

Official Spin: Censorship and Control of the Australian Press 2007

The Media, Entertainment & Arts Alliance 2007
report into the state of press freedom in Australia



press freedom 07

**2007 Australian
Press Freedom Report**



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Our thanks also to the photographers
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245 Chalmers Street, Redfern, 2016.

Printed by: Printcraft, 23 Links Avenue,
Queensland 4009.

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1.0 Introduction

A free and vibrant press is the cornerstone of Western democracy. It's one of the most vital checks and balances for a just society. The balance between the public interest and the interests of those in power is delicate but crucial, and daily the media battles to bring truth to light.

Over the past 12 months Australian journalism has shone light in some dark corners: exposing the suffering of Indigenous communities in Australia's north; bringing pressure to bear over the death of Private Jake Kovco and Australia's continued commitment in Iraq; asking just how much the Howard government knew about the shameful corporate scandal of AWB.

As the Coalition enters its 11th year in power, and confronts the challenges of an election year, this scrutiny is essential. As the stakes of power are raised, however, the freedom of our press seems increasingly under threat.

Two journalists face prison for refusing to reveal their sources over a government plan to reject a \$500 million boost to veterans' benefits, despite the conviction being overturned for the whistleblower in question. The charging of Michael Harvey and Gerard McManus, in the face of repeated assurances from the government that it will introduce uniform laws to protect journalists' sources, casts doubt on the real commitment behind the rhetoric.

Raiding the newsroom of an Australian newspaper and the conviction of a whistleblower whose revelations prompted a major shake-up of airport security; a federal security agency with unmitigated powers to eavesdrop and detain; ministers who restructure censorship review bodies to ban dissenting literature – these are the hallmarks of a government determined to monopolise and sanitise its public image.

The nation's highest court last year held the ministerial right to refuse access to information above the public's right to know, and vested the discretion to do so in ministerial hands. The High Court's ruling against Michael McKinnon in his Freedom of Information case against the Treasury set a new low for press freedom, effectively neutering the legal right of journalists to information which a minister may feel it isn't "in the public interest" to release.

The industry itself is undergoing an enormous shake-up, as the government's radical cross-media reforms take effect. Job losses, increased syndication, the attrition of diversity and commercial self-censorship are just some of the threats journalists face in an evolving media landscape. The erosion of long-held workplace rights under the government's new industrial relations regime has also begun. As a workforce traditionally expected to work long and unpredictable hours, the removal of such rights as paid overtime and shift penalties for journalists is deeply troubling.

The only way to confront this time of official spin and manipulation is head-on, and the time is now.

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



Christopher Warren
Federal Secretary
Media, Entertainment
& Arts Alliance

HOW AUSTRALIAN JOURNALISTS HELP

Australian journalists raised more than \$140,000 in 2006 through the Alliance Safety and Solidarity Fund. Established by the Media Alliance, the Fund assists journalists and their families, supports safety training and monitors and assists press freedom advocacy in the region.

The Fund has contributed to a number of international projects, including the establishment of Media Safety Office in the Philippines. Since its inception the Safety Office has launched safety training for journalists, campaigned against

state violations of press freedom, and undertaken research on media complaints procedures.

At the end of 2006, in response to the deteriorating press freedom and journalist safety situation in Sri Lanka, the Safety Fund also financed the employment of an emergency alerts coordinator in Colombo, and established an emergency assistance fund for journalists under threat, which has already provided financial support to 34 journalists in the embattled Jaffna Peninsula.

2.0 Legislation and the Courts

2.1 Sedition

In September 2006 the Australian Law Reform Commission issued a report on the federal sedition laws, *Fighting Words – A Review of the Sedition Laws in Australia*¹. The Commission had been asked by the federal Attorney-General to review whether the sedition laws needed to be modernised and whether the 2005 changes had adequately addressed the question of ‘intentionally urging others to use force or violence against any group within the community’. The Commission also considered whether the term ‘sedition’ adequately described such conduct. It subsequently issued 27 proposals for reforming the laws.

