

Sources and conflicts

*Review of the adequacy of
ABC Editorial Policies
relating to
source protection
and to the
reporting by journalists of events
in which they are participants*

October 2007

Introduction

In June 2005 Australia's federal Treasurer dined with three journalists, one from the ABC. In August 2007 the media reports of the dinner resulted in the ABC Managing Director initiating this review.

I was asked to examine the adequacy of the ABC's standards for source protection and for handling situations in which a journalist becomes a participant in newsworthy events rather than purely an observer.

At the outset, it is useful to list the core questions in each context.

Sources issue

- Is a promise to keep confidential the identity of a source absolute?
- Or are there circumstances in which truth-telling overrides promise-keeping?
- How can this clash of basic values be minimised in practice?
- When a clash is unavoidable, how ought journalists make and explain their decisions?

These are some of the most difficult questions in media ethics. They have created recurring tensions between journalism and the law for many decades in many countries.¹ The relevant literature is vast.²

A recent excerpt from that literature usefully condenses many of the issues relevant to this review. The former editor-in-chief of Time Inc., also a former managing editor of *The Wall Street Journal*, Norman Pearlstine, a lawyer as well as a journalist, was spurred to make a book-length study of the source-protection issue by his involvement in events that led to the criminal conviction of Scooter Libby, chief of staff to the US Vice President, Dick Cheney. This is part of Pearlstine's conclusion –

The agreement with a confidential source is a contract between the reporter, the reporter's employer, and the source. The reporter should protect the source, but the source owns the confidentiality. The source can demand confidential-source status, but the reporter should rarely offer confidentiality to a source. It is, after all, in the reporter's interest to have the source on the record. Reporters must explain that they cannot promise more than the law allows, and they shouldn't make promises that are against the public interest. Journalists aren't above the law, and we have to stop acting as though we are.

That said, there will inevitably be exceptions when reporters and their publications decide they must resist demands after exhausting every avenue of litigation. The consequences of such resistance are so great that journalists must do far more to resist using confidential sources.

Deciding what merits the grant of confidentiality is, again, a balancing act. The source who seeks confidentiality should typically be risking livelihood, life, or reputation, and there should be no other way for the reporter to get the information than from the source. The information the source wishes to impart should be vital to the public interest. *The Washington Post's* stories about CIA detention centers is one example where I think it would be appropriate to defy contempt findings to protect sources and their testimony. Confidential-source status should never be granted to government officials who are trying to spin a story, especially if they are breaking the law when they do so.

Individuals can engage in civil disobedience, but if the press defies the courts whenever we litigate and lose, then journalists are in fact asserting an absolute

¹ For two examples, oceans and eras apart, see 'No Information Obtained', *New York Times*, 30 January 1885, page 5, and *R. v McManus and Harvey* [2007] VCC 619, County Court of Victoria. Selected references comprise Appendix 1 to this report.

² For two recent studies usefully illuminating most aspects of this issue, see: Norman Pearlstine, *Off the Record: the press, the government and the war over anonymous sources* (Farrar, Straus and Giroux, NY 2007); and Lori Robertson, 'Kind of confidential' *American Journalism Review* (June-July 2007) drawing on a wide range of views from US media organisations. Another analysis, briefer and more pungently expressed, is by a former long-serving editor of the *Guardian* (UK), Peter Preston, 'How not to defend your source', *British Journalism Review* (2005) 16:3 pages 47-52. Among academic analyses, Lili Levi's 'Dangerous Liaisons: seduction and betrayal in confidential press-source relations' *Rutgers Law Review* (1991) 43, pp 609-732, has aged well. In Australia, Mark Pearson addresses the issue usefully in Part 4 of *The Journalist's Guide to Media Law: dealing with legal and ethical issues* (Allen & Unwin 2004).

privilege for their sources and themselves. It is more complicated for publicly held corporations. But there will no doubt be that rare case where they will conclude that defiance of a court order is their only option.

There is an inevitable tension between the journalism and the law.³

Put more broadly, there is an inevitable tension between promise-keeping and truth-telling.

Pearlstine is dealing with the common confidential-source case, the one in which the journalists want to uphold their promise to maintain the confidentiality of a source even where the law may have ruled that the identity of the source and his or her testimony are necessary in the interests of justice. Pearlstine makes clear how serious is a decision by journalists, after due process, to substitute their judgement for the courts' judgement and defy a lawful order. And he acknowledges that in rare cases that will be their only option.

In another rare category of confidential-source cases we find journalists arguing that their obligation to the truth justifies them in breaching an agreement and disclosing the identity of a source in connection with particular information. Comparatively few media entities' codes expressly mention this discomfiting category. The Ethics Guidelines of the *Los Angeles Times* come closer than most –

Promises to a source must be kept except under the most extraordinary circumstances. If a source, acting in bad faith, were to succeed in using the newspaper to spread misinformation, we would consider our promise of anonymity no longer binding. That said, we do not 'burn' sources.⁴

The need for clear, consistent guidance and due care in making binding promises of confidentiality, in deciding whether or not to break them, and in explaining those decisions, is beyond argument. The question is what the guidance should say, and how staff of media organisations ought to go about making decisions by reference to that guidance.

Conflict issue

- How might journalists and their supervisors assess when the journalist is so much a participant in newsworthy events that independence, actual or perceived, requires that the journalist stand aside from reporting the events?

Media organisations' codes do not usually address the specific category of conflict raised by the circumstances that prompted this review, the Costello dinner and its aftermath.

Most codes deal with potential conflicts involving journalists' personal outside interests, especially financial interests and the involvements that a journalist or his or

³ *Off the Record*, op cit at pages 252-53.

⁴ Content section, sub-heading 'Sources' (July 2005 edition).

her family members might have in entities such as political parties, clubs, associations or religious communities about which the journalist may be called on to report. The journalist may stand aside in such circumstances, although disclosure to the audience of the journalist's interest is commonly regarded as sufficient.

In the journalist-as-participant-in-events category, disclosure is of limited use. The journalist's involvement in such situations may be well known, and it may heighten the perception that independence is in question. Typical phrases from the language encapsulate the issue. We sometimes say a person is 'too close', 'can't stand back from it', 'hasn't got the distance', or has 'lost perspective'. In particular circumstances, responses may be all too human, characterised by the urgency, competitiveness and group loyalty so typical of journalism. But precisely because of those understandable instincts, self-regulatory standards need to give adequate guidance to journalists - and especially to their supervisors - about how to deal with these sorts of circumstances if independence, actual and perceived, is to be preserved.

The issues in this review can bring into play all four of the key values underpinning the ABC's Editorial Policies - honesty, fairness, independence and respect.⁵

I have concluded that the 2007 Editorial Policies are inadequate on both the sources issue and the conflict issue.

This report begins by illustrating the importance of adequate guidance in relation to source protection. For brevity's sake, the vital interests at stake are compressed and all linked to the central notion of trust.

The report then explains the scope of what I was asked to examine, which was limited.

The next section summarises the events that prompted the review. Crucial facts are in dispute among the participants. It was not necessary - nor was there power - to investigate or make findings about those matters of disputed fact.

The report then outlines existing ABC policies and their inadequacies and recommends improvements.

Reasonable people can disagree on ethical issues, and some have been willing to go to prison or otherwise be punished under law for their beliefs about source protection.

The legitimacy of any journalistic entity's standards on source protection depends in part on the rigor, good faith and willingness to explain themselves of those who apply the standards case by case. Transparency is vital to accountability, on which credibility and trust also depend in part. Media often make this point when attempting to make governments or other powerful institutions more transparent. The journalist-source relationship is necessarily opaque. This puts a greater onus on the media to have adequate standards, apply them rigorously and explain openly their decisions in as much detail as circumstances permit.

⁵ Editorial Policies section 2.1.

Journalist-source relationships are also matters of personal trust and confidence. Any media organisation must try to build and administer its standards in consultation with its journalists. The media organisation looks to the journalists to cultivate the relationships that reap reliable information for disclosure. The journalists look to the media organisation to disseminate the information and to help protect confidential sources, particularly from legal action aimed at identifying them.

Accordingly, I recommend that the proposals for amendments to the Editorial Policies made in this report be subject to thorough consultation within the ABC, especially with News and with Legal, and be made public, before the Managing Director formally seeks the Board's endorsement of amendments.

This recommendation has two other practical aims. Exposing the proposals to as much informed scrutiny and comment as possible, both in relation to the underlying policy and the drafting, should lead to a better result. Second, consultation tends to heighten awareness and deepen reflection about difficult ethical issues. On the sources issue, this should also open up for audiences more details about practices that affect the information they receive from media. And it stimulates discussion among the professionals – journalists, lawyers and perhaps even regular sources. It is usually discussion best undertaken at some distance from the specifics of a case, the crush of deadlines and the heat of a flaring controversy. Ethical decision-making takes practice, and one form of practice is the debates that occur when drafting standards.⁶

Scope of this review

On 23 August 2007 the Managing Director asked me to review whether the Editorial Policies provide adequate guidance to ABC staff in the following areas –

1. Off-the-record and background conversations, and balancing the commitment to confidentiality against the public interest in disclosure of information.
2. Appropriate practice when an ABC staff member becomes a participant in a story, rather than purely an observer.

The review did not encompass investigations of specific complaints relating to the events that gave rise to the review. Nor was I asked to investigate and make findings about disputed facts and recollections among the participants.

