds.

The organisation has produced Indigenous guidelines and a newsroom handbook to assist media to report on Aboriginal and Torres Strait Islander peoples’ issues. It has also created a new Walkley Award that honours journalists who are making an outstanding contribution through their reporting or coverage of diverse people or issues in Australia. “This includes culturally and linguistically diverse communities (CALD) and people with disability (PWD). It celebrates reporting that demonstrates notable courage in raising awareness of CALD and/or PWD experiences and perspectives, as well as innovation in the telling of these stories. It recognises the significance of media coverage in providing nuanced reporting which serves to alter perceptions and attitudes, challenge stereotypes and fight misinformation.”²³¹

OVERCOMING OFFENCE AND IGNORANCE THROUGH DIVERSITY AND REPRESENTATION

In April 2018 journalist Alex McKinnon examined an Australian Human Rights Commission report, *Leading for Change: A blueprint for cultural diversity and inclusive leadership revisited*.²⁵²

McKinnon went on to discuss the cultural and ethnic make-up of Australia's media:

"The faces on our TV screens get most of our attention, but what about the people behind the scenes? Around 19,000 people listed their occupation as 'journalist' in the 2016 Census. The census doesn't ask people to identify their ethnic background, but the other information those 19,000 journalists provided gives a pretty clear snapshot of the types of Australians who typically make a career in journalism — and the types of Australians who don't, or can't. As it turns out, Australia's journalism and media industries are just as ethnically homogenous as the corporate and political worlds.

"A 2016 survey of media outlets by consultancy firm PricewaterhouseCoopers²⁵³ found that the average Australian media worker is 'a 27-year-old white male who lives in Bondi'... It found 'the top 10 suburbs for media and entertainment people are all in Sydney, either in the eastern suburbs or the inner west'.

The Census shows how chronic that homogeneity really is. Sydney journalists are far more likely to live in relatively wealthy, white parts of town like the CBD, the eastern suburbs, the inner west and the north shore than they are to live in places like Blacktown and Parramatta. In Melbourne, journalists are overwhelmingly concentrated in the city centre, rather than the outer suburbs.

Journos are also much more likely to live in capital cities than everyone else, especially as news outlets close down bureaus in regional areas and centralise to cut costs. In a nation where more than 28 percent of people are born overseas, migrant journalists are more likely to be born in "north-west Europe" than anywhere else. Astonishingly, only 118 journalists identified as being of Aboriginal background. Just three journalists identified as being of Torres Strait Islander background, while another three identified as both.

Would a media industry with more people who grew up outside of Australia's wealthiest, whitest enclaves constantly treat Sydney's west like a rolling re-enactment of Underbelly? Would we get



Sunrise panel *Channel 7 Sunrise*

as many headlines fretting that "Sydney is now more Asian than European"²⁵⁴, or intrepid white journalists going on David Attenborough-style journeys to Lakemba, aka 'Muslim Land'²⁵⁵ Is it any wonder that coverage of Indigenous issues is frequently patronising, racist or plain ignorant? Do we really need 643 journalists in Canberra when the Northern Territory has only five outside of Darwin and Alice Springs?

While groups like Media Diversity Australia are trying to draw attention to journalism's lack of diversity, there are few signs the media industry as a whole has recognised the problem, or is doing much to try and fix it.²⁵⁶

There is much work to be done.

On September 4 2018, the Australian Communications and Media Authority found the Seven Network program *Sunrise* had breached broadcasting standards clause 3.3.1 for accuracy and clause 2.6.2 for intense dislike, serious contempt or severe ridicule on the basis of race when it aired an all-white panel on its "Hot Topics" segment discussing the adoption of Indigenous children and child abuse.²⁵⁷

Introducing the segment the host incorrectly stated that Aboriginal children can only be cared for by their relatives or Aboriginal carers.²⁵⁸

A panellist subsequently said: "Please, don't worry about the people who decry and hand-wring and say this will be another Stolen Generation. Just like the first Stolen Generation where a lot of children were taken because it was for their wellbeing, we need to do it again, perhaps."

A second panellist added: "We need to be protecting kids, we need to

be protecting Aboriginal kids, and putting them back into that culture... what culture are they growing up and seeing? Well, they're getting abused, they're getting hurt and they're getting damaged."²⁵⁹

The Australian Communications and Media Authority found that the March 13 2018 segment was in breach of the industry code of practice as it contained strong negative generalisations about Indigenous people as a group. "These included sweeping references to a 'generation' of young Indigenous children being abused," ACMA said.

"While it may not have been Seven's intention, by implication the segment conveyed that children left in Indigenous families would be abused and neglected, in contrast to non-Indigenous families where they would be protected."²⁶⁰

Sunrise responded to the concerns about the segment by producing a "follow-up segment". But ACMA was not satisfied. In its finding, it said: "Clause 3.3.4 provides that a licensee will not breach clause 3.3.1 if it makes a correction in an appropriate manner within 30 days of a complaint being received or referred to the ACMA. In its submission, the licensee argued that the follow-up 'Hot Topics' segment broadcast on 20 March 2018 clarified any inaccuracy broadcast in the earlier segment.

"The follow-up segment was introduced by *Sunrise* presenter, Mr David Koch, with the following statement: 'We know it's a conversation around Aboriginal children and their removal, [that] sparked concern and protest last week, so we're responding to calls by the Aboriginal community to look at the issue with the experts, and we've got the experts this morning.'²⁶¹

ACMA found that the “detailed follow-up segment” was not a correction because it was not labelled as such. “The ACMA has noted in a number of previous investigations that for a correction to be appropriate, it would ‘ordinarily involve a clear on-air acknowledgement of the error made in a particular broadcast and a statement of the correct position, in such a way that there is a clear connection between the error made and the correction’... The follow-up segment was not flagged as a correction. There was no acknowledgement of any inaccuracy in the earlier segment broadcast on 13 March 2018... Had the presenter explicitly acknowledged the inaccurate statement from the previous episode and corrected that statement, the ACMA would have been satisfied that the correction was made in an appropriate manner,” the report said.

The Guardian reported on the company’s response: “Seven’s director of news and public affairs said the decision was a “direct assault on the workings of an independent media”, called it “censorship”, and said that that Seven would seek judicial appeal.”²⁴² (Guardian Australia is partnering with IndigenousX to showcase the diversity of Indigenous peoples and opinions from around the country.)

On April 5 2019 it was reported that Channel 7 was “being sued for defamation by a group of Aboriginal people from the remote community of Yirrkala over a segment on breakfast TV show *Sunrise* in which three white people discussed the Stolen Generations.

“The lawsuit, filed in the Federal Court in February, alleges *Sunrise* defamed Yolngu woman Kathy Mununggurr and 14 others when it played background footage of them, with a blurring effect, as the panel discussion took place.

Mununggurr and the other applicants argue they were identifiable in the footage and that by playing it *Sunrise* had suggested they abused, assaulted or neglected children, were incapable of protecting their children, and were members of a dysfunctional community. Seven intends to defend the lawsuit.”²⁴³

BuzzFeed News reported a Seven spokesman as saying: “The proceedings relate to some footage used in the

background to the story which was blurred to prevent any person being identified and Seven is able to defend the case on that basis.”²⁴⁴

On February 15 2019, the Civil and Administrative Tribunal of New South Wales found Channel Nine *Today* show presenter Sonia Kruger had “vilified Muslim people when she called for Australia to close its borders to those of the Islamic faith during a segment on the *Today* show, but [she] did not engage in racial vilification because Muslim people living in Australia are not a race.”²⁴⁵

The tribunal was investigating an incident screened on July 18 2016. The racial vilification complaint was dismissed by the tribunal.²⁴⁶

In its finding, the tribunal said: “Kruger’s ‘vilifying remarks’ in July 2016 ‘amounted to a stereotypical attack on all Muslims in Australia’ and had the capacity to ‘encourage hatred towards, or serious contempt for, Australian Muslims by ordinary members of the Australian population’.”²⁴⁷

Kruger’s remarks on Muslims were made while part of a panel discussing the question: “Do more migrants increase the risk of terror attacks?” The tribunal said:

...we cannot accept that the remarks of Ms Kruger were “reasonable”. She expressed the view that the size of Australia’s Muslim population meant there should be no further Muslim migration irrespective of any other matter. This appears to be unsupported by any evidence or material placed before the Tribunal...

*In our view, Ms Kruger could have expressed her comments in a more measured manner to avoid a finding of vilification.*²⁴⁸

The media industry must address the diversity issue. MEAA believes the pressing issue of greater media diversity must be addressed to ensure the media reflects the community it serves.

TOXIC WORK ENVIRONMENTS

Greater media diversity is a workplace issue and a press freedom issue, not least because a lack of awareness of diversity in our newsrooms places people in in discomfort and isolation while at work. At worst it places people in danger as they carry out their duties.

The experience of former Sky News Canberra employee Rashna Farrukh²⁴⁹ is just one example of the difficulties of working in a newsroom where fellow Sky News employees and their guests demonstrated little respect for community diversity.

“I compromised my values and beliefs to stand idly by as I watched commentators and pundits instil more and more fear into their viewers.

“I stood on the other side of the studio doors while they slammed every minority group in the country — mine included — increasing polarisation and paranoia among their viewers.

“I’d walk commentators to the studio where after some very polite chit chat — ‘how are you?’, ‘how’s uni going?’ — they’d go on air and talk about my community.

“I was there when Cory Bernardi advocated for banning the burqa, and when he called on the government to remove “offend” and “insult” from 18C of the *Racial Discrimination Act* under the guise of free speech.

“I was there when Pauline Hanson proudly talked about how she would, the following day, put forward the ‘It’s OK to Be White’ motion to counter the rise of so-called anti-white racism.

“I watched as Bronwyn Bishop, following the ‘terror raids’ in Sydney, insisting that ‘war’ had been declared against western culture.

“I answered calls from viewers who yelled about immigrants and Muslims ruining Australia. They did not realise that the person on the other end of the phone was both of those things,” Farrukh wrote.

Sky News Australia covered the Christchurch massacre by using segments of the gunman’s video stream. Sky later explained in a statement: “...we ran heavily edited and carefully selected video that featured no vision from inside the mosque, no shootings and no victims. At no stage did we feature the live vision. Contrary to some reports, we ceased running any vision on Sky News Live from early Saturday morning, unlike other networks who continued to do so.”²⁵⁰

GREATER MEDIA DIVERSITY IS A WORKPLACE AND PRESS FREEDOM ISSUE

THERE IS A DIVIDE BETWEEN YOUNGER STAFF AND THE OLD GUARD

By then, it was too late. Damage had been done to Sky, its audience and to at least one of its employees — Farrukh resigned on that Saturday.

As Farrukh says, “When I reflected on who I work for and whether I could justify going into work this weekend, I knew what I had to do. Even as young journalists, we should act on our morals now rather than at some point in the future where we assume that we will have more of a say.

“In the media industry, who we work for matters, as we are responsible in some way for the information being disseminated. What we distribute has consequences... The news we read, the way we talk about minorities in our community — every decision we make matters and it all adds up.

“As we saw in Christchurch, what happens in our media can have real life consequences.”²⁵¹

But there can be change. On the following Monday the ABC’s *The Drum* show presented “a panel of all-Muslim women” discussing the impact of the Christchurch shooting and particularly examining a variety of issues linked to media diversity including “... what part do politics and the media play in the rise of white supremacy, and when does free speech become hate speech”.²⁵²

But as all five panellists noted in a Tweet²⁵³ (under the hashtag #representationmatters) that was sent three hours before the program went live: “Tonight will be an only-Muslim women panel on ABC’s *The Drum*. We have been told that this has not happened before. This was put together in the last 24 hours.

“We acknowledge the absence of First Nation and black Muslim women on the panel who as a minority within a minority have historically and to date been excluded from media engagement opportunities,” they wrote.

“Every one of us was willing to give up our spot but we could not find somebody available in the short time frame, or willing to do it (understandably) with the additional constraint that the program would only consider a panellist who had been on the show before or [who had]

comparable TV experience. Our media networks and internal mentoring opportunities need to focus on widening the platform to our black sisters so that their voices are heard loud and clear.”

Clearly, there is still much to be done to change the media industry and how it represents and reports on Australia and Australians — as well as to change the representation and diversity among Australia’s journalists and journalism.

AFTER CHRISTCHURCH — REPORTING ON HATE CRIMES AND EXTREMISM

On March 28 2019, MEAA and Media Diversity Australia hosted a forum *Reporting on Hate Crimes and Extremism* at the State Library of NSW. The forum was moderated by former Race Discrimination Commissioner Dr Tim Soutphammasane and featured a panel of journalists, authors, news editors and a representative from Media Diversity Australia.

The forum began with a discussion about how media outlets covered the Christchurch massacre, and the decisions made on whether or not to screen parts of the terrorist’s livestream of the attack.

The discussion examined the need to make decisions on the spot about a fast moving story, including deciding not to air killer’s video and manifesto. As the video was available uncensored on thousands of Facebook and YouTube accounts, the forum discussed how the media can control a narrative in a responsible way that social media cannot. There was discussion that video should be seen because evil in society needed to be seen in order to create change. “Sometimes you need to shock people into caring,” said one panellist, although acknowledging a line had to be drawn when the rationale for broadcasting violent footage or publishing an extremist manifesto is to get clicks and page views.

Identifying the killer by media outlets was also discussed — New Zealand Prime Minister Jacinda Ardern refused to name the killer and had good motivations for taking that position. “People can have personal views but we’re news and we have to name him and say where he comes from.”

There was discussion about how the media treats Muslims and non-Muslims differently after an atrocity, with one speaker saying there would have been more coverage of the victims if they had been European Australians, rather than Muslims.

There was surprise at the tenor of contrition from some media outlets after Christchurch. “People were scrambling to disassociate themselves (from white nationalism)”. Was some of that insincere or opportunistic in an attempt to absolve themselves after many years of airing the positions of white nationalists? There was talk also of many post-Christchurch opinion pieces having had a lack of Muslim voices and too many white voices saying “we didn’t see this coming”. Had Muslim people been asked, they definitely saw it coming — and more diverse newsrooms would have helped anticipate an attack like this.

Had the media provided extremists with a platform for their hate speech? White extremists had been normalised by their years of appearing in the mainstream media where white nationalism was regularly given a platform with little examination. Media panellists conceded that there is a lot of soul-searching now taking place about whether media outlets had interrogated the issue hard enough, and that have done things differently with a more diverse workforce. “In Australia, you can say just about anything about Muslims and it’s okay”. Instead, one speaker said, “we need to normalise difference in newsrooms, like in other businesses”.

Hate speech exponents had huge unfiltered audiences on the internet, so the role of journalists was not to give them a platform, but to interrogate them. While there were plenty of articles interrogating structural racism, “they aren’t making it to mainstream media”.

After Christchurch, there were not enough voices in the media from the community that was attacked: Muslims. One panellist had tried to pitch an article to a publication only to be told that they already had published a piece from her community, however the writer was a Christian Arab, not a Muslim. Diversity in newsrooms will bring in different life experiences, different

contexts and can add value and dimension to news coverage. Network 10's *The Project* host Waleed Aly's post-Christchurch interview with Prime Minister Scott Morrison was so powerful because Aly had "skin in the game".

Years of Islamophobia in the media meant "a lot of good Muslim voices don't want to put their heads above the parapet. But Christchurch means there is no choice because you need to be part of the debate about the future of the country".

While the media "had no context" for attacks like Christchurch because they were predominantly white, non-Muslims, it was clear they had empathy. But "empathy needs to be translated into action. Business is so far ahead of you." The private sector had culturally and linguistically diverse communities (CALD) representation rates well above the media. Leading consulting firm PriceWaterhouseCoopers had an 80 percent CALD.

By contrast, the ABC has about 20 percent of staff from CALD/non-English speaking backgrounds, and this was a factor in the way the ABC covers the news. While the ABC has diverse voices presenting shows on-air, the people in decision-making positions off-air, including producers and editors, were still dominated by white men. There is also a generational divide between younger staff and "the old guard" who grew up in an era before the internet and social media, and have a different ethical framework for news judgement. "That is being challenged now."

Should Islamophobia and "hate speech" be outlawed? While there was support for the idea, other speakers said a solution was to have more different voices in newsrooms.

The shrill contemporary nature of civil discourse, particularly on social media, was unhelpful. Newsrooms shouldn't be conflated with social media — it would be dangerous to impose on newsrooms the types of restrictions that are being suggested for social media.

At the conclusion of the forum, the federal president of MEAA's Media section, Marcus Strom, said the union would be developing new guidelines later this year on reporting on hate speech and extremism, which would be opened to public comment before being adopted as an addition to the MEAA *Journalist Code of Ethics*.²⁵⁴

DIGITAL PLATFORMS

The Australian Competition & Consumer Commission's inquiry into digital platforms released its preliminary findings on December 10 2018.²⁵⁵

The inquiry was triggered on December 4 2017 following the Senate Select Committee's inquiry into the Future of Public Interest Journalism. The ACCC was directed to conduct an inquiry examining "the effect that digital search engines, social media platforms and other digital content aggregation platforms have on competition in media and advertising services markets. In particular, the inquiry will look at the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers."²⁵⁶

The preliminary report contained 11 preliminary recommendations and eight areas for further analysis as the inquiry continues.

The ACCC said it had reached the view that Google has substantial market power in online search, search advertising and news referral, and Facebook has substantial market power in markets for social media, display advertising and online news referral.

The ACCC said:

The report outlines the ACCC's concerns regarding the market power held by these key platforms, including their impact on Australian businesses and, in particular, on the ability of media businesses to monetise their content. The report also outlines concerns regarding the extent to which consumers' data is collected and used to enable targeted advertising.

"Digital platforms have significantly transformed our lives, the way we communicate with each other and access news and information. We appreciate that many of these changes have been positive for consumers in relation to the way they access news and information and how they interact with each other and with businesses," ACCC Chair Rod Sims said.

"But digital platforms are also unavoidable business partners for many Australian businesses. Google and Facebook perform a critical role in enabling businesses, including online news media businesses, to reach consumers. However, the operation of these platforms'

key algorithms, in determining the order in which content appears, is not at all clear."

Google and Facebook are now the dominant gateways between news media businesses and audiences and this can reduce the brand value and recognition of media businesses. In addition traditional media businesses and in particular, traditional print media businesses, have lost advertising revenue to digital platforms. This has threatened the viability of business models of the print media and their ability to monetise journalism.

"News and journalism perform a critical role in society. The downturn in advertising revenue has led to a cut in the number of journalists over the past decade. This has implications across society because of the important role the media plays in exposing corruption and holding governments, companies, powerful individuals and institutions to account," Mr Sims said.

The inquiry has also considered important questions about the range and reliability of news available via Google and Facebook. The ACCC's preliminary view is that consumers face a potential risk of filter bubbles, or echo chambers, and less reliable news on digital platforms. While the evidence of filter bubbles arising on digital platforms in Australia is not yet strong, the importance of this issue means it requires close scrutiny.

The ACCC is further concerned with the large amount and variety of data which digital platforms such as Google and Facebook collect on Australian consumers, which go beyond the data which users actively provide when using the digital platform.

Research commissioned as part of the inquiry indicates consumers are concerned about the extent and range of information collected by digital platforms. The ACCC is in particular concerned about the length, complexity and ambiguity of online terms of service and privacy policies, including click-wrap agreements with take-it-or-leave-it terms.

Without adequate information and with limited choice, consumers are unable to make informed decisions, which can both harm consumers and impede competition.

The preliminary recommendations and the areas for further analysis identified in the preliminary report have been put forward as potential options to address the actual and potential negative impacts of digital

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platforms and contribute to the debate about the appropriate level of government oversight.

The report found that key digital platforms, Google and Facebook, had both the ability and incentive to favour related businesses or those businesses with which they may have an existing commercial relationship. The platforms' algorithms rank and display advertising and news content in a way that lacks transparency to advertisers and news organisations.

"Organisations like Google and Facebook are more than mere distributors or pure intermediaries in the supply of news in Australia; they increasingly perform similar functions as media businesses like selecting, curating and ranking content. Yet, digital platforms face less regulation than many media businesses," Mr Sims said.

"The ACCC considers that the strong market position of digital platforms like Google and Facebook justifies a greater level of regulatory oversight," Mr Sims said.

"Australian law does not prohibit a business from possessing significant market power or using its efficiencies or skills to 'out compete' its rivals. But when their dominant position is at risk of creating competitive or consumer harm, governments should stay ahead of the game and act to protect consumers and businesses through regulation."

The report makes preliminary recommendations aiming to address Google and Facebook's market power and promote increased consumer choice, including a proposal that would prevent Google's internet browser (Chrome) being installed as a default browser on mobile devices, computers and tablets and Google's search engine being installed as a default search engine on internet browsers.

The ACCC also proposes that a new or existing regulatory authority be given the task of investigating, monitoring and reporting on how large digital platforms rank and display advertisements and news content. Other preliminary recommendations suggest ways to strengthen merger laws.

Additional preliminary recommendations deal with copyright, and take-down orders, and the review of existing, disparate media regulations.

The ACCC also notes that consumers will be better off if they can make informed and genuine choices as to how digital platforms collect and use their data, and proposes changes to the Privacy Act to enable consumers to make informed decisions.

The ACCC is further considering a recommendation for a specific code of practice for digital platforms' data collection to better inform consumers and improve their bargaining power.

"The inquiry has also uncovered some concerns that certain digital platforms have breached competition or consumer laws, and the ACCC is currently investigating five such allegations to determine if enforcement action is warranted," Mr Sims said.

The ACCC is seeking feedback on its preliminary recommendations, and the eight proposed areas for further analysis and assessment.

These eight areas for further analysis include the proposed 'badging' by digital platforms of media content, produced by an accountable media business, as well as options to fund the production of news and journalism, such as tax deductions or subsidies, a digital platforms ombudsman to investigate complaints and provide a timely and cost effective means to resolve disputes, and a proposal for digital platforms to allow consumers to opt out of targeted advertising.²⁵⁷

On February 15 2019, in its response MEAA welcomed the preliminary report saying it should "drive the urgent need for reforms to our laws and policies which currently ignore the overwhelming power of the major digital platforms, especially with regard to the Australian news media industry."

MEAA acknowledged that the ACCC had rightly recognised that the diminution of the media sector has serious implications for Australian democracy. "The ongoing instability of the Australian media sector will only amplify these dangers," MEAA warned.

In MEAA's 13-page submission in response to the ACCC preliminary report,²⁵⁸ MEAA said it supports an overhaul of Australia's communications laws to ensure a level regulatory playing field for businesses that create and carry content. Without this, the status quo of

continuing journalist (and allied staff) job losses, media company downturns and the progressive abandonment of coverage of newsworthy matters, will continue, if not escalate.

"MEAA is however anxious that several of the Commission's recommendations potentially suggest an increased role for Government (and its agencies) to stipulate how media companies should be run and vet content.

"In the same vein, MEAA is concerned that the Commission's principled efforts to improve the digital platforms' carriage of reliable, verified quality news by pursuing ranking and badging measures, will further empower Google and Facebook by enabling them to arbitrate between quality and questionable news media. We do not support these companies occupying such a position.

MEAA concluded by saying it had hoped that the Commission would have more closely considered the objective needs for digital platforms' to pay for media companies' content. "These arrangements are, in MEAA's opinion, key to any constructive resolution of the lopsided nature of the relationship between the digital platforms and the media companies which, in substantial part, drive users to the platforms."

In some specific responses to ACCC preliminary recommendations, MEAA said:

- MEAA supports in principle the ability of a regulatory body to assess and make findings about the distortive impact of algorithms in terms of news consumption. By this, MEAA submits that we support assessment of digital platforms that do not produce news content providing prominence to news information where no effort has been made to verify the information provided or where ranking of news information is influenced by a commercial relationship between the digital platform and the source of the news item.
- MEAA supports mechanisms to better detect and address digital platforms striking arrangements that benefit the digital platforms own commercial interests at the expense of customers.
- MEAA is prima facie concerned by the establishment of a regulatory

GOOGLE AND FACEBOOK SHOULD NOT ARBITRATE WHAT IS QUALITY NEWS

Google facebook

authority to actively monitor, investigate and report on the ranking of news and journalistic content by digital platforms and the provision of referral services to news media businesses. The caveat to this concern is in instances where ranking is linked to the digital platform's commercial benefit or other alleged impropriety.

- MEAA is otherwise concerned that the prospect of the regulation involving value judgments about the inherent worthiness of news content. Although disparate in their nature and application, there are codes of conduct, including MEAA's Code of Ethics, Australian Press Council standards, commercial television codes of practice and oversight mechanisms for public broadcasters for consumers to ventilate their concerns and seek remedies. MEAA supports the retention of these arrangements, although we would prefer common standards to be developed for application across the media sector. As MEAA stated in its submission to the Inquiry, we support the extension of regulatory standards

to the major digital platforms that carry news content. This ought not be confused with proposals for further review of the conduct of news media organisations, especially where the agency charged with investigating and determining complaints is a government agency.

- MEAA supports proposals to conduct a separate, independent review by Government "to design a regulatory framework that is able to effectively and consistently regulate the conduct of all entities which perform comparable functions in the production and delivery of content in Australia, including news and journalistic content, whether they are publishers, broadcasters, other media businesses, or digital platforms". MEAA strongly supports regulatory equality for all news media organisations, while noting (as the ACCC's report has) that Australia's regulation of media organisations is hopelessly fractured, out of date (especially with respect to digital entities) and enables free riders to escape reasonable standards of

conduct and scrutiny (i.e. digital platforms that do not produce, curate and fund news media content). MEAA notes however that significant work has already been performed through the Convergence Review in 2012 and 2013. That review persuasively advanced the concept of platform neutral regulation. MEAA is otherwise concerned, as with ACCC preliminary recommendation 5, that such a review might be pathway for additional government encroachment into the conduct of news media organisations. MEAA will closely monitor the progress of this preliminary recommendation.

- MEAA believes that much greater effort is required by digital platforms to act promptly in response to copyright owners' requests to remove unauthorised content from their sites. MEAA would wish to be consulted about the development of any 'mandatory standard' that would apply to digital platforms.

The ACCC will present its final report to the Government on June 3 2019.



Then Treasurer Scott Morrison is congratulated by then Prime Minister Malcolm Turnbull after delivering the 2018 Budget speech
Alex Ellinghausen | Fairfax Photos

GOVERNMENT PUBLIC BROADCASTING

It has been the most tumultuous year in the ABC's history. From the politicisation of the national broadcaster's funding and a call for the organisation to be sold off, the imposition of unnecessary inquiries as favours for the support of Pauline Hanson's One Nation for the Government's media package, and a crisis of leadership at the ABC.

FUNDING CUTS

The Federal Budget brought down on Tuesday May 8 2018 revealed cuts of \$127 million from the funding of the ABC.

MEAA called the cuts "dangerous and irresponsible", and added that the cuts presented grave implications for audiences seeking news and information. MEAA said the cuts only weaken public broadcasting at the very time when commercial broadcasting

is struggling due to the challenges of digital disruption — particularly for audiences in rural, regional and remote Australia.

MEAA said²⁵⁹ the loss of \$43 million over three years in funding to support news and current affairs, particularly in regional Australia, is particularly short-sighted (the funding was to expire in 2019-20 and the ABC would have to re-bid for further funding. In its pre-election Budget on April 2 2019 the government restored the funding for three years — see below), as the ABC "can and must" play a crucial role in providing high quality public interest journalism in the era of "fake news" and social media platforms stripping revenue from commercial news media.

What did Communications Minister Mitch Fifield do with the millions he stripped from the ABC? The Guardian

reported: "Savings from the ABC cuts will be redirected to other spending measures within the communications and arts portfolio, according to the budget papers, including \$48.7 million for the commemoration of the 250th anniversary of James Cook's landing in Botany Bay."²⁶⁰

MEAA Media director Katelin McInerney said: "The [combined] potential \$43 million cut to dedicated news funding, and the freezing of indexed funding at a cost of \$84 million, are crippling blows to the ABC and follow years of underfunding by the Abbott and Turnbull Governments."