The Alliance welcomed many of the Commission’s proposals. The Commission advised the ‘red rag’ term of sedition be dropped from federal statute books and that, at law, any urging of others to use force or violence should be intentional and that the intent was for force or violence to occur. It also proposed that a jury should take into account the context in which the conduct occurred: whether it was part of an artistic performance or

exhibition; a genuine academic, artistic or scientific discussion; an industrial dispute; or in a news report or commentary about a matter of public interest.

The Commission also recommended amending the offence of assisting the enemy to clarify that it referred to material assistance — providing funds, personnel or strategic information - as well as the repealing of outdated provisions in the *Crimes Act* concerning ‘unlawful associations’, which have been superseded by more recent laws on terrorist organisations, along with associated offences such as ‘treachery’ and ‘sabotage’. It also ruled out the need to introduce a British-style offence of ‘glorification of terrorism’.

On September 13, the day the Commission’s report was tabled in Parliament, Attorney-General Philip Ruddock said he would carefully consider the recommendations.² Five days later he said there would be no change to the legislation.³

In December 2006 Martin Scheinin, United Nations Special Rapporteur, issued his report on Australia’s human rights compliance while countering terrorism.⁴ Scheinin noted the speed with which Australia had enacted anti-terror laws and their “profound implications” for human rights, particularly given the lack of domestic laws protecting these rights. He also concluded that the extraterritorial provisions of the sedition laws were too broad and could pose a threat to international humanitarian laws.



Cartoon by Chris Kelly

Ridiculous Tastes

ALAN MOIR

Apart from the striking similarities in industrial relations laws, the other bemusing likeness the Howard Government has with the US of the late 19th Century are the attempts with the Sedition Laws to stifle questioning and debate in the media.

Several States passed anti-cartoon legislation between 1897 and 1915 in an attempt to stop cartoonists ridiculing their often corrupt politicians. In all cases the laws produced laughter but not obedience and were all eventually repealed.

The funniest example is that of McDougall, the cartoonist in the *Philadelphia North American*. The cartoonists in Pennsylvania had been depicting their Governor, Samuel Pennypacker, (yes, that was his name) as a parrot, a mouthpiece for other forces. Pennypacker had an anti-cartoon bill introduced in the State Legislature. The bill forbade cartoons using birds or animals to portray politicians. So McDougall drew the politicians as vegetables and beer mugs, causing great hilarity, and, it is said, a jump in newspaper sales.

We haven’t got to that stage yet, although some thin-

skinned politicians in the past have attempted to take legal action to stop them being ridiculed, so far without success.

And here is potentially a curious little problem for cartoonists. Legally ridicule is allowed if a cartoon can be seen as a ‘fair comment’ on current events. However a pure caricature could be seen as gratuitously malicious, having no greater purpose than personal ridicule. As yet in Australia it’s untested.

Australian editors have traditionally given great support and encouragement to their cartoonists and if there are to be any challenges to cartoonists’ freedoms I’m sure it will be vigorously opposed by the newspapers. The main challenges so far have come under the rubbery title of ‘taste’. Unfortunately cartoonists were born without tastebuds, so I and many of my colleagues occasionally have to go through a re-education process through readers’ email responses and Letters to the Editor. We’re slow learners.

The role and practice of cartooning hasn’t changed for the better, or worse, for the last thirty or forty or so years, but the new sedition laws throw up new horrendous possibilities.

The cartoonists of Australia wait and hope.

Alan Moir is a Walkley award-winning cartoonist with the Sydney Morning Herald.

2.2 Criminal Code Amendments

In June 2006 Ruddock tabled in Parliament the report of the Security Legislation Review Committee's public and independent review of 2002 and 2003 terrorism amendments to some part of the Criminal Code. The Attorney-General's department submitted to the SLRC that subsection 3 of section 100.1 of the criminal code should be omitted from the definition of a 'terrorist act' – the section which deals with 'advocacy, protest, dissent or industrial action'.