⁶ This is what the Brennan Committee, on which I served, had in mind when it proposed that the leading Australian journalism code of ethics contain reference to the need for journalists continuously to educate themselves about ethics: *Report of the Ethics Review Committee, Media Entertainment and Arts Alliance (Australian Journalists' Association Section)* 1995, published in paperback as *Ethics in Journalism* (Melbourne University Press, 1997) page 73. For the Committee's discussion of source protection and recommended clause see pages 55-73.

Summary of events prompting this review

On 2 June 2005, the Federal Treasurer Peter Costello dined at a Canberra restaurant with one of his advisers, David Alexander, and three journalists experienced in reporting politics.

One of the journalists was the ABC staff member Michael Brissenden, political editor of the television current affairs program *The 7.30 Report*. The other journalists were Paul Daley of *The Bulletin* magazine and Tony Wright, then of *The Bulletin* but with *The Age* newspaper at the time of the events that prompted this review.

Typically, there are three bases on which a politician and a journalist converse -

- **On the record**, meaning both parties agree that the information imparted to the journalist may be disclosed and attributed to the source by name.
- **On background**, meaning both parties agree that the information imparted to the journalist may be disclosed but not attributed to the source.⁷
- **Off the record**, meaning both parties agree that the information imparted is not to be disclosed, with or without attribution.

These terms have no standard definitions.⁸ They mean different things to different people, including seasoned sources and experienced journalists.

The basis of the Treasurer's conversation that night at dinner with the journalists is disputed, as are the participants' recollections of the contents of the conversation.

Mr Costello has stated publicly that the conversation was off the record. His adviser, Mr Alexander, has supported him. Mr Brissenden understood the conversation was on background. From their published writings, it appears that Mr Daley and Mr Wright had the same understanding as Mr Brissenden.

The day after the dinner, after discussion with Mr Alexander, the journalists did not disclose any of the information, attributed or unattributed.

⁷ There are degrees of description of the source, designed to protect identity but give the audience some sense of the source's position in relation to the information. Examples include 'government source', 'source close to the negotiations', 'party room source', 'one shadow minister', 'senior official'. A practice that several media ethics codes note and disapprove is a tendency among journalists to write of 'sources' plural when there is actually only one source, or to cite an unnamed source and in the same report quote the source, by name, as having declined to comment (presumably to throw any witch-hunters off the scent). The term 'on background' has variations. In the US, 'deep background' tends to mean that the journalist may not use any attribution, and must simply assert on the journalist's own authority the information provided by the source. Thus, 'The ACME Network understands...' or 'I believe...'. Sometimes, information will be stated with no preliminary at all, as in 'The Minister told the PM at their meeting that...'

⁸ I have used the meanings given to these terms in the report of the Brennan Committee (*Ethics in Journalism* op cit at 64). References in the Appendix provide further details of the variety of terminology in use.

The available material does not allow me to make a finding about whether all the parties to that arrangement had the same understanding of the duration of the new agreement not to disclose the information. To one or more of them, it may have meant ‘not now’ or ‘not too soon’ or ‘not until after some fixed time in the future’ or ‘not ever’.

For the purposes of this review, it is sufficient that it is common ground that the information was held by the journalists on no lesser terms than on background.

More than a year after the dinner, Mr Daley used information in this way, that is, on background. In two pieces for *The Bulletin*, Mr Daley attributed information indirectly to Mr Costello but made no mention of the dinner.⁹

On 14 August 2007, when Mr Costello was asked in public about Mr Daley’s 2 August 2007 report, he replied in a way that resulted in the three senior decision-makers at *The 7.30 Report* deciding that Mr Brissenden would disclose on the program that evening information sourced from the dinner conversation and attributed directly to Mr Costello.

That is, *The 7.30 Report* broke an agreement. The program understood the information had been obtained on background but disclosed and directly attributed it to the source.

I asked the three senior decision-makers, Mr Brissenden, Kerry O’Brien, the program’s presenter, and Ben Hawke, the executive producer, whether they had referred to the ABC Editorial Policies in making their decisions about the source issue. They said they had relied on their experience.

They were entitled under the current ABC policy of upward referral (section 4.1) to decide the matter themselves and to take responsibility for that decision (section 4.1.2). It was not mandatory under the current upward referral policy for them to consult for decision more senior News Division management, or for News to refer it to the Managing Director as editor-in-chief.

Section 4.1.4 states that if content is controversial or likely to have an extraordinary impact, the most appropriate senior manager should be notified in advance, even where specific editorial guidance is not being sought. More senior staff may be notified if appropriate. Soon before *The 7.30 Report* went to air on 14 August, the program team notified senior management of the News Division by phone of the decision. This was notification only. *The 7.30 Report* team were not referring the matter upwards for guidance or for decision, and were not understood at the time by News Division senior management to be doing so.

In discussion with me, the three senior decision-makers at *The 7.30 Report* made it clear that they accept responsibility for the decisions they together took.

⁹ See ‘Costello’s delayed reaction’, *The Bulletin*, 15 August 2007, referring to an earlier article by Paul Daley in *The Bulletin* 18 July 2006. See also pieces by Mr Daley dated 6 February 2007 and 2 August 2007.

Whether the information reported by Mr Daley, Mr Brissenden and Mr Wright was accurate is not an issue for this review to determine. Nor is the reliability of any notes that the journalists made. I am not asked to find in this review whether the decisions of *The 7.30 Report* team were right or wrong, but rather whether the guidance in the ABC's Editorial Policies is adequate for the purposes of making such decisions.

I enquired about the process by which *The 7.30 Report* team came to their decisions and the usefulness of the Editorial Policies in that process. Had *The 7.30 Report* team consulted the Editorial Policies they would have found little to assist them in dealing with source protection or with the relatively unusual category of conflict of interest that arose in this case. The specific inadequacies of the relevant sections of the Editorial Policies are discussed later in this report.

The contents of Mr Brissenden's 14 August report, and subsequent reports by Mr Daley and Mr Wright, were prominent in the news, in part because the information attributed to Mr Costello was of political significance, and in part because it was a case of journalists attributing information directly to a source by name when the source had conversed with them, as they understood it, on background.

Note that Mr Costello said publicly that he regarded the conversation as having been off the record, and that his adviser Mr Alexander has supported him. Notwithstanding that this dispute remains unresolved, it puts the status of the conversation at no less than 'on background'.

The case was also rare in the sense that most cases in which the journalist-source relationship is prominently and controversially in issue involve journalists attempting to protect the identity of a source, usually from being disclosed in court proceedings, official inquiries or during investigations by investigative agencies.

Of significance to this review is the very fact of disputed understandings and recollections, with serious consequences, among five experienced professional participants in a transaction about information and its uses. This type of transaction is routinely made among politicians and journalists.

Uncertainty and confusion and dispute are not uncommon in cases in the literature about journalist-source relationships when, for whatever reason, important consequences flow from the disclosure. Yet it is at precisely these moments that the precise terms of agreements matter most. The cases generally, not just the recent Costello dinner case in Australia, show the need for written guidance and mandatory consultation in media organisations about terminology and about negotiating clear agreements. Given the difficulties that experienced players can encounter, it would seem that the less experienced – journalists and sources – would plainly benefit.

Following the initial broadcast on 14 August, Mr Costello noted in public comments that the program had got the date of the 2005 dinner wrong by three months, referred to the discussion as having been in his view off the record, and raised the issue of journalists' ethics.

Mr Costello declined to appear on the *The 7.30 Report* on 15 August. In that evening's program, the error about the date of the dinner was twice acknowledged but the correct date was not broadcast.

Mr Brissenden again reported on the events of the day and of the dinner and its aftermath, events in which he was a participant.

Mr Brissenden, Mr O'Brien and Mr Hawke told me that they had considered whether Mr Brissenden should continue to report the story on the second evening, 15 August. They had decided that Mr Brissenden was the best-equipped person to report the story. They had not made express reference to the ABC Editorial Policies in coming to the decision. If they had, they would not have found much to guide them in relation to this kind of conflict issue.

On both counts – dealing with sources and assessing the particular type of conflict involved - this case demonstrates that the policies are inadequate.

It also points to a need for the ABC to give greater emphasis to improving its capacity for structured ethical decision-making according to clear standards expressed in language that assists staff to make decisions against the inevitable deadline pressure of media work, and to be able to explain those decisions afterwards by reference to the standards prescribed and the structure provided.

Source protection issue

Why adequate standards matter

Trust is in play in complex ways in the source protection context.

The trust risks – or, put another way, the investments of trust - listed below illustrate briefly what is at stake in: journalists’ day-to-day interactions with sources; decision-making by journalists about disclosure or continued protection of sources; and the approach of the courts and other bodies with enforceable power to order disclosure.

The selected references appended to this report underpin it, but also provide a resource for those who wish to explore further the many permutations of trust risks/investments sketched here, or who will be part of the process by which the ABC improves its standards.

The issues have been compressed in this way because the theme of trust allows us to see that the source protection issue is far more complicated than many journalists, commentators and lawyers typically allow.

The list below is necessarily limited. This is a review of a media organisation’s self-regulatory structures, not an inquiry into the appropriate balance to be struck in judge-made law¹⁰ or in statute¹¹.

1. How much can sources, who may risk various forms of damage¹², trust journalists to protect their identities after the information they provide has been made public and caused its consequences?
2. To what extent can journalists trust sources not to abuse anonymity and use the journalists’ promise of protection as a shield to spread misinformation for which the source evades responsibility?
3. When a person wronged by reports that cite anonymous sources seeks the identity of the source through legal process, or a court wants answers relevant in a trial, how can that potential plaintiff or the accused on trial or those observing the system at work in such cases have confidence in a system that cannot compel the production of all information necessary in the interests of justice, including sometimes the identity of a journalist’s source?