The latest funding reduction would amount to almost \$340 million being cut from the ABC's base funding since 2014.

This has had a significant impact on

ABC news, on television drama, and on radio programming, and there needs to be a major reinvestment in the ABC by the federal government. “These funding cuts have placed enormous stress upon the ABC which, last night, was once again being asked to do more with less,” McInerney said.

“The timing of these cuts could not be worse: in the lead-up to a federal election when strong journalism to independently scrutinise politicians’ claims and counter claims will be needed. It is becoming increasingly difficult for the ABC to deliver original investigative journalism and local and regional newsgathering with these deep cuts to its funding,” McInerney said.

“The spate of highly politicised assaults on public broadcasting by the Government in recent years fly in the face of calls made to restore funding. In February the Senate Select Committee into the Future of Public Interest Journalism recommended that the Government must ensure adequate funding for the ABC and SBS to ensure they meet their charter obligations — particularly in rural and regional services and fact-checking capacity,” McInerney said.

“Right now, the ABC is already seeking to cut 20 journalist positions in a proposed restructure, cuts that will hurt its local newsrooms and in turn, starve local communities of quality reporting of news stories that matter to them. Every time the Government announces these politically motivated assaults on the ABC it is local communities that suffer.”

MEAA Equity director Zoe Angus warned: “These Federal Government cuts also represent a dangerous threat to the creation of original Australian television production, particularly drama. It is this type of short-sighted and devastating cuts to funding that has spurred the Make it Australian campaign. The constant slashing of funding by Governments endangers the ABC’s ability to produce quality Australian screen content and fulfil its important cultural role in Australian storytelling.

“Even before last night’s Budget, more than \$250 million had been cut from the ABC since 2014. Over this same period, the ABC’s commissioning budgets for adult drama and children’s content each dropped by 20 percent. Given their important cultural role, the ABC must be properly funded and future funding must be guaranteed so that productions can be developed with certainty,” Angus said.

MEAA responded to the funding cuts by once again invoking “Hands Off Our ABC”, a community and advocacy campaign co-ordinated by the two unions that represent the vast bulk of employees at the ABC: MEAA and the Community and Public Sector Union. The campaign’s goal is an editorially independent ABC that is fully funded by the government and meets its charter as a comprehensive national broadcaster, that is resourced to tell Australian stories across multiple platforms, and positioned to take advantage of new technology to retain its position as the most trusted and reliable source of news and entertainment in Australia.

The implications of ongoing funding cuts were soon made clear. At a Senate estimates hearing in May 23 2018, the ABC’s chief finance officer revealed that the broadcaster had shed 1012 jobs since 2014. The Guardian reported: “A total of 939 employees or 829 full-time-equivalent have been made redundant in four years, including 205 as a result of the closure of the ABC’s retail shops and a further 73 vacant positions were closed. The ABC has been shedding staff since the Coalition cut \$254 million from the ABC budget in 2014. [Managing director Michelle] Guthrie, who has been in the position for just over two years, has imposed several restructures which have led to hundreds of staff being made redundant. A further 22 journalists will be made redundant this month.”²⁶¹

On June 12 2018, Labor promised it would restore the \$83.7 million cut by the Coalition. MEAA described²⁶² the promise as “a good first step” towards reversing the damage from a succession of funding cuts since 2014.

Responding to the Labor promise to restore the ABC’s funding,²⁶³ MEAA said: “The Media, Entertainment & Arts Alliance welcomes the announcement from Opposition Leader Bill Shorten that a Labor government would not proceed with the funding indexation freeze which effectively cuts \$83.7 million from the ABC over three years from 2018-19.

MEAA chief executive Paul Murphy said: “ABC executives have warned that the \$84 million cut in last month’s Budget cannot be absorbed through more efficiencies, but can only come from cuts to programming, services and operational staff, such as journalists. ABC news staff are already going through another painful round of redundancies with 20 jobs to be axed when the cut was announced. Put simply, the ABC is doing more with less

than ever before, and the latest cut was especially vindictive.

“While we welcome Labor’s commitment not to go ahead with the funding freeze if elected at the next election, we will be looking for further concrete pledges of increased funding from all political parties,” Murphy said. “We will also continue to press all political parties to respect the independence of the ABC and reinforce the integrity of its charter to be the national broadcaster for all Australians.”

The then ABC chairman Justin Milne wrote an opinion piece on the issues confronting the ABC.²⁶⁴ He said: “The ABC is an organisation known intimately to every Australian and about which every one of us has an opinion. The letters pages of newspapers contain a steady stream of bouquets and brickbats for the public broadcaster. Yet according to pollsters, with around 80 percent support, the ABC is the most trusted media organisation in the country by a very wide margin. It is one of the few organisations to maintain trust when confidence in institutions everywhere has declined.

“The commercial television networks and some newspapers peddle an ever more urgent message that the ABC is hurting their business and should be held back. They take delight in reviews into the broadcaster’s efficiency and business practices, hoping they will coalesce into a full-blown revision of the ABC’s Charter that relegates the public broadcaster to a “market failure” function limited to programming about fine arts, science, education or philosophy. This would likely spell the end for popular programming like *Four Corners*, *Australian Story*, *Gruen* or *Sea Change* because, the argument goes, these programs could be produced by commercial media and taxpayers would save millions. But this argument misses two points,” Milne wrote.

“First, the ABC’s existence is not and never was based on a premise of market failure. Our Charter, enacted by legislation, has always required much more of us. By fulfilling that Charter, we provide Australians with distinctive content, media diversity, a strong creative sector and more. Even better, the ABC costs each Australian half what it cost 30 years ago.

“Second, the declining audiences reported by commercial media are not and never have been the fault of the ABC. What has changed for all media is the arrival of the FAANGs — or Facebook, Amazon, Apple, Netflix and Google — with their mega-billion-dollar

production budgets and global-scale economies that have upended business models the world over,” Milne said.

On April 2 2019, in its pre-election Budget, the Government decided it would extend the funding of the ABC’s “enhanced news measure” — the funding had previously been under a cloud and was due to expire in the coming year. The funding extension is worth \$43.7 million over three years and would allow the ABC to continue to support local news and current affairs services, particularly in regional areas.

In a statement²⁶⁵ in response to the Budget, the director of ABC news, analysis and investigations, Gaven Morris, said of the extension of the funding: “It complements the \$15 million a year investment we have made in regional news. It allows us to create jobs at a time when commercial news media are reducing services, particularly in regional Australia.”

ABC acting managing director David Anderson said: “The program budget sustains critical roles in ABC Investigations and the Specialist Reporting Team; provides camera operators in Broome, the Alice and the Hunter; funds the Parramatta, Geelong and Ipswich bureaux and regional VJs in Bunbury, Newcastle and Renmark; and enables capital investment in linking equipment and other technology.

“The extension of this program for another three years at \$43.7 million is recognition of the important work the national broadcaster does in delivering more tailored news to communities, in investing in specialist resources that explain complex policy and political issues to the public and in providing a national audience for news from across the country.”²⁶⁶

The ABC statement went on to say: “On the negative side, despite extensive requests from the ABC, the Budget papers have locked in the \$83.7 million pause in indexation funding flagged in last year’s budget. This is on top of the \$254 million the ABC has had to absorb in efficiency cuts over the past five years.

“The cut comes into effect at the start of the next financial year, with a first-year impact of \$14.6 million. Given our tight fiscal envelope, meeting the costs will have to involve tough decisions on staffing and services. Our commitment is to consult with staff in considering options. I will keep you informed on this front.”

The Budget also contained a Department of Finance perspective on ABC staffing levels. It was the ABC’s intention to maintain staffing at 4180 for 2019-20 but the Department said this would have to change saying the ABC should employ 4130 people — a loss of 50 jobs.²⁶⁷

The Budget also saw a funding boost for SBS of \$29.6 million over three years for its TV, radio and online operations.

PRIVATISING THE ABC

Amid the debate about funding the ABC appeared a sure sign that public broadcasting had simply become a political plaything for conservatives. The Liberal party’s federal council meeting on June 16 2018 voted 2:1 to privatise the ABC.

The *Sydney Morning Herald* reported:

“The overwhelming vote at the party’s annual council in Sydney gained vocal support from conservative think-tank Institute of Public Affairs, which said the company could be sold or given to Australians who already own it. The vote came in a debate on Saturday where about 110 council delegates, representing Liberal branches from across the country, also voted for an efficiency review into SBS.

“Council delegate Mitchell Collier, the federal vice president of the Young Liberals, said he had enjoyed ABC programs such as *Bananas in Pyjamas* during his childhood but said there was no economic case to keep the broadcaster in public hands.

“High sentimentality is no justification for preserving the status quo,” Mr Collier told the meeting, which included cabinet ministers, Liberal state premiers and top party officials.

The motion said: “That federal council calls for the full privatisation of the Australian Broadcasting Corporation, except for services into regional areas that are not commercially viable.”

The vote has no binding power over Prime Minister Malcolm Turnbull, federal cabinet or federal MPs, who set policy in their party room meetings in Canberra.

But Mr Collier won the vote on the floor of the council.

“There are several ways we could privatise the ABC — we could sell it to a media mogul, a media organisation, the government could sell it on the stock market,” he told the meeting.

“Privatising it would save the federal

budget \$1 billion a year, could pay off debt and would enhance, not diminish, the Australian media landscape.”

There was no explanation of how the ABC would have any commercial value to a buyer if the government imposed restrictions on the sale to protect rural services, forcing any buyer to continue operations that might lose money.

Nobody rose from the federal council floor to speak against the motion, but Communications Minister Mitch Fifield spoke from his position as a senior minister to note that privatising the ABC was not government policy.

Senator Fifield told the meeting that he had made two appointments to the ABC board — Minerals Council of Australia chair Vanessa Guthrie and Queensland rural leader Georgina Somerset.

He also said the government was amending the ABC’s governing act to stipulate that it was “fair and balanced” in its coverage and would force it to disclose the names of staff earning more than \$200,000 a year.

No other members spoke on the motion and it was carried on a show of hands from delegates, with roughly twice as many voting in favour of the motion as those who voted against. No count was taken. Senator Fifield voted against the motion.

Asked about the vote later, Treasurer Scott Morrison said there was no plan to sell the ABC and the Liberal council did not decide government policy.

“We listen and we consult with our members, all the time, as we do with all Australians,” Mr Morrison said.

“But I should be very clear: the government has no plans to privatise the ABC.”

Mr Morrison quipped that some Australians “may think the Labor Party already owns it” but the government had no plans to sell the ABC...

[Institute of Public Affairs] research fellow Chris Berg said the question should be about the best way to privatise the ABC, with options being a sharemarket float, a sale to a media mogul or the IPA’s preferred option is for ownership to be transferred to ABC staff or Australian taxpayers.²⁶⁸

As public broadcasters, both the ABC and SBS are already owned by Australian taxpayers. Communications Minister Mitch Fifield is reportedly a member of the Institute of Public Affairs.²⁶⁹



Former ABC chair Justin Milne, former ABC managing director Michelle Guthrie and former Prime Minister Malcolm Turnbull on August 15 2018 *Alex Ellinghausen, Fairfax Photos*

LEADERSHIP CRISIS

The next key event in the ABC during the year would propel the ABC into a profound crisis precisely at a time when strong, united leadership was vital in the face of the funding cuts and other assaults on the public broadcaster.

On Monday September 24 2018 Justin Milne announced that ABC managing director Michelle Guthrie had been sacked — two years and four months into her five-year term.

MEAA responded to the news by calling²⁷⁰ for next managing director of the ABC to be someone prepared to fight for better funding and independence, and to champion public broadcasting in a hostile political environment. “The departure of Michelle Guthrie follows a tumultuous period for the ABC, and MEAA members hope that new leadership... could be a circuit breaker for the organisation.”

The director of MEAA Media, Katelin McInerney, said Ms Guthrie’s two-and-a-half years as managing director would be remembered for historically low levels of funding culminating in the loss of \$84 million announced in the 2018-19 federal budget, hundreds of

redundancies, unprecedented political attacks on the ABC’s independence and low staff morale.

“It is no secret the ABC is caught in the pincers — between the need to invest in an ever-changing media landscape, and a decline in real funding to historically low levels,” Ms McInerney said. “The next managing director of the ABC will face real challenges, including how to restore the trust and confidence of staff by ending the “Hunger Games” processes, casualisation, and outsourcing which in four years have seen more than 1000 experienced workers leave the organisation.

“They must have a clear vision for the ABC and be able to articulate the direction they want to take the organisation. They must be a vocal public advocate for the ABC, who is prepared to tackle head-on the historically low levels of ABC funding with meaningful engagement with the Federal Government. They must be 100 percent committed to public broadcasting and to fend off any attempts to privatise the ABC either directly or by stealth. They must be a champion for quality Australian content and specialist content and a staunch

defender of the ABC’s independence and of its editorial staff. This includes refocusing daily journalism away from lifestyle content and ‘clickbait’ and back towards news and current affairs,” McInerney said.

“Importantly, the ABC board must also be prepared to back the staff of the ABC and the integrity of the ABC as a respected publicly owned institution in the face of unrelenting political attacks.

“We feel it is time for a new vision and new direction for the ABC to emerge, allowing journalists and content makers to get on with the job of serving audiences with the content they trust.”

However, the leadership crisis at the ABC worsened on Wednesday September 26 when allegations were raised suggesting Milne had compromised the ABC’s independence — allegations he denied. MEAA responded to the news, saying²⁷¹:

ABC chairman Justin Milne should heed the decision of his board and stand aside today to allow a comprehensive, independent inquiry to go ahead into alleged political interference in the running of the ABC.

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Further revelations today that Mr Milne urged former managing director Michelle Guthrie to 'shoot' the network's political editor, Andrew Probyn, make his position as chairman completely untenable.

On top of earlier reports that Mr Milne also told Ms Guthrie to sack the ABC's economics editor, Emma Alberici, indicates a pattern of overt political interference in the running of the ABC that is in clear breach of the ABC charter and the role of the chairperson.

Mr Milne seems to have misunderstood that the role of the ABC is as a public broadcaster, not a mouthpiece for the government of the day. He must stand aside immediately, and these issues must be investigated fully by an independent inquiry.

The allegations sparked an overwhelming response from ABC staff. MEAA noted that the reports alleged Milne had sought to interfere in editorial and staffing decisions at the ABC. "MEAA believes that, if true, they would indicate Milne has no understanding of editorial independence, proper complaints handling processes, or the appropriate distance a board chair needs to keep from staffing matters."²⁷²

Staff meetings were held at ABC offices with the following resolutions²⁷³ passed by staff. At Ultimo, ABC staff said: "We call for an independent inquiry into the allegations that have been made in the media today, and for the chairman to stand down in the interim while the investigation takes place. The idea behind the investigation is to secure the editorial independence of the ABC from top to bottom."

At ABC Melbourne the meeting resolved: "ABC staff in Melbourne are calling for the chairman Justin Milne to stand aside while an independent inquiry takes place. The ABC is, and always has been, a fiercely independent news organisation and it is of no concern to our program makers or journalists whether they are hated by any government. We are dismayed that the chairman of our own board is exerting political pressure behind closed doors. Mr Milne's position as chairman of the board is untenable if he does not support the ABC's fierce pursuit of journalism without political interference."

The ABC Brisbane staff passed the following resolution: "This meeting calls on the chairman to publicly acknowledge if the political interference in the reported email is true and, if so, immediately resign from his position."



ABC Sydney staff protest over allegations of political interference

In Tasmania the resolution read: "ABC MEAA staff in the Tasmanian newsroom join calls for the Chairman Justin Milne to stand aside while an independent inquiry takes place. We are dismayed that the chairman of our own board appears to be exerting political pressure behind closed doors. Mr Milne's position as chairman of the board is untenable if he does not support the ABC's fierce pursuit of journalism without political interference."

The following day, on September 27 and just four days after Guthrie was sacked, Milne resigned.

ALLEGATIONS OF POLITICAL INTERFERENCE

The leadership crisis led MEAA to subsequently call for a comprehensive public inquiry. "Staff members made very clear yesterday their disgust with the targeting of journalists behind the scenes from those who are supposed to uphold the ABC's independence. This is not a one-off attack on the ABC's independence, but is the culmination of years of inappropriate external meddling in the ABC's affairs."²⁷⁴

MEAA chief executive Paul Murphy said: "Mr Milne seems to have misunderstood that the role of the ABC is as a public broadcaster, not a mouthpiece for the government of the day. The job of the chair of the ABC is to defend the independence of the broadcaster from political attacks, not to act as a messenger or do a hatchet job because the government is unhappy with the coverage it is receiving. ABC journalists cannot do their jobs of reporting fairly and without fear if they do not have confidence that the board and the chairman have their backs."

Murphy said the announcement of a departmental inquiry into the affair was inadequate. "A departmental inquiry is simply not good enough and the public cannot have faith it will be anything but a whitewash," he said. "The only way for this to be fully investigated is through a Senate inquiry, held in the open and with the power to force witnesses to testify. The government must co-operate with a Senate inquiry, and [Communications Minister] Senator Fifield, Prime Minister Morrison and former Prime Minister Turnbull should all be called to give evidence about how deeply they were involved in these attempts to interfere with the editorial decisions of the ABC."

Murphy said the leadership crisis had exacerbated the climate of instability and uncertainty for all ABC staff, who should be commended for continuing to work professionally in extremely difficult circumstances. "MEAA members and supporters will continue to stand up for an independent ABC. We thank all who supported our action yesterday, and our ongoing campaign to safeguard Australia's journalism."²⁷⁵

A review by Mike Mrdak, secretary of the Department of Communications and the Arts, into the events at the ABC looked at the role of Milne and Guthrie as well as the ABC board members in the lead-up to the leadership crisis.²⁷⁶ Public service news website The Mandarin reported:²⁷⁷ "Communications Minister Mitch Fifield tabled the Mrdak review in the Senate today, highlighting that Milne and Guthrie both told his department head "there was no request or suggestion" by any minister that led the national broadcaster's former chair to demand senior journalists be



sacrificed to appease an increasingly unfriendly government.

“Of course, the former chair’s stated reasoning for very strongly suggesting that Guthrie fire senior reporters Emma Alberici and Andrew Probyn was that the government clearly disliked them and some of their recent reporting, based on clear public statements and letters of complaint from ministers, including former prime minister Malcolm Turnbull and Fifield himself.

“Mrdak was looking at how Milne communicated with Guthrie around a series of complaints from the government, regarding Alberici and Probyn, the decision by Triple J to stop running the Hottest 100 countdown on Australia Day, and edgy political satire televised on *Tonightly*.

“A timeline of events included in the report demonstrates that each case involved both interventions by the board and complaints from the government which reflected identical concerns. The former chair maintains he was making his views known to the managing director, not giving a direction, while Guthrie sees it the other way around.”

“...As to whether Guthrie’s sacking was a direct result of the Alberici and Probyn arguments, Mrdak simply observes a difference of opinion between Milne’s claim that her resistance to his strong interventions over editorial and staffing matters was not the main reason for the board’s decision to cut her loose, and the former MD’s impression that it was a major factor.”²⁷⁸

The vacuum created by the departure of the ABC chair and the ABC

managing director would be followed by an example of direct government interference in the ABC’s board selection process — and not for the first time.

On February 25 2019 Minister for Communications Mitch Fifield and Prime Minister Scott Morrison announced that former print media executive and more recently Network Ten panel show member Ita Buttrose would be recommended to the Governor-General for appointment as the new chair of the ABC board.

The government’s move to override the legislated independent panel selection process was reportedly because the recruitment firm appointed during the five-month hiatus since Justin Milne’s resignation had not found a woman to make the short list of three. Morrison said: “It is true that she was not one of those who have been independently recommended, and I can confirm that the independent recommendations did not include a female candidate.”²⁷⁹

Her appointment came “after Senate estimates heard... that the company brought in to run the recruitment process was paid more than \$160,000 to whittle down the list of potential names.”²⁸⁰

MEAA chief executive Paul Murphy said: “There is an independent panel selection process in legislation which the Government has yet again ignored, as they have on very many occasions in making appointments to the ABC board. That’s not a reflection on Ita Buttrose but it’s an important point we’ve been raising.”²⁸¹

In its opening statement²⁸² to a public hearing of the Senate Environment and Communications References Committee as part of its inquiry into allegations of political interference in the ABC, MEAA expressed grave concerns with the conduct of the former ABC chair, Mr Milne, at the time his views concerning senior ABC editorial staff were publicly aired, shortly before his and Ms Guthrie’s departure from the corporation. MEAA said:

MEAA and its members abhor selective and/or politically motivated interventions by senior ABC personnel. We are dismayed by members of the political class continually undermining the ABC by sniping, carping and punishing the ABC, and by encouraging dissent towards the corporation, ordering meritless inquiries, cutting funds and, on occasion, stacking its board. For the record, MEAA submits that complaints concerning editorial staff or perceived institutional bias should be aired and considered in an orderly and dispassionate manner where the principles of procedural fairness are observed. There should be no room for senior ABC officers to prosecute complaints outside of such processes.

In our submission, we didn’t seek to further canvass the events of September last year. We believe that this inquiry should focus on the systems that enabled those events to occur and on measures to ensure that board selection processes are sound and are not polluted by political interference. We concentrated our comments on terms of reference (c), (d) and (e). For the reasons set out in our submission, we make a total of 12 recommendations, and those are in three main areas: firstly, strengthening the independent selection process for board positions, removing political considerations from them and making them more transparent; secondly, replacing ad hoc and seemingly endless efficiency reviews with set, fixed term reviews based on consistent criteria and introducing independent external advice to guide triennial funding decisions; and, thirdly, reviewing the existing internal complaints handling processes.

On the first point around board appointments, we believe the initiative to establish an independent selection process some years ago for the ABC board was a good one, reflecting the need for the public to have confidence that board members would be selected based on merit and be capable of defending the independence and integrity of their public broadcaster. Multiple recent examples of the minister bypassing that process have, in our submission, produced a board not best fit to fulfil its duties.

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The perception of political favouritism in any appointment undermines public confidence, and, to be honest, the perception we have is that the minister of the day views the independent selection process as little more than an obstacle course to be overcome before making the appointment that they desire. In our submission, legislation should be amended so that no future appointments can be made outside of proper consideration and recommendation by the independent nomination panel.

We also make recommendations regarding board composition, specifically to extend the ban on former political officeholders being appointed to the board and to bar them from appointment to the independent nomination panel. We also recommend specifying that at least half the board should have experience in journalism or broadcasting, and for the creation also of an additional staff elected board position.

On funding, we note that since 2014 the ABC has faced funding cuts of more than \$350 million and the resulting loss of hundreds of jobs. On one analysis, referred to in our submission, Australia invests 34 percent less per person in public broadcasting than is the average figure for comparable democracies. Our submission notes that the ABC has been subject to no less than 16 efficiency reviews in the last 20 years. These reviews are often perceived as being driven by political considerations.

No-one argues the ABC should not be subject to efficiency reviews. Like all public institutions, it must be accountable for the use of public money. But reviews should be on a regular cycle, rather than being announced ad hoc, and should be conducted on consistent and transparent criteria. With regard to triennial funding, in our submission the engagement of independent advisers to assist government in assessing appropriate funding levels would be of great benefit.

“And finally, in relation to the complaints processes, we have fielded several complaints from ABC personnel about the manner in which the ABC’s Audience and Consumer Affairs unit deals with complaints. The ACA fielded 26,850 complaints in 2017. It examines all manner of complaints, from subtitling errors to claims of bias in reporting. Of those complaints, 120 were upheld in 2017. On occasion, it receives multiple complaints from business and community organisations that allege an ingrained bias against their interests. A number of cases where such bias has been alleged have seen the ACA arrive at preliminary and sometimes final findings about bias

without first providing allegations to the editorial staff member concerned. MEAA submits that the ABC’s complaints system must inform relevant staff of editorial complaints without fail. In addition, the person whose behaviour is complained about must have the ability to respond directly to the allegation before a preliminary or final decision is made. Anything less is a denial of natural justice and actually serves to undermine the integrity of the complaints process itself.”

On April 1 2019, the Senate political interference inquiry made a series of recommendations:

- Amend the *Australian Broadcasting Corporation Act 1983* to define the term “consult” to ensure that the Prime Minister provides the Leader of the Opposition with information about the outcome of the Nomination Panel recruitment process and any alternate nominee, and the opportunity to discuss a proposed recommendation for appointment.
- Amend the election criteria for the appointment of non-executive Directors) Determination 2013 to:
- allow for applicants with substantial experience or knowledge in the field of education;
- emphasise the need to demonstrate an understanding of the role of the fourth estate and independent media in democracy; and
- require no less than two non-executive members of the ABC Board to demonstrate substantial experience or knowledge in the media industry.
- Amend the *Act* to set out the selection criteria for the Nomination Panel and enhance the transparency and accountability of the work of the Nomination Panel.
- Amend the *Act* to require the Prime Minister to table a statement advising the Parliament on the extent and outcome of consultations with the Leader of the Opposition.
- The Board should formally review these events, including the findings of this inquiry, and report to the Minister on lessons learned and steps taken to guard against a similar occurrence in future.
- The Government should acknowledge the benefit and desirability of stable funding for the ABC, not only for ABC planning purposes but also as a guard against political interference, and commit to stable funding for the ABC over each budget cycle.²⁸⁵

Commenting on the report, MEAA chief executive Paul Murphy said: “It must be remembered that this inquiry was called following the sacking of ABC managing director Michelle Guthrie and

subsequent allegations of interference in the ABC’s editorial processes by board chairman Justin Milne.

“Recommendations which improve the independence and transparency of board appointments, add more media experience to the board and protect the ABC’s staff from political interference are all sensible and welcome.

“Particularly important is the final recommendation for stable funding over the budget cycle of the ABC ‘as a guard against political interference’. We urge the swift and full implementation of the Committee’s recommendations.

“That would be an important step towards ensuring the chaos and dysfunction of last year is not repeated.”²⁸⁴

INQUIRIES

The ABC has been subjected to inquiries that appeared to be largely politically motivated or spurred by rivalries with other media outlets. At least two were initiated at the behest of Pauline Hanson’s One Nation party. The first was the introduction of the *Fair and Balanced Bill* — the legislation has stalled in the Senate²⁸⁵ after a standing committee inquiry was split along party lines with the Greens and Labor dissenting with the Government representatives’ final report.²⁸⁶

The other One Nation-provoked inquiry was into the national broadcasters’ businesses in comparison to their commercial rivals. The *Australian Financial Review* said: “The then-Turnbull government set up an expert panel to run an inquiry into public broadcasting in March as part of a deal with Pauline Hanson’s One Nation to get Communications Minister Mitch Fifield’s media reform package through the Senate.”²⁸⁷

On March 29 2018 the Communications Minister launched the inquiry into “the competitive neutrality of the national broadcasters”. The inquiry was predicated on the premise: “Competitive neutrality principles provide that government business activities should not enjoy net competitive advantages simply by virtue of their public sector ownership.”²⁸⁸

In its submission to the competitive neutrality inquiry, MEAA said: “MEAA note that this Inquiry is being conducted in an environment of overt hostility towards the ABC and to a lesser extent, SBS. In our view, this is an inquiry in search of an ill-articulated (or non-existent) problem. This Inquiry follows



Senator Pauline Hanson in the Senate
Alex Ellinghausen, Fairfax Photos

the ABC and SBS Efficiency Study of 2014, approximately \$380 million in funding cuts to the ABC and \$20 million for SBS since 2014 and is taking place in conjunction with a further ABC efficiency review announced by the Government in May 2018...

“We further note that this Inquiry is occurring before two other inquiries have reported their findings: Treasury’s Review of the Commonwealth Government’s Competitive Neutrality Policy, which commenced in 2017; and the ACCC’s Inquiry into Digital Platforms.

“It strikes us as premature that this Inquiry should proceed while the foundations of competitive neutrality policy are being reviewed and before the main threats to the Australian media sector’s plurality, if not survival — digital platforms such as Facebook and Google and unregulated content providers including Netflix, Amazon and Stan — has properly been assessed.