The Committee's final report described the section as "an essential protection of fundamental rights such as the right of free speech", and labeled its possible omission "unthinkable".⁵ It also noted that, while cases of government breaching civil rights in Australia were rare, it was "not unfair to observe that, at times, submissions made by government agencies in favour of the current legislation did not adequately acknowledge that risk".

The Alliance supports calls for the implementation of a number of the Committee's recommendations ensuring freedom of speech is upheld, including amendments to ensure that favourable coverage of a proscribed terrorist organisation or direct praise of a terrorist act could not be construed as providing support or advocating terrorism at law.⁶

At the time of print, no action had been taken on the Committee's recommendations.

2.3 ASIO and Anti-Terror Legislation

Since September 11 2001, 41 pieces of anti-terror legislation have been enacted federally. In April 2006 Parliament passed the Telecommunications Interception (Amendment) Bill, allowing ASIO broader powers to tap the phones of associates of suspects – the covert capacity to intercept the communications of somebody who is in no way suspected of any offence.⁷

"Sedition and other laws constraining speech inevitably have a 'chilling' effect on what people are prepared to say...Like other democratic nations we ought to grant expression specific legal protection in a national charter of rights."

Charter of Rights Needed

GEORGE WILLIAMS

Since September 2001 Australia has gained new laws that were unthinkable prior to the attacks on the US. One of those laws allows ASIO to detain Australian citizens for questioning for up to a week even when they are not suspected of any crime. While detained, a person can be compelled to reveal information about family members, sources or anything else they may know, upon pain of five years' jail.

The ASIO detention regime makes it an offence to disclose "operational information" about a person's detention within two years of that person being detained. Operational information is defined very widely to include information that ASIO "has or had" or "an operational capability, method or plan" of ASIO's.

Revealing such information can incur up to five years' imprisonment. While the warrant is in force, it is also an offence to disclose even the mere fact that someone has been detained or questioned, or any other matter relating to the content of the warrant or the questioning or detention of the person. There are no exceptions for fair reporting or if the information is published as part of a media story that reveals that ASIO has abused its powers or mistreated detainees.

Another problematic law relates to the banning of terrorist organisations. A body can be proscribed not only because the government believes that it is engaged in preparing, planning or performing a terrorist act, but because it 'advocates the doing of a terrorist act (whether or not a terrorist act has occurred or will occur)'. In other words, organisations can be banned not just for their actions but also because of what is said on their behalf. Once an organisation is banned, penalties of up to twenty-five years in jail apply to people who are members of or support the organisation.

The Criminal Code states that an organisation "advocates" the doing of a terrorist act including if it "directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person . . .

to engage in a terrorist act". An example could be where an organisation's executive or membership praises Nobel Peace Prize winner Nelson Mandela's resistance against apartheid in South Africa.

Then there is the sedition law. It criminalises people for what they say if, among other things, they urge by force or violence the overthrow of the constitution or the government. The penalty is jail for up to seven years. Sedition had, at least until recently, been regarded as a discredited offence because of its use against political oppositions. Those charged with sedition include Mahatma Gandhi, Mandela and even Peter Lalor after the 1854 Eureka Stockade.

While the law of sedition has been "modernised", it provides few exceptions. No specific defences are given for many forms of communication, including artistic, academic or scientific discussion. It even fails to protect satire or comedy, a very Australian way of dealing with something as difficult and troubling as terrorism. Black humour, typified in the way ABC Television's *The Chaser's War on Everything* uses the words and images of Osama bin Laden, has the potential to become a criminal offence.

Attorney General Philip Ruddock has said he will not apply the sedition law in such cases. But there is no guarantee of how this or future governments will use the law, and Ruddock's undertaking also ignores the larger problem of self-censorship. Sedition and other laws constraining speech inevitably have a 'chilling' effect on what people are prepared to say.