¹⁰ *John Fairfax & Sons Ltd v. Cojuangco* [1988] 165 CLR 346 and the cases in Appendix 1.

¹¹ Legislators in Australia and the United States have recently been active in this field: *Evidence Amendment (Journalists’ Privilege) Act 2007 (Cth)* inserting Division 1A – Professional confidential relationship privilege, with express reference to journalist-source relationships in the Explanatory Memorandum; *Free Flow of Information Act (Bill no. HR2102)* passed the US House of Reps on 16 October 2007 and was first read in the Senate on 17 October 2007. The protections in both pieces of legislation are qualified, not absolute.

¹² Dismissal or demotion, risk of prosecution, legal costs, ostracism, ill-effects on health, and in some cases personal danger - these are the types of damage that may result from a person being identified as the source of a leak to the media, even if the person was not the actual source but is falsely accused.

4. When journalists disclose information of consequence using anonymous sources it is often to ensure the proper workings of the rule of law by, for instance, exposing official corruption in institutions that require public trust in order to provoke reform. On what grounds can journalists then deny access to the same sources of information (assuming it cannot be otherwise obtained) to those with the responsibility of investigating and rectifying what has been exposed? Can the public trust journalists to convey to their sources that disclosure of information of importance in the public interest is usually not the end of a matter, and that the effects of the source's actions and the journalists' actions can when necessary serve the public interest beyond simple disclosure?
5. When a journalist asks a court to allow the journalist to shield a source partly so that other sources will not be deterred from giving information to journalists in future, can the journalist trust the court to weigh this abstract public interest against the concrete information needs of a specific party that wants the identity of the source?¹³
6. What ought media organisations reasonably do before journalists trust their supervisors and management to support them when they commit to protect a source and then face legal processes in which they may be required to choose between breaking the promise or disobeying a lawful order to disclose and risking punishment for contempt?
7. What ought journalists reasonably do before media organisations trust that a journalist who wants a media organisation to carry the risks – legal and otherwise – of disseminating information obtained from an anonymous source actually has a source¹⁴ and–
 - the source and the journalist have the same understanding of the terms they are using to make their agreement;
 - the source's motives for seeking anonymity have been tested;
 - alternative attributable sources have been pursued;
 - the information from the source, if there is only one source available, has been independently verified to the extent practicable;
 - the agreement is clear about the extent of protection the source is being promised by the journalist and by the media organisation.

¹³ This aspect of trust, along with some courts' wariness to trust that sources actually exist and are anonymous rather than merely fictitious, can be detected in some of the case law and in the debate about shield laws more generally.

¹⁴ Famously, the *Washington Post* (Janet Cooke case, 1981) and *New York Times* (Jayson Blair case, 2003) undertook thorough review and reform of their source protection procedures after learning that a staff journalist had fictitious, not anonymous, sources, but inadequate accountability by editors had allowed publication of the journalist's articles. In Cooke's case, a Pulitzer Prize had to be returned. Such cases, of varying seriousness, recur from time to time: eg 'News Leader reporter fired over fabrications, plagiarism', *The News Leader*, Staunton, Virginia, US, October 2007.

8. Can the source trust that his or her identity will not be exposed through carelessness by the journalist or media organisation, notwithstanding their intention to protect?¹⁵

9. Having regard to relevant duties and to potential costs¹⁶, can those responsible for the governance of a media organisation trust the journalists, supervisors and executive management to take appropriate steps to ensure, before the disclosure of information obtained with a binding promise, that:
 - the information is of sufficient importance in the public interest to warrant the protection promised and the risks incurred;
 - appropriately senior personnel will follow sufficiently rigorous processes¹⁷ in deciding, if the issue arises, whether to –
 - break the promise so as to obey, after due process, a lawful order to disclose; or
 - disobey a lawful order to disclose and incur punishment so as to keep the promise; or
 - break the promise and disclose so as to serve a value, such as truth-telling, which is believed in good faith to override the value of promise-keeping in the circumstances;
 - appropriately senior personnel will ensure that reasonable steps are taken to minimise the adverse effects of any of these three decisions and to explain them.

¹⁵ Carelessness, or a failure to appreciate the sophistication of various investigative techniques available to government and private investigators, have in some cases resulted in journalists unintentionally failing to deliver to sources the protection they promised and intended to maintain. The ways in which exposure of a source's identity can occur include: the tracing of photocopies back to the photocopier on which they were made; data-matching phone records between the journalists' numbers and the suspected sources' numbers; aligning the times of relevant calls with the CCTV footage from cameras trained on the desk phone from which the relevant call is known to have been made; and references in media organisations' emails or drafts of notes or stories which linger in computer systems.

¹⁶ For example in legal proceedings, resources, reputation, stakeholder confidence (including staff), and credibility among audiences.

¹⁷ Such processes include, but are not limited to: seeking appropriate advice and negotiating with a source for a waiver or any other variation of the agreement that may be appropriate in the circumstances. The recommendations in this report deal further with decision-making processes. For useful, practical advice on specific approaches, see especially the policies of the *New York Times*, *Washington Post*, *Los Angeles Times* and the hybrid policy recommended by Norman Pearlstine in *Off the Record: the press, the government and the war over anonymous sources* (Farrar, Straus and Giroux, NY 2007) page 257. For advice directed separately to reporters and to their editorial supervisors, see 'A Guide to Evaluation Sources' by Joann Byrd, former *Washington Post* Ombudsman and Pulitzer Prize judge, *Poynter Online*, 1 March 2000. For some insights into the methods of specific practitioners, see Lori Robertson, 'Kind of confidential' *American Journalism Review* (June-July 2007). For an example of a formal model, see David E. Boeyink 'Anonymous Sources in News Stories: Justifying Exemptions and Limiting Abuses' *Journal of Mass Media Ethics* (1990) 5:4 pages 233-245.

10. Can the audience, which has an interest in both the flow of information and in the proper administration of justice, trust the media alone, the media supervised by the unfettered discretion of the courts, or the media supervised by courts with discretionary powers structured by Parliament in statutes usually referred to as ‘shield laws’?

ABC Editorial Policies

Section 5.2.2 (i) of the 2007 Editorial Policies states –

The ABC supports employees’ ethical obligations in protecting confidential sources, subject to requirements under the law.

The content of the ‘ethical obligations’ is not elaborated anywhere in the Editorial Policies.

Following the circulation of a draft of this report for comment, the News Division advised that several entries in its Style Guide were relevant. Although not a single substantive statement of ethical obligations relating to confidential sources, some of the entries (reproduced at Appendix 2 to this report) contain guidance similar to that found in the standards in other media organisations’ codes and in this report. The Style Guide entries will be useful references in finalising amendments to the Editorial Policies on dealing with sources. In this as in all other policy matters, care should be taken by the ABC to ensure consistency in the guidance to staff in the all-of-ABC Editorial Policies and the guidance in any Divisional documents such as the News’ Style Guide. The Editorial Policies should prevail to the extent of any inconsistency.

I have concluded that the content of the ‘ethical obligations’ referred to in section 5.2.2 (i) is to be found in the Code of Ethics of the Media Entertainment and Arts Alliance (Australian Journalists’ Association section).

Dating from 1944 (revised 1984 and 1995), the MEAA-AJA code is the leading statement of journalism ethics in Australia. Although enforceable only in relation to MEAA-AJA members, the Code of Ethics is generally treated in the relevant literature and case law as the prime reference.

The ABC Code of Practice 2007¹⁸, which is derived from the Editorial Policies, relevantly states at section 2.18 –

Confidential Sources. ABC staff will not be obliged to disclose confidential sources which they are entitled to protect at all times.

¹⁸ *ABC Act* section 8 (1) (e) and *Broadcasting Services Act* Part II, Division 2.

The Code of Practice uses absolute terms. Section 5.2.2 (i) of the Editorial Policies qualifies the protection, making it subject to the requirements of the law. I recommend that the Code of Practice be made consistent with the Editorial Policies, whatever amendments to the Editorial Policies result from this review.

Section 5.2.2 (j) of the Editorial Policies states –

Take responsibility for editorial decisions and refer upwards as required.

Section 4.1 of the Editorial Policies is headed ‘Editorial responsibility and “upward referral” and begins –

- 4.1.1 The ABC’s output through its radio, television and online networks and other outlets is vast. It is the responsibility of staff to ensure that the provisions of the ABC Act, the ABC Code of Practice, laws relating to broadcasting and the philosophies and policies of the Corporation are observed.
- 4.1.2 Subject to normal editorial management and controls, staff are responsible for making the content and for exercising editorial judgement. If a problem arises, or there is any doubt, staff must consult the next higher level of editorial management for guidance. This process, known as ‘upward referral’, can extend, through the relevant director, to as far as the Managing Director as Editor-in-Chief. If staff do not refer the issue upward, he or she will be responsible for the editorial decision made.
- 4.1.3 Any matter with legal implications must be referred to ABC Legal Services for advice.
- 4.1.4 If content is controversial or likely to have an extraordinary impact, the most appropriate senior manager should be notified in advance, even where specific editorial guidance is not being sought. More senior staff may be notified if appropriate.