“Finally, we note the existence of the Productivity Commission’s Competitive Neutrality Complaints Office (AGCNCO). This office is charged with fielding complaints and launching investigations into whether public entities have adhered to the Competition Principles Agreement. The by-passing of this office in favour of this inquiry is puzzling and concerning...”²⁸⁹

MEAA concluded its submission by saying: “MEAA supports full public accountability for public broadcasters. Their statutory origins form the basis upon which Australians can trust and test that the monies they receive and the ventures they participate in — are in furtherance of their public missions.

“The ABC and SBS have made admirable headway in the first decade of the digital media era. It now appears that this is a source of unrest for commercial broadcasters, who are looking to preserve income streams, especially advertising income.

“As we pointed out earlier, the national broadcasters are not to blame for diminishing advertising returns. The ABC receives no advertising revenue and SBS’s share is relatively modest. Our public broadcasters are efficient and they are dedicated to meeting audience expectations and demands, including making quality content available on a variety of platforms.

“It would be absurd if the national broadcasters were constrained from making use of the technological tools that encourage public access to their platforms. There is simply no public utility in doing so. It would impair the value and purpose of these enterprises’ delivery of excellent news and entertainment.

“With all due respect to the panel members on this inquiry, MEAA believe

that competitive neutrality principles, which have largely fallen into disuse in the past 10 years, are a virtual Trojan horse through which the Government can mount further attacks on the ABC and its employees.

“Meanwhile, the progressive failure by government to modernise broadcasting regulation to suit the digital era continues. For as long as this situation prevails, all producers of content in Australia will be fighting with one hand tied behind their back, revenues will continue to fall and the alarming trend of job losses will continue.

The inquiry handed down its report on December 12 2018.²⁹⁰

“The report concluded: “Given their market shares, and other factors, this inquiry considers the National Broadcasters are not causing significant competitive distortions beyond the public interest. But it did see the need for greater transparency from them.”²⁹¹

The Conversation reported: “The outcome will be disappointing to News Corp in particular which has been highly critical of the ABC’s expansion in online publishing. The former Fairfax organisation, now taken over by Nine, also complained about the competition eating into the market of commercial media groups. The report said: “Competitive neutrality seeks to ensure that competition is not distorted by public entities taking inappropriate advantage of government ownership. It is not intended to prevent public entities from competing, nor to relieve discomfort from competitive processes which are bringing benefits to consumers as they rapidly adopt and enjoy new services.”

The Conversation report continued: “The inquiry found the broadcasters’ business activities in order; they were ‘abiding by a best endeavours approach to competitive neutrality’. It suggested there should be some improvements in transparency and internal procedures.”²⁹²

The *Australian Financial Review* said: “ABC and SBS could be forced to give more detail on how and where they spend more their taxpayer-funded budgets, under recommendations made by a competitive neutrality inquiry into public broadcasting.... The inquiry, which cost approximately \$495,000, concluded SBS and ABC were meeting their competitive neutrality obligations, but they needed to be more transparent in their business activities and report on how their operations related to their respective charters.”²⁹³



Hugh Marks of Nine **David Rowe** Fairfax Photos

and diversity of voices in what is already one of the most concentrated media markets in the world.

Marcus Strom, president of MEAA Media, said: “Today’s takeover announcement is the inevitable result of the Coalition’s Government’s short-sighted and ill-conceived changes to media ownership laws that were always going to result in less media diversity. With ongoing inquiries into the independence and long-term viability of quality journalism under way, the ACCC [Australian Competition and Consumer Commission] must block this takeover.

“This takeover reduces media diversity. It threatens the editorial independence of great news rooms at Nine, *The Sydney Morning Herald*, *The Age*, *Canberra Times*, *Illawarra Mercury*, *Newcastle Herald*, Macquarie Media and more — right around the country. It harms the ability of an independent media to scrutinise and investigate the powerful, threatens the functioning of a healthy democracy, undermines the quality journalism that our communities rely on for information,” Strom said.

“Nine and Fairfax must explain how they intend to defend the integrity of independent quality journalism in any combined entity.”

MEAA demanded that all existing employment conditions and entitlements are protected and retained for all workers at both companies; and that existing industrial agreements are respected.

Strom said: “Any further cuts to editorial journalism at Nine and Fairfax would bite into the muscle, bone and soul of the newsroom. The proposed savings of \$50 million in two years should come from trimmings to bloated executive salaries and from any back-office rationalisation.”

MEAA said that the ACCC couldn’t seriously consider the proposed merger until it has finished its digital platforms inquiry, which then Treasurer Scott Morrison called for in December 2017. If the merger were to go ahead, it would reduce media diversity and potentially undermine the editorial integrity of Fairfax’s mastheads.

In addition, MEAA called for Nine and Fairfax to guarantee that the Fairfax Media Charter of Editorial Independence²⁹⁶ would be retained, and that there would be no job losses under any merger.

MEDIA OWNERSHIP

Farewell Fairfax

One of the Australian media industry’s best known and most respected journalism brands disappeared as the result of a takeover that further reduced media diversity in Australia. It was the culmination of the Government’s misguided media ownership reforms and the shakeout of media assets arising from digital disruption and transformation. Almost a year later, the ramifications of the takeover are still being felt, not least for editorial staff at the combined entity wondering about ongoing job security as the takeover is “bedded down”.

On February 8 1841 “the founder of the family dynasty, John Fairfax, acquired co-ownership of the then *Sydney Herald* with his business partner, Charles Kemp for the princely sum of £10,000.”²⁹⁴

On July 26 2018 Nine Entertainment Co announced a takeover of Fairfax Media that would dissolve the Fairfax name.

Fairfax owned:

- 60 percent of ASX-listed real estate and technology services business Domain Holdings;
- metropolitan newspapers, digital media, transactions and events business Australian Metro Media (including the leading newspapers and

websites *The Sydney Morning Herald*, *The Age*, *The Australian Financial Review*, *BrisbaneTimes.com.au* and *WAToday.com.au*);

- rural, regional and agricultural newspaper and digital media business Australian Community Media (ACM) which includes more than 160 regional publications and community-based websites include *The Canberra Times*, *Newcastle Herald*, *The Examiner*, *The Border Mail*, *The Courier and Illawarra Mercury*, approximately 130 community-based websites plus agricultural publications that include *The Land*, *Queensland Country Life*, and *Stock and Land*;
- New Zealand multimedia business Stuff that includes *The Dominion Post*, *The Press* and *The Sunday Star-Times* in a portfolio of regional and community newspapers, magazines and agricultural publications;
- a 50 percent in subscription video on-demand business Stan; and
- a 54.5 percent stake in Macquarie Media operating a nationwide network of stations comprising 3AW and Talking Lifestyle 1278 in Melbourne; 2GB and Talking Lifestyle 954 in Sydney; 4BC and Talking Lifestyle 882 in Brisbane; and 6PR in Perth.

When the takeover was announced MEAA issued a statement²⁹⁵ saying it would be bad for Australian democracy

MEAA encapsulated its demands into three key areas when it wrote to both the Nine CEO Hugh Marks and the Fairfax CEO Greg Hywood that day:

- Job security — preserving current levels of employment in the merged organisation.
- Enterprise agreement — honouring the current Fairfax EBA.
- Editorial independence — adopting the *Fairfax Media Charter of Editorial Independence*.

Later in the day, Marks responded:

- On job security, Marks said: “We are... continuing to grow opportunities for journalists’ employment across broadcast in regional and in digital and that commitment now includes radio and print so more growth and expanded potential for quality content.”
- On the EBA, Marks said: “Fairfax employees will remain employed under the current terms and conditions of their respective enterprise agreements and that will continue.”
- On editorial independence, Marks said: “We have been very clear Nine, its board and management are committed to the charter of editorial independence and already understand the responsibilities of independence for journalists as we respect that in our existing business.”

MEAA responded the following day, July 27 2018, saying it was not satisfied with the response regarding job security. “We will continue to push for solid undertakings and guarantees. On the EBA, Marks’ response is encouraging and MEAA acknowledges Nine’s statement about maintaining Fairfax terms and conditions. However, we are unclear as to how long this commitment will last and MEAA will press for clear and reliable answers, and what this means for current EBA negotiations. On the charter of editorial independence, MEAA notes and welcomes Marks’ response, but will continue to seek a written guarantee that the full wording and intent of the current charter will be adopted by the enlarged company should the takeover go ahead.”²⁹⁷

On July 30 2018 MEAA issued a statement²⁹⁸ saying that key questions

remain unresolved about how editorial independence would be protected following the proposed takeover of Fairfax.

MEAA said Nine chairman Peter Costello and his board must commit in writing to the full wording and intent of the Fairfax charter of editorial independence. Nine must also guarantee not to close or reduce the editorial footprint of Fairfax’s network of regional and suburban publications, which serve communities around Australia.

MEAA Media federal president Marcus Strom said Nine had a tradition of great journalism, but without a commitment in writing, Fairfax staff had every right to be concerned about whether the charter would be adopted if the takeover went ahead.

“The Fairfax charter of independence, established in 1991 when the company was facing an earlier takeover, explicitly prohibits media owners from dictating or interfering in the editorial decisions or journalism of its publications, even if they may reflect poorly on the proprietor or advertisers.

“It has allowed the journalists of Fairfax to pursue investigations into powerful influences, sometimes to the detriment of commercial interests, such as the series of stories into banking misbehaviour which resulted in a royal commission, and articles about corporate wage theft,” Strom said.

“Until Peter Costello, who would be chair of the new merged entity, formally signs a binding document that commits Nine to adopting the charter of independence, our members will continue to be concerned and sceptical about how genuine Nine’s commitment to editorial independence really is.”

The future of the charter of independence was just one of several outstanding concerns about the proposed takeover, Strom said. “We will continue to push for solid undertakings and guarantees on job security, and we need clear and reliable answers on Nine’s commitment to maintaining current employment terms and conditions beyond the current enterprise agreements at Fairfax,” Strom said.

“Even if we assume the best of intentions from Nine management, there will be immediate pressure to merge newsroom functions to cut costs. And Nine has made no guarantees about the future of the regional mastheads, portraying them in some interviews as unwanted assets.

“The ACCC should hit the pause button on this takeover until it has guarantees on editorial independence, the future of regional and rural mastheads and has time to consider the recommendations of its own digital media inquiry,” he said.

Later that day the ACCC chairman Rod Sims said the commission would scrutinise the takeover. He was reported as saying: “Once we get the submissions from the merger parties, we have given ourselves 12 weeks, which is about as long as we ever take, to go through this in very great detail... So all I can say is we are going to look at it extremely carefully. It’s a very, very important issue... Ours is a competition view, and so competition in advertising, competition as it affects consumers, but one way it affects consumers is the quality and diversity of their media. We will take that into account, because it’s part of what you are getting here, the quality of news and the breadth of news,” Sims said.

“Of course the merger parties say there is no competition issues, they always do. Every merger I have ever come across, the merger parties said ‘why do you bother us, there is just no competition issues’. Well, we are going to look very carefully at this. We are going to take it very seriously and there is not much more I can say until we get going,” Sims said.²⁹⁹

On August 1 2018, in correspondence with MEAA, Nine again failed to give satisfactory answers on editorial independence. MEAA wrote to Nine CEO Hugh Marks on July 27 seeking clarification of the duration of Nine’s commitment to observe the terms and conditions of current Fairfax enterprise bargaining agreements (Marks said Nine would comply “for as long as they remain in effect”). MEAA also said that it “may be appropriate to discuss matters in more detail”.

THE FUTURE OF THE CHARTER OF EDITORIAL INDEPENDENCE IS A CONCERN



THE PUBLIC'S RIGHT TO KNOW

But Marks ruled out discussions with MEAA “as the deal is yet to complete. Our expectation is that this will happen around December 2018”.

MEAA said: “It is disappointing that Mr Marks has now ruled out further discussions. MEAA remains open to meeting with Nine.”³⁰⁰

Meanwhile, ACCC chairman Rod Sims said he expected a 12-week “long review” of the takeover that will make a “very careful study” of the impacts it will have, including the effect on diversity of views”. “Our lens is: what does the reduction in competition mean for diversity? What are competitive forces doing to diversity? We will look at quality, price and quantity,” Sims said.³⁰¹

On August 3 2018 a report said the takeover of Fairfax Media by Nine would further concentrate the Australian media which, data shows, was already one of the more concentrated media industries in the world.³⁰²

ACCC chair Rod Sims made additional comments about the upcoming takeover review. The findings of the Commission’s inquiry into digital platforms will help inform its long review, he said. “The merger parties [Nine and Fairfax], can see no competition issues here. We will see what unfolds when we begin our assessments. We have indicated a 12-week phase-one timeline so our review will be a thorough one.”

MEAA welcomed this as from day one we called on the ACCC to “hit pause” until it had completed that inquiry.

“This will be a fascinating review given the considerable changes affecting traditional media in recent years,” Sims said. “Significantly in this matter, we will have the benefit of considerable insight into these changes from our digital platforms inquiry.”³⁰⁵

On August 6 2018 MEAA said the future of Fairfax’s regional newspapers in any merged Nine-Fairfax business remained far from certain, especially in light of some of Nine CEO Hugh Marks’ comments. When he was asked about the future of the regionals, Marks stated that “those other businesses that may

not fit that high-growth model may be better serviced by being part of some other environment.”³⁰⁴

On August 10 2018 MEAA said the takeover of Fairfax Media by Nine should undergo a far more detailed examination by the ACCC than that currently proposed. MEAA wrote to the heads of Nine and Fairfax, and Rod Sims, urging the companies to seek a formal authorisation of the merger from the ACCC — a far more rigorous process than the current 12-week informal merger review. “A takeover of this nature, with its implications for media diversity, editorial independence and the cloud hanging over the Fairfax portfolio of regional publications and websites, requires a more robust and transparent process than an informal merger review. Nine and Fairfax should submit themselves to detailed questioning about this takeover. They should explain what their takeover will mean for all their media businesses and what it will mean for consumers, the audience who rely on the information and entertainment provided by those businesses. And they should be willing to explain what it will mean for the thousands of affected employees.”

On August 16 2018 Nine CEO Hugh Marks said Nine and Fairfax had lodged a detailed submission with the ACCC.³⁰⁵ On September 7 2018 submissions to the ACCC’s formal review of the Nine Entertainment Co takeover of Fairfax Media closed at 5pm. To that time, 1147 submissions had been made from people using a special online MEAA web site tool. The submissions made by the public were overwhelmingly opposed to the takeover.

MEAA’s submission³⁰⁶ urged the ACCC to oppose the merger as it contravenes the Australian Competition and Consumer Law. MEAA argued the merger would substantially lessen competition and diversity in the media industry, is anti-democratic, and any public benefit is outweighed by the public detriment.

MEAA chief executive Paul Murphy said³⁰⁷ the 1147 submissions passed on to the ACCC by MEAA far exceeded expectations. “It’s a sign of how much this takeover is against the public interest that more than 1100 people

felt compelled to send a submission to the ACCC,” Mr Murphy said. “The ACCC must seriously take these views into account when considering whether to allow the takeover to proceed.

“This is a takeover that will change the face of Australia’s media forever by creating a cross-platform giant that will reach every corner of our nation and which will control newspapers and websites, television and radio stations in our two largest cities.

“There is no question that the Nine takeover of Fairfax will reduce diversity in Australia’s media, which is already one of the most concentrated in the democratic world.

“We also hold concerns about what it will mean for independent journalism, for the future of Fairfax’s metropolitan and 160 community, regional and rural publications around Australia, and for the jobs and conditions of thousands of Fairfax employees,” Murphy said

“It is disappointing that Nine did not agree to submit the takeover to more rigorous scrutiny by seeking formal authorisation from the ACCC. This would have ensured greater transparency, and forced Nine to address many of the concerns expressed in these public submissions. Nevertheless, the volume of public submissions and the concerns expressed in them are real and cannot be ignored by the ACCC, which should act by rejecting the takeover in its current form.”

MEAA said that if the takeover is allowed to go ahead it should only be with strict enforceable undertakings, including a robust process to guarantee editorial independence, the maintenance of separate Nine and Fairfax newsrooms, and commitments to continue existing employment arrangements and all existing Fairfax publications for at least three years.

On November 8 2018 the Australian Competition and Consumer Commission announced it would greenlight the takeover of Fairfax Media by Nine. MEAA responded to the news in a statement³⁰⁸ saying the decision by the Australian Competition and

THIS IS A TAKEOVER THAT WILL CREATE A CROSS-PLATFORM GIANT

Consumer Commission to greenlight the takeover is a body-blow to media diversity, and the forerunner to future mega-deals that will reduce coverage of matters of public and national interest and do untold harm to media jobs.

MEAA said that despite the ACCC's tough talk about protecting competition and assuring the community that the merger would not simply be waved through, the commission had ignored the concerns raised by MEAA and hundreds of Fairfax and Nine readers and viewers. The merger had been approved without any conditions being attached about editorial independence, protection of jobs or employment conditions, or continued operation of existing mastheads.

The ACCC had found that the merger "will likely reduce competition", but not substantially lessen competition in any market. MEAA said it did not accept the ACCC's view that the growth in online news by smaller media companies "now provide some degree of competitive constraint".

MEAA argued that none of the new entrants to the Australian media market have the capacity to conduct journalism at the scale of Nine, Fairfax, ABC, NewsCorp or SevenWest. Despite the ACCC recognising this, it had chosen not to place any conditions on the merger.

In the statement MEAA chief executive Paul Murphy said the merger was the inevitable result of the removal by the government of the two-out-of-three media ownership rule in 2017. "The ACCC seems to have neither the will nor the regulatory tools to block transactions like this," he said.

"As we saw with the 2011 merger to form Seven West Media, media mergers of this scale result in endless cost-cutting to increase 'synergies', far fewer journalists and far less local and national public interest journalism, while also wiping billions of dollars of value from the company.

"The likely outcome of Nine's takeover of Fairfax will be the same.

"Given the ACCC's failure to take the concerns raised by MEAA and the public into account, we will be making a robust case to the new owners of Fairfax to sign a new charter of editorial independence, guarantee there will be no closures of newsrooms or titles, especially in

regional areas, and maintain existing wages, entitlements and employment conditions."

MEAA urged the ACCC to block the merger on the grounds it would substantially lessen competition and diversity in the media industry, is anti-democratic, and any public benefit is outweighed by the public detriment.

MEAA also noted that since July 2018, when the Nine-Fairfax merger was announced, the share values and market capitalisation of both companies had fallen by at least 30 percent, with the combined value of the merged company down by more than \$1.3 billion to less than \$3 billion.

The federal president of MEAA Media, Marcus Strom, said: "The public should ask: if the merger isn't good for media diversity, public interest journalism or shareholders, what or who is it good for? To avoid a repeat of mergers that devalue journalism, destroy jobs and reduce scrutiny of those in power, Australia must restore strong media diversity protections as a matter of urgency. Any such test must have the public interest and media plurality at its heart."

On December 2 2018 Nine announced 144 roles would be made redundant, affecting 92 employees, due to duplicated jobs and vacancies that would not be filled.

On December 7 2018 MEAA wrote: *After providing quality independent journalism to Australian audiences for more than 185 years, the Fairfax brand will disappear on Monday following completion of the takeover of the business by Nine Entertainment Co.*

MEAA will be closely monitoring the situation as the Fairfax mastheads come under the Nine banner.

When the takeover was first announced, we sought three commitments from Nine's management, and these remain outstanding issues in the wake of Nine's takeover:

1 *Nine's chairman Peter Costello, the board of directors and Nine's CEO Hugh Marks must commit to and sign the Fairfax Charter of Editorial Independence that all owners of Fairfax have signed up to over the past 30 years.*

2 *Fairfax editorial staff are*

the backbone of the business, acknowledged for their award-winning public interest journalism. It is vital that the journalism produced by Fairfax journalists is maintained and properly resourced, and so Nine must commit to observing and respecting the workplace agreements that are currently in place.

3 *There are still uncertainties surrounding what will happen to Fairfax businesses. The fate of more than 160 Fairfax regional and rural publications and websites is also under a cloud.*

On December 10 2018 the Nine takeover of Fairfax Media was completed with the merged business known as Nine — 177 years after John Fairfax began his news business. Nine began to eradicate the Fairfax name from the combined business.

Then on the following day — a fortnight before Christmas — 26 journalists and other staff at Nine-owned (formerly Fairfax-owned) Allure Media were told they were redundant.³⁰⁹

At the beginning of March 2019, as forewarned by Hugh Marks, Nine put the Fairfax regional newspaper businesses held by the Australian Community Media (ACM) business division up for sale. MEAA continued to have concerns about what a change of ACM group ownership would mean for independent journalism, for the future of Fairfax's 160 community, regional and rural publications around Australia, and for the jobs and conditions of Fairfax regional employees.³¹⁰

As with the Nine takeover, MEAA called on the potential new owners to invest in reporting and newsrooms at a time when maintaining already reduced journalist numbers on the ground is pivotal to maintaining scrutiny of local authorities and business interests in an election year.

As such, MEAA's demands remained the same of any new owners of the ACM group of newspapers that was sought from Nine CEO Hugh Marks when the takeover was first announced:

- Job security — preserving current levels of employment.
- Enterprise agreements — honouring the current Fairfax enterprise bargaining agreements.
- Editorial independence — committing to the Fairfax Media Charter of Editorial Independence.

ASYLUM SEEKERS

MEAA has been a long-term campaigner against the strict media blackouts, secrecy and harsh anti-whistleblower legislation that governs not only the detention centres on Manus Island and Nauru, but asylum seeker policy in general.

We find these deliberate attempts to suppress reporting about the treatment of asylum seekers and the conditions of the centres to be an affront to press freedom.

As the 2016 press freedom report published by MEAA said: “We have already had years of refusal by the current government to be open about its activities relating to asylum seekers. Requests for information are met with a blanket refusal to discuss ‘on-water matters’.

“Similarly, questions about what happens in asylum seeker detention centres have been met with silence, obfuscation, and even buck-passing questions to foreign governments. Last year this approach was reinforced by brutal legislation: the Border Force Act now carries a two year jail term if “entrusted personnel” disclose “protected” information.”³¹¹

But as Guardian Australia reporter Ben Doherty wrote in the same report: “For years, Australian journalists have noisily and proudly resisted political efforts to restrict them in their work. But they must continue to oppose the suppression of free reportage, on issues of asylum and all others.”³¹²

MEAA continues to support journalist and author Behrouz Boochani, 36, a Kurdish writer, journalist and filmmaker who continues to be detained by Australia on Manus Island, Papua New Guinea.

Boochani was born in Ilam city in west Iran in 1983. He graduated from Tarbiat Madares University in Tehran with a masters’ degree in political geography and geopolitics.

The London-based freedom of expression association of writers PEN International reported³¹³ that “in his native Iran, Boochani worked as a journalist for several newspapers, including national dailies *Qanoon*, *Kasbokar* and *Etemad*, and the Kurdish-language monthly magazine *Werya* (also spelled *Varia*). Due to his focus

on business and politics, Boochani was subject to constant surveillance by the Iranian authorities.”

In February 2013, the offices of *Werya* in Ilam were raided and ransacked by Islamic Revolutionary Guards.³¹⁴ Boochani was not in the office at the time of the raid but was in Tehran. Eleven of his colleagues were arrested, six were subsequently imprisoned.³¹⁵ Boochani went into hiding.

PEN wrote in a report on Boochani’s case: “During his three months in hiding, several colleagues advised Boochani that he was at risk of arrest and interrogation. Having been interrogated and warned previously about his writing and work teaching Kurdish culture and language, and having signed an undertaking that he would not continue this activity, he found himself in grave danger.”³¹⁶

Fearing for his safety, Boochani left Iran on May 13 2013, making his way to Indonesia.³¹⁷

He attempted to leave but the first boat he was on sank. In July 2013 he made a second attempt to leave Indonesia when the boat he was on with 75 other people was intercepted by the Royal Australian Navy.³¹⁸ Boochani immediately requested asylum “as was his right under Article 1 of the 1951 *Convention Relating to the Status of Refugees*”.³¹⁹ Australia is a party to the Convention “and its 1967 Protocol, which defines a refugee as a person who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.”³²⁰

Boochani and his fellow asylum seekers were initially detained on Christmas Island for one month before being forcibly transferred to the Manus Island detention centre in Papua New Guinea on August 27 2013 as part of Australia’s Pacific Solution II, known as Operation Sovereign Borders. He has been imprisoned on Manus since August 2013.³²¹

He has subsequently been interviewed by the UNHCR and found to be a genuine refugee.³²² The Australian Parliamentary Library writes: “The primary obligation under the [*Convention Relating to the Status of Refugees*] is that of non-refoulement — that is, refugees must not be expelled or returned to places where they would

face persecution based on one or more Convention grounds. This covers both the refugee’s country of origin and third countries. Given practical difficulties in both the processing and resettlement of refugees in Nauru and PNG and concerns over the rigour of their refugee status determination processes, it has been argued that offshore processing could amount to refoulement.

“In addition, it has been argued that offshore processing may constitute a penalty in breach of Article 31 of the Convention, which prohibits imposing penalties based on a refugee’s mode of arrival. Similarly, it could amount to expulsion in breach of Article 32, which provides that refugees shall not be expelled save on grounds of national security or defence.”³²³

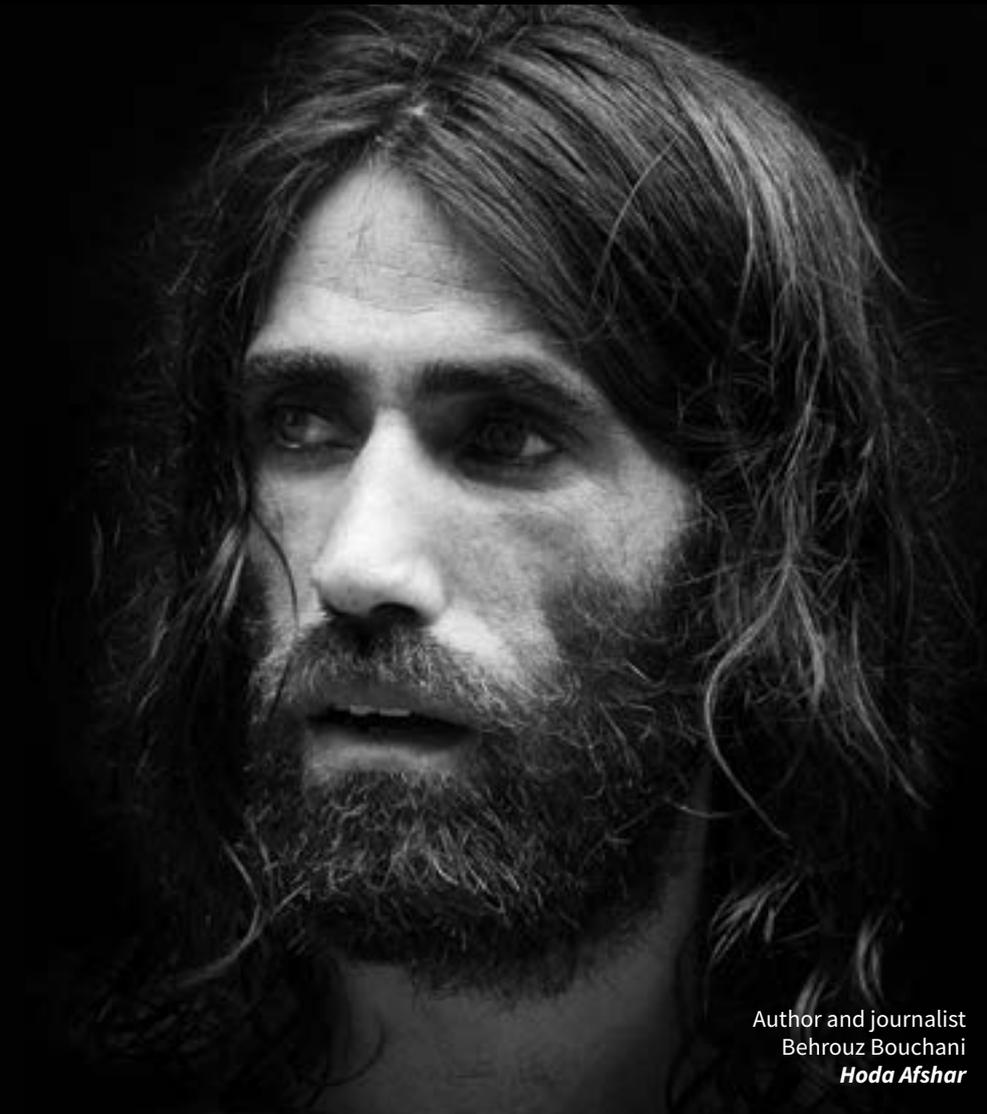
Boochani has been adopted and recognised by PEN International as a journalist and writer imprisoned and persecuted by Australia and is designated by the organisation as a PEN Prisoner of Conscience. According to PEN’s *Caselist*, “Boochani has faced harassment for reporting to the Australian media and other organisations on conditions inside the detention centre and human rights abuses alleged to be taking place there. He reports being the target of beatings as a direct result of his reporting.”³²⁴

“PEN considers that, in effect, Boochani is marooned on Manus Island and that his indefinite state of limbo has compounded his trauma, and amounts to cruel, inhuman or degrading treatment which is prohibited under international law, as affirmed in the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, to which Australia is a state party. [PEN] is continuing to call for him to be allowed to enter Australia to seek asylum there.”³²⁵

Boochani has been declared an honorary member of PEN Melbourne and PEN Norway.³²⁶ He has been shortlisted in the journalism category for the 2017 Index on Censorship’s Freedom of Expression Awards.³²⁷

MEAA believes that his continued detention undermines Australia’s credibility as a leader for press freedom across the region.