These examples demonstrate how fragile freedom of speech is in Australia. They expose how we assume, rather than actually protect, the freedom. Like other democratic nations, we ought to grant expression specific legal protection in a national charter of rights.

George Williams is the Anthony Mason Professor and Director of the Gilbert and Tobin Centre of Public Law at the University of New South Wales.



Jack Thomas leaves the Court of Appeal with his wife Maryati after the court announced that he will receive a retrial. December 20, 2006. Photo by Craig Abraham/The Age



An activist for the People for the Ethical Treatment of Animals (PETA) holds up a sign decrying the abuse of sheep by Australian wool exporters and calling for a boycott of Australian wool. November 4, 2004. Photo by Ed Wray/AP/AAP Image

“We are told legislation to protect journalists is coming, but will it really make a lot of difference?”

Former NSW Premier Neville Wran said this could include journalists “who, during the course of their work are thought to have some information about a person in which ASIO has an interest, may be arrested and interrogated, forced to break their confidentiality or even jailed if deemed uncooperative or fail to answer questions.”⁸

ASIO’s power to keep secret its reasons for deporting or detaining people has also come into question, with the Federal Court granting access for US peace activist Scott Parkin to his adverse security assessment – a landmark precedent. Previously ASIO had been able to refuse access to their assessments of people considered to be a security risk. The federal government has challenged this ruling to the full bench of the Federal Court.

The potential retrial of terror suspect ‘Jihad’ Jack Thomas based on interviews he gave to *The Age* and ABC TV, is a tangible demonstration of the importance of a free press. Thomas, who was the first man convicted under Australia’s

anti-terror laws, last year had his conviction overturned on the grounds his interview with the AFP was inadmissible because it was involuntary.

However, the Victorian Court of Appeal in December ordered he be retried, finding his statements to the media were voluntary new evidence and capable of supporting a conviction on some of the charges.⁹

Media continue to fight an uphill battle against the “secret justice” of the trials of accused terrorists. Proceedings are closed to the media and the public for days at a time over evidence sensitive to “national security”, with the federal government winning an order for ‘security classified’ evidence in the August trial of 13 Melbourne terror accused to be heard in closed court.

2.4 Uniform Defamation and SLAPPS

Uniform defamation laws came into effect in all states and territories across Australia on January 1 2006. The changes excluded almost all corporations from the right to sue, a move applauded by the Alliance as a boon for press freedom. The public interest test for true comment has also been abolished.

Insulation from corporate legal action against media is far from absolute, however.

In February 2007 retail giant David Jones took independent think-tank The Australia Institute and its director, Clive Hamilton, to court for breach of section 52 of the Trade Practices Act 1974. The retailer alleged the Institute engaged in misleading and deceptive conduct with claims that David Jones advertising eroticised and sexually exploited children¹⁰.

The case began after a media release “Corporate paedophilia - sexualising children by advertising and marketing”, named retailers David Jones and Myer as having “jumped on the bandwagon” in eroticising children. David Jones claims to have suffered “loss or damage” as a result.

The action is a SLAPP: Strategic Litigation Against Public Participation. SLAPPS aim to silence dissent, and are a favourite of big business. Recent moves by the Australian wool industry are another such example.

Federal treasurer Peter Costello in February 2007 announced changes to the secondary boycott provisions of the Trade Practices Act to allow the Australian Competition and Consumer Tribunal to take class action against People for the Ethical Treatment of Animals (PETA).¹¹ The animal rights group has been running a boycott campaign of Australian wool products over the practice of mulesing - the slicing away without anaesthetic of folds of skin from a merino sheep’s rump to prevent maggot infestations.