Section 4.2 of the Editorial Policies is headed ‘Legal responsibility’. Broadly summarised, the section describes some of the complex legal issues that can arise for the media and encourages staff to gain a working knowledge of how the law does or might apply to their work. Staff are to refer to ABC Legal Services for advice all content matters with legal implications. Editorial staff have the final decision whether to broadcast, but if they propose to act contrary to legal advice, the staff and Legal Services must upwardly refer the matter to relevant Executive Directors. The implications – ethical and legal - of the ABC making a binding promise to keep a source confidential, or of breaking such a promise, are such that, in my view, no such promise should be made or broken without the relevant staff first referring upward the decision to a level of executive responsibility commensurate with the seriousness of the decision.

I recommend that such decisions be made the subject of mandatory upward referral and that the Editorial Policies be amended accordingly.

Relevant ethical obligations

The content of the ‘ethical obligations’ referred to in section 5.2.2 (i) of the ABC’s Editorial Policies is found in the Code of Ethics of the MEAA (AJA Section). Relevantly, that Code states –

MEAA members engaged in journalism commit themselves to

- **Honesty**
- **Fairness**
- **Independence**
- **Respect for the rights of others**

1. Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis. Do your utmost to give a fair opportunity for reply.

...

3. Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source’s motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.

...

Guidance Clause

Basic values often need interpretation and sometimes come into conflict. Ethical journalism requires conscientious decision-making in context. Only substantial advancement of the public interest or risk of substantial harm to people allows any standard to be overridden.

As the Guidance Clause notes, there are times when a standard can be overridden.

The value, promise-keeping, is expressed in the third sentence of Clause 3 of the Code of Ethics – ‘where confidences are accepted, respect them in all circumstances’. When confidences are protected, the truth-telling value expressed in Clause 1 is, in effect, taking second place to promise-keeping. The identity of the source of information is being suppressed. A relevant and available fact, the source’s identity, which in some cases may be essential to assessing the truth of a matter, is suppressed in favor of upholding a promise to a source.

This is what is happening when journalists omit from their reports the names and affiliations of the sources of some of the information. This is what is happening in cases in which journalists decline to give the legal system the identity of a source. In effect, the journalists have judged that the value of promise-keeping trumps the truth-telling that, in its own way, the legal process is pursuing. The legal process wants to obtain and examine the source and his or her information directly because a court has ruled that this is necessary in the interests of justice. Appendix 1 contains cases that illustrate this ethical choice in action.

Less common in the literature, but also ethical decisions in which the truth-telling value overrides the promise-keeping value, are the cases in which journalists have decided themselves, without compulsion or any external pressure, to reveal their sources. It would appear that where confidences are accepted, in practice they may not be respected in all circumstances.

Despite a commitment not to attribute information to its source, journalists have broken the commitment to serve what in the circumstances they regard as a higher ethical duty. The decision of *The 7.30 Report* in the Costello matter appears to be one such case.

Examples from the literature illustrate how the promise of confidentiality made by a journalist to a source may not be absolute, why the decision-making implicit in the Guidance Clause in the Code of Ethics may be necessary in particular circumstances, and why media professionals need to practise how to make such decisions well, then explain them. By citing these examples, I should not be understood to be endorsing the decisions in each.

Example 1 – A journalist had given a promise of confidentiality to a man who told the journalist how three years prior to their meetings he, the source, had shot dead at close range another man during the era of violence in Northern Ireland. The journalist, Nick Martin-Clark, later wrote: ‘Later I got the full story from him, and even though the piece by me that appeared in *The Sunday Times* that year kept back some crucial forensic detail, it got the full attention of the police.’ The source was charged with the murder, the journalist gave evidence at his trial about their conversations, and the source was convicted and jailed for a minimum of 24 years.

The journalist’s decision drew some criticism, including that he had compromised the neutrality that journalists needed to show in order to get access to both sides of a conflict. Martin-Clark responded, in part, as follows –

There was a clear public interest in solving a murder. An absolutist stance on confidentiality is akin to total pacifism or to not telling a lie even to save a life. It is an eccentricity that has little to offer real-world journalism. What if someone told you about a murder he or she was going to commit? What if an egregious paedophile revealed all? Odd then to find absolutism championed in Northern Ireland, where the journalism is often as messy as the politics. But it is not just in Northern Ireland that the chimera of neutrality is cruelly exposed. The embeds in Iraq similarly compromised some of their independence in return for privileged access. The answer is not to take a black and white view, but to face up to the difficult balances we have to strike as journalists with values, and be prepared to defend those values. In exceptional cases, and this was one, striking the right balance can involve overriding the principle of extending confidentiality to sources...The principle of confidentiality, important though it is, is not an end in itself but ultimately a means to disclosure which must remain for journalists...our primary purpose.¹⁹

¹⁹ ‘When a journalist must tell’ *British Journalism Review* (2003) 14:2 pages 35-39.

Example 2 – Oliver North was a US Marine colonel who worked in the White House during the Reagan Administration. He was involved in dealings with Iran at a time when relations between the US and Iran were strained. This is an excerpt from an article by journalist, Jonathan Alter, in *Newsweek* –

Can I tell a quick leak story? The year was 1987 and Oliver North was testifying before a congressional committee investigating the Iran-contra affair. As I sat listening to him in the Senate Caucus Room, I couldn't believe my ears. North was talking about the 1985 apprehension of Arab terrorists who had tossed an elderly man in a wheelchair, Leon Klinghoffer, over the side of the cruise ship *Achille Lauro*. The already famous Marine colonel was accusing members of Congress of being untrustworthy because they revealed the military details of that capture. I knew that North was shamelessly accusing other people of leaking something that he, in fact, had leaked himself – not to me, but to other reporters. He was using confidentiality as a weapon. I decided to blow the whistle in *Newsweek* and identify him as the source. It didn't exactly make me Mr Popularity with my colleagues or with North, who threatened to sue. But I would do it all over again.²⁰

Example 3 – Dan Cohen was a public relations specialist and political activist with ties to the Republicans during the 1982 election campaign for governor of Minnesota. He sued because his identity as a source was disclosed by media organisations. The Cohen case reached the US Supreme Court and the following excerpt is from a summary by an academic who based it on records from the litigation –

As part of an orchestrated effort by Republican supporters and campaign officials shortly before the election, when polls indicated that the Republican slate was far behind the Democrats, Cohen disclosed to four media organizations that the Democratic candidate for Lieutenant Governor had an arrest record [for involvement in protests and for shoplifting \$US6 worth of sewing material at a time when she was emotionally distraught]. He requested confidentiality from the reporters so that the information would hurt the Democratic campaign without reflecting badly on the Republicans. Despite the objections of the reporters who had granted Cohen confidentiality, the editorial staffs of the defendant newspapers determined that it would be inappropriate to conceal the identity of the source of the news and ran stories identifying Cohen. The newspaper stories included claims by the Democratic camp that the news had been leaked by the Republican campaign as a 'last-minute smear campaign'.

With the identification of Cohen and his relationship to the Republican campaign, the stories were no longer simple revelations of misdeeds in the Democratic candidate's past. They became part of a controversy concerning unattributed 'smear tactics' in political campaigns that was later to assume national prominence in our most recent Presidential contest. But the editors' decision to disclose Cohen's identity did not merely affect the editorial pages

²⁰ 'Hey, rat out that source – Reporters shouldn't fear leaking sometimes if it's in the public interest', *Newsweek*, 13 October 2003.

of newspapers. Cohen was fired from his job the day after the public revelation of his name as the newspapers' source.²¹

Cohen sued the press, in short, for breach of the contract or promise that a source has with a journalist. The US Supreme Court ruled in his favor - on the key issue, although his victory was not complete²² - and a Minnesota court, when it reconsidered the matter, found that the newspapers had made a legally enforceable promise.

Apart from further illustrating the complexity of the source protection issue, these three examples demonstrate that, even among journalists, source protection is not absolute.

But if promise-keeping, or any other basic value, is to be overridden in particular circumstances, it is necessary to be able to discern and articulate, as the MEAA-AJA Code of Ethics puts it, the 'substantial advancement of the public interest or risk of substantial harm to people' that justifies the decision in the context in which it is made.

Put broadly, the steps in such a decision-making process include –

- 1 Identify the applicable standards.²³
- 2 Verify relevant facts and consider whether there are facts missing that are necessary to a proper decision-making process.²⁴
- 3 Be clear about the values that underpin the applicable standards.
- 4 Apply the standards to the facts in light of the values, having weighed in good faith the public interest and any foreseeable harms.
- 5 Be prepared to account for the decision.

Reasonable people may differ about whether a particular ethical decision was right or wrong. But the adequacy of standards and of decision-making processes can be judged.

²¹ Lili Levi, 'Dangerous Liaisons: seduction and betrayal in confidential press-source relations' *Rutgers Law Review* (1991) vol 43, p 609 at 642-44. For several other examples of journalists' decisions to reveal sources, see Section C of the Levi article headed 'The Occasions of Voluntary Disclosure' and associated footnotes.

²² *Cohen v Cowles Media Co.* 501 US 663 (1991). In his book, *Anonymous Source: At War Against the Media* (Oliver Press, 2005), Cohen states that the candidate was elected and served two terms as Lieutenant Governor. Cohen writes: 'Providing that stale, trivial record to the press was mean-spirited. I regret what I did.' For one of the reporters' reminiscences about the case nine years after the story was first published, see: Bill Salisbury, "Burning the source" (September 1991) *American Journalism Review*, <http://ajr.org/article.asp?id=1553>.