In the six years that the Australian authorities have detained him, Boochani has courageously continued to work, writing for publications in Australia and overseas, tirelessly reporting on the conditions on Manus Island, while also



Author and journalist
Behrouz Boochani
Hoda Afshar

helping Australian-based journalists cover the situation there.

In early 2017, MEAA co-ordinated an international open letter to then-Prime Minister Malcolm Turnbull, under the campaign slogan Bring Them Here, calling for Boochani, along with two other Iranians — actor Mehdi Savari and cartoonist Eaten Fish — to be resettled in Australia, which was signed by dozens of journalists, writers, actors, artists and international organisations. Boochani is the only one of the three men to still be held on Manus Island.³²⁸

In December 2017, MEAA has supported Behrouz’s efforts to be recognised as an accredited journalist and assisted him in receiving his International Federation of Journalists press card.³²⁹

Boochani is undeniably talented. In 2017, he co-directed a film that he shot on mobile phone, titled *Chauka, Please Tell Us The Time*, which was selected for screening at numerous film festivals. “Denied travel documents, and without a visa, Boochani was unable to

attend either of the premier screenings of his documentary held at the Sydney or London Film Festivals.”³³⁰

His lauded book, *No Friend but the Mountains: Writing from Manus Prison* (Picador) published in late July 2018, is an extraordinary account of his experience of the Manus island offshore detention system. In the winning citation, the judges wrote: “Altogether, this is a demanding work of significant achievement. *No Friend But the Mountains* is a literary triumph, devastating and transcendent.”³³¹

He used his mobile phone to write the book which, in January 2019, won Victorian Prize for Literature, the richest of its kind in Australia. Boochani also claimed the award for non-fiction.³³² Boochani wrote the book as text messages on his phone, sending them, sometimes through several intermediaries, to the academic Omid Tofighian for translation into English.

He has also written for many Australian and overseas media outlets. In November

2017, Boochani won the Amnesty International Australia media award in the print, online and multimedia category for his work last year for the *Guardian* and the *Saturday Paper*.³³³

MEAA remains deeply concerned for Boochani’s welfare and safety — particularly the longer he remains on Manus. The success of his book and his status as a journalist have made him a target of the Manus authorities; a danger that has only increased with his rising profile.

In November 2017 MEAA formally complained³³⁴ to the Australian and PNG prime ministers about the singling out and deliberate targeting by PNG police of Boochani. He was detained by PNG police at the Manus Island Regional Processing Centre.

MEAA believed that comments by PNG police show Boochani was being deliberately targeted for his journalism and his detention in handcuffs amounted to an outrageous attack on press freedom.

Boochani was likely selected for this special treatment because of his journalism reporting on the situation on Manus. The determination of PNG police officers from the outset to find “the journalist” suggests the officers intended to disrupt and muzzle any live reporting of the activities of the PNG police while they conducted their operation inside the Centre, and that by getting a working journalist removed from the scene of the police action, media coverage of the event would be minimal.

MEAA chief executive Paul Murphy said at the time: “For years now, a veil of secrecy has cloaked every aspect of the government’s asylum seeker policy. The role of the media is to hold the powerful to account and to scrutinise what they do. Behrouz Boochani is a former magazine editor and publisher. His reports for various Australian media outlets have finally given us a glimpse into the conditions on Manus faced by refugees. His reporting has been exemplary and has been recognised with an Amnesty International Australia Media Award.

“The actions and statements of PNG police confirm that Boochani was targeted during the police operation on Manus. That is a clear assault on press freedom,” Murphy said.

In its 2017 letter, MEAA has called on the two prime ministers to ensure that those engaged in the outrageous assault

on press freedom on Manus Island be reminded of their obligations to protect journalists and working media covering important news stories on Manus Island, and observe their obligations towards freedom of expression and press freedom.

“Boochani remains at high risk. His continued coverage of Kurdish and Iranian politics, published in Kurdish newspapers, means that he would be at risk of imprisonment should he return to Iran... although Boochani was accorded refugee status by PNG immigration authorities in April 2016, remaining on PNG is not a viable option, as he and the other men stranded on PNG have genuine and well-founded concerns about their safety.”³³⁵

On April 1 2019 MEAA began co-ordinating a new campaign calling for the Morrison Government to resettle Boochani in Australia.³³⁶ The initial signatories of an open letter urging Boochani’s release was signed by Nobel Prize for Literature winner J.M. Coetzee, prominent journalists Peter Greste, Kerry O’Brien, Tracey Spicer, Kate McClymont and Quentin Dempster, and writers Tom Keneally, Michelle de Kretser, Alexis Wright, Alice Pung, Christos Tsiolkas, Andy Griffiths, and Kate Grenville.

The letter said:

We, the undersigned, write this this letter as Australian journalists, writers, editors, publishers, academics, and lovers of literature, to call for our colleague and fellow award-winning journalist and author, Behrouz Boochani to be allowed to enter Australia...

In the six years that the Australian authorities have detained him, Boochani has courageously continued to work, writing for publications in Australia and overseas, tirelessly reporting on the conditions on Manus Island, while also helping Australian-based journalists cover the situation there.

In December 2017, the International Federation of Journalists recognised Boochani’s work as a legitimate journalist and granted him an IFJ press card. As Australian journalists, we are acutely aware that his continued detention undermines Australia’s credibility as a leader for press freedom across the region.

We are deeply concerned for Behrouz Boochani’s welfare and safety. The success of his book and his status as a journalist have made him a target of the

Manus authorities; a danger that has only increased with his rising profile.

As Australian journalists, writers, academics and readers, we extend a welcome to Behrouz Boochani. We regard him as a valuable member of the contemporary Australian literary community. He had the courage to stand up for the rights of his people in Iran, and in the past six years, he has borne witness to the trials of his fellow detainees, and advocated for their freedom on Manus Island. We join with him in advocating for justice for all those detained on Manus.

We call on the Australian government to allow Behrouz Boochani into our country, where he can continue to work safely as a journalist and writer. We also urge that he be offered a pathway to permanent residency. We will all be enriched by this.

MEAA chief executive Paul Murphy said Boochani’s safety and welfare had deteriorated since the publication of the book, and the case for releasing him from Manus Island was now urgent.

“Behrouz has effectively become a marked man since the fame that his book has brought him,” Murphy said. “In November 2017, he was targeted and arrested by Manus authorities during a protest by asylum seekers. He is now constantly threatened and we have grave concerns for his safety while he remains on Manus Island.”

Peter Greste, now spokesman for the Alliance for Journalists’ Freedom and the UNESCO Chair in Journalism and Communication at the University of Queensland who spent more than a year in an Egyptian prison while reporting for Al-Jazeera in 2015, said Boochani had courageously worked as a journalist chronicling life on Manus Island for publications in Australia and overseas, while also helping Australian-based journalists cover the situation there.

“Behrouz represents the best of journalism in his brave reporting which has revealed the unpleasant reality of the ongoing incarceration of hundreds of asylum seekers on Manus Island,” he said. “But Behrouz’s own detention brings shame upon our nation, and undermines Australia’s credibility as a leader for press freedom across the Asia-Pacific region.”³³⁷

In addition to seeking the resettlement of Behrouz Boochani to a safe destination, the campaign aims to “bring more attention to all subject to Australia’s immigration detention regime”.³³⁸



Tasmanian Parliament House

In October 2018, the Speaker of Tasmania’s House of Assembly Sue Hickey issued new rules for journalists reporting on the parliament.

The new rules for media, which were introduced without consultation, included:

- Journalists “may not linger” in selected corridors and “may not seek to engage members in conversation”
- Media “should make an appointment by telephone” if they wish to speak to a politician
- Reporters are allowed to “transit around the building unescorted to areas the media are permitted”
- Areas where journalists can walk unimpeded include “the media room” and “bistro”
- Photos of “unparliamentary behaviour” by parliamentarians are banned
- Images “cannot be digitally enhanced, touched up or altered in any form”
- Photos “are only permitted during the first 10 minutes of Question Time”.³³⁹

The ABC reported the scale and impact of the new rules:

Under the guidelines, the media is prohibited from “lingering in the corridors in the vicinity” of the House of Assembly Chamber, Committee Rooms, the Atrium, Ministerial Offices, party rooms or individual rooms of Members of the House of Assembly.



REPORTING DEMOCRACY

“In these areas, the media may not seek to engage members in conversation,” the document states.

“As a general rule, members of the media wishing to speak with a member should make an appointment by telephone.”

The rule effectively means journalists are banned from talking to MPs in most areas of the Tasmanian Parliament. The guidelines also prohibit the media filming anywhere in the building, without the permission of the Speaker.

What can be filmed inside the House of Assembly even when permitted is also limited.

The guidelines are the first time restrictions on Parliamentary coverage and interactions with politicians have been documented and distributed to media outlets, with previous limitations on reporters and camera crews communicated through sporadic emails or memoranda.

Media can only film or take photos in the first 10 minutes of Question Time, and cannot document MPs not engaged in debate, interjections from other members, or the public gallery.

“In case of general disorder or un-parliamentary behaviour by a member/ members on the floor of the House, coverage must revert to the Speaker or Chair.”³⁴⁰

MEAA Tasmania president A. Mark Thomas said: “Everybody knows that the hour of Question Time, is really an open time for media for the opposition parties to ask questions of the government, to hold them to account... The perception of it could be that it is an attempt to stymie democracy. That’s the media’s job: to ask questions of members of parliament.”³⁴¹

On October 18 2018 MEAA wrote to the Speaker of Tasmania’s House of Assembly condemning her proposed new media guidelines.³⁴² MEAA wrote:

Dear Madam Speaker,

[We] write to express the great concern of the Media, Entertainment & Arts Alliance (MEAA), the professional association for Australia’s journalists, over the new guidelines for journalists working at Tasmania’s Parliament issued by you.

The guidelines represent an outrageous assault on press freedom, undermine the role of the media in carrying out legitimate scrutiny of the work of the state’s elected representatives, and hinder the dissemination of news and information to the people of Tasmania.

The rules effectively ban journalists from working in many areas of the Parliament, impede the work of journalists as they seek to carry out their duties and responsibilities, prohibit media filming

and photography by stifling and/or censoring what can be photographed and when, impose barriers to curtail MPs and the media from interacting and exchanging information, and prevent the media from reporting on the activities and behaviour of the elected politicians in the People’s House.

The role of the media is to scrutinise and report on the powerful. It is a role that is vital to maintaining a healthy functioning democracy by ensuring the media is able to report legitimate news stories in the public interest. These new rules represent the most egregious attack on the work of a parliamentary press gallery in this country and are not worthy of an Australian parliament.

[MEAA urges] you to immediately rescind these new rules and restore the ability of journalists to do their vital work of informing Tasmanian communities about what their Parliamentarians are doing in their name.

A week later, the ABC reported that the Speaker had subsequently convened “a roundtable meeting with media organisations where she announced the most controversial of the media guidelines, which stopped journalists from lingering in corridors, had already been dropped. After further discussion with journalists, editors, photographers and opposition parties, Ms Hickey also agreed to abandon the other contentious guidelines on a six-month trial basis. Restrictions could be re-introduced if there are complaints about media behaviour.”³⁴³

The ABC said: “Under the new rules, media can photograph and film the entire proceedings of Parliament, and interviews can be conducted on the front steps of Parliament House, the atrium and other agreed places. Southern Cross, WIN News, the ABC, the Mercury and Fairfax were all present at the meeting and agreed to the updated guidelines, which will be published on Wednesday.”

MEAA’s Thomas responded to the news by telling the ABC: “Any restriction on the Tasmania media was really a restriction on what the Tasmanian people could learn about what is happening in Parliament every day. It’s a good result for the media, it’s a good result for the Tasmanian Parliament, therefore it is a good result for the Tasmanian community.”³⁴⁴

SAFETY WORKPLACE

TRAUMA

A recent case has highlighted the importance of media employers providing staff with appropriate support and training when they cover traumatic incidents.

The Conversation noted: “A landmark ruling by an Australian court is expected to have international consequences for newsrooms, with media companies on notice they face large compensation claims if they fail to take care of journalists who regularly cover traumatic events. The Victorian County Court accepted the potential for psychological damage on those whose work requires them to report on traumatic events, including violent crimes.”³⁴⁵

In February 2019, it was reported that a former journalist with *The Age* had been awarded \$180,000 in damages for post-traumatic stress, anxiety and depression.³⁴⁶ The journalist had reported on some of the city’s gangland war and a particularly distressing death of a child involved in a custody dispute.

An Australian Association Press (AAP) report of the case said the journalist had worked in the role for almost a decade until taking voluntary redundancy in 2013 and covered major stories including the death of four-year-old Darcey Freeman, who was thrown off the West Gate Bridge by her father. The journalist had also covered gangland murders, road deaths, fires and police shootings.

On February 22 2019, County Court judge Chris O’Neill said on awarding the damages to the journalist: “She received no training in how to deal with the trauma of the incidents she was required to report upon. The things she observed when she was required to cover a story were graphic and traumatic, being close to scenes where, in particular, children had been killed, often violently, would be obviously distressing.”

The court was told during a three-week hearing that the journalist had repeatedly sought better support and debriefing from her superiors after covering stories. The day she reported on the death of Darcey Freeman in 2009, she requested to be transferred away from crime reporting.

The ABC program *The Law Report*³⁴⁷ said: “When four-year-old Darcey Freeman’s body was pulled out of Melbourne’s Yarra River — after she was thrown off a bridge by her father — an *Age* journalist was one of the first at the scene. Later, she told everyone in the newsroom: “I’m done, I can’t do this anymore. I have had enough of death and destruction.”

The journalist was transferred to the sports desk. The Conversation reported: “But a senior editor later persuaded her, against her wishes, to cover the Supreme Court where she was exposed to detailed, graphic accounts of horrific crimes...”³⁴⁸

However, her mental condition worsened covering murder trials, including having to cover the case involving Darcey Freeman’s father.

The journalist alleged *The Age*:

- had no system in place to enable her to deal with the trauma of her work;
- failed to provide support and training in covering traumatic events, including from qualified peers;
- did not intervene when she and others complained; and
- transferred her to court reporting after she had complained of being unable to cope with trauma experienced from previous crime reporting.

“*The Age* contested whether the journalist was actually suffering from post-traumatic stress. It argued that even if a peer-support program had been in place it would not have made a material difference to the journalist’s experience.

“Further, *The Age* denied it knew or should have known there was a foreseeable risk of psychological injury to its journalists and simultaneously argued that the plaintiff knew ‘by reason of her work she was at high risk of foreseeable injury’.”³⁴⁹

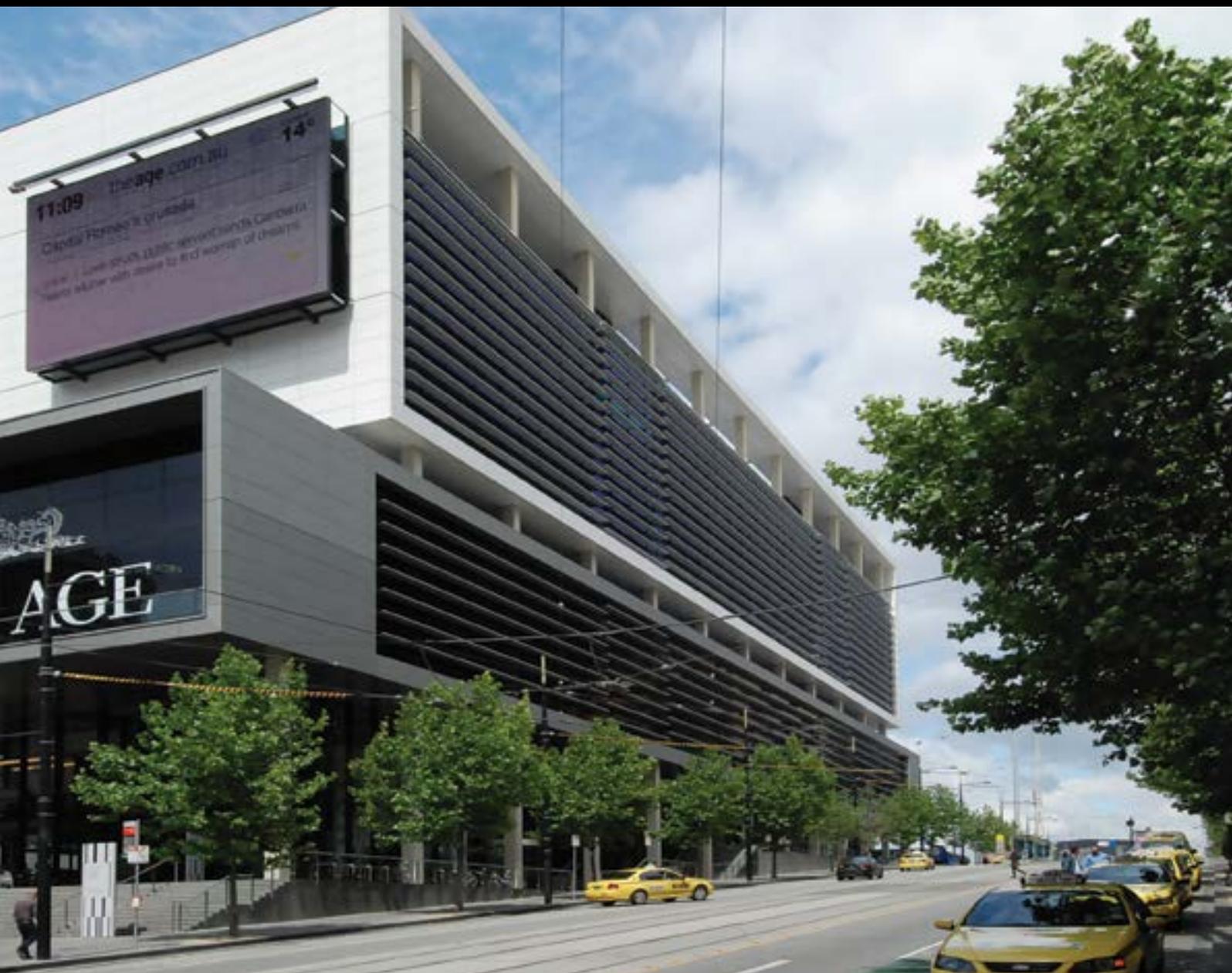
The Conversation also reported: “Judge Chris O’Neill found the journalist’s evidence more compelling than the media company’s, even though the psychological injury she had suffered put her at a disadvantage when being cross-examined in court.”³⁵⁰

The workplace environment played a particular role in the journalist’s

condition. The judge said: “I am satisfied that the culture at *The Age* was such that the reporting of psychological symptoms and distress was not encouraged. This was for a number of reasons. No doubt, it was a competitive environment and a stressful workplace. To express symptoms of, for example, anxiety or depression was likely to be seen as a weakness and an indication an employee was not able to carry out the assigned work. In an environment where redundancies were a regular event, it was not an easy thing to be open and frank about the trauma to which younger journalists were exposed and their reaction to it.”³⁵¹

Judge O’Neill said: “She should never have been requested, let alone persuaded, to undertake work as a court reporter given her complaints to *The Age* after the Darcey Freeman incident.”





The judge added that it should have been obvious to management that something was wrong and there was a “clear indication” an underlying psychological disorder was emerging, the AAP report said. Despite this, repeated complaints to editors and human resources personnel failed to lead to training or support, the court was told.

The Conversation in its coverage of the case said: “Historically, the idea of journalists suing their employers for occupational PTSD was unheard of. Newsroom culture dictated that journalists did whatever was asked of them, including intrusions on grieving relatives, or ‘death knocks’ as they are known. Doing these was intrinsic to the so-called ‘school of hard knocks’. Cadet journalists were blooded in the newsroom by their ability to do these tasks...

“What is alarming from the evidence provided to Judge O’Neill is the extent to which these attitudes still hold sway in contemporary newsrooms. [The journalist] said that as a crime reporter she worked in a ‘blokey environment’ where the implicit message was ‘toughen up, princess’.”³⁵²

The case is a timely reminder of the need for media outlets to support their staff and to monitor workplace health and safety issues particularly for journalists reporting on traumatic incidents. Some media employers have been proactive in this area, even providing peer-support programs.

Ben Shapiro, executive director of the DART Centre for Journalism and Trauma, a project of the Columbia University Graduate School of Journalism, told the ABC’s *Law Report*³⁵³

that there are important lessons for media organisations. “Scientific, evidence-based studies about trauma and resilience in news professionals have been accumulating for nearly 20 years. So this ruling is a wake-up call. It says that news executives have enough information to be legally responsible for providing journalists with trauma-awareness training and support.”

MEAA works with the Dart Centre³⁵⁴ which is dedicated to informed, innovative and ethical news reporting on violence, conflict and tragedy. While DART provides ample resources for journalists, the need for employers to provide proper resources for their staff is highlighted by this case.

CYBERBULLYING

MEAA is disappointed that more has not been done to tackle cyberbullying,

particularly following the report³⁵⁵ of the Senate's Legal and Constitutional Affairs References Committee inquiry into the Adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying.

MEAA made a lengthy and detailed submission³⁵⁶ to the inquiry, as did Women in Media. MEAA also appeared at the inquiry's public hearings. The details are contained in the MEAA 2018 press freedom report.³⁵⁷

As MEAA noted in the 2018 report, MEAA members are required to engage with the public in numerous ways. Initially, this is through contacting sources and recording them for a news story.

The dissemination of news through publishing or broadcasting a story is a second method of engagement. In the past, this sometimes gave rise to follow up contact with the audience responding to stories via mail or telephone. It could even be as simple as talkback radio or letters to the editor. But the development of digital social media platforms has introduced a new significant way for journalists and the audience to interact. Social media has allowed individuals to speak directly to journalists.

This change has been embraced by media employers who now insist that their employees use social media platforms to promote and engage with audiences in order to build traffic around digital news stories. Indeed, the number of hits on a news story has become a new and even somewhat oppressive key performance indicator imposed on journalists (on top of demands to file more words, with fewer errors, for immediate publication on the media outlet's web site in advance or publishing or broadcasting on traditional media).

In many cases, journalists are being compelled by their employers to express opinions regarding news events, the news stories they are working on and other news stories by developed by their media employer – all with the aim of interacting with an online audience, driving engagement and building traffic numbers to impress advertisers.

It is the unfortunate nature of social media that discourse can quickly dissolve into heated discussion, often

without reference to facts or objectivity, and often with too great a willingness to allow debate to become personal, abusive and threatening.

The fact that many social media users depend upon and even thrive on disseminating abuse, often behind the veil of anonymity, leaves many journalists exposed to quite horrifying cyberbullying.

Journalists are, by their nature and by the requirements of responsible journalism, accessible to the public. They usually engage openly, using their own names, in order to make social media the tool for increasing audience responsiveness – exactly the sort of increase in “eyeballs” on news stories that media employers demand of their journalist employees.

As outlined above, the nature of journalists' contact with their audience on digital media platforms, including via social media, makes them particularly vulnerable to cyberbullying. As part of their employment they must openly engage with the audience which, in return, may hurl abuse and threats at them – again, often under the protection of anonymity.

MEAA believes that our members, as workers in the media industry, should be able to work free from cyberbullying. MEAA will be stepping up efforts with media employers to ensure employers create and operate policies to protect their staff, ensure they work in a safe and healthy environment, that training and counselling regarding with dealing with cyberbullying is made available, and that employers take steps to deal with cyberbullies on behalf of their employees.

NEWSROOM SAFETY SELF-ASSESSMENT

On April 3 2019 several press freedom groups launched a newsroom self-assessment tool kit³⁵⁸ that will help news outlets review and improve their current safety practices and protocols; the resource pays special attention to gender issues, mental health care and digital security.³⁵⁹

“Safety of journalists is an important facet of press freedom. Until journalists feel secure, their ability to carry out quality, investigative coverage is restricted. While states bear the primary responsibility

for ensuring journalist safety, news organizations have an important role to play in journalist protection,” [International Press Institute] executive director Barbara Trionfi said. *“This resource we join in launching today will go a long way toward ensuring the adopting of best practices to promote a safe working environment for journalists...”*

The News Organisations Safety Self-Assessment comprises a brief set of key questions and guideline notes that should prompt a constructive conversation around safety best practices and encourage practical and effective ways to advance such practices. The Self-Assessment supports news organizations to identify and better understand their own weaknesses and strengths in relation to the security of all individuals working for them exposed to danger, including freelancers.

The resource pays special attention to gender issues, mental health care, digital security needs and working with freelancers and fixers, aspects which are often neglected in organizational policy and protocols. The Self-Assessment includes links to relevant articles, reports, guides and other existing resources, as well as a basic glossary.

The organisations involved in this initiative recognize the crucial role that news managers, publishers, executive directors and editors play in advancing a culture of safety, and have come together in partnership to create and promote this useful tool.

“Although this is a resource primarily aimed at news management, we encourage anyone in the news chain to use these guidelines to learn more about their organization's safety provisions and start a productive conversation around safety issues,” Elisabet Cantenys, executive director of the ACOS Alliance, said. *“Keeping safety protocols relevant is a major challenge for most news organizations. Here we offer a practical and useful tool, which we hope will take us a step closer towards embedding a culture of safety.”*

“Aside from the moral imperative to protect all the individuals who contribute to a news product,” Cantenys continued, *“Investing in a robust safety policy and protocols can save an organization from the financial loss and reputational damage of a crisis that could have been prevented, or could have been carefully managed.”*³⁶⁰

SOCIAL MEDIA MAKES JOURNALISTS VULNERABLE TO CYBERBULLYING

IMPUNITY

NINE AUSTRALIAN JOURNALISTS MURDERED

THE AUSTRALIAN FEDERAL POLICE (AFP) INVESTIGATION INTO THE MURDER OF THE BALIBO FIVE RAN FOR 1868 DAYS, FROM SEPTEMBER 9 2009 TO OCTOBER 21 2014. DESPITE THE INCIDENT BEING DESCRIBED AS A WAR CRIME, THE AFP SAID THAT DURING THOSE FIVE YEARS IT “HAD NOT INTERACTED WITH THE INDONESIA NATIONAL POLICE” AND DID NOT SEEK ANY CO-OPERATION FROM INDONESIA. THE KOPASSUS OFFICER WHO ALLEGEDLY ORDERED THE KILLINGS IS PROMINENT IN INDONESIA POLITICS TO THIS DAY.