Currently, individual sheep farmers can sue for losses of trade that result from a ban on Australian wool, but Costello wants to widen the secondary boycott provisions – previously confined to action against unions which hindered the supply of goods or services to or from companies- to allow the ACCC to sue for damages on behalf of wool farmers. Costello denies the changes will impact free speech: “You can say what you like. You can be as ignorant as you like. There’s no law that’s going to stop ignorant commentary, but there will be a law which allows the ACCC to stand up for Australian farmers when they suffer from a boycott.”¹²

Greens Senator Bob Brown said the change would turn the respected ACCC into a “political attack dog.” Taxpayers could end up paying the legal bills for companies acting in an ethically questionable manner, he said.

The ACCC powers could provide a back door for a swathe of corporate actions including that of timber giant Gunns, who has unsuccessfully tried to sue a group of high-profile

Court in the Act: Media and the Law in 2006

PETER BARTLETT

Early 2006 saw the introduction of uniform defamation laws in all states and territories in Australia. No longer do journalists need to worry about eight separate laws.

There are some very significant changes. Companies employing more than ten people cannot sue. There is a cap on damages on \$250,000 indexed. Truth now is a complete defence.

The results since 1 January 2006 is that very few new actions have been issued, claiming damages for defamation. Some major publishers and broadcasters have not had one action issued in that time. Many complaints are still being received but few move to the Writ stage. A review of the legal scene over the last 12 months shows some interesting trends.

The media has always been nervous about being served just prior to publication or broadcast, with injunctions to restrain publication, on the basis of alleged defamatory materials. Media lawyers have long taken the view that an application for an injunction related to defamation would fail, if damages was an adequate remedy. The High Court has now clarified the position. Heydon J noted in *Australian Broadcasting Corporation v. O'Neill* [2006] HCA 46, 170 that '...only one proposition of importance flows from the appeal. That is that as a practical matter no plaintiff is ever likely to succeed in an application against a mass media defendant for an interlocutory injunction to restrain publication of defamatory material on a matter of public interest, however strong that plaintiff's case, however feeble the defences, and however damaging the defamation'.

There are however, many areas of concern for the media.

Suppression orders appear to be on the increase. As Lord Hoffman has said: 'There are in the law reports many impressive and emphatic statements about the importance of the freedom of speech and the press. But they are often followed by a paragraph which begins with the word 'nevertheless' (R v. Central Independent Television).

Victoria, in particular, has seen a blow out in suppression orders, many related to the gangland murders and police under charge. It has been a minefield for reporters and pre publication lawyers. The media was particularly frustrated when for many months it could not publish details of the conviction of Carl Williams for the murder of Michael Marshall, due to further pending murder trials.

Another area to watch is that of confidentiality and privacy. The United Kingdom has moved even closer to a tort of privacy. Australia has a media exemption in the Privacy Act, although it is under review by the Commissioner. The NSW defence of Truth and Public Interest and the Queensland defence of Truth and Public Benefit (both of which arguably introduced a privacy element) have been replaced by a truth alone defence in the uniform defamation laws.

2006 saw the Victorian Supreme Court prevent the media from publishing the identity of three AFL footballers who had tested positive twice, to the use of illicit drugs. We also saw Gerard McManus and Michael Harvey of the *Herald Sun*, charged with contempt of court for failing to disclose sources. We are told legislation to protect journalists is coming, but will it really make a lot of difference?

The High Court threw out *The Australian* newspaper's attempts under FOI legislation to gain access to Federal Treasury documents. The decision was a bitter blow for reporters trying to make use of the FOI laws. *The Australian* says that the most immediate consequence of the decision is the emasculation of the FOI Act.

British American Tobacco sought injunctions against *The Age* and Fairfax, claiming privilege over documents relating to the McCabe case, leaked from Clayton Utz. The tobacco companies incurred extraordinary legal costs in a six week period, fighting the publishers.

More recently we saw two Australian Federal Police officers serve subpoenas on journalists from *The Australian* newspaper. These subpoenas related to criminal proceedings against former Customs Department official, Allan Kessing.

In addition, it appears the news stories prepared by Ian Munro (*The Age*) and Sally Neighbour (ABC) may constitute an essential part of the evidence in any re-trial of accused terrorist, 'Jihad' Jack Thomas – an astounding development.