²³ These should be in the Editorial Policies or, if located elsewhere, referred to in the Editorial Policies.

²⁴ In circumstances in which the facts are in dispute, yet the decision will rest on one or more of those facts, it is necessary to take particular care. Significant values are being weighed in the balance against each other on the basis of a factual foundation. The natural urgency of journalism may have to be tempered so that this checking can occur (unless any delay, in the particular circumstances of the case, would itself lead to substantial harm).

The importance of terminology

In Australian journalism there are no standard definitions of the terms ‘on the record’, ‘on background’, or ‘off the record’. It is common to hear people use ‘off the record’, ‘not for attribution’, and sometimes even ‘in confidence’ to mean what, for the purposes of this review, I have defined ‘on background’ to mean.

Unless terminology is clearly understood during the negotiation of agreements between sources and journalists, misunderstandings develop, with potentially serious consequences for the source, the journalist, and others.

The Editorial Policies should be amended to include definitions of the three key terms. ABC staff should be required by the policies to negotiate agreements with sources on the basis of these definitions.

The implications of ‘deniability’

The primary benefit to a source of a journalist’s promise of confidentiality is that the source can deny that he or she is the source. ‘Deniability’ is the essence of the protection the journalist has promised to provide. It results routinely when journalists decline to reveal their sources.

This fact has implications, both for drafting standards and for decision-making in specific cases.

Pared to essentials, a routine agreement between journalist and source may work like this –

Journalist and Source converse.
Source provides information ‘on background’.
Journalist discloses information, unattributed.
Consequences follow for others, possibly adverse.
The adversely affected enquire who leaked, and Source denies it along with other potential sources.
Leak is investigated, formally or, more commonly, informally.
Journalist, if asked, declines to reveal Source.

If one of the routine benefits to sources of ‘on background’ agreements is deniability, it would seem to require more than mere denial by the source to justify the journalist breaching the agreement. Something more, which involves, as the MEAA-AJA Guidance Clause puts it, ‘substantial advancement of the public interest or risk of substantial harm to people’, is necessary before promise-keeping can be overridden by some other value such as truth-telling.

It may be that the source’s mere denial, in the circumstances, would have such consequences. But it is in these consequences, not in the bare fact of denial by the source, that justification for breaching the agreement must be found. A source’s denial, by itself, would seem to be nothing more than an implied term of an agreement to accept information on background. Absent some other factor, when the source

takes the benefit of deniability, the journalist's continuing silence is simply his or her end of the bargain.

If this result discomforts, it should. It is unavoidable that in upholding promises of confidentiality for sources journalists are complicit in suppression of a piece of the truth. Recognition of this fact is one of the reasons why the majority of self-regulatory standards make attribution the rule and promises of anonymity the exception.

At minimum, a decision whether to give such a promise requires an assessment by the journalist of the value of the information and the motives of the source.

Motives

From the outset, an 'on background' agreement is a compromise by the journalist. Information may be disclosed, but without attribution to its source. This may suit the source, but it does not serve the audience as well as full attribution would serve. For the audience, knowing the origins of information is part of weighing up how much credence to give it and how much 'axe grinding' to allow for.

Long experience has taught journalists that sometimes the only way to get information of public interest into the public domain in a timely way is to compromise truth-telling in favor of promise-keeping. Agreements to accept information on background may have strong justification in the circumstances. The journalist may have concluded that it is better to obtain and to disclose the information in this way than to wait until the source is comfortable with attribution, or until the information can be obtained from an alternative attributable source.

The agreement may reflect the reality of the relationship: the journalist may believe that the source will provide a valuable continuing supply of information beneficial over time to the journalist and his or her audience, and that the price of continuation of supply is conditions set by the source, including the condition of anonymity.

When the Brennan Committee recommended reform of the source-protection clause of the MEAA-AJA Code of Ethics to remove the absolutism conveyed by the phrase 'in all circumstances', it stated in part –

The journalist and the 'whistleblowing' source have a relationship based on mutual dependence. The journalist needs the information in order to fulfil public responsibilities; the source needs a way to disseminate information of public importance. But this description is based on the notion of a source as classic 'whistleblower', an altruist moved by frustration or conscience to reveal information of substantial public interest in order to get something done about it. Altruistic sources are vital and fundamental to an analysis of source protection, ethics and the law. But an altruistic source is rare among anonymous sources commonly cited in Australian media.

Most confidential sources are not seeking anonymity in order to ensure that their job or safety is protected after the journalist disseminates information of

high public interest that would not have been disclosed in any other way. Most journalist-source relationships are not of mutual dependence but of mutual convenience.²⁵

In its final report, the Committee urged greater consideration be given by journalists to the motives of sources before journalists granted anonymity -

...One study of confidential sources identified the following motives among those who leak information:

- to satisfy a sense of self-importance
- to earn 'credit' with the journalist that can be 'spent' at a later date
- to reveal a contemplated proposal in order to test public response to it before adopting it officially ('kite flying')
- to try to build support for or opposition to a policy proposal
- to try to discredit another official or faction (especially during leadership struggles in political parties)
- to correct perceived wrongs that the source believes cannot be remedied through proper channels.

The altruist fits the last category. The others give a sense of the variety of relationships between journalists and sources.²⁶

The risk of manipulation by sources of journalists and their audiences is obvious. It is regularly noted in the relevant policies of media organisations. The *Washington Post*, for instance –

Sources often insist that we agree not to name them in the newspaper before they agree to talk with us. We must be reluctant to grant their wish. When we use an unnamed source, we are asking our readers to take an extra step to trust the credibility of the information we are providing. We must be certain in our own minds that the benefit to readers is worth the cost in credibility.

The London *Guardian's* guidelines state that 'if used lazily or indiscriminately anonymous quotes become a menace'.²⁷

The New York Times' policy contains valuable guidance aimed at minimising the risk of manipulation, and the harm to credibility that can follow –

Whenever anonymity is granted, it should be the subject of energetic negotiation to arrive at phrasing that will tell the reader as much as possible about the placement and motivation of the source – in particular, whether the source has firsthand knowledge of the facts.

In any situation when we cite anonymous sources, at least some readers may suspect that the newspaper is being used to convey tainted information or

²⁵ *Ethics in Journalism*, op cit page 56.

²⁶ Ibid p 65.

²⁷ *Editorial Code*, updated April 2007, section 1.

special pleading. If the impetus for anonymity has originated with the source, further reporting is essential to satisfy the reporter and the reader that the paper has sought the whole story.

We will not use anonymous sourcing when sources we can name are readily available.

Confidential sources must have direct knowledge of the information they are giving us — or they must be the authorized representatives of an authority, known to us, who has such knowledge.

We do not grant anonymity to people who are engaged in speculation, unless the very act of speculating is newsworthy and can be clearly labeled for what it is.

We do not grant anonymity to people who use it as cover for a personal or partisan attack. If pejorative opinions are worth reporting and cannot be specifically attributed, they may be paraphrased or described after thorough discussion between writer and editor. The vivid language of direct quotation confers an unfair advantage on a speaker or writer who hides behind the newspaper, and turns of phrase are valueless to a reader who cannot assess the source.

Anonymity should not be invoked for a trivial comment, or to make an unremarkable comment appear portentous.

We do not promise sources that we will refrain from additional reporting or efforts to verify the information being reported.

We do not promise sources that we will refrain from seeking comment from others on the subject of the story. (We may, however, agree to a limited delay in further inquiries – until the close of stock trading, for example.)²⁸

The *NYT* policy is similarly detailed about methods of attribution short of naming a source –

When we agree to anonymity, the reporter's duty is to obtain terms that conceal as little as possible of what the reader needs to gauge reliability. We should distinguish conscientiously between high-level and lower-level executives or officials. We should not use blind attribution – "sources said," for example – which is more a tease than a signpost. Attribution should never amount to a truism: since "source" merely means a provider of information, "one source said" is equivalent to "somebody said." And "informed" or "reliable source" is no improvement. (Would *The Times* quote an uninformed or unreliable one?) The objection is not to the word "source," but to its emptiness without a meaningful modifier: "a Senate source," for example, may be acceptable – unless, of course, it is possible to tell the reader still more. The word "official" is overused, and cries out for greater specificity.

²⁸ Confidential News Sources Policy, February 2004. See Appendix 1

Trail markers should be as detailed as possible. "United States diplomat" is better than "Western diplomat," which is better than "diplomat." Still better is "a United States diplomat who took part in the meeting." And "a lawyer who has read the brief" or "an executive close to the XYZ Company" is far better than "a person familiar with the case," a phrase so vague that it could even mean the reporter.

Readers value signs of candor: "The report was provided by a Senate staff member working to defeat the bill."²⁹

From time to time in Australia, the source protection issue flares into prominence. Two recent examples are the Harvey/McManus case and the Costello dinner case. Although the cases sometimes generate media attention to the merits of legislative protection for journalists and their sources, or the courts' approach to the issue, there is less often a focus on the sophistication of the approach that media organisations habitually take to what is, as this review has shown, an issue of significant ethical complexity.

Perhaps a lack of journalistic introspection is what the first public editor of the *New York Times* had in mind when he wrote to his colleagues (as much as to their shared readership) –

Since I've been in this job, use of anonymous sources has been the substantive issue raised most often by readers. They challenge the authenticity of quotations....Credibility is also why many reporters will now acknowledge that the profession's worst habits must be broken – the vague descriptions of phantom sources, the readiness to disregard their 'motivations', the willingness to let them say what they wish without public accountability.