On November 2 2017 — Unesco’s International Day to End Impunity for Crimes Against Journalists — the global body reported that between 2006 and 2016, 930 journalists were killed for bringing news and information to the public. Over that time, a conviction has been achieved in less than one in 10 cases.³⁶¹

“This impunity emboldens the perpetrators of the crimes and at the same time has a chilling effect on society including journalists themselves. Impunity breeds impunity and feeds into a vicious cycle... These figures do not include the many more journalists who on a daily basis suffer from non-fatal attacks, including torture, enforced disappearances, arbitrary detention, intimidation and harassment in both conflict and non-conflict situations. Furthermore, there are specific risks faced by women journalists including sexual attacks.”

“When attacks on journalists remain unpunished, a very negative message is sent that reporting the “embarrassing truth” or “unwanted opinions” will get ordinary people in trouble. Furthermore, society loses confidence in its own judiciary system which is meant to protect everyone from attacks on their rights. Perpetrators of crimes against journalists are thus emboldened when they realise they can attack their targets without ever facing justice.

“Society as a whole suffers from impunity. The kind of news that gets “silenced” is exactly the kind that the

public needs to know. Information is quintessential in order to make the best decisions in their lives, be it economic, social or political. This access to reliable and quality information is the very cornerstone of democracy, good governance, and effective institutions.”³⁶²

Australia has nine cases of journalists who have been killed with impunity. All but one of the cases involve a journalist working in a conflict zone overseas. The sole domestic case, of Juanita Nielsen, remains unsolved despite considerable attempts by police forces to find her body and to bring homicide charges against her murderers.

The remaining eight cases, the bulk of which date back to the Indonesian invasion of East Timor in 1975, are

The Balibo Five, from left to right - Gary Cunningham, died aged 27; Brian Peters, died aged 24; Malcolm Rennie, died aged 29; Greg Shackleton, died aged 29; Tony Stewart, died aged 21.



a sorry tale of ongoing government indifference, and an apparent unwillingness to thoroughly investigate the murder of Australian journalists.

The impunity over the murder of journalists is a growing global issue. For Australia to join the ranks of nations that treats journalist lives so cheaply should be a source of shame, particularly as Unesco reports that many other countries have stepped up their efforts to stamp out impunity and bring the killers of journalists to justice.

To do nothing, as has been the case to date, means that their killers are getting away with murder and sends a signal that the Australian Government and its agencies treat the lives of Australian journalists as counting for less than other Australians.

THE BALIBO FIVE

Journalists Brian Peters, Malcolm Rennie, Tony Stewart, Gary Cunningham and Greg Shackleton were murdered by Indonesian armed forces in Balibo, East Timor, on October 16 1975.

It is alleged they were killed on the orders of Captain Yunus Yosfiah who commanded the Kopassus (Indonesian Special Forces) Team “Susi” that attacked Balibo in a combined operation with regular troops of Rajawali Company B.

In 2007 Brian Peters’ sister, Maureen, through her lawyers, invoked a provision of the *Coroners Act 1980 (NSW)* to ask for a coronial inquest based upon Brian’s residence in New South Wales.³⁶³

On November 16 2007, NSW Deputy Coroner Dorelle Pinch brought down a finding in her inquest into the death of Peters.



Journalist Greg Shackleton paints the Australian flag on the house in Balibo

Pinch found “the journalists were surrendering to the Indonesian forces by throwing their arms in the air and protesting their status as ‘Australians’ and ‘journalists’ when the order came from Captain Yunus Yosfiah of the Indonesian Special Forces that they be killed. It was only after they were killed that they were dressed in old Portuguese army uniforms, photographed to show they were active participants in the hostilities and then burnt to conceal they were killed by AK-47 weapons which were not used by the local forces.”³⁶⁴

Her conclusion was expressed as follows:

*Brian Raymond Peters, in the company of fellow journalists Gary James Cunningham, Malcolm Harvie Rennie, Gregory John Shackleton and Anthony John Stewart, collectively known as ‘the Balibo Five’, died at Balibo in Timor-Leste on 16 October 1975 from wounds sustained when he was shot and/or stabbed deliberately, and not in the heat of battle, by members of the Indonesian Special Forces, including Christoforus da Silva and Captain Yunus Yosfiah on the orders of Captain Yosfiah, to prevent him from revealing that Indonesian Special Forces had participated in the attack on Balibo.*³⁶⁵

Pinch also found that “there is strong circumstantial evidence that those orders [to kill the journalists] emanated from the Head of the Indonesian Special Forces, Major-General Benny Murdani [died August 24 2014] to Colonel Dading Kalbuadi [died October 10 1999], Special Forces Group

Commander in Timor, and then to Captain Yosfiah.” During the inquest an “eyewitness identified Yunus Yosfiah from a photograph projected on screen at the coronial inquest. The Coroner found that the journalists could not have been and were not mistaken for combatants. They clearly identified themselves as Australians and as journalists. They were unarmed and dressed in civilian clothes. They all had their hands raised in the universally recognised gesture of surrender. They were killed in a matter of minutes.”³⁶⁶

Pinch stated “that she intended to refer the matter to the Commonwealth Attorney-General for consideration of potential breaches of division 268 of the *Commonwealth Criminal Code*” and she recommended that the killings be investigated by the Australian Federal Police (AFP) as a war crime as the journalists “were killed deliberately on orders given by the [Indonesian] field commander, Captain Yunus Yosfiah.”³⁶⁷

A statement in the British Parliament, (Brian Peters and Malcolm Rennie were British citizens) responded to the Coroner’s findings: “The Australian Government admitted in 2002 that their officials were informed by the Indonesians on 13 and 15 October 1975 that Balibo would be seized covertly by Indonesian troops on 15 and 16 October, which is what happened. They also quickly found out about the deaths. As the coroner’s report shows, key Australian officials and Ministers knew the main facts about the deaths within 48 hours. From the closed material, including an Australian

intelligence review, we can see that they even knew who led the attack.”³⁶⁸

It took a further two years after the inquest, on September 9 2009, before the Australian Federal Police finally announced that it would conduct a war crimes investigation into the deaths of the five journalists. Never before has there been an Australian Commonwealth prosecution for war crimes under the *Geneva Conventions Act*.³⁶⁹

Over the course of what would turn out to be five long years, little was ever disclosed about how the AFP war crimes investigation was being conducted, what lines of questioning were being pursued, what evidence had been gathered or whether the families were being kept informed of the AFP’s progress.

The AFP appeared to be particularly slow in its activities around the war crime investigation. For instance, in October 13 2014, just three days before the 39th anniversary of the war crime and five years into the AFP’s investigation, the AFP answered a question asked about the progress of the investigation in a Senate estimates committee. The question had been asked in an estimates hearing seven months earlier and it had taken that long for the Senate to receive the response from the AFP.

The AFP advised the Senate committee that “an active investigation” into the murder of the Balibo Five was still ongoing. “The AFP says the investigation has ‘multiple phases’ and results are still forthcoming from inquiries overseas.”

But in a remarkable revelation, the AFP stated that despite five years of an “active investigation” with “multiple phases” that was still awaiting results from inquiries overseas, it had “not sought any co-operation from Indonesia and has not interacted with the Indonesian National Police”.³⁷⁰

And then, just six days later, on October 21 2014 came a severe blow to those hoping for justice. The Australian Federal Police announced it was abandoning its five-year investigation due to “insufficient evidence”.³⁷¹

MEAA said in response to the abandonment: “Last week, the AFP admitted that over the course of its five-year investigation it had neither sought any co-operation from Indonesia nor had it interacted with the Indonesian National Police. The NSW coroner named the alleged perpetrators involved in murdering the Balibo Five in 2007. Seven years later the AFP has achieved nothing.

“It makes a mockery of the coronial inquest for so little to have been done in all that time. This shameful failure means that the killers of the Balibo Five can sleep easy, comforted that they will never be pursued for their war crimes, never brought to justice and will never be punished for the murder of five civilians. Impunity has won out over justice.”³⁷²

On October 15 2015 the son of Gary Cunningham, John Milkins, said he wanted more information about why the AFP had decided to close the investigation. “I would be pleased to see it reopened. I feel it was closed without an explanation to the Australian public.” Milkins added: “We [the families of the slain journalists] don’t think that story’s finished. I think perhaps the government would like the book to be completely closed but I think there are many chapters still to write, there are many unknowns.”³⁷³

In a letter to MEAA on April 15 2015, the AFP’s Deputy Commissioner Operations Leanne Close said: “As stated by the AFP Commissioner during the last Senate Estimates hearing on November 20 2014 the AFP has now completed an extensive review of the investigation into the deaths of the ‘Balibo Five’. It has been determined there is insufficient evidence to support providing a brief of evidence to the office of the Commonwealth Director of Public Prosecutions for consideration for prosecution under Australian law.”

Despite the AFP saying that there was “insufficient evidence”, the AFP — had it bothered to make contact with anyone in Indonesia during its five years of investigation — would not have had any difficulty finding someone who may have been able to throw light on the events at Balibo: the alleged war criminal Yunus Yosfiah, the man identified by NSW Deputy Coroner Dorelle Pinch as having ordered the killing of the Balibo Five.

In the more than 40 years since Balibo, Yosfiah has not lived in obscurity; he would not have been difficult for the AFP to find. An internet search reveals in seconds that Yosfiah has led a very active life since the killings.

After Balibo, Yosfiah’s career took off. He rose to be one of Indonesia’s most decorated soldiers. He was commander of the Armed Forces Command and Staff College (with the rank of Major General) and Chief of Staff of the Armed Forces Social and Political. He was chairman of the Armed Forces Faction in the Indonesian National Assembly. He retired from the army in 1999 with the rank of Lieutenant General.



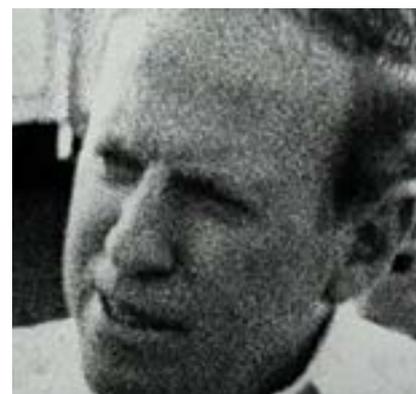
In 1998-99 Yosfiah served as minister of information in the government of President Bacharuddin Jusuf Habibie. In May 1998, in his inaugural speech as minister, he promised that he would support journalists in their profession.³⁷⁴

As late as March 2019, Yosfiah was supporting the ticket of Indonesian presidential candidate, Gerindra Party chairman Prabowo Subianto. The *Jakarta Post* reported: “Prabowo, a former commander of Kopassus, is also backed by several retired members of the elite unit, including Lt. Gen. (ret) Yunus Yosfiah, a former Kopassus captain during Indonesia’s 1975 invasion of then-East Timor, and Lt. Gen. (ret) Yayat Sudrajat, the former chief of the military’s Strategic Intelligence Agency (BAIS).”³⁷⁵

A war crime was committed at Balibo in 1975. The killers have been getting away with murder.

It is never too late for justice.

Above: Prabowo Subianto with Balibo suspect Yunus Yofiah; **Left:** Mohammad Yunus Yosfiah; **Below:** Roger East, died aged 53.



ROGER EAST

Roger East was a freelance journalist on assignment for Australian Associated Press when he was murdered by the Indonesian military on the Dili wharf on December 8 1975. MEAA believes that in light of the evidence uncovered by the Balibo Five inquest that led to the AFP investigating a war crime, there are sufficient grounds for a similar probe into Roger East’s murder and that similarly, despite the passage of time, the individuals who ordered or took part in East’s murder may be found and finally brought to justice.

However, given the unwillingness to pursue the killers of the Balibo Five, MEAA does not hold out great hope that Australian authorities will put in the effort to investigate East’s death. Again, it is a case of impunity where, literally, Roger’s killers are getting away with murder.



The 'Flag House' at Balibo today
Felix Dance

THE BALIBO FIVE-ROGER EAST FELLOWSHIP

MEAA has honoured the memory of the Balibo Five and Roger East with a fellowship in their name, in conjunction with Union Aid Abroad-APHEDA, with MEAA providing the bulk of the funding and additional funds being received from the Fairfax Media More Than Words workplace giving program, and from private donations. The fellowship sponsors travel, study expenses and living costs for East Timorese journalists to undergo training to develop their skills in Australia. The fellowship was established on the 40th anniversary of the murders of the Balibo Five in 1975.

The 2018 recipients of funding from the fellowship are:

- Maria Pricilia Fonseca Xavier, a journalist and news broadcaster in Tétum and Portuguese at Timor-Leste Television (TVTL).
- Augusto Sarmiento Dos Reis, senior sports journalist and online co-ordinator at the *Timor Post* daily newspaper and diariutimorpost.tl website.

MEAA chief executive Paul Murphy said all the applications were again of a high quality and representative of the diversity of journalism in East Timor. "We are well aware that is not easy to work as a journalist in Timor-Leste, and journalists face many hurdles including a lack of resources and training, and attacks from the government on press freedom," he said. "But we are delighted that the successful applicants represent both

print/online and broadcast media, and there is a balance between genders. Both Pricilia and Augusto are young journalists with impressive track records and a thirst to succeed in their chosen profession."

For more information on the Fellowship, go to: www.meaa.org and search under "Balibo Five Roger East"

LIVING MEMORIAL

In March 2019 a new school was opened in Balibo as a memorial to the five murdered journalists.³⁷⁶ Seven Network journalist Nick McCallum wrote: "The school was built in an area where there were no education facilities. This now means local children will no longer miss out on the start of a basic education..."

"East Timor's Education Minister Dulce Soares grew up near Balibo and her family had direct contact with the Australian journalists several days before they were killed. She vows the local schoolchildren will now be taught about the young Australians who died trying to tell a story the world needed to know. 'Honestly to say as a Timorese I feel ... I'm very emotional,' she said. 'All Timorese people, especially people in Balibo, they should know exactly what is this story about the Balibo Five'. "The formal opening ceremony was attended by the widow of one of the journalists, Shirley Shackleton. [She] was swamped by the 56 students now attending the school and was overwhelmed by the gratitude. 'I think it's a wonderful legacy. True in every way,' she said.

At age 87, Shirley Shackleton says such events can still make her sad, bringing back such painful memories. But this school opening was just so uplifting. 'It's been such a hard fight, but look at it!' she said. 'It's marvellous these children have got a beautiful school!'"³⁷⁷

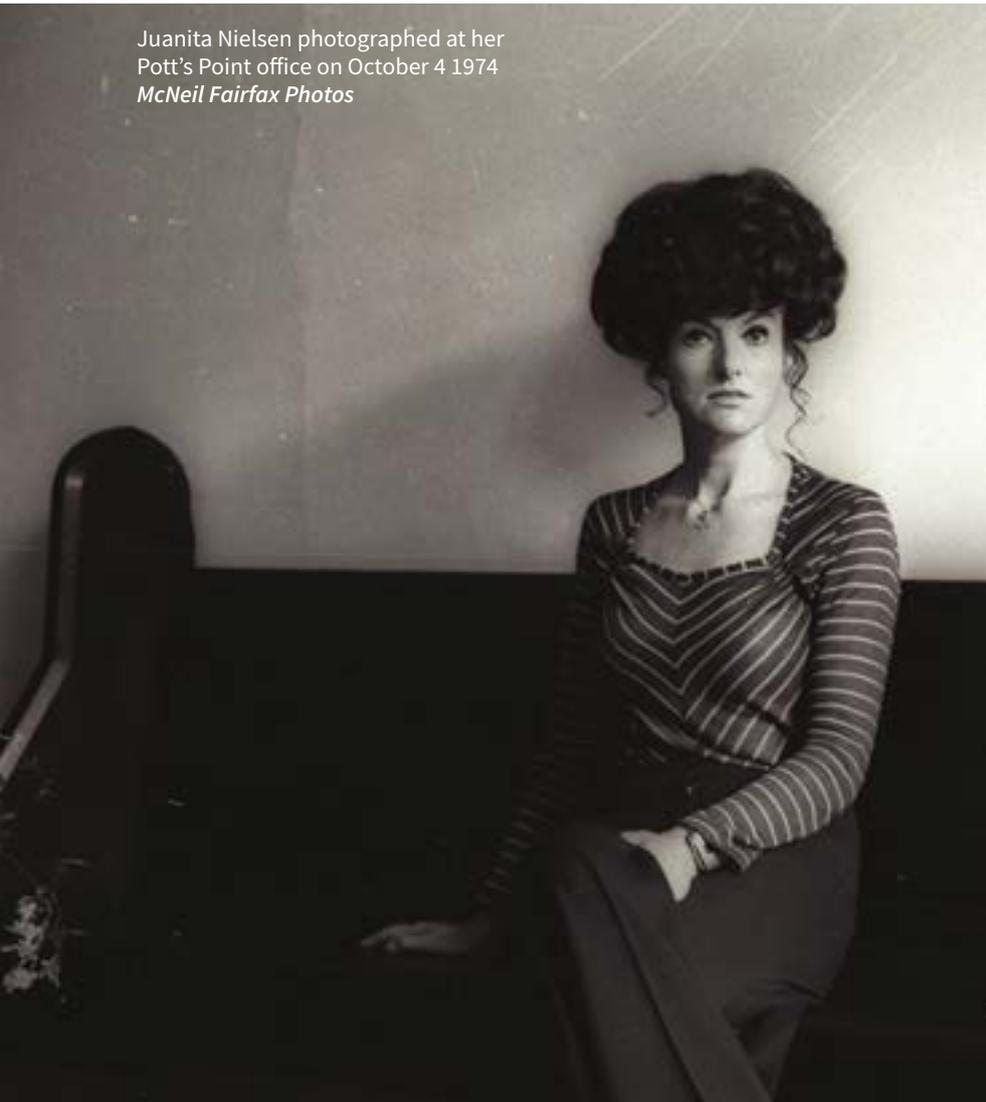
BALIBO HOUSE TRUST

The trust honours the memories of the Balibo Five by working with the Balibo Community to enrich their lives. Its work includes:

- Promoting early childhood education through the Balibó Five Kindergarten and the proposed Prep-Grade Two school at Belola.
- Developing skills through the Balibó Community Learning Centre.
- Creating employment and income through tourism at the historic Balibó Fort, Balibo Fort Hotel and Dental Clinic.
- Improving the oral health of the Balibo community by providing free dental treatment and community education and preventative programs.
- Fostering awareness of the significance of Balibó to relationships between Australia, Timor-Leste and Indonesia.
- Maintaining a permanent memorial to the five journalists murdered at Balibó in 1975 and to the Balibó people murdered during the Indonesian occupation of Timor-Leste.

For more information on the work of the Balibo House Trust, go to: <http://balibohouse.com/>

Juanita Nielsen photographed at her Pott's Point office on October 4 1974
McNeil Fairfax Photos



JUANITA NIELSEN

Sydney journalist and editor Juanita Nielsen, disappeared on July 4 1975. Nielsen was the owner and publisher of *NOW* magazine.

She had strongly campaigned against the development of Victoria Street in Potts Point, in the electorate of Wentworth, where she lived and worked.

There were numerous threats to her safety. Green bans, union-backed moratoriums on further development in Kings Cross, had begun to bite on property developers who were losing money on interest payments without any work on their developments able to take place.

In the midst of the tension, Nielsen agreed to attend a meeting at the Carousel Club in Kings Cross on July 4 1975, regarding advertisements being placed in an upcoming edition of *NOW*. The club's owner at the time was "King of the Cross", organised crime boss Abe Saffron.

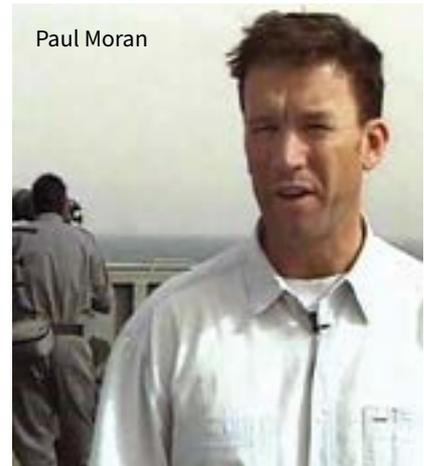
The *Daily Telegraph* reported that a "club employee, Eddie Trigg, who set up the meeting, was jailed in 1977 after admitting that he and an accomplice had planned to kidnap Nielsen less than a week before she disappeared, but pulled out of the caper at the last minute. Police believe the small-time crook was likely the last person to see Nielsen alive."³⁷⁸

Trigg died in 2013.

A 1983 coronial inquest into Nielsen's disappearance returned an open finding but noted the investigation may have been hampered by police corruption.³⁷⁹

As recently as August 2014, NSW Police forensics dug up the basement of a former Kings Cross nightclub in an attempt to locate her remains but the search was unsuccessful. While there have been convictions over her abduction, no formal homicide charges have been brought and her remains have never been found.

Paul Moran



PAUL MORAN

Paul Moran, a freelance cameraman on assignment with the Australian Broadcasting Corporation to cover the Iraq war, was killed by a suicide bomber on March 22 2003 leaving behind his wife Ivana and their then seven-week-old daughter Tara.

Paul was the first media person killed in the 2003 Iraq war.

The attack was carried out by the group Ansar al-Islam — a UN-listed terrorist arm of Al-Qaeda. According to US and UN investigations, the man most likely responsible for training and perhaps even directly ordering the terrorist attack is Oslo resident Najmuddin Faraj Ahmad, better known as Mullah Krekar. He has escaped extradition to Iraq or the US because Norway resists deporting anyone to countries that have the death penalty.

Krekar had been imprisoned in Norway, guilty of four counts of intimidation under aggravating circumstances. He was released from prison on or around January 20, 2015. It was revealed that he would be sent into internal "exile" to the village of Kyrksaeteroera on the coast, south-west of Trondheim.³⁸⁰ Krekar would have to report regularly to police and would stay in a refugee centre.

On February 10 2015 MEAA wrote to Justice Minister Michael Keenan and AFP Commissioner Andrew Colvin once more, stating: "We are deeply concerned that if those responsible for killing Paul are not brought to justice then they are getting away with murder.

"You would be aware that the United Nations General Assembly has adopted Resolution A/RES/68/163 which urges member states to: 'do their utmost to prevent violence against journalists and media workers, to ensure accountability through the conduct of impartial, speedy and effective investigations into all alleged violence against journalists

and media workers falling within their jurisdiction and to bring the perpetrators of such crimes to justice and ensure that victims have access to appropriate remedies.’”

On April 15 2015, the AFP’s Deputy Commissioner Operations Leanne Close replied to MEAA’s letter saying that there was insufficient information available to justify an investigation under section 115 of the *Criminal Code Act 1995 (Harming Australians)* and that despite the new information on Krekar’s movements, AFP would not be taking any further action.

On February 20 2015, in the aftermath of the massacre in Paris of journalists, editorial and office staff at the *Charlie Hebdo* magazine, it was reported that Krekar had been arrested for saying in an interview that when a cartoonist “tramples on our dignity, our principles and our faith, he must die”. It is believed Krekar was subsequently arrested on a charge of “incitement”.³⁸¹

Krekar was arrested in prison in Norway on November 11 “in a co-ordinated police swoop on Islamist militants planning attacks”. The raids across Europe targeted Krekar and 14 other Iraqi Kurds and one non-Kurd. Authorities allege the men were involved in Rawti Shax — a group spun-off from Ansar al-Islam, that has alleged links to ISIL. Authorities allege it is a jihadist network led by Krekar. Investigators claim Krekar pledged allegiance to ISIL in 2014.

In mid-March 2016 Norwegian media said Krekar had been released from jail after a court found him not guilty of making threats. His lawyer said Krekar will seek compensation.

On November 23 2016 the Norwegian Police Security Service arrested Krekar in order to secure his extradition to Italy. But on November 25 it was reported that Italy had withdrawn its extradition claim, and Krekar was released.

In mid-January 2018, an anticipated Italian trial of Krekar and five others (including Krekar’s son in law) was subsequently delayed again as Krekar and his lawyers had not been notified. Under Italian law, a hearing can take place if the defendant is not present but the delay is believed to have been granted to allow formal notification to be provided to Krekar’s lawyers.

On March 4 2019 a court in Bolzano, northern Italy, decided to postpone the next hearing in the case until May 7. It

is still uncertain if Krekar, and his co-defendants, will travel to Italy for any hearings. The Norwegian Government has ruled out guaranteeing that Krekar will not be sent to Italy. Reports said Krekar “would still not travel without guarantees from the Norwegian government that he would return after giving evidence in the case. He has also demanded that Norway get him removed from the UN terrorist list.”³⁸²



TONY JOYCE

ABC foreign correspondent Tony Joyce arrived in Lusaka in November 21 1979 to report on an escalating conflict between Zambia and Zimbabwe.

While travelling by taxi with cameraman New Zealander Derek McKendry to film a bridge that had been destroyed during recent fighting, Zambian soldiers stopped their vehicle and arrested the two journalists.

The pair were seated in a Zambian police car when, it is claimed, that a suspected political officer with the militia reached in through the car’s open door, raised a pistol and shot Joyce in the head.

Joyce was evacuated to London, but never regained consciousness. He died in hospital on February 3 1980. He was 33 and was survived by his wife Monica and son Daniel.³⁸³

Zambia’s President Kenneth Kaunda wrote to Australian Prime Minister Malcolm Fraser to claim that Zambian “security forces” had fired at Joyce and McKendry, “mistaking” them for white “Rhodesian commandos” who had crossed the border with Zambia, formerly Northern Rhodesia.

On July 31 2015, journalist Alan Ramsey wrote in *The Sydney Morning Herald*:

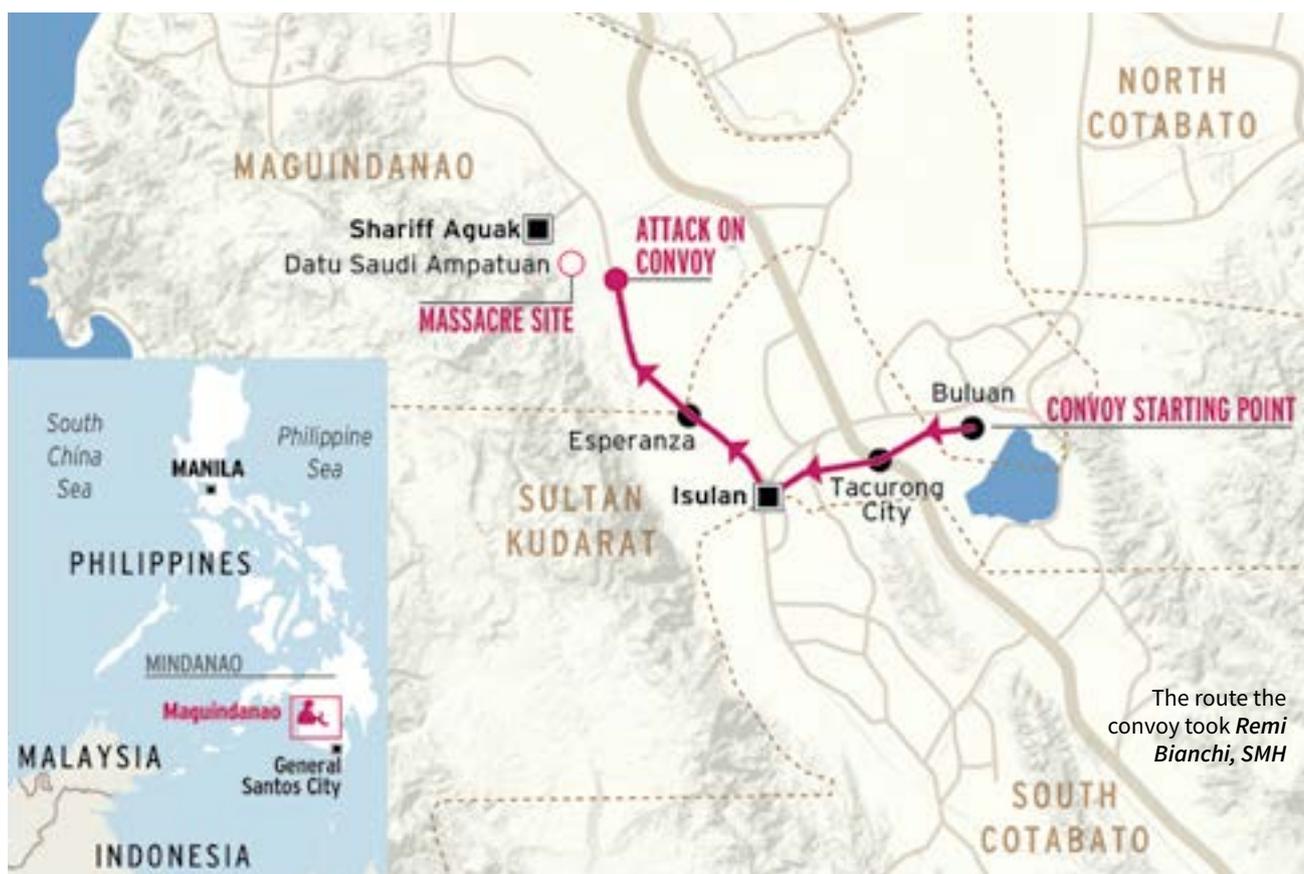
“Two years after ‘the incident’, the wondrous Peter Bowers would write a two-part series in *The Sydney Morning Herald* in November 1981 which nailed the Zambians for Joyce’s murder. Photographer McKendry, in a detailed interview, scrupulously described the individual gunman who had shot Joyce even though he was never asked by the Zambians to identify him; nor, indeed, did Zambia even interview McKendry after the New Zealander refused to sign, while still locked up for four days in a cell, the concocted police version of a ‘battlefield shooting’.