On the positive side, in many ways, we saw *The Age* newspapers reports on Geoff Clark vindicated, by a Victorian Court. Johan Lidberg from Murdoch University claims that when it comes to freedom of information, Australia remains a banana republic. I do not agree.

Defamation laws have moved in the right direction. There are areas to be concerned about. There are areas where the media needs to be vigilant. However, it is still far safer to be a journalist in this country than in the vast majority of countries on earth.

Peter Bartlett is a Partner and head of Media and Communications at Minter Ellison. He was named leading Australian media lawyer in Chambers Global 2006.

environmentalists, including Brown, for up to \$8 million on numerous occasions in the Victorian Supreme Court. Gunns claims, like the wool farmers and David Jones, that it suffered loss of reputation and profits as a result of the negative publicity.¹³

2.5 Excessive Prosecution

Melbourne Magistrates Court was brimming with television personalities on May 15, when a group of Channel Seven employees was charged with contempt for identifying a minor involved in a Children's Court case. The 14-year-old was originally named by Chris Tinkler in the *Sunday Herald Sun*. Tinkler was also charged, along with his editor Alan Howe.

Five presenters, including Naomi Robson, David Koch and Jennifer Keyte, were among the group of 11 fronting court.

Seven's News and Current Affairs director, Peter Meakin, accused the prosecution of being "starstruck" and conducting a "show trial". "I'm amazed that they didn't charge the cameramen who recorded the pictures and the sound recordist who turned on the



Chas Licciardello leaves the Sutherland Local Court draped in an Australian flag after the magistrate threw out charges of offensive behaviour. January 23, 2007. Photo by Jon Reid/*The Sydney Morning Herald*



Peter Meakin and Seven Network staff speak following a verdict at Melbourne Magistrates Court relating to naming a minor. May 15, 2006. Photo by Angela Wylie/The Age

“In a world where spin is king and a tight lid is kept on unpleasant news or bureaucratic bungles modern technology is being used to keep an eye on who might be in cahoots or even in conversation with the press”

microphone, such was their level of vengeance”, Meakin said.¹⁴

Magistrate Lisa Hannan dismissed the charges against Tinkler and the presenters but convicted Channel Seven News Director, Stephen Carey, *Today Tonight* executive producer Craig McPherson and former *Sunday Herald Sun* editor Alan Howe.

Seven’s *Today Tonight* was again before the courts one week later, when a South Australian magistrate found producer Graham Archer guilty of breaching a suppression order by naming a sex-attack victim. Meakin claimed the case was politically motivated, saying Archer “shines lights in corners that (the South Australian government) would rather stay dark.”¹⁵

Magistrate Grantley Harris declined to record a conviction but fined Archer and Seven Adelaide \$1000 each and ordered the station to pay more than \$18,000 in costs and compensation. The August 2003 story was mostly based on court transcripts available on a legal website, which included the name of the alleged victim. Archer later said the case “sounds a warning to all media of the

willingness of this administration ... to use the court system.”¹⁶

The Chaser’s War on Everything had a win for satire in Sutherland Local Court, where comic Chas Licciardello was found not guilty of offensive behaviour for trying to sell rugby league “supporter kits” outside an NRL game at Kogarah’s Jubilee Oval on July 14 2006. Licciardello was arrested after trying to sell a kit – which he touted as official Bulldogs merchandise - to a number of aggressive fans, as police looked on. The kit contained plastic knives, fake knuckledusters and mock packets of rohypnol.