...But getting to the point where journalists incorporate this awareness into their work isn't easy. The psychic rewards a newspaper can bestow still go to the reporter who publishes something the competition doesn't have. Valuable sources, insisting on anonymity, continue to dangle tantalizing details as if they were biscuits offered to hungry dogs. Even background briefings have their appeal, where the alternative is a two-dimensional view of policy.

...There are good reasons to use information provided by unidentified sources. The best is that it can lead you to someone who will confirm it on the record, so readers can learn something valuable. But the burden of proof is enormous when no one will stand publicly behind a bold assertion. So should be the barrier to publication.³⁰

²⁹ Ibid.

³⁰ Daniel Okrent, *Public Editor #1* (Public Affairs, NY, 2006) pages 254-55, 257-8.

Amendment to the Editorial Policies recommended – proposed new section on dealing with sources

Subject to improvements resulting from the consultation recommended in the Introduction, the following is proposed for incorporation into Section 5 of the Editorial Policies –

Dealing with sources

When the ABC carries unattributed information it is vouching for it to the audience and risking the ABC's own credibility.

Sometimes, disclosure by journalists to the public of unattributed information and protection by journalists of the identity of sources of that information are necessary to the free flow of information in a democratic society.

Sometimes, journalists grant sources anonymity too readily, sources misuse anonymity, and as a result the flow of information is tainted.

Very rarely, the value that journalists uphold when they protect sources, promise-keeping, may justifiably be overridden in order to uphold another value, such as truth-telling.

In applying this section of the Editorial Policies, bear in mind that any decision

- to use information unattributed,
- to disclose the identity of a source in breach of the terms of an agreement with that source,
- to refuse to disclose the identity of a source,

has potential effects on the source, the persons affected by the source's information and its disclosure, you, your colleagues, the profession of journalism, audiences and the ABC.

The purpose of this section of the Editorial Policies is to ensure the ABC deals honorably with sources, in ways that serve the public well and maintain the independence and integrity of the ABC.

The following standards are to be followed –

- Aim to attribute information to its source.

- When sources seek anonymity, always consider their motive and any alternative attributable source.

- Test whether the source has first-hand knowledge of the matters he or she is conveying.

Seek to confirm the information through independent sources (persons or documents).

Exchanges routinely occur between journalists and their sources on the basis of understandings between them about the degree of protection the individual journalist will provide. Much of the information gleaned in such exchanges is of value to journalists in obtaining leads or a fuller understanding of events and issues. Such information informs journalists' work but is not necessarily broadcast or published by the ABC without attribution.

The upward referral mandated in this section of the Editorial Policies applies to those situations in which the journalist judges that information supplied by an anonymous source ought to be disclosed and, having regard to these standards and the circumstances of the case, can be disclosed only on the basis of a binding promise to protect the identity of the source.

It is mandatory to refer upwards to an appropriately senior person designated for the purpose prior to making an agreement that would bind the ABC to protect the identity of a source after the ABC disclosed information supplied by the source.

Prior to disclosure of information obtained under a binding agreement to protect the identity of a source, the source's identity must, if sought, be made known to an appropriately senior person designated for the purpose, who will become bound by the agreement on the same terms as the journalist who obtained the information.

At the sole discretion of the Managing Director, the requirement that a source's identity must be disclosed to an appropriately senior person may be waived in exceptional circumstances, such as when information from the source reveals serious high-level failure of the checks and balances of the Executive, Judiciary or Legislature.

In deciding whether to make a binding agreement, consult Legal and consider –

- Whether the disclosure of the information unattributed would serve a sufficiently important public interest.
- Whether the information can be obtained from an attributable source of comparable reliability for disclosure within a time period that would allow the important public interest involved to be adequately served.
- Terms appropriate to the circumstances of the case, such as agreed limitations to the promised protection, as appropriate. Limitations may include an understanding that if the disclosure

of the information supplied by the source causes certain consequences the source waives the obligation of confidentiality. Relevant consequences may include: legal proceedings in which the journalist and/or the ABC are lawfully compelled to provide information; or the establishment of a process under law by an authority with the capacity to protect the source from adverse effects.

- The extent to which disclosure of the information unattributed would amount to a personal attack under cover of anonymity.

In negotiating an agreement with a source, be clear about the precise elements of the agreement, especially key terms including –

- **On the record**, meaning both parties agree that the information imparted to the journalist may be disclosed and attributed to the source by name.
- **On background**, meaning both parties agree that the information imparted to the journalist may be disclosed but not attributed to the source.
- **Off the record**, meaning both parties agree that the information imparted is not to be disclosed, with or without attribution.

Honoring good faith agreements with sources is a basic rule of journalism. Only in the rarest of cases and for exceptional reasons can the rule be overridden. The potential cost in loss of trust and reduced information flow is serious. Every effort must be made to try to avoid such situations and, if they occur, to minimise harm.

When a commitment is made to protect a source, take care to make the protection effective in a practical sense. For instance –

- avoid exposing the source when cross-checking the information the source supplied;
- minimise and keep secure any notes, email exchanges, phone records, drafts and other material which may expose the source's identity;
- be aware of the risks to the source arising from original documents, photocopies, disks, USB data storage devices and other items supplied by the source;
- for vision of the source, blur rather than pixelate (which can be reversed);
- for voiceovers of the source use another person's voice rather than distort by technological means the actual source's voice;
- consider the potential for details other than face or voice to identify a source – for example, clothing, location, vehicle registration number;
- be vigilant to maintain the security of a source even when the source is geographically remote from the place in which the

report based on the source's information is first broadcast or published.

In rare circumstances basic values such as promise-keeping come into conflict with other basic values such as truth-telling or fidelity to the rule of law. If circumstances arise in which a decision needs to be made about whether to honor an agreement with a source –

- it is mandatory to refer upwards to the Director News;
- consult Legal;
- consider whether a waiver or partial release from the terms of the agreement can be negotiated with the source in light of circumstances that have developed since the original agreement was made;
- gather and verify the facts needed to make the decision;
- identify the competing values;
- analyse the impact of the various options and how to minimise foreseeable harms;
- decide whether, in the circumstances, substantial advancement of the public interest or the risk of substantial harm to people justifies overriding promise-keeping and breaking the agreement in order to serve another basic value.

Give an honest public account of the decision and the way it was made.

Journalist-as-participant issue

At the outset, it is necessary to distinguish between the level of a journalist's participation in the newsworthy events that can raise a conflict, and the inevitable 'participation' by journalists in every event they cover.

We are not concerned here with the debate about objectivity, in which it is sometimes argued that no person, journalist or otherwise, can be objective. Similarly, it is recognised as unavoidable that journalists participate in every story to the extent that they make decisions about: what to report, the angle they take, the people they contact, interviewing styles, methods of presentation, editing and how to introduce a report. The objectivity debate is a different debate to the simpler point being considered here.

By 'journalist-as-participant', I mean that the journalist's participation - by action or inaction, alone or in combination with other participants in the events - is integral to what makes the matter newsworthy. This makes it probable that the coverage of the matter will affect the journalist personally. A potential conflict here is grounded in the journalist's work interests, not his or her outside interests. His or her personal honor or reputation may be at stake, as distinct from the journalist's outside financial or family interests.

ABC Editorial Policies

Section 2.1 of the 2007 Editorial Policies lists the key values of the ABC as honesty, fairness, independence and respect.

Section 3.5.6 notes that independence, which the ABC has a statutory duty to maintain³¹, 'carries with it a high degree of responsibility'.

Section 4.4 addresses conflicts of interest, which in practice have the potential to compromise independence, and states in part that there should be no conflicts between the private interests of ABC staff and their official duties.

Although 'private interests' are not comprehensively defined, section 4.4.1 turns the focus on 'outside activities' and financial, personal and political relationships.³² Section 4.4.2 draws in the ABC Workplace Values and Code of Conduct³³ which, apart from general statements³⁴, makes no reference to the issue raised by the facts of the matter that prompted this review.

I have concluded that neither the Editorial Policies nor the Workplace Values and Code of Conduct are adequate to deal with the issues raised in this case. Certain

³¹ *ABC Act*, section 8 (1) (b).

³² In this respect, the ABC Editorial Policies are similar to most media organisations' codes. See, for instance, the relevant sections of the codes of the *Washington Post*, *Wall Street Journal* and *New York Times*.

³³ Adopted in 2000 - see Appendix 6, ABC Editorial Policies.

³⁴ For example, Code of Conduct sections 2.1 a., 3.1 dot points 4 and 8, and, broadly, 9.1.3.

inconsistencies in language aside, they both lack guidance for journalists and their supervisors in resolving the unusual category of conflict that arises when a journalist becomes a participant, as defined above, in the events he or she is reporting.

One of the most common methods of dealing with conflicts in journalism, as in other fields such as corporate governance, is to require that they be declared. But disclosure will not readily deal with the category of conflict relevant here. Typically, the journalist's participation in the newsworthy events will be well known. It is part of the story. Even if it is not, simply to disclose that participation does not deal with the core problem – the threat to independence – of having the journalist continue to report events in which he or she is a participant.

The other participants in the events are simultaneously dealing with the journalist as both a co-participant and as the reporter of the events. The journalist is, as always, under an obligation to report accurately, fairly and impartially on all participants. Even if the journalist achieves this in reality, the audience may wonder, and the co-participants may question. If the events have put the journalist and co-participants at loggerheads, this wondering and questioning intensifies.