Bowers was damning in his analysis: “The cover-up [with Kaunda and Fraser] shows with chilling clarity how heads of government, whatever their politics, will put the wider national interest above individual human rights and fundamental justice when they perceive that to do otherwise would harm the national interest.”

In an interview on ABC national television with Richard Carleton on November 9, 1981, after publication of his closing article, Bowers was even harsher. He told Carleton: “The Prime Minister (Fraser) is a party to the cover-up to the extent he is no longer pressing the Australian position and demanding an inquiry [by the Zambians]. Not only that, but he went into Parliament and made excuses for the Zambian authorities failing to find out what had really happened. Clearly Mr Fraser has seen it to be in the national interest to no longer press cover-up of a crime in Zambia, to turn a blind eye, to connive. Why? Because he is obviously concerned it could affect his personal relationship with Kaunda [as well as] his whole black-African strategy which is one of his strongest commitments in the international arena.”

... in September 1981, on the eve of a Commonwealth heads of government conference in Melbourne and Sydney, with Malcolm Fraser the host and Zambia’s President Kaunda in attendance, along with Britain’s Margaret Thatcher and a raft of lesser Commonwealth leaders, an internal memo was circulated within the senior bureaucracy in Canberra: “We do not wish President Kaunda to arrive in Australia under the impression we are dissatisfied with his explanation of events ... We would not want the Joyce matter raised further with the Zambians at this stage’.”³⁸⁴

MEAA hopes that, despite the passage of time, efforts can be made to properly investigate this incident with a view to determining if the perpetrators can be brought to justice.



THE AMPATUAN MASSACRE OF 32 JOURNALISTS

“THE KILLERS WANT YOU TO FORGET.
#KEEPTHESTORYALIVE”

MEMORIAL TO THE VICTIMS OF THE AMPATUAN MASSACRE

The November 23 2009 Ampatuan Massacre in the southern Philippines is a case study of what happens when impunity surrounding the killing of journalists is allowed to fester.

It demonstrates how impunity taints and corrupts a society, enveloping and entrapping communities, police, military, government and the judicial process. The failure to address impunity continues to harm Philippines society today with the Duterte administration’s bloody and brutal “drug war” of state-sponsored extrajudicial killings that has claimed thousands.

This year marks the 10th anniversary of the massacre that took place in the southern Philippines. Nearly a decade on, the families of those slain in the massacre are still awaiting justice — many suspects are still at large and those that have been detained have manipulated the legal system to repeatedly delay the judicial process.

For many years, MEAA has closely monitored the impact and aftermath of the massacre. The MEAA Media section federal president and a MEAA employee participated in the initial International Federation of Journalists’ rapid assessment

solidarity mission on December 5-11 2009³⁸⁵ and also attended several funerals of the journalists who were killed. MEAA followed up its initial engagement in several subsequent missions to determine what progress was being made on bringing the perpetrators to account given the Philippines government’s appalling history of impunity. In 2014, on the fifth anniversary of the massacre, an IFJ mission included two MEAA representatives, one of whom was the MEAA Media federal vice-president.³⁸⁶

MEAA has continued to call for justice for the victims of the massacre, an end to the impunity surrounding journalist killings and increased safety for our journalist colleagues in the Philippines.³⁸⁷ Over several years MEAA’s Media Safety & Solidarity Fund has provided essential financial support and assistance to pay for the education of the children of slain Filipino journalists, including the children of the massacre victims.³⁸⁸

THE MASSACRE

The culture of impunity that has flourished in the Philippines after its return to democracy in 1986 proved to be the perfect hothouse for this act of extreme brutality. A total of 107 media workers had been killed in the Philippines prior to, and not including, the massacre (1986 – November 22

THE PUBLIC'S RIGHT TO KNOW

The checkpoint where the convoy was abducted
Mike Dobbie



2009³⁸⁹) with barely any perpetrators brought to justice and none of those who masterminded and ordered the killings.

It's likely the massacre's perpetrators' reasoning is that if so many people had already been killed with little or no police investigation let alone prosecution, why not simply scale up the killings from a single figure to dozens?

The Ampatuan Massacre takes place in the province of Maguindanao, on the island of Mindanao, on Monday, November 23 2009.³⁹⁰ The massacre is named after the provincial municipality in which it took place as well as the warlord family that allegedly orders and carries out in the killings.

The massacre victims are driving in a multi-vehicle convoy heading to the provincial capital of Shariff Aguak to file election candidacy papers for Esmael "Toto" Mangudadatu for the upcoming May 10 2010 national gubernatorial elections.

Mangudadatu is nominating for the position of provincial governor, running against Andal Ampatuan Jr, the son of the incumbent warlord who had governed the province for years. After so long in control, the prospect of a challenge coming from the Ampatuan's greatest rival was big news.

The Ampatuan clan was loyal to then Philippines President Gloria Macapagal Arroyo. Under her stewardship the clan had become enormously powerful thanks to government largesse and military expediency. A long-running insurgency on the island of Mindanao

had seen the government increasingly turn to local war lords and their militias to secure provincial towns and villages against the unrest. It handed clans such as the Ampatuans extraordinary powers and equipped them with war chests of weapons in exchange for their loyalty.

The Ampatuans had used their dominance to intimidate local police, judges and provincial administrators.

But Mangudadatu was now challenging the Ampatuan clan's heir apparent, and many journalists are gathering at the Mangudadatu compound in the town of Buluan to report on the beginning of the election campaign and to see how the Ampatuans will react to the emergence of a gubernatorial rival.

The period for filing the candidacy papers had opened the previous Friday, November 20 2009. There were rumours that the Ampatuan family will strongly object to the fielding of candidates from the rival Mangudadatus.

Philippines National Police (PNP) respond, setting up six new additional checkpoints along the 27km stretch of highway between the each clan's power bases. The police say they will use the checkpoints to reduce the number of firearms in circulation. Three of these checkpoints are in Ampatuan Town — where the clan has its compound.

The day before the convoy departs, journalists begin arriving at the Mangudadatu compound in Buluan, central Mindanao. The convoy will depart at 9am the following morning, Monday November 23.

Fearing the Ampatuan clan will interfere, Toto Mangudadatu arranges for his wife Genalyn, his sisters and two female lawyers to travel in the convoy to file his candidacy papers for him. It is believed that in accordance with Muslim tradition, no harm will come to the women.

Prior to departure, the family is still troubled by security concerns. The convoy's departure is delayed while the family seeks a military escort from the commander of the 6th Infantry Division, Major General Alfredo Cayton — the 601st Infantry Brigade is operating in Maguindanao under the command of Colonel Merdado Geslani.

Instead of providing the escort, Cayton assures them that the road to Shariff Aguak is clear and safe, and that there are units of the Philippines National Police (PNP) deployed along the highway. Pressed again by the journalist, Cayton responds: "There is nothing to worry about."

Under United Nations Security Council Resolution 1738 passed in 2006, member states are required to ensure that journalists, media professionals and associated personnel must be "respected and protected" in "areas of armed conflict".

A journalist later said of Cayton: "They in the military knew better than us. He should have informed his field commanders and field units that journalists would be covering the convoy of Mangudadatu. If he had done that, I think the... massacre could have been prevented."

Police uncovering crushed vehicles from one of the pits at the massacre site *Nonoy Espina*



The bodies of some of the 58 victims of the Ampatuan Massacre *Nonoy Espina*

The convoy of six vehicles sets off from the Mangudadatu compound just after 9am.

A forgotten laptop saves three journalists' lives. The three were meant to be part of the convoy but had turned back to retrieve the forgotten device from their hotel.

The convoy is slowly moving along the highway, so slow that two other vehicles with six people inside, unwittingly get caught up in the convoy's progress as they try to overtake the convoy's six vehicles. One of the vehicles contains a man heading to hospital after suffering a mild stroke; he is accompanied by his wife.

At almost precisely 10am, as the convoy approaches Ampatuan Town, the eight vehicles are stopped at a checkpoint at the hamlet of Sitio Malating, near the village of Barangay Salman, by officers of the PNP commanded by a chief inspector.

Emerging from the long grass and from inside the simple roadside watch house appear about 100 armed men allegedly led by Andal Ampatuan Jr.

The three journalists who had turned back receive a text message from a colleague in the convoy, saying they have been stopped at the checkpoint and that there are many armed men present. The text message is a standard safety

procedure among Filipino journalists used to covering the Mindanao insurgency: always stay in mobile phone contact with journalist colleagues in case of trouble.

Mangadadatu's wife Genalyn also calls her husband to briefly tell him what is happening.

When the three journalists reply to their colleague seeking more information about what was happening at the checkpoint, they get no response. For the next half hour they keep calling their friends but no one answers.

At the checkpoint, the six vehicle convoy and the two additional cars are commandeered by the gunmen. The eight vehicles are diverted west from the highway on to a rough dirt track, driving along a ridgeline for about 2.5km to the deserted hamlet Sitio Masalay, arriving at about 10.30am.

The convoy vehicles stop on a knoll with a steep drop-off, overlooking a broad lush-green valley. The knoll is covered in long grass and topped by a single tree.

A yellow tracked-wheel excavator is at the top of the track, just short of the tree. The excavator has dug three pits between 1.5 metres and 3.5 metres deep. The excavator had earlier been carried on a transporter to the checkpoint, and then driven up the side road. The excavator's engine casing is stamped with the words "Property of the province of Maguindanao — Gov. Datu Andal Ampatuan Sr".

Over the next hour the armed men kill 58 people: 43 men and 15 women. Of the 58, 32 are journalists and media workers. Victims are taken out of the vehicles and shot in batches of about 10; those who refused to get out are shot where they sit.

The excavator begins to bury the bodies and vehicles.

At 10.40am the three journalists, now fearful that they cannot raise anyone in the convoy, alert Major General Cayton via a text message: "General, I would like to inform you that more than 30 journalists in the convoy are already kidnapped by unidentified armed men."

At 11am Cayton replies: "I will try to check that info with the PNP."

Troops of the 64th Infantry Brigade under Geslani's command are ordered to commence operations to rescue those who have been abducted. At 1pm they make contact with police at the checkpoint — the chief inspector in command denies any knowledge of any alleged abduction.

THE PUBLIC'S RIGHT TO KNOW

At 1.30pm the soldiers, in four armoured vehicles, cautiously fan out to the west, still believing they are conducting a rescue operation. Two-thirds of the way along the track they encounter two armed men and hear the roar of the excavator's engine. At 2.50pm they see vehicles in the distance, on the top of the ridgeline.

At the massacre site, the gunmen learn that Army units are approaching. They hurriedly flee before the soldiers arrive, unable to bury the vehicles and bodies in time to hide all trace of the massacre.

The soldiers reach the massacre site at about 3pm and initially find 22 bodies and five vehicles at the scene. Subsequent police operations reveal that three vehicles and six bodies are buried in the large pit dug by the excavator. They are covered with soil in alternating layers, with the excavator used to crush the vehicles flat. The investigators count six layers in the large pit.

Five victims are exhumed from another pit and 24 victims from the third. A 58th victim's body has never been found. Some victims are shot in the genital area. Others are mutilated. Many are shot in the face, making them unrecognisable.

At 6pm the Philippines Government declares a state of emergency in the province (subsequently martial law will be declared on December 5 2009). A PNP scene of crime operatives (SOCO) team arrives at the site at 10pm and begins its investigations. The bodies are quickly removed without proper forensic examination due to the tropical heat.

Four days after the massacre General Cayton and Colonel Geslani are relieved of their respective commands and sent to Manila to attend an investigation into the failure to provide security for the convoy.

The National Union of Journalists of the Philippines (NUJP) has said: "It is a fact that an Army intelligence unit witnessed the convoy being stopped and then taken to the killing grounds in Sitio Masalay. The unit had been reporting back to Geslani's headquarters as events developed. It is clear... there is no way he can claim ignorance and that the only conclusion that can be drawn is that he, too, had a degree of involvement in the Ampatuan Massacre."

Sixteen days after the massacre the Inspector General of the Armed Forces of the Philippines finds Cayton and Geslani were not remiss for failing to provide security to the victims of the

The Ampatuan Massacre site six months after the massacre
Mike Dobbie



massacre. Barely a month later, Cayton is promoted to Vice-Commander of the Army. He retires the following month on February 14 2010. In October 2014 Geslani is promoted to Brigadier-General.

A total of 197 people are officially accused of having a role in the massacre. Eighteen of the accused carry the Ampatuan surname, including clan patriarch Andal Ampatuan Sr, and his sons Andal Jr and Zaldy Ampatuan. The chief inspector at the checkpoint and a staggering 61 other police officers are charged for their role in the massacre.

By the fifth anniversary of the massacre the Philippines Government claims 118 people have been arrested and arraigned, but according to then Justice Secretary Leila de Lima, 84 of the suspects had still not been captured; the

Philippines police says only 77 are still at large.

The police do admit that five of the suspects still on the run are police officers. Four more are members of the Armed Forces of the Philippines (AFP), and 53 are members of the government-subsidised paramilitary Civilian Volunteer Organizations (CVOs). Worse still, nine of those yet to be arrested have the surname Ampatuan. Some of those nine had run for political office in Maguindanao over the preceding five years, while still somehow eluding capture.

At least four prosecution witnesses have been murdered or died under mysterious circumstances in the past nine years. Andal Ampatuan Sr, the clan patriarch and the alleged mastermind of the crime, died in 2015.³⁹¹



President Rodrigo Duterte
of the Philippines



Ampatuan memorial *National Union of Journalists of the Philippines*

There has been little impetus to get a result in the trial which has crawled along at an incredibly slow pace. The Ampatuan trial began on September 15, 2010 — 293 days after the arrest of Andal Ampatuan Jr.

At times the court would sit only two days a week — Wednesdays and Thursdays. In the more than 1500 days to the fifth anniversary of the massacre the court had sat for only 206 days. It took 560 days before the assets of the Ampatuans were frozen. The axiom of “justice delayed is justice denied” is surely at work in the Philippines.³⁹²

As of March 2019, the trial before Judge Jocelyn Solis-Reyes is still underway. The prosecution is expected to rest its case at some point mid-way through

the year. There is hope of a verdict this calendar year.³⁹³ However, even now, 70 suspects are still at large.³⁹⁴

While the trial has dragged on, local media says the case is unlike any judicial action in Philippines history. “Consider the work load: 166 witnesses for the prosecution and 107 witnesses for the defence or 273 witnesses to be cross-examined, 15 sets of offers of evidence in connection for the bail applications of the 70 persons accused, who are part of the 197 respondents including the prime suspect... Andal Ampatuan Jr. The nine-year trial had supposedly produced transcripts of stenographic notes worth 59 volumes, 129 volumes of records for the case and 10 volumes of the prosecution’s evidence.”³⁹⁵

It is noteworthy that over several years, on subsequent IFJ missions to inspect the massacre site and participate in memorial services, the victims’ families and accompanying journalists have been provided with a military escort due to ongoing safety fears in the heart of the Ampatuan clan’s power base.

Since the massacre, the bloody toll of journalists killed with impunity has continued. In the 10 years since the massacre of the 32 journalists at Ampatuan, a further 49 media workers have been killed in the Philippines (November 24 2009 — December 31 2018³⁹⁶). That’s a total death toll since the return of democracy to the Philippines of 188 slain journalists and media workers.³⁹⁷

It does not help that current Philippines president Rodrigo Duterte

has encouraged the use of extrajudicial vigilantism to fight a war on drugs. Human Rights Watch reports that according to “the Philippine Drug Enforcement Agency (PDEA), 4948 suspected drug users and dealers died during police operations from July 1 2016 to September 30 2018. But this does not include the thousands of others killed by unidentified gunmen. According to the Philippines National Police (PNP), 22,983 such deaths since the ‘war on drugs’ began are classified as ‘homicides under investigation’.”³⁹⁸

On September 27 2018, Duterte admitted: “My only sin is the extrajudicial killings.”³⁹⁹

Duterte’s past comments about journalists (“Just because you’re a journalist you are not exempted from assassination if you’re a son of a bitch.”⁴⁰⁰) and the aggression directed by Duterte in harassing and intimidating Rappler editor Maria Ressa points to a willingness to embolden violent action against journalists. The threat to the safety of journalists and their journalism is palpable.

On December 18 2013 the United Nations General Assembly adopted Resolution 68/163 which calls on states to promote a safe working environment for journalists, including awareness raising measures for law enforcement officers and military personnel.

The resolution requires states to monitor and report attacks against journalists, publicly condemn attacks and dedicate resources to investigate and prosecute attacks. The resolution also requires that member states do their utmost to prevent violence against journalists and media workers, ensure accountability through the conduct of impartial, speedy and effective investigations into violence against journalists and media workers, and bring the perpetrators of these crimes to justice; and ensure that victims have access to appropriate remedies.

In almost every case of a journalist killing in the Philippines since 1986, the perpetrators have gotten away with murder. Impunity continues to reign unchecked.

Mike Dobbie is MEAA Media’s communications manager. He led the IFJ’s 2009 rapid assessment solidarity mission and participated in subsequent investigative missions including the five-year anniversary international solidarity mission in November 2014.

TACKLING IMPUNITY

On October 29 2018, MEAA wrote to Foreign Affairs Minister Marise Payne and Shadow Foreign Affairs Minister Penny Wong advising them that on October 22 the global journalists union, the Brussels-based International Federation of Journalists (MEAA is an affiliate member and hosts of the IFJ's Asia-Pacific office in Sydney) had made a formal representation to the United Nations proposing a new UN convention dedicated to the protection of media professionals.

In its letter, MEAA noted that to date in 2018, two journalists had been killed every week on average and conviction rates for those who mastermind such killings remain almost non-existent.

“Journalist killings is a growing concern, highlighted most recently by the murder of Saudi journalist Jamal Khashoggi and bomb threats made to the offices of CNN,” MEAA said.⁴⁰¹

“The IFJ argues that the deliberate targeting of journalists and the systemic impact of attacks on media workers indicates the need for a dedicated instrument to tackle crimes against journalists and has proposed the new convention.

MEAA added: “There is an important Australian element to the proposal. Since 1975, nine Australian journalists have been murdered with impunity — eight while working on assignment overseas. The most recent case is that of ABC cameraman Paul Moran killed by a car bomb in northern Iraq in 2003, leaving behind his wife and seven-week-old daughter. The individual who ordered the bombing is known and is currently residing in Norway — but he has not been brought to justice for his role in the murder of Paul.”⁴⁰²

Subsequently, on March 19 2019, the International Federation of Journalists issued this statement:

Representatives from governments in every continent today joined the IFJ, journalists' unions, editors groups, public broadcasters and media organisations in a united call for the United Nations to take action to tackle impunity by adopting a Convention on the safety and protection of journalists.

Senior lecturer Carmen Draghici from the University of London and author of

the Convention presented the text and answered legal issues.

The joint call came during the 40th session of the United Nations Human Rights Council in Geneva.

Last year, on average, two journalists were killed every single week — yet impunity for crimes against journalists remains at 90%. Now a coalition involving the IFJ, media industry groups and press freedom campaigners have taken the demand for action to the heart of the UN's Human Rights Council.

At an event organised by the IFJ, representatives from the European Broadcasting Union, International Press Institute, UNI-MEI and Al-Jazeera joined journalists' unions from Europe and the Middle East and governments from every corner of the globe in urging the international community to adopt a dedicated international instrument to enhance the protection of journalists.

The Convention on the Protection and Independence of Journalists and Other Media Professionals⁴⁰³ seeks to provide greater safeguards for media workers by: Rectifying a gap in international law for binding norms establishing safeguards for media workers specifically

- *Including not only journalists, but all the media professionals who are at risk every day, from the cameramen to the drivers, interpreters etc*
- *Allowing denunciations of systematic violations by persons other than the direct victims, effectively combating self-censorship*
- *Providing for interim measures and an expedited procedure in case of alleged violations.*

The Convention not only includes incontrovertible obligations such as the protection of journalists against attacks on their life, arbitrary arrest or forced disappearances, but also others so far found only in soft law, like the obligation to protect the confidentiality of journalistic sources;

- *not to misuse national security to hinder the work of journalists through arbitrary detention;*
- *to conduct an effective investigation where crimes against journalists have been committed, capable of bringing to justice not only the executors, but also the moral authors of crimes.*

IFJ General Secretary Anthony Bellanger said: “Today's event was an important step in building support for the adoption

of the Convention and more importantly putting action to protect journalists and tackle impunity higher up the agenda of the Human Rights Council. If impunity is allowed to go unchallenged, if journalists self-censor, if societies are deprived of information, then media freedom and democracy suffer.”

IFJ President, Philippe Leruth, said: “The International Federation of Journalists wants the fight against impunity to intensify. The common law which forbids killing and the international protection of civilians in conflict zones fail to protect journalists because they don't consider journalists as specific targets. When a journalist is murdered a disturbing voice is silenced but also the whole press as self-censorship increases: you don't find heroes to take over the task of the murdered journalist.”

IN THE SHADOW OF VIOLENCE

On June 29 2018 four media professionals and one staff member of the *Capital Gazette*, a daily published in Annapolis, the capital of Maryland state, were shot dead by a gunman in what police described as a “targeted attack”.⁴⁰⁴

The paper named the victims as editor and community reporter Wendi Winters (65), sales assistant Rebecca Smith (34), assistant editor and columnist Robert Hiaasen (59), editorial writer Gerald Fischman (61) and reporter and editor John McNamara (56). Two more people were injured in the shooting, according to media reports.

The paper's crime reporter Phil Davis told media that the gunman, named as Jarrod Ramos “shot through the glass door to the office” before opening fire on employees. He was later arrested by police at the scene and taken into custody. The suspect had lost a defamation case against the newspaper in 2012, media reports added

MEAA responded⁴⁰⁵ to the sickening news of five deaths saying it highlighted the growing threats to journalists. MEAA Media section president Marcus Strom said: “When political leaders around the world are regularly decrying ‘fake news’ and labelling journalists as ‘enemies’ they are contributing to a volatile and dangerous environment for journalists,” said.

“We can't ignore the proliferation of this dangerous rhetoric. Words have consequences.



“It is time for leaders to demonstrate their respect and support for journalists and journalism. Threats, harassment and intimidation of the media are threats to press freedom and should be called out as such,” Strom said.

“Australian journalists are devastated by the news but are inspired by the courage of journalists and staff at the *Capital Gazette* to continue to serve their community and the craft that we love.”

Terrorism still targets journalists. In Afghanistan on April 30 2018 nine journalists, including a female journalist, were killed in Kabul in back-to-back suicide attacks, the second of which targeted the journalists who had gathered on the site of the first blast near the Afghan Intelligence services headquarters.

Agence France-Presse (AFP) chief photographer in Kabul Shah Marai, Tolo News cameraman Yar Mohammad Tokhi, Radio Azadi correspondents Abadullah Hananzai, Moharram Durrani and Sabawoon Kakar, 1TV reporter Ghazi Rasooli and cameraman Nowroz Ali Rajabi, Mashal TV reporter Salim Talash and cameraman Ali Salimi were killed in the second blast when a suicide bomber disguised as a journalist detonated himself among the journalists who had gathered to cover the first attack.

The two suicide attacks hit central Kabul, on April 30. The first bomb was detonated by an assailant on a motorcycle and the second was detonated 20 minutes later among those who had come to rescue those targeted in the first attack, including a group of journalists.⁴⁰⁶

State “actors” also hunt down and kill journalists. On October 2 2018 Jamal Khashoggi, the Saudi columnist for *Washington Post* disappeared after he went to the consulate of Saudi Arabia in Istanbul, Turkey, to arrange paperwork for his marriage. After a fortnight and following reports that he had been killed inside, Saudi authorities confirmed the news of his killing, blaming the crime on rogue agents who allegedly acted without the approval or knowledge of the rulers of the oil-rich kingdom.⁴⁰⁷

On October 19 2018, MEAA wrote to Foreign Minister Marise Payne and Trade Minister Simon Birmingham urging them to ensure Australia does not participate in a global investment conference in Riyadh in the wake of the murder of Khashoggi. MEAA wrote:

Dear Ministers,

You would be aware that Saudi Arabia is hosting the Future Investment Initiative

in Riyadh next week. MEAA understands that Australia’s ambassador and the Austrade regional manager will be attending.

Given many representatives of governments and corporate sponsors/partners have withdrawn from the conference in protest at the horrific murder of Saudi journalist Jamal Khashoggi, MEAA is concerned that by maintaining an official presence at the conference Australia is sending an appalling signal.

It seems hardly necessary to press home to you the very great concern that Australia’s journalists feel if our government fails to fully condemn the regime over Khashoggi’s death.

Nine out of 10 journalist murders around the world are never properly investigated and perpetrators never brought to account. Australia is not immune from this. Since 1975 nine Australian journalists have been murdered, all but one while on overseas assignment. Not one of their killers has ever been charged.

MEAA, as the advocate for Australia’s journalists, urges you to withdraw any official Australian presence and representation at the Riyadh conference in support of the global outcry at Jamal’s murder.



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MEAA was subsequently advised by the ministers that “the Government has determined that official Australian representation at the Future Investment Initiative event in Riyadh is no longer appropriate”.⁴⁰⁸

In its list of journalists and media workers killed in 2018, In the Shadow of Violence,⁴⁰⁹ the International Federation of Journalists’ general secretary Anthony Bellanger wrote:

The brutal murder of Jamal Khashoggi made headlines around the world. Rightly so. As gruesome details of him being tortured and his body dismembered emerged, his murder made front page news.

The shocking fact is Jamal was not the only journalist murdered that week. Zaki Al-Saqaldi was killed in Yemen — one of 9 to die in the country in 2018. And Jamal and Zaki were not the only journalists to be killed that month — another 7 were murdered in Afghanistan, Bulgaria, India, Mexico and Somalia.

And while evidence in the Khashoggi case pointed to high level involvement in planning the murder and governments around the world issued statements, those widely believed to be ultimately responsible for the crime went unpunished.

Jamal’s is far from the only case where the intellectual author of the crime remains unpunished.

2018 saw 95 journalists and media professionals lose their lives in targeted killings, bomb attacks or crossfire incidents. Yemen, India, Mexico, Afghanistan and Syria witnessed the most devastating toll. And whilst South Asia is now the world’s most dangerous region for journalists, no part of the globe was left unscathed by those who seek to silence the message by killing the messenger.