Magistrate Joanne Keogh found Licciardello’s stunt was clearly a joke, and “although it may not have been a joke to everyone’s liking”, it didn’t amount to offensive conduct.¹⁷

2.6 Protecting Whistleblowers

The Alliance renews its calls for the implementation of uniform qualified privilege for journalists and protection of their sources. The Australian Law Reform Commission and its NSW and Victorian counterparts in February 2006 called for professional confidential relationship privilege for journalists in NSW be extended to all Australian jurisdictions.¹⁸

The issue was brought into sharp relief by the decision of the Victorian Supreme Court to pursue contempt charges against Canberra-based *Herald Sun* journalists Michael Harvey and Gerard McManus. The pair face a possible jail term for refusing to reveal the key source of an article they wrote revealing plans to reject a \$500 million boost to war veterans’ pensions.

Chief County Court Judge Michael Rozenes said the journalists considered their professional code of ethics above the law. “In the real world how can there be a conflict between the law and professional journalistic ethics? This is almost a badge of honour, upholding the best traditions of journalistic ethics ... How can any court tolerate that?” Judge Rozenes asked.¹⁹

Reviewing an appeal by the journalists last August, Victorian Supreme Court Justice Elizabeth Hollingworth said the law did not recognise the Alliance Code of Ethics. “Although the journalists’ code of ethics may preclude them from naming a source, that code has no legal status,” Justice Hollingworth said.²⁰

The Commonwealth government has made numerous calls for the charges against Harvey and McManus to be dropped, and has denied claims of hypocrisy by Press Council chairman Ken McKinnon, who said they were “determined to prevent leakages to the point of intimidation”.²¹

The pursuit of charges against Harvey and McManus seems entirely contradictory in the face of uniform support for national shield laws protecting journalists’ sources: an intergovernmental working party on proposed uniform commonwealth and state shield laws is due to report presently. The force the proposed laws would have has also already been questioned, with a heavy reliance on judicial discretion.²²

The recent conviction of whistleblower public servant Allan Kessing and related raid on the offices of *The Australian* newspaper also casts some doubt on the strength of the government’s commitment to the shield laws.²³

Kessing faces a probable jail term for leaking a confidential report on airport security to journalists Martin Chulov and Jonathon Porter from *The Australian*. Their disclosure of the report led to the biggest shake-up of airport security in Australian history. Chulov and Porter refused to disclose their source or co-operate with the investigation that led to Kessing being charged. The judge urged the jury not to consider the public interest of the leak in coming to their verdict.²⁴

A question on notice in Parliament last year revealed that between 2002 and 2006 there were 53 referrals from Commonwealth Government departments and agencies to the Australian Federal Police over “unauthorised disclosures of government information”.²⁵

Listening In

KATE MCCLYMONT

“Don’t ring me on the office number whatever you do,” said a police source when we met for coffee recently. He went on to say that there was witch hunt going on in his office to track down police officers conversing with the reptiles of the press.

In a world where spin is king and a tight lid is kept on unpleasant news or bureaucratic bungles, modern technology is being used to keep an eye who might be in cahoots or even in conversation with the press.

Take the case of Desmond Kelly. You may recall that Kelly, a public servant, found himself on the wrong end of the law when the government went into a dizzy spin after the *Herald Sun* published a yarn suggesting that the Government had wimped out on the recommendations of a wide-ranging review into veterans’ entitlements. The news story also suggested that the veterans were going to lose out on an estimated \$500 million worth of entitlements.

Even though the Government had decided not to go with the option unearthed by the *Herald Sun*, did they accept the legitimate criticism and move on? Of course not. They spent a considerable amount of taxpayers’ money tracking down who had been the bringer of bad news.

And according to modern technology the bringer of bad news was senior Veterans’ Affairs public servant Desmond Kelly.

The federal police trawled through the telephone records of hundreds of public servants looking for a match with the telephone numbers of either of the journalists.

At Kelly’s trial, the prosecution produced phone records which showed that in the days before the *Herald Sun*’s story broke, Kelly had made calls from both his home phone as well as his work to Michael Harvey’s mobile and his work phone in the Canberra press gallery.

When Harvey and his colleague Gerard McManus refused to give evidence at Kelly’s trial as to who had been the source of their story, the pair were charged with