It is natural that a journalist-participant may still feel able to provide proper coverage, and for the journalist-participant's supervisors to be inclined towards allowing him or her to continue to report the story. For the journalist, the fact of a personal stake compounds the usual sense among reporters that they 'own' particular stories. For the supervisors, the journalist's special position as a participant in newsworthy events can give their outlet's coverage a competitive advantage. And it may well be that the journalist-participant is the best-equipped to undertake the coverage.

Add to these factors another natural phenomenon, one which a former public editor of the *New York Times*, Daniel Okrent, identified when dealing with a variation on the conflicts-of-interest theme –

When a news subject tries to get a reporter removed from a story, a challenge has been issued to the core of a newspaper's self-image: its integrity. Unless editors see a clear case of bias or conflict, they tend to respond the way you or I would respond to, say, an insult to a family member. They stiffen with indignation. They try at the same time to support the wounded loved one. Were they to concede, the humiliation could hurt more than the charge itself.³⁵

Against these factors, which because they are so natural can predominate and stay unexamined, must be considered other factors that, depending on the context, may weigh in favor of the journalist standing aside. Those factors include –

- The importance of audiences receiving independent coverage.
- The potential for inaccuracies and for unfairness towards other participants in the events.

³⁵ *Public Editor No. 1* (Public Affairs, New York, 2006) page 38 reproducing a column published in the NYT 21 December 2003 'You can stand on principle and still stub a toe'.

- The risk that, as events unfold, the journalist-participant may become unable to gain access to other participants, with consequent ill-effects on coverage.
- The risk to the credibility and reputation of the organisation, the program and the journalist-participant caused by the wondering and questioning that is likely to result from coverage of the events by the journalist-participant.

Given that a journalist-participant in such cases is understandably likely to have clear views but clouded judgement, it is essential that editorial guidelines prescribe a role for supervisors. The journalist-participant's views are of course relevant, but they ought not be determinative.

Section 4 of the Editorial Policies is adequate to deal with the upward referral implicit in such cases, so long as staff and supervisors recognise the journalist-as-participant issue is a category of conflict of interest. Section 4.4.4 states –

Declarations: To prevent conflict of interest, supervisors must be told about any associations or interests which an individual has that may conflict with editorial responsibilities. Individuals have a duty to declare an actual or potential conflict of interest at the earliest opportunity. They also must declare in advance any proposed activity that might conflict with editorial responsibilities.

Compared with the source-protection issue, the journalism ethics literature is sparse on this category of conflict of interest.³⁶ The BBC Guidelines address a related category – coverage of stories in which the BBC itself is a participant – as follows –

Our reporting must remain accurate, impartial and fair even when our content, or the BBC itself, becomes the story. We need to ensure that our impartiality is not brought into question and presenters or reporters are not placed in potential conflict of interest. It will be inappropriate to refer to either the BBC as 'we' or the content as 'our'. There should also be clear editorial separation between those reporting the story and those responsible for presenting the BBC's case.³⁷

A version of the journalist-as-participant issue arose recently for several US journalists covering the multinational company Hewlett Packard. The journalists were targets of covert and unlawful surveillance by private investigators trying to

³⁶ Most codes address outside interests, financial or familial and sometimes political: See, for example, New York Times' *Ethical Journalism: a handbook of values and practices for the news and editorial departments*, September 2004, discussing recusal in the context of romantic relationships (para 24) and the outside interests of journalists' spouses, family members, companions (para 67, political activity, paras 117-119). In summary, the *NYT* policy is that:

the staff members must be sensitive to the creation of conflicts or the appearance of conflicts; they should advise their supervisor and the standards editor when the possibility arises; and '[d]epending on the circumstances, the staff member may have to recuse himself or herself from certain coverage or even move to a job unrelated to the activities [of the spouse etc] in question.'

³⁷ BBC Editorial Guidelines, Section 4, Impartiality and Diversity of Opinion.

identify the source of leaks of company information. The journalists became victims and potential plaintiffs, not purely observers, of Hewlett Packard.

The journalists' supervisors responded in varied ways. One stopped its employee from covering Hewlett Packard at all. Another allowed its journalist to report unrelated matters involving Hewlett Packard, but not to cover the spying and associated legal issues affecting the company. A third published its employee's personal account of her experience as a target of surveillance, with her article clearly signposted as a personal account.

Kelly McBride, an ethicist at a leading media ethics centre, the Poynter Institute, has suggested that it is not sufficient to base a decision to disqualify a journalist from covering a story on the basis of his or her identity alone. For instance, it would be wrong to disqualify –

- Journalists of particular ethnicities from reporting on discrimination issues;
- Gay journalists from covering the same-sex marriage debate;
- Catholic journalists from investigating child abuse by clergy; or
- Journalists who have been victims of violent crime from reporting violent crime.

Some extra factor must ordinarily be involved before recusal is required. McBride writes –

There is no arbitrary test by which a conflict can be judged to determine if it rises to the level that precludes a journalist from covering particular stories. Instead, what becomes important is the process by which conflicts – all conflicts – are examined in newsrooms...

Rather than searching for analogies, journalists must find the threshold where individuals are disqualified from reporting, editing or influencing a particular story. One threshold should be when fairness cannot be achieved. Another threshold involves public perception. When a journalist enters into the public debate, he gives the public cause to doubt his ability to report the news fairly...³⁸

Among their nine *Elements of Journalism*, Bill Kovach and Tom Rosenteil include independence. They analyse independence in various contexts, but conclude that no rigid prohibition guarantees that a journalist remains independent. They prefer to rely on good judgement and 'an abiding commitment to the principle of first allegiance to citizens'.³⁹

That notion of the primacy of the audience also guides the recommended amendments to the Editorial Policies relevant to this section of the review.

³⁸ 'Searching for the threshold', *Poynter Online*, 14 March 2004.

³⁹ *The Elements of Journalism: what newspeople should know and the public should expect* (Three Rivers Press, New York, 2001) page 109.

Amendment to the Editorial Policies recommended – proposed new section dealing specifically with this type of conflict of interest

Subject to improvements resulting from the consultation recommended in the Introduction, the following is proposed to be incorporated into Section 4 of the Editorial Policies –

Journalist-as-participant

This section relates to the type of conflict of interest that arises when a journalist's participation - by action or inaction, alone or in combination with other participants in the events - is integral to what makes a matter newsworthy.

Circumstances will vary from case to case, but the needs of audiences and the independence and integrity of the ABC are prime considerations in every case.

In assessing whether a journalist should cover, or continue to cover, a story in which he or she is or is likely to become a participant, the journalist and supervisors should consider factors including –

- the extent to which the essential elements of the story relate to the journalist's own actions or inaction;
- the nature of the personal interests involved;
- the relationship between those personal interests and the organisation, individuals, issues and events required to be covered by the ABC, in particular the extent to which the journalist's personal honor or reputation has or is likely to be pitted against the honor or reputation of other participants;
- whether disclosure of the personal interests would be sufficient in all the circumstances of the case;
- whether, if the journalist were to cover the story, audience members with knowledge of the facts giving rise to the conflict could reasonably doubt the fairness and accuracy of the story;
- whether, if the journalist stands aside, audience members will lose any element of substance from the ABC's coverage which could not be provided through other means (for example, by having another journalist interview the journalist-participant in the same way as any other participant).

As the consultation proceeds, it may be that other amendments to the 2007 Editorial Policies and/or 2007 Code of Practice, consequential on the proposed amendments, become necessary or desirable.

Paul Chadwick
Director Editorial Policies
31 October 2007

JOURNALISTS' CONFIDENTIAL SOURCES

Selected resources⁴⁰

NEWS ORGANISATIONS' POLICES & CODES OF ETHICS

International organisations

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⁴⁰ Director Editorial Policies acknowledges the work of Michelle Fisher, Manager Research (Editorial Policies) in preparing these references, and the support of Jessica List, Executive Assistant to the Director, during the review.

⁴¹ Taking part: The International Organisation of Journalists (IOJ), the International Federation of Journalists (IFJ), the International Catholic Union of the Press (UCIP), the Latin-American Federation of Journalists (FELAP), the Latin-American Federation of Press Workers (FELATRAP), the Federation of Arab Journalists (FAJ), the Union of African Journalists (UJA), and the Confederation of ASEAN Journalists (CAJ) – representing, overall, 400,000 working journalists from all over the world.

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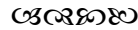
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☞☞☞☞

SHIELD LAWS (recent)

Australia

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Evidence Act 1995 (NSW), sections 126A and 126B,
<http://www.legislation.nsw.gov.au/viewtop/inforce/act+25+1995+FIRST+0+N/>, introduced by the *Evidence Amendment (Confidential Communications) Act 1997* (NSW) which came into operation on 1 January 1998,
[http://www.legislation.nsw.gov.au/sessionalview/sessional/TITLE/Evidence%20Amendme nt%20\(Confidential%20Communications\)%20Act%201997%20No%20122.pdf](http://www.legislation.nsw.gov.au/sessionalview/sessional/TITLE/Evidence%20Amendme nt%20(Confidential%20Communications)%20Act%201997%20No%20122.pdf).

New Zealand

Evidence Act 2006 (NZ), section 68,
http://legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=718385878&hitsperheading=on&infobase=pal_statutes.nfo&record={2A35B}&softpage=DOC. The Act came into force on 4 December 2006.

USA

Reporters Committee for Freedom of the Press, *Privilege Compendium*, 2002,
<http://www.rcfp.org/privilege/>. [Guide of statutory and common law shield laws applying in each U.S. state and federal circuit.]