The rise in killings takes place in the context of an increasing polarization of views across the world with the rise of dangerous nationalist and populist forces in many countries and the stigmatization of journalists and media by politicians and the enemies of media freedom.

That is why the IFJ continues to prioritise the safety and protection of journalists — providing urgent material

support via our Safety Fund, by carrying out training courses for journalists across the world including in some of the world’s hotspots such as Syria, Iraq, Yemen and Somalia and negotiating landmark collective agreements covering the safety and security of media professionals in Tunisia and Palestine.

More than that, the IFJ continues to call all those who kill, jail, threaten and harass journalists to be held accountable. From demanding answers via the Council of Europe’s online Platform for the Protection of Journalism and the Safety of Journalists to meetings with Mexico’s Special Prosecutor for Crimes against Freedom of Expression (FEADLE), the IFJ and its affiliates are at the forefront of demanding an end to impunity.

That commitment to demand the international community act to halt the killings of journalists and to bring the killers — including the material architects of such crimes — to justice was reinforced by the launch of a draft Convention on the Safety and Independence of Journalists and other Media Professionals by the IFJ, alongside a broad-based coalition of representative organisations of media workers and owners, senior editors and public broadcasters.

As the rise in the numbers of killings this year shows — and the fact that rates of impunity have remained at around 90% for more than a decade — words are no longer enough: it is time for action!

The Convention would address important weaknesses in the international legal regime and provide a dedicated instrument specific to the situation of journalists to ensure more effective implementation of international law. Every time a journalist is killed it is not just the individual, the family, the media which suffers. Society is increasingly denied its right to the free flow of information and views as journalists — fearful for their lives — are silenced by the assassin’s gun.

Achieving such a Convention is a long and difficult road — but we cannot shirk from such challenges. The IFJ and its affiliates have met with governments, lobbied delegations and missions at the United Nations and taken the argument for stronger action by the international community to every available forum.

We do so not for us, not just to honour the lives of all those who have been killed in the pursuit of the truth, carrying out their professional duties, but because attacks on journalists’ life or physical integrity have a detrimental impact on the public’s right to information, contribute to a decline in democratic control and have a chilling effect on everyone’s freedom.

It is not just our fight — it is for all those who believe in such rights.

Together we can make a difference.

The IFJ has called on journalists’ groups, media organisations and all relevant public authorities to respect the *International Code of Practice for the Safe Conduct of Journalism*:

- 1 Journalists and other media staff shall be properly equipped for all assignments including the provision of first-aid materials, communication tools, adequate transport facilities and, where necessary, protective clothing;
- 2 Media organisations and, where appropriate, state authorities shall provide risk awareness training for those journalists and media workers who are likely to be involved in assignments where dangerous conditions prevail or may be reasonably expected;
- 3 Public authorities shall inform their personnel of the need to respect the rights of journalists and shall instruct them to respect the physical integrity of journalists and media staff while at work;
- 4 Media organisations shall provide social protection for all staff engaged in journalistic activity outside the normal place of work, including life insurance;
- 5 Media organisations shall provide, free of charge, medical treatment and health care, including costs of recuperation and convalescence, for journalists and media workers who are the victims of injury or illness as a result of their work outside the normal place of work;
- 6 Media organisations shall protect freelance or part-time employees. They must receive, on an equal basis, the same social protection and access to training and equipment as that made available to fully employed staff.

MORE THAN 1000 JOURNALISTS HAVE BEEN KILLED IN THE PAST 10 YEARS

The dangers posed to journalists and media staff working in dangerous situations and conflict zones are the subject of extensive record. The IFJ has recorded the deaths of more than 1000 journalists and media staff over the past 10 years.

Many journalists are killed, injured or harassed in war zones, either targeted by one side or another or caught in the crossfire of violence. Others are the victims of premeditated assault and intimidation either by criminals, terrorists or by agencies of the state — the police, the military or the security forces — acting secretly and illegally.

Very often there is little that journalists or media organisations can do to avoid casualties. There will, inevitably, be accidents, no matter how much care is taken to provide protection and there is little one can do when those targeting media use ruthless and brutal methods to crush journalistic inquiry.

However, there are steps that journalists and media organisations should take to minimise the risks to staff. In particular, the following are vital considerations in providing protection:

- Adequate preparation, training and social protection. It is essential that journalists and media staff be in a state of readiness when difficulties arise. There should be a framework for providing individuals with health care and social protection.
- Media professionals must be informed and inform themselves about the political, physical, and social terrain in which they are working. They must not contribute to the uncertainty and insecurity of their conditions through ignorance or reckless behaviour.
- Media organisations must guard against risk-taking for competitive advantage, and should promote co-operation among journalists whenever conditions exist which are potentially hazardous.
- Governments must remove obstacles to journalism. They must not restrict unnecessarily the freedom of movement of journalists or compromise the right of news media to gather, produce and disseminate information in secure and safe conditions.
- Must Keep Their Hands Off Media. Everyone should respect the physical integrity of journalists and media staff at work. Physical interference with filming or other journalistic work must be prohibited.⁴¹⁰

PRESS FREEDOM IN NEW ZEALAND

UNCHARTED WATERS FOR KIWI MEDIA FREEDOM

BY COLIN PEACOCK

Many commentators and politicians have airily claimed the terrorist attack in Christchurch on March 15 2019 has changed New Zealand forever.

Another common refrain, echoed on New Zealand newspapers' front pages the day after the attack, was that this marked "the end of our innocence".

Any complacency about the threat of extremism in New Zealand has certainly been extinguished and things will never *feel* quite the same for many New Zealanders — especially Muslims ones.

The cancellation of public events and the presence of rifle-toting police officers on city streets bulked up with body armour has been a startling — even chilling — sight for New Zealand people. The police said it was a temporary measure with the nation is on high alert and things will return to normal. But exactly what the new normal will be in New Zealand's free and open society remains to be seen — and New Zealand media need to be vigilant about incursions into their freedom too.

Some small but significant steps have already been taken in the short-term responses. Soon after the first eyewitness reports of shots fired at the mosques came to the media's attention, so did the disturbing digital content the white supremacist gunman created — a GoPro live-streamed video on Facebook and a sickening "manifesto" of racism, fascism and violence. It was, as media commentators around the world pointed out,⁴¹¹ a massacre made to go viral.

It also dovetailed grimly with the highly profitable business model of major social media platforms⁴¹² and they weren't able or willing to stop the stuff spreading online.

When the government-appointed Chief Censor⁴¹³ banned the gunman's online video,⁴¹⁴ New Zealand's biggest ISPs jointly blocked access to websites circulating it, including notorious forums 4Chan and 8Chan. It was a bold but unprecedented move.

But some internet and media freedom activists are asking whether legitimate use of the internet could be curbed in the future when the ISPs concur that a crisis demands extraordinary intervention again. The activists' concerns peaked when it was revealed⁴¹⁵ that plans to lift the block were reversed by the ISPs after intervention by the Government the week after the attack.

Almost all mainstream media applied basic decency and decided against using the video and other images the gunman posted online, but opinion was divided over the so-called "manifesto" also banned by the Chief Censor. His order has exemptions whereby journalists and researchers can apply for permission to consult the 78-page document (after paying a fee of \$NZ102 [\$A96.64]) but that's not useful for reporters on a deadline.

"Everything we need to know about [the shooter's] motivations can be found in who he chose to target," said one journalist. "It's child-like nonsense. Ban it, fire every copy into the sun, it's a waste of time," said a Stuff

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(formerly Fairfax Media New Zealand) correspondent. His paper, *The Press* — the daily paper in Christchurch where the attack took place — also backed the ban. “(It) serves as a practical guide to what is acceptable in this country. Should a resident or visitor not completely understand where the line is, the censor has made it plain,” said the paper. *The Press* said the ban may actually help police and intelligence agencies because people found to possess the manifesto open themselves to further investigation — just as they do with other forms of objectionable material like child pornography.

But the country’s biggest selling paper disagreed. “The alleged gunman is part of this story and we can’t shy away from that. It doesn’t give his abhorrent views a platform,” the *New Zealand Herald* said. “People are searching for answers to New Zealand’s most horrific act of terrorism. They’re searching for light in dark corners and this is such a place, despite how difficult that may be,” the paper argued. The *New Zealand Herald* also reckoned exposure would more effectively in outing extremism that could contribute to further attacks. “If the information can in any way equip authorities and experts in being alert to people with these types of ideologies — and help the public be wary — we have done our job,” the paper said.

But it’s impossible to test which approach to censorship is right.

As in post-Port Arthur Australia, gun law changes have been rushed through in New Zealand and the government has also indicated it could introduce new hate speech laws too. New Zealand has already grappled with this⁴¹⁶ in 2005 after the United Kingdom drafted its own hate crime laws.

But some academics, broadcasters and conservative groups warn any proposed laws here would be a threat to freedom of expression — including that the media.

Last year, one well-known entrepreneur tried to prosecute media outlets under the *Harmful Digital Communications Act* — essentially an anti-cyberbullying law. They had written critically but accurately about his business affairs. The move failed, but those who wish to bring the media to heel could try again if momentum builds against what they believe to be hate speech which fosters the Far Right.

“I would rather the Government looked at what’s already there and decided whether any of that can be improved and made to work properly,” Professor



Ursula Cheer, New Zealand’s leading media law expert, told the *New Zealand Herald* on March 25.⁴¹⁷

In 2018, Australia’s biggest news media companies united to fight⁴¹⁸ new national security laws that could criminalise reporters and their sources. New Zealand’s media companies may need to do the same in the coming months. On April 1, the *National Business* warned “some bureaucrats — the intelligence services come to mind — might be mindful of the maxim to ‘never waste the opportunity offered by a good crisis.’”

The inquiry into the Christchurch terrorist attack will now be a Royal Commission,⁴¹⁹ zeroing in on our security services. The main questions will be whether the attack could have been prevented, whether the security

services have the right tools to monitor extremist communication online, and whether they chose the right targets.

The opposition National Party (which could have been leading the government now after emerging as the top-polling party in the 2017 election) has called for wider powers for intelligence agencies — the domestically-focused Security Intelligence Service and the internationally-oriented Government Communications Security Bureau. National Party leader Simon Bridges has claimed they operate with “both hands tied behind their backs” and need greater powers.

New Zealand media have good reason to worry about what they would do with freer hands and longer reach. In 2014, the Prime Minister’s office ordered an



Deepak Sharma takes a quiet moment of contemplation at a makeshift shrine of flowers at the Botanical Gardens in memory of those killed in the Christchurch shooting | Jason South, Fairfax Photos

investigation of a leak which created a front-page story for Fairfax Media political reporter Andrea Vance. Her scoop revealed dozens of New Zealanders were illegally spied upon by the GCSB. The inquiry tracked her movements round Parliament and details of her phone calls from her Press Gallery office. Parliamentary Services handed over this private and sensitive data. The head of the service later paid for this over-reach with his job and apologised.⁴²⁰

National Party leader Simon Bridges also wants to revive an internet surveillance program canned by the previous government. Project Speargun was revealed by NSA whistleblower Edward Snowden in 2014.⁴²¹

Reporters with sensitive stories would be vulnerable to such potentially

unlimited interception. The PM at the time, John Key, rubbished the claims. He said he personally put a stop to this “highest form of protection” in March 2013 because it was too intrusive.

But investigative reporter David Fisher eventually acquired official documents showing Speargun actually continued *after* the time Key said he ordered a halt.

And “eventually” is the key word. It took almost three years to get the official information he needed and John Key had left politics by the time the full story came out.

The forthcoming Royal Commission into the terrorist attack in Christchurch is bound to uncover things the government will want to conceal or at least “manage”. The temptation to

withhold information of genuine public interest will be great. Investigations by the media — also hungry for answers — will overlap with the official work and could bring them into conflict with the powers-that-be who feel backstopped by national security imperatives.

New Zealand’s search and surveillance laws are already strong and open to abuse. Investigative reporter and author Nicky Hager discovered this when his home was raided in 2014. Police officers wanted the source of the leaked emails at the heart of his lid-lifting book *Dirty Politics* after the 2014 election campaign. Using the recently beefed-up *Search and Surveillance Act*, police seized and copied documents and computers, including those belonging to his daughter. They also asked private companies for details of his phone,

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online accounts and his travel and banking records.

The raids and breaches of his privacy were eventually deemed unlawful and followed by apologies and out-of-court settlements. Nicky Hager's legal battles only came to an end in February this year when Westpac apologised for handing over private information to police. The police requested it without a warrant — and Westpac paid Hager a confidential sum as a settlement.

Since then, Hager has tested the limits of media freedom with his next book too. *Hit & Run*, co-authored with freelance investigative correspondent Jon Stephenson, claimed that six Afghan villagers were killed and 15 others injured in New Zealand Special Air Service (NZSAS) raids in retaliation for the death of a New Zealand soldier.

The New Zealand Defence Force disputed the claims and has only reluctantly released information so far, forcing journalists to engage the Office of the Ombudsman to secure the release of relevant official information. NZDF withheld much of the requested information primarily on the grounds it may prejudice the security and defence of New Zealand — or jeopardise relationships with defence allies.

The government announced an inquiry into the deaths last year. Documents released under the Official Information Act revealed The NZ Defence Force has a NZ\$2 million budget for the inquiry.⁴²² NZDF said its team would have 11 staff as well as two full-time “surge support personnel” helping with research and a senior Queens Council earning NZ\$375 an hour.

In 2017 a new law overhauling powers of spy agencies created a new offence for people passing on classified information. The changes made it easier to people to make a “protected disclosure” to the Inspector-General of Intelligence and Security. But those who pass information to journalists may face up to five years in jail. This has yet to be tested, but it will be brave member of the intelligence services who leaks information the media on that basis. Journalists will also have the added worry of possible prosecution themselves if pressed to reveal sources. The current government is also exploring whether the law and

procedures to protect whistleblowers at work need to be strengthened.

“Anyone who raises issues of serious misconduct or wrongdoing needs to have faith that their role, reputation, and career development will not be jeopardised when speaking up,” the state services minister has said. Some Australian state governments already support whistleblowers who contact journalists in if they have not had “honest concerns” properly investigated by a relevant higher authority, but there are no such shield laws here.

In 2015, security guard Lydia Maoate, with the backing of her union, told the *Dominion Post* newspaper her employer encouraged staff to cheat in their training. The Employment Relations Authority deemed the *Dominion Post* “not an appropriate authority” to receive the information and her dismissal was justified. Exposure of activities that are illegal, corrupt or unsafe are clearly of genuine public interest, but by the end of public consultations no media organisations had argued for change.

New Zealand's State Services Commission is to report back on the law later this year and it remains to be seen if any change to the *Protected Disclosures Act 2000* recognises the role of the media.

A Bill to tidy up the law on contempt of court⁴²³ is now before Parliament and the *Privacy Act* is also under review. Let's hope the journalists' interests in reform these laws are put forward more effectively.

One law under review about which journalists have complained long and loud is our once world-leading *Official Information Act*. Justice Minister Andrew Little has actually asked for media input before deciding how to proceed. The current government came to power in 2017 promising reform after years of non-compliance, obstruction and delays in dealing with legitimate requests from the media while their rivals were in charge. It appointed a new minister, Clare Curran, with overlapping responsibilities in broadcasting, digital media, technology and open government. But this joined-up approach fell apart when the minister was forced out of her portfolios because, ironically, she had arranged off-the-books meetings with prospective appointees and Coral Hirschfeld, the

head of news at the public broadcaster RNZ.

Ministers were put on notice by a new Chief Ombudsman in 2017, and on March 13 this year, the State Services Commission claimed 95 percent of OIA requests in late 2018 were met on time. But as political reporter Andrea Vance found on closer inspection,⁴²⁴ two key agencies accounting for more than half of OIA requests, the NZ Police and NZ Defence Force, were excluded.

How come?

“Timeliness is not reported for NZ Police... [who] introduced a new system for tracking OIAs. A design error, now fixed, meant it was not able to accurately report the number of requests that met the legislated time frame,” said the statement.⁴²⁵

Andre Vance said she found that “convenient”. “They receive by far more OIA requests than any other agency and are pretty notorious for mishandling them. They first refused to release any OIA timeliness data to me when I requested it, and I haven't even been able to report that to the SSC,” she said.

It's not just journalists who have noticed. The Open Government Partnership⁴²⁶ — a coalition of government and civil society organisations — concluded that although the government has not yet “made the ambitious steps towards the openness and transparency that many New Zealanders want”. It called for “full reform of the *Official Information Act*” and said public sector chief's contracts should be tied to open government performance. On March 14, the frustrations of Andrea Vance and her colleagues at Stuff were laid out starkly in an eye-opening special series called “Redacted”.⁴²⁷

Just one day after that, the terrorist attack in Christchurch turned the country, and our media, upside down. The ghastly deaths and the fallout from the attack have preoccupied the media ever since. Nothing else has seemed nearly as important. But as journalists get to work raising awkward questions in a new environment, their freedom to report the truth will take on a whole new importance.

Colin Peacock is the presenter of Radio New Zealand's “Mediawatch” program.

FREEDOM TO REPORT THE TRUTH TAKES ON A WHOLE NEW IMPORTANCE

The last print edition of The Cambodia Daily
Socheata Hean



ASIA-PACIFIC JOURNALISTS KILLED SINCE MEAA'S 2018 PRESS FREEDOM REPORT (25 April 2018 – 25 April 2019)

Afghanistan	18
Bangladesh	1
India	5
Pakistan	3
Philippines	3
Asia Pacific total:	30

PRESS FREEDOM IN THE ASIA-PACIFIC

BY ALEXANDRA HEARNE

In calendar 2018, the International Federation of Journalists (IFJ) recorded the highest number of journalist and media worker killings since 2014. In the Asia Pacific, 32 journalists, editors, drivers, camera operators, television reporters and broadcasters were brutally murdered.

South Asia was the deadliest region in the world with 29 killings, 16 of which occurred in Afghanistan.

Fifteen journalists lost their lives in targeted shootings or were lethally caught in the crossfire. Another 12 died as a result of being in the wrong place, when car bombs detonated or suicide bombers unleashed.

Yet journalists in the Asia-Pacific face threats and challenges beyond the killings. Governments are continuing the flex their muscle in attempts to silence critical voices and intimidate the media to toe the government line,

rather than acting as a watch dog.

In the Philippines the targeting of Rappler CEO Maria Ressa is a stark reminder of the challenging media environment.

Yet, there are small wins that must be celebrated. In February 2019, the Indonesian government revoked the presidential pardon that was granted to the killer of a journalist, keeping the perpetrator in jail for life. In March 2019, four people were arrested for trolling and harassing Indian journalist Barkha Dutt, in a case which is a breakthrough for the relentless trolling and online harassment of journalists.

AFGHANISTAN: On April 25 2018, 10 journalists were murdered. Nine died in the capital Kabul in back-to-back suicide attacks. The killer, disguised as a journalist, detonated his bomb in the middle of a media scrum that had gathered to report on an initial bomb blast. On the same day, in Eastern Khost

province, 29-year-old BBC reporter Ahmad Shah was shot dead while he was on his way home.

The safety of journalists and media workers in Afghanistan remains an ongoing challenge, particularly for those based away from Kabul. According to IFJ research, of the 86 journalists and media workers killed since 1993, almost 40 percent were non-Kabul based media.

Despite the safety concerns, the Afghan government continues to lag in attempts to address the concerns and implement concrete action. As noted in previous reports, the Afghan Ministry of Interior Affairs started investigating 172 cases of violations of journalists' rights more than three years ago. To date, there has been no practical action for justice.

Two journalists were killed in an attack on the offices of Radio Hamsada in Telagan, Afghanistan, on February 6 2019. The two victims were Shafiq Areya, a reporter, and Rahimullah, the presenter of a social program. Both were in their 20s and died on the spot. Simin Hussaini, the editor of Hamsada Radio Station, confirmed that they did not receive any threats before the attack.

Journalist Sultan Mohammad Khairkhan was shot and killed as he drove to work on March 17 in Khost, south eastern

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Afghanistan. Khairkhah worked for the Afghan National TV channel and hosted several social programs. He was shot near the police checkpoint in Khost and died in hospital from his injuries.

Photojournalist M Asif Hakimi was among 22 killed in a bomb blast on an election gathering in northern province of Takhar, Afghanistan, on October 13 2018. Hakimi was killed when a motorcycle bomb was detonated around midday targeting the campaign rally of Nazifa Beg, a female candidate from Rustaq district of Takhar.

Two television journalists were killed and another five injured in a brutal twin blast in Kabul on September 5 2018. Journalist Samim Faramarz and cameraman Ramiz Ahmadi of TOLO News lost their lives as they reported at the scene of an earlier suicide attack. The initial bombing targeted an evening sporting event at a wrestling gym in the Qala-e-Nazer area of Kabul, also known as the sixth district. The journalists were killed when a second explosion, an hour after the initial blast, is alleged to have specifically targeted first responders at the scene. Faramarz had been reporting live from the scene for TOLO just minutes before he was killed in the second blast. The twin attacks killed at least 25 people and injured 80 others. The Islamic State is reported as claiming responsibility. Among the wounded were five other journalists also reporting at the scene of the sports club explosion — Amanullah Farhang of 1TV, Khaled Nekzad, Sayer Yunusi and Hussain Rastemanish of Khurshid TV, and Jamshid Ahmadi of Maiwand TV.

CAMBODIA: As Cambodia prepared to go to the polls in July 2018, the first half of the year saw a continued government-led media crackdown. Justification for the government's behaviour was the usual argument of maintaining stability and social order. But carrying out its highly effective campaign against dissenting voices also pushed the Cambodian media to its limits.

Inevitably journalists were targeted. Cambodia's media is now impeded by a litany of threats, self-censorship and draconian laws ranging from defamation to *lese majeste*. Media proprietors face disruption to online services and pressure to toe a government-friendly line, or risk exorbitant tax bills and law suits that carry prison terms.

Between 2017 and the July elections, the Overseas Press Club of Cambodia said that the number of foreign journalists working in Cambodia decreased from 150 to between 15 to 30 by the elections.



Gui Minhai, Chinese-Swedish book publisher who has fallen victim to China's crackdown on publishing. He was arrested on a train to Beijing in the company of Swedish diplomats. *IFJ*

IFJ research for the first IFJ South East Asia Media Freedom Report — *Under the Autocrats* — found that almost all Cambodian journalists felt their work had caused them security concerns. The overwhelming majority of Cambodian journalists also said that over the past 12 months government efforts to protect journalists were worsening to extremely bad, citing the ruling party position as the cause for this.

The political climate in Cambodia eased immediately after the election. Political dissidents were released from prison, although charges remain. In a turn from previous behaviour, Hun Sen's political rhetoric has taken on a more conciliatory tone.

CHINA: Between January 2018 and March 2019 the IFJ recorded more than 130 media violations in China, Hong Kong, Taiwan and Macau, of which 73.5 percent occurred in China.

A closer look at the violations recorded highlights the key issues for media freedom in China. Censorship continues to impede media freedom and is taking on many forms. Websites are blocked, Weibo accounts are taken down or content is deleted, traditional media outlets don't report on key issues or events and, instead, republish reports from state-owned Xinhua.

The extent of the government-led crackdown was evident in November 2018, when more than 10,000 social media accounts were shut down. The accounts had shared footage or had content commenting on social issues.

The arrest of Australian writer and former Chinese diplomat, Yang Hengjun, in Guangzhou airport on January 19 2019 highlighted the extent that the Chinese authorities would go to in order

to silence critical voices. Yang arrived on a flight from the US and was immediately detained on espionage charges. He remains under "residential surveillance" for "engaging in criminal activities that endangered China's national security". Yang is a strong democracy advocate and is prolific online.

In February 2019, the Foreign Correspondents' Club of China (FCCC) released its annual report based on a survey of its members. The report found that working conditions for foreign correspondents in China are quickly worsening. Surveillance was noted as one of the key concerns with 48 percent saying that they had been followed or their hotel room had been entered without permission; 22 percent said they were aware that authorities had tracked them using public surveillance systems.

With the growing crackdown in the Muslim-majority region of Xinjiang, FCCC members said that 24 of the 27 respondents who had travelled to the region had experienced interference while there, with 19 being asked or forced to delete data.

FIJI: Three journalists with independent, New Zealand-based news and current affairs site Newsroom were arrested in Fiji on April 3 2019. Newsroom co-editor Mark Jennings, Investigations editor Melanie Reid, and cameraman Hayden Aull were detained and held overnight at the main Suva police station after developer Freesoul Real Estate accused them of criminal trespass. The journalists were released the following morning and the Fijian Prime Minister Frank Bainimarama has apologised.

New Zealand journalist union E tū's senior national industrial officer Paul Tolich said the the journalists should never have been arrested in the first



Media unions affiliated the International Federation of Journalists across the Asia-Pacific region show their support for Filipino editor Maria Ressa

place. “The journalists were simply engaged in journalistic inquiries about the impact of development on Malolo Island and the actions of the police are another example of Fiji’s intolerance towards a free and independent press. Despite the apology from Fiji’s Prime Minister, this will have a chilling effect on journalism in the Pacific. Journalists need to be able to challenge the powerful and hold them to account. This is the hallmark of a free and democratic society. We urge the Fijian government to support independent journalism rather than maintaining a climate which supports those who would seek to suppress it.”

HONG KONG: Of the 132 China media violations recorded by the IFJ between January 2018 and March 2019, 31 occurred in the autonomous Special Administrative Region of Hong Kong. The key threats to press freedom in Hong Kong continue to surround interference from China and the ability of the Hong Kong government to guarantee Hong Kong’s autonomy.

In 2018, this was challenged on several fronts. The Hong Kong Journalists

Association’s annual Hong Kong Press Freedom Index found that press freedom in Hong Kong had declined 0.9 points down to 47.1, the lowest level since the index began in 2013.

On October 5 2018, the Foreign Correspondents’ Club of Hong Kong vice president and Asia news editor of the *Financial Times* Victor Mallet was advised that his work visa renewal had been refused. The refusal came just a couple of months after Mallet hosted a lunchtime talk at the FCC Hong Kong with pro-democracy activist Andy Chan. The talk was widely criticised with former Hong Kong chief executive Chun-ying Leung questioning if FCC Hong Kong should maintain its lease in Hong Kong. Despite widespread protest, Mallet left Hong Kong.

The proposed *National Anthem Law* — which is a controversial vaguely-worded Bill that sets out criminal sanctions for unwelcome behaviour during the playing, and commercial and other misuse, of China’s *March of the Volunteers* anthem — has cast a shadow on press freedom in Hong Kong for the past 12 months, with many questions

about how any legislation would be implemented and the implications for media freedom. The biggest question remains, how would media outlets report on any report the activities that violate the law, and what would be the penalties on such reporting.

INDIA: The press freedom situation in India is an ongoing concern that was highlighted in 2018 with a disturbing trend of targeted mobile attacks on journalists, with four media workers killed.

The murder of Shujaat Bhukari in Kashmir in June 2018 shows the brutal nature of journalist killings in India. He was shot multiple times, despite having two bodyguards. They were both also killed in the attack as they left his office at *Kashmir Daily*.

The threats, intimidation and assaults on journalists continued through 2018. In February, officials of the ruling right-wing Bharatiya Janata Party (BJP) officials attacked a journalist in Raipur. In October police attacked a group of journalists in Kashmir as they attempted to cover a clash between security forces and militants. In November a journalist in Manipur was detained under the draconian *National Security Act* for expressing his views against the leaders of ruling party at the Centre and the State in a Facebook post.

On October 30 2018, videojournalist Achyutananda Sahu was killed as he covered preparations for upcoming state elections in Chhattisgarh. Sahu was part of a media team from government-run Doordarshan, embedded with local police. He was killed by crossfire when the group came under attack from a Maoist militant group.

In a separate incident, Chandan Tiwari, a journalist with Aaj News, was found unconscious on October 29 2018 and rushed to hospital where he was declared deceased. According to investigations Tiwari had lodged two complaints with police over threats he had received.

Even for the journalists who did not face harassment, intimidation and attack due to their work, the precarious nature of their employment was evident in mass redundancies. On September 29 2018, the Press Trust of India sacked 297 staff. PTI is the largest news agency in India.