Free Flow of Information Act 2007 (USA), Bill number S.2036, (Long title: *A bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media*), introduced on 10 September 2007 and reported on by the Senate Committee on the Judiciary on 4 October 2007, status of bill available at <http://www.thomas.gov/cgi-bin/bdquery/z?d110:s.02035>.

Also see the similarly titled bills under consideration by the U.S. Congress: S.1267 and related bill, H.R.2102. The status of these bills can be checked respectively at <http://www.thomas.gov/cgi-bin/bdquery/z?d110:s.01267>: and <http://www.thomas.gov/cgi-bin/bdquery/z?d110:HR02102>:. Bill H.R. 2102 was passed by the House of Representatives on 16 October 2007 by a recorded vote of 398-21, after being reported on by the House of Representatives Committee on the Judiciary, *Report on the Free Flow of Information Act of 2007* (Bill no. H.R. 2102), House report 110-370, 10 October 2007, <http://frwebgate.access.gpo.gov/cgi->

[bin/getdoc.cgi?dbname=110_cong_reports&docid=f:hr370.110.pdf](#). The Bill was read for the first time in the Senate on 17 October 2007.

Various witness testimony and member statements on 20 July 2005, 19 October 2005 and 20 September 2006 relating on “Reporters’ Shield Legislation” are available at the Senate Judiciary Committee website, accessible at http://judiciary.senate.gov/search_testimony.cfm?testimony=free+flow+of+information and http://judiciary.senate.gov/search_statements.cfm?statement=free+flow+of+information&Submit3=Submit. Member statement on *Free Flow of Information Act, no. S2035* on 4 October 2007 available at http://judiciary.senate.gov/meeting_notice.cfm?id=2973

ABC News Division Style Guide – Excerpts –

Entries relevant to dealing with sources

analyst

The audience is much better off knowing who is saying something rather than being fobbed off with anonymous “analysts”. If you're reporting what you have established is a generally held view, then “some financial market economists” or “some political analysts” is acceptable.⁴³

anonymous sources

There will be occasions when stories rely on material obtained from anonymous sources.

Before an anonymous source is used as the basis of a story, it *must* be upwardly referred. While the ABC's general rules on the protection of sources will apply, your immediate editorial manager is entitled to know the identity of the anonymous source.

All reasonable efforts will be made to verify the information obtained from an anonymous source before its use, and an editorial decision will then be made through upward referral about the way in which the information will be used and presented.⁴⁴

attribution

We use information from reliable sources – people who are in a position to know what they're talking about. Reliability may be assured by the person's official position, or it may not. These are judgements for each journalist to make, in consultation with his or her editor.

When reporting domestic news, the onus is on us to confirm information independently. If we can quote a source, especially for important breaking news, we should. For example, “the Prime Minister's office has announced the death of the Governor-General”. If we cannot name our source in a piece

⁴³ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

⁴⁴ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

of original reportage, we rely on our journalist – “the ABC's Finance Reporter says the Reserve Bank has a plan to support the dollar”.

Official announcements by governments, police forces, corporations, institutions and interest groups are a staple of information that can make news. There are no prizes for being first and wrong – so check and attribute. However, we do seek to be a pace-setter in getting accurate breaking news to our audience.

When reporting foreign news, if the only source is the BBC or AFP, we quote the BBC or AFP, and if they are quoting someone else, we should say who that source is: “The news agency AFP is quoting aid workers in Afghanistan as saying hundreds of people have been killed in an earthquake.” Once similar information is flowing from multiple sources, we can drop the specific attribution.

Our overseas correspondents carry the authority of the ABC. If a conflict of information should arise, advise the correspondent and be guided by his or her judgement.

[See: [breaking stories](#), [credits](#), [editorialising](#), [experts](#), [rumours](#)]⁴⁵

claims

“Claims” carries a hint of incredulity (as do “reputedly” and “so-called”). If there is no reason to doubt the veracity of a statement, “says” is better. For example, “the party says it will field candidates in all electorates”, rather than “the party claims it will”.

The authority of the person or organisation making a claim (that is, something not previously accepted, known or understood), and the nature of the claim, will decide whether we would report it without corroboration. A claim, therefore, must be attributed. “Claims” implies the ABC is seeking further confirmation or reaction.

[See: [according to](#), [admits](#), [attribution](#), [corroboration](#), [experts](#)]⁴⁶

corroboration

Where we have a single source of information that's in dispute or that we may have to defend in court (for example, in defence of defamation) we have a

⁴⁵ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

⁴⁶ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

responsibility to seek corroboration. This is a basic tenet of investigative journalism.

Corroboration involves testing and weighing up the veracity of information, not just selectively applying means of arguing its plausibility. Corroboration may come from independent witnesses, documents and other substantiating or supporting evidence.

[See: [claims](#), [defamation](#)]⁴⁷

editorialising

All News and Current Affairs reports are expected to be grounded in fact and free of bias.

We should concentrate on giving the public the news: what happened, where, when, and who was involved. Reporters have a legitimate role analysing events to explain what they mean, but it's essential to give the audience the facts.

We should be careful not to resort, unthinkingly, to stock phrases that characterise events, impute motives, declare winners and losers, or in various other ways gratuitously editorialise. It may be as subtle as the use of “safe” in the phrase “safe injecting room”, or “finally”, as in “the council finally changes its parking policy”.

“Finally” is a loaded term and should be avoided. It suggests the reporter has been impatient for something to happen. Let someone else say if it's been “a long time coming”.

People want the opportunity to make up their own minds without us forcing a view upon them.

If, for example, we start a story with “The Government is playing down the dispute”, we're elevating opinion to the status of fact. It may be apparent to most people what the Government hopes to do, but any analysis is better delivered by our reporter, argued from the facts.

If we report “Universities are lifting fees, cashing in on demand for student places”, we are suggesting these are opportunistic increases, not principally motivated by concerns about financial viability and service. Can that be demonstrated?

⁴⁷ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

In another example, if we begin “In good news for the Government, unemployment has fallen to five-point-six percent”, we're adopting one perspective over all others, and possibly an unreasonable one for those still unemployed.

Be specific, rather than revert to lazy formulas which characterise (by belittling or aggrandising) something even before we've reported it.

“Hopefully” is another word that raises a question. Who hopes?

“Defiant”, as in “the president remains defiant”, carries a similar taint, when the president may be simply sticking to a policy, in the face of pressure.

And if you say “in a surprise move”, be sure you aren't the only one surprised.

[See: [attribution](#), [claims](#), [quotes](#), [reaction](#)]⁴⁸

off the record

Be aware of what you are agreeing to by accepting material off the record. In dealing with an informant you should confirm whether information is being offered on or off the record (and for attribution or not), and seek, whenever possible, to have it placed on the record (and for attribution).

[See: [attribution](#), [corroboration](#), [sources](#)]⁴⁹

quotes

Take care not to run accusations or opinions as matters of fact. “North Korea has blamed the US for escalating tensions with its bullying tactics” contains an accusation that must be qualified along the lines of “what it [North Korea] says are American bullying tactics”.

Similarly, make clear who the source is for language that is judgemental. Rather than “the Premier has apologised unreservedly for the blunder of allowing the tax change”, to emphasise who used the terms “unreservedly” and “blunder” write: “the Premier says he apologises unreservedly for what he calls the blunder”.

Sometimes it's appropriate for a reporter to provide interpretation or analysis (always grounded in the facts). But we don't advance our personal views or

⁴⁸ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

⁴⁹ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

opinions. We must always make the source of an opinion clear, so it cannot be perceived as coming from the ABC.

Any direct quote included in radio or television copy needs to include quotation marks, as this material often finds its way into online stories.

However, great care is needed when including direct quotes to ensure that it is obvious to the audience that they *are* quotes. In most cases, the use of actuality is the best way of including quotes, or in the case of television, the inclusion of the transcript of a direct quote in graphics.

Where this is not possible, it should be clear that the material is a direct quote by the way it is written, or through careful reading by the presenter.

There is usually a better way of presenting a direct quote than by using the words “quote” and “unquote”.

[See: [attribution](#), [editorialising](#), [interviewing](#), [punctuation](#), [Q & As](#)]⁵⁰

rumours and speculation

Gossip is gossip and must be treated with the appropriate caution. A rumour may become significant where it shapes opinion, or is an explanation for an event or reaction worth noting. Analysis must never elevate rumour to fact. For example, a rumour that a prominent person has died may influence the share market. We may describe the share movement and its apparent cause but we don't give credence to the rumour and we always make clear whether our checks have substantiated it.⁵¹

sources

We should not lift any story or any assertion or “fact” from another media source – and report it as fact – without making our own checks. The ABC prides itself on original reporting and every source must be checked for accuracy.

Where a piece of information reported by another media outlet cannot be immediately confirmed, but is of such moment that it also cannot be ignored, we make careful attribution. Such cases will usually require upward referral.

Live interviews, broadcast elsewhere, may be reported without further confirmation. But if there is any doubt about the “live” nature of the material,

⁵⁰ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

⁵¹ Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.

it should be checked. It's also possible for live interviews to contain defamatory matter – if in doubt, check with ABC Legal Services.

Online journalism exposes us to a vast new range of sources, many of them offering information which is unconfirmed and often based on hearsay.

[See: [attribution](#), [corroboration](#), [off the record](#)]⁵²

⁵² Extracted from Style Guide (August 2006), News & Current Affairs Style Guide.