In a small win, four people were arrested in March over trolling and harassment of journalist Barkha Dutt. The four perpetrators were charged under the Indian Penal Code and IT Act, which



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is seen as a win against the epidemic of trolling and online harassment of journalists in India.

INDONESIA: A press card is not a guarantee of safety for journalists covering news in Indonesia. In April 2018, an online journalist was covering a demonstration at the Makassar City Council building, South Sulawesi, when he was brutally set upon by authorities, despite holding the card and telling the authorities who he was.

In early 2018, hundreds of protestors from the Islamic Defenders Front (FPI) marched on the offices of *Tempo* in Jakarta, demanding an apology for a caricature the magazine published which they claimed mocked firebrand cleric and FPI leader Rizieq Shihab. When several editorial team members met with the representatives of the protestors inside the *Tempo* office, instead of having a constructive dialogue, the journalists were threatened and intimidated.

According to the Alliance of Independent Journalists, Indonesia, physical attacks were still the biggest threats to the media, with at least 39 recorded between November 2017 and December 2018. But due to the expansion of social media journalists have also become targets of online harassment.

The legal pursuit of journalists using the 2008 *Information and Electronic Transaction Law* remains a serious problem. From 2008-2018, at least 14 charges were laid against media organisations and journalists under the law.

A success story from Indonesia recently has been the launch of IndonesianLeaks — a collaborative approach to investigative reporting. The platform, which was launched in 2017, enables whistleblowers to anonymously submit crucial documents to multiple media outlets relating to scandals that involve the public interest.

MALAYSIA: After Barisan Nasional (BN) lost the May 9 2018 election there was fresh hope the Malaysian press would be freed from the legislative shackles it has been under since independence in 1965.

Press freedom and the removal of other oppressive security laws were cornerstones of the manifesto of the victorious Pakatan Harapan (PH) coalition, led by former prime minister Mahathir Mohamad.

Yet this has not fully materialised.

In the lead up to the elections, the Malaysian government brought in the 2018 *Anti-Fake News Act*, which had become synonymous with the alleged cover up of the 1MDB scandal that dogged ousted leader Najib Razak. In its first post-election parliamentary sitting in August 2018, the PH-dominated lower house passed a bill to repeal the controversial act. But this faltered in the upper house by seven votes and it will now be another year before it can be brought forward again in accordance with Malaysia's constitution.

Other moves to abolish laws described by the PH coalition as “tyrannical” have not progressed quickly either. Chief among these is the 1984 *Printing Presses and Publications Act* which was used by Mahathir to temporarily revoke the licences of three newspapers during his government's *Operasi Lalang* crackdown in 1987, which led to the jailing of more than 100 activists and politicians.

NAURU: As Nauru prepared to host the Pacific Island Forum in September, it announced on July 2 2018, that it would block the Australian Broadcasting Corporation from attending and covering the Forum. The IFJ and MEAA condemned the decision as a blatant attack on press freedom.

A statement by the Nauru Government said it has blocked the ABC from covering the Forum, and was refusing to issue its journalist visas because of allegations of interference in its politics, bias and false reporting. In response, ABC's director of news, analysis and investigations, Gaven Morris, said: “The Nauruan government should not be allowed to dictate who fills the positions in an Australian media pool. It can hardly claim it is ‘welcoming the media’ if it dictates who that media will be and bans Australia's public broadcaster.”

On Tuesday, the Nauru Government issued a follow-up statement, stating: “We remind the ABC that we — like Australia — have every right to refuse a visa to any person or organisation that we believe is not of good character, and that entry into our country is a privilege not a right,” it said. “The Australian media do not decide who enters Nauru.”

Then Australian Prime Minister Malcolm Turnbull said the decision by the Nauru Government was regrettable, but that it was a matter for Nauru.

MEAA Media section president Marcus Strom said: “Politicians, wherever they are, must accept the role of the media to report and scrutinise those in power. The Forum is a crucial gathering. It

comes at a very important time. It is important that its deliberations and discussions are widely reported to the people who live in the region.

“As MEAA has said before, when Clive Palmer sought to exclude a journalist from *The Australian*, politicians can't be allowed to pick and choose who can attend their press conferences. It's ‘one in, all in’,” Strom said. “Prime Minister Malcolm Turnbull says he ‘regrets’ the ABC is being barred from reporting on the Forum but that ultimately it is a matter for the government of Nauru. That is simply not good enough. This is an attack on press freedom that our government needs to condemn in the strongest possible terms. Recognising the sovereignty of another nation does not extend to accepting they have the right to prevent free and open reporting.”

The IFJ said: “Governments, leaders and politicians must remember the role of the media, and not use their powers to control and stifle press freedom. The Nauru Government is setting a dangerous precedent by barring ABC journalists' from covering the Pacific Island Forum. We call for solidarity with our colleagues in the region to demand the ban be revoked and press freedom guaranteed.”

On July 5, the IFJ issued a letter to Nauruan President Waqa urging him to reconsider the ban. IFJ president Philippe Leruth wrote: “The role of the media is to hold those in power to account with free and fair reporting. However, decisions such as these violate the basic universal principles of press freedom and only go to harm the image of Nauru on the world stage.

“The IFJ is concerned that such a refusal to grant a visa to a member of the Australian media pool sends a terrible signal internationally about press freedom in Nauru — particularly at the very time when the world's attention will be focused on the work of the Pacific Island leaders as guests of your country. Such undermining of press freedom standards to a major public and regional broadcaster by your government before such a significant global audience is a dangerous step that would reflect poorly on Nauru well beyond the Asia-Pacific, and is an act of censorship,” Leruth wrote.

Following the decision by President Waqa, the Australian Federal Parliamentary Press Gallery said that the media pool, which was to include an ABC staff member, would be disbanded, saying: “If one cannot go, none will go” and “We stand for a free press, not



Journalists protest press freedom crackdown in India *Tanmoy Bhaduri*

a banned one". In addition, *The Sydney Morning Herald*, *The Age*, the New Zealand Parliamentary Press Gallery, and the *Daily Post* in Vanuatu said that they would not participate in the Forum.

NEPAL: The Nepal government has drafted new legislation that will impose harsh penalties for posting content on social media deemed "improper". The IFJ and its affiliate the Nepal Press Union (NPU) strongly criticised the proposed legislation and called on the government to hold wide consultations with stakeholders to address key issues.

The proposed bill is related to the management and regulation of information technology, which could see individuals who post content deemed by authorities as a character assassination or an attack on national sovereignty, fined NPR 1.5million (\$A19,030) or sentenced to five years in jail.

The bill includes a provision that states no one should be defrauded, discouraged, discriminated or discredited through social media. The proposed law, which will be tabled by the Ministry of Information and Communications Technology, also states that social media users will need to be registered.

On February 15 2019 the NPU strongly criticised the draft legislation, stating: "By trying to restrict the use of the

social networks, where the highest degree of freedom of expression is being practised, the government is attacking democracy. The intent and character of the government have been evident through its various decisions including this one. NPU calls on all the stakeholders to fight with determination against this effort of the government."

The IFJ added: "The proposed law put forward by the Nepal Government is a blatant attempt to control and muzzle freedom of expression on social media. As noted by NPU, freedom of expression is guaranteed in the Nepal Constitution, and this must be respected and protected by the government, not weakened by legislation."

PAKISTAN: While Pakistani journalists remain under threat from attack the latest challenge they are facing is job security.

In December 2018 alone, 2000 media workers from the Jang Group of Newspapers lost their jobs. In one short announcement, Jang Group shut five newspapers: the Peshawar and Faisalabad editions of *Jang Daily*, the Karachi-based Urdu-language daily *Awam* and English-language *Daily News*, and the Lahore-based Urdu daily *Inqibal*.

Around the same time, Century Publications' Urdu daily *Express* closed its bureaus in Sukkur, Quetta,

Gujranwala and Multan and the Herald Group of Publication closed the *Herald* monthly. The Pakistan Federal Union of Journalists estimated these additional closures cost another 2500 jobs.

A journalist with the *Daily Jang* newspaper was reported abducted from his home in Karachi in the early hours of March 30 2019. The IFJ raised serious concerns about the disappearance of Matloob Husain Mosavi and demanded an investigation. According to reports the journalist was abducted by two dozen people. Masked men climbed walls to gain access, locked the rest of Matloob's family in a room and then abducted Matloob. The men arrived in several vehicles, including three police vehicles. Matloob's family has reported his abduction to police.

On April 1 2019, Karachi cameraperson Ali Mubashir was abducted near his office. According to reports, Ali Mubashir, a cameraperson with Abb Takk, a privately owned news channel was taken from the carpark of his office just two days after Daily Jang journalist Matloob was abducted.

Journalist Sohail Khan was shot and killed just days after filing a story about drug mafia on October 16 2018. Sohail had just left the District Police Office (DPO) in Haripur district of Khyber Pakhtunkhwa when he was shot several times. He died at the scene. He was at the



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DPO filing an application for protection after receiving multiple death threats following his report on drug mafia in Pakistan. According to local news, members of the drug mafia killed Sohail in retaliation for his reporting.

PAPUA NEW GUINEA: Authorities and government officials in Papua New Guinea continue to impede press freedom.

In August, a female journalist was punched in the face as she tried to cover a natural disaster unfolding in Baliau village. Her attacker also threatened to throw her camera into the sea.

In November, during the APEC Summit, non-accredited Chinese media were barred from covering several meetings of Chinese President Xi Jinping and Pacific leaders. Space and security concerns were given as the reasons to bar the media who were then advised to, instead, cite reports about the meetings from China's state-run *Xinhua*.

PHILIPPINES: Almost 10 years ago, 32 journalists were killed in the single deadliest attack on the media. One would think the inevitable shock and outrage that followed the bloodbath would have prodded the Philippine government to finally put an end to the media killings that have long made the country one of the most dangerous places in the world to practise journalism. But there has been no let-up in media killings; since 1986 more than 185 journalists have been killed in the Philippines.

However the situation in the Philippines has become precarious for journalists on more fronts, particularly with the blatant government-led attempt to take down the news website Rappler. Since the Philippines Securities and Exchange Commission rescinded Rapplers' licence for allegedly violating foreign ownership bans stipulated in the constitution in early 2018, the government has filed 11 law suits against Rappler and its CEO Maria Ressa. The lawsuits have including cyber libel for a story that was published in May 2012. The charges were filed under the *Cybercrime Prevention Act (2012)* which was not legislated until after the story was published. The Department of Justice resolution cites the multiple publication rule to validate the charges.

The other big issue for journalists in the Philippines is the incessant trolling and

online harassment many face. Women journalists appear to be easier targets for online attacks. Several have reported being bombarded with threats on social media to rape them or their children, or wipe out their families. News websites and media organisations critical of Duterte's leadership have also been hacked and taken down, including the NUJP, which has faced multiple attacks.

Edmund Sestoso, a broadcaster in Dumaguete City was shot on April 30 2018. He was critically injured by five bullets to his chest and stomach and died the following day. Sestoso was a broadcaster on dyGB 91.7 FM with his daily program, Tug-anan. He was on his way home after work when he was shot. Following the attack, the gunmen also shot the tires of the pedicab which was going to take Sestoso to hospital.

Dennis Denora was brutally murdered in a brazen attack on June 7 2018, in the southern Philippines' region of Mindanao. Denora was the publisher and columnist of the community paper, *Trends and Times*, and an officer of the Davao Region Multi-media Group. He was shot by unidentified persons near the wet market of Panabo City in Davao del Norte. Denora's colleagues acknowledged that he was "fearless" in his commentaries in broadcast and print.

Broadcaster Joey Llama was gunned down on his way to work on July 20 2018 in Legaspi City, Albay, in the central Philippines. Llama, a blocktimer (freelancer) for dwZR radio station, was leaving his home at 4am on Friday morning, on his way to host his program at 5.30am. According to local reports, he was shot 14 times by assailants. Llama's murder, if found to be work related, would be the 12th journalist killed under the Duterte administration.

SRI LANKA: The constitutional crisis in late 2018 was the harbinger of a climate of political danger that awaits in 2019 — an election year. On the evening of October 26 2018 President Maithripala Sirisena used his executive powers to remove Prime Minister Ranil Wickremesinghe from office, appointing in his stead arch rival former president Mahinda Rajapaksa — in violation of the Constitution. Wickremesinghe continued to enjoy the support of the majority of the Parliament. (On December 16 2018, he was restored as prime minister.) Immediately following the appointment

of Rajapaksa, state-controlled media institutions were forcibly taken over. Either the editors were asked to step down or gangs invaded editorial offices. A new set of editors and managers was soon installed. With no delay, they started rolling out engineered stories supporting the political coup, portraying it as a patriotic act of the parties involved. The unfortunate reality was that some of the newly installed editors were press freedom champions of yore.

During the political crisis, the revival of civil society activism was particularly remarkable. Daily protests were held in Colombo, organised by independent civil society groups.

But while state media had been "taken over" in the coup, the role the mainstream private media chose to play was also highly questionable. Some mainstream Sinhala news channels welcomed Rajapaksa as a patriotic leader and glorified the coup. These media groups also launched personalised attacks against civil society activists as they protested against the coup and rejected the extremely biased point of view of these channels. The absence of independent media has emerged, not for the first time, as a key cause for concern around freedom of expression in Sri Lanka.

Broadcaster Swarnavahini TV fired 15 employees for union activity on March 18 2019. About 270 employees had participated in a meeting in the company's car park with the aim to form a union to fight for better working conditions. The meeting was scheduled during staff lunch hour, however at the end of the meeting the gates to the office were shut and they were locked out. They reported the incident to the police, but when they were finally able to access the offices, 15 staff members found letters informing that they had been sacked for "deliberately disrupting the business and operations" and for using the company sound system at an unauthorised gathering. In the past 12 months there had been no salary increases, pay was not on time and there was bias when it came to promotions. This is the first case of a private media company unionising in Sri Lanka.

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SINCE 1986 MORE THAN 185 FILIPINO JOURNALISTS HAVE BEEN KILLED



THE MEDIA SAFETY & SOLIDARITY FUND

A MEAA initiative established in 2005, the Media Safety & Solidarity Fund is supported by donations from Australian journalists and media personnel to assist colleagues in the Asia-Pacific region through times of emergency, hardship and war.

The fund trustees direct the International Federation of Journalists Asia-Pacific office to implement projects to be funded by the MSSF.

In 2017-18 MSSF supported the work of the IFJ AP's human rights and safety program. Under the program, IFJ AP remained a prominent advocate in the region for press freedom and journalists' rights and safety.

In January 2018, the IFJ launched the 10th China Press Freedom Report, reviewing this bleak period for freedom of expression. The IFJ recorded more than 900 media violations between 2008 and 2017, more than 30 percent in the Beijing municipality alone.

Since 2010, a major focus of the MSSF has been to provide financial support to orphans of journalists killed in Nepal and the Philippines. This is alongside the regular work we do with the International Federation of Journalists (IFJ) in campaigns for press freedom and support for journalists facing immediate threats to their safety.

In 2017-18 in Nepal, MSSF supported 23 children with two due to graduate from university at the end of the year.

In the Philippines, MSSF supported 68 students — 25 are the children of journalists killed in the 2009 Ampatuan

Massacre. Five children have graduated from university with a range of qualifications including computer science, financial management, engineering and teaching.

Also in Fiji, MSSF supported Jone Ketebaca, the son of Sitiveni Moce who died in 2015 after he succumbed to injuries sustained when he was attacked by soldiers in 2007.

Funds to support those orphans have come from regular donations from Fairfax journalists and from other journalists in Australia and New Zealand. These donations have been made as an annual payroll deduction of the first instalment of increased pay at the start of each financial year.

Over the last few years, the number of children needing support in Nepal has dropped significantly (as journalist deaths were linked to the civil war that ended over 10 years ago). However, the number of children needing support in the Philippines remains constant as journalist deaths continue under President Duterte.

Unfortunately, the capacity of the MSSF to support these children is much reduced as donations from the journalist community and from other fundraising sources has dropped off as numbers of journalists employed fulltime at news outlets like Fairfax have been reduced due to redundancy programs.

The MSSF management committee has been reviewing ways to make the most from limited donations.

With increasing challenges to press freedom in Australia and in our region,

the committee has identified work in this area as crucial for the future of journalism.

In November 2018, the MSSF developed a new program of press freedom campaign work for 2019. There is much potential for the MSSF to effectively use its funds for smaller scale support to press freedom advocacy in the region, including producing press freedom reports for South Asia and South East Asia.

Additionally, there would be greater flexibility to produce urgent situation reports in the region as needs arise. Recent examples include Kashmir, the Maldives, Cambodia and Malaysia.

In December 2018, the MSSF contributed \$A1000 to Philippines news web site Rappler to support the defence of its editor Maria Ressa who has been persecuted by the Duterte regime.

From January 2019, the fund will no longer support the education of the orphans of journalists in Nepal and the Philippines. The MSSF committee has been contacting partners in the region to seek their assistance with the orphan support.

To mark UNESCO World Press Freedom Day in 2019, MEAA is organising fundraising events on behalf of the MSSF.

The MSSF's trustees are Marcus Strom, the federal MEAA Media section president; the two national MEAA Media section vice-presidents, Karen Percy and Michael Janda; two MEAA Media section federal councillors, Ben Butler and Alana Schetzer; and Brent Edwards representing New Zealand's journalists union E tū.

Supporters of press freedom are encouraged to make a donation to the Media Safety & Solidarity Fund via the web site: www.meaa.org/meaa-media/mssf

FUTURE A MEDIA FREEDOM ACT

BY **PETER GRESTE**. THIS ARTICLE WAS FIRST PUBLISHED IN *THE AUSTRALIAN* ON FEBRUARY 5 2019.⁴⁵¹

One of the central tenets of a successful liberal democracy is press freedom. As voters, we employ our elected officials to run the government on our behalf and, as with all bosses, we have a right to know what they get up to. In any democratic system worth the title, that happens through good, sceptical, independent and at times aggressive journalism.

That kind of reporting is inherently wary of crafted news releases and staged media events. It is the kind of journalism that digs into the inner workings of government, cultivating sources and relationships beyond the press officers who act as gate-keepers and spin-doctors. It is the kind of journalism that uses deep sources to expose mismanagement, hypocrisy and outright corruption.

It is not always pretty or especially edifying, but it has helped to “keep the bastards honest” (to paraphrase the late Don Chipp), oil public debate, and make Australia one of the most stable, prosperous and peaceable nations on the planet. It makes sense to protect and defend it.

Yet surprisingly, Australia has no explicit constitutional or legal protection for media freedom.

Although the High Court of Australia ruled that there is an implied freedom of political communication inherent in our system of representative democracy, press freedom is by no means hard-wired into our laws in the way that the Bill of Rights does it in the United States. The First Amendment to the US Constitution unequivocally says, “Congress shall make no law... abridging the freedom of speech, or of the press...”

In a landmark case from 1997, *Lange v Australian Broadcasting Corporation*, the High Court said, “(u)nlike the First Amendment to the US, which has been interpreted to confer private rights, our Constitution contains no express right of freedom of communication or expression. Within our legal system, communications are free only to the extent that they are left unburdened by laws that comply with the Constitution.”

In 2008, Channel Nine’s political editor Laurie Oakes exposed Cabinet documents that showed four economic departments had warned the Government its FuelWatch program could increase petrol prices.

In 2016, a string of leaks revealed that the NBN was blowing the budget and had fallen way behind schedule — facts that were hugely embarrassing to the Prime Minister Malcolm Turnbull.

And in 2016-17, a series of leaks exposed the way Centrelink’s automated debt recovery system was making crippling demands of some of the poorest people in the country. It prompted Centrelink to warn its staff that any unauthorised communication with the media violated the Crimes Act.

In each of those cases, both the leakers and the reporters risked breaking laws that restricted disclosure of government information and protected national security. Indeed, the security services were called in to track down the sources. Yet in each of them, there was a clear public interest in exposing what was happening, and in the end, after the public rows settled, both the government and the public were arguably better off.

When he retired, Oakes said, “The



importance of what I do is enabling democracy... so people know what politicians are doing, so they know what they are voting for, why they are voting...”

Until the early 2000s, Australia broadly managed to strike a working balance between media freedom and government authority, but two key forces have helped tip the scale away from the public’s right to know, and in favour of the government’s natural tendency to secrecy.

The first is the way the digital revolution has damaged news business models, significantly weakening the ability of news organisations to pay for the kind of investigative journalism that holds governments to account. The second is the political pressure to enact



Peter Greste
Jay Cronan
Fairfax Photos

ever tighter national security legislation in the ongoing War on Terror. Since 2001, Australia has passed 54 separate pieces of anti-terror legislation — arguably more than any other country on earth.

Together, those forces have given governments a license to chip away at the space that journalists have traditionally been able to operate in, and in the process reduced transparency and accountability.

This is not to suggest that national security laws need to be repealed. Far from it. But without the restraint that the First Amendment places on US legislators, Australia’s politicians have had much more scope to pass legislation that harms the public’s capacity to know, and therefore ultimately our democracy.

In just a few examples from the past few years, we have seen Section 35P of the *ASIO Act* which gives the minister the power to keep any security operation secret forever. There is the *Data Retention Act* which makes it almost impossible for journalists to protect government sources; the *Foreign Fighters Act* which potentially criminalises stories covering militant extremists, and most recently, the *Foreign Interference and Espionage Act* that significantly broadens the scope of information defined as “classified”. All in some way intrude on media freedom.

That is why my organisation, the Alliance for Journalists Freedom, is launching a campaign for a media freedom Act. The Act would act as a yard-stick to measure all our laws against, to protect the watchdog role

that journalists play.

It isn’t intended to stop or repeal critical national security legislation; clearly, we need to update our laws to cope with a dangerous world. But the Act would compel our law makers to strike a better balance between those two essential functions, making us all both safer and better informed.

If the most vital role a government can play is defending our democracy, surely enshrining media freedom in law is essential.

Professor Peter Greste is UNESCO chair in journalism and communication at the University of Queensland, and a founding director and spokesperson of the Alliance for Journalists’ Freedom (www.journalistsfreedom.com).

THE WAY FORWARD

BY MIKE DOBBIE



Press freedom is not in the best of health in Australia. Attacked by government legislation and an aggressive judiciary, weakened by harassment and abuse, undermined by media organisations that fail to adapt, and threatened by assaults both verbal and physical emanating both here and abroad.

It's becoming increasingly difficult to fight for the public's right to know when so many of those who are meant to be responsible guardians of public right are doing their best to not only suppress, shroud and obstruct access to information, but to pursue and punish those who tell the truth.

MEAA has been cataloguing the assaults on press freedom since 2001. In that time there has been a flood of new laws, supposedly in response to the war on terrorism and the need for increased national security, but which also included granting government

and its agencies extraordinary powers to muzzle the media, restrict the flow of information and punish those who revealed secrets — particularly secrets that embarrassed the government of the day rather than threatened the safety of the nation.

Too often, these laws, because they are drafted under the mantle of “national security”, are rushed through the parliament and passed with bipartisan support. Increasingly, they are poorly drafted, without foresight for the implications of what they are creating, and subject to little or ineffective review.

While laws have been produced recently to protect both public and private whistleblowers, they impose criteria that provides no great comfort or genuine protection for a whistleblower seeking to expose wrongdoing. And, in the midst of passing these laws, court cases are underway to punish

whistleblowers for historic revelations — seemingly more out of a petulant sense of trying to wipe away any lingering government embarrassment caused by the public discovering the truth. The Witness K trial over events dating back to 2004 is the perfect example.

Then there are the laws such as those that seek to decrypt communications, secretly access journalists' telecommunications data to discover their confidential sources, and intimidate social media over sharing abhorrent violent material that will also undermine the ability of whistleblowers to use social media platforms to expose atrocities and other human rights abuses.

The courts, too, have to take responsibility for undermining the public's right to know. The Vincent report has revealed that judges are issuing suppression orders too often

Australia's federal election may bring a better approach by government to press freedom issues



and the orders are being misused, poorly drafted and poorly communicated. The principle of open justice is literally being suppressed. But the Vincent review has shown the way out of the mess and should encourage the media and the judiciary to sit down to create a national approach where the genuine need for a suppression order is met rather than misused.

It is encouraging that a review of the national uniform defamation regime has been undertaken after the regime was found to be so wanting after just 13 years of operation. But it is concerning that a suggestion for change has been to grant corporations the ability to sue — which would simply generate a raft of lawsuits launched by powerful plaintiffs against defendants trying to uphold the public's right to know.

Fixing the problem requires government to reverse the trend of recent years and make a commitment to press freedom,

ensuring that the principles of press freedom are regularly enshrined and protected in legislation. Courts and the media must come together to find a joint solution to the suppression order issue that promotes open justice as well as ensuring the public's right to know about how justice is practised and dispensed.

Whistleblowers must not be offered protection and relief in one hand while being spied on using metadata retention powers and secret Journalist Information Warrants to hunt them down and punish them. Governments have acknowledged the cruel way whistleblowers have been treated in the past while exposing wrongdoing — but that should not be a reason for the government to join in by criminalising journalism and prosecuting whistleblowers for telling the truth.

Much more needs to be done for journalist safety. The brutal murder of exiled Saudi journalist Jamal Khashoggi, the impunity over journalist killings (including our nine Australian colleagues murdered since 1975), the pursuit of Filipino editor Maria Ressa by a vindictive Duterte regime, and the relentless campaign of President Trump and other world leaders to incite crowds by labelling news stories they don't like as "fake news" — all this must end.

This year will hopefully see some semblance of justice for the families of the victims of the 2009 Ampatuan Massacre. The massacre — the single greatest atrocity against journalists where 32 journalists and media workers were gunned down as part of a political "hit" — is the perfect example of how a long history of impunity for the perpetrators of journalist killings is allowed to fester into a monstrous act of massive proportions. It has taken almost a decade to reach some kind of resolution but still many of the those responsible for the crime, including police, the military and members of the alleged mastermind's clan, are still at large. Just how many journalists need to be killed before governments act on impunity?

The role of the fourth estate has to be accepted by governments. The scrutiny that comes with taking power and public funds and governing in the name of the people, must be an accepted fact. Too often politicians, Australian politicians included, are attacking the media. The message they are sending the wider community is being taken up.

Journalists are now subjected to waves of cruel abuse and harassment, coupled with violent threats. Governments

should enforce the law and prosecute those responsible.

Media employers have a responsibility too. They must work to safeguard their employees from harm and to ensure they have a safe workplace and that, because of the journalism they produce, that they are protected away from work too. Employers must also be mindful of the mental health of their employee and take action to alleviate the stress and anxiety that can accompany the work of a journalist.

Our industry must also do more to reflect the audiences we serve. Gender diversity as well as cultural and religious diversity must be reflected in our news and our newsrooms. It must be reflected in the sources we quote and the opinions we promote.

The growth and power of digital platforms that has evolved in just a few years amid the digital disruption that hurt traditional media must be acknowledged. Platforms that are made wealthy due to the content and traffic provided at no charge by media outlets must give rise to some form of compensation and co-operation — one can't be allowed to destroy the other at the cost of the public's right to know.

MEAA is still calling for a uniform national shield law regime so that journalists privilege is accepted and recognised and so that journalists will not face contempt of court convictions, and all that represents for their career as well as their private life, for observing and maintaining their ethical obligation to protect the identity of their confidential sources. After South Australia adopted a shield law in 2018, only Queensland remains as the last jurisdiction to hold out — thus creating the threat that borderless publishing will promote jurisdiction shopping where actions will be brought in the Sunshine State against journalists from elsewhere in Australia — simply to identify their sources. Even when Queensland does finally join the other states and territories, as well as the Commonwealth, the tortuous process in creating shield laws these past few years means that the laws are not identical, contain gaps and failings, and still expose journalists to potential convictions. A shield with holes is not much protection at all.

There is much to do to unravel the many attacks on press freedom of recent years. We know what the issues are. Now it's time to fix them.

Mike Dobbie is MEAA Media's communications manager.

THE PUBLIC'S RIGHT TO KNOW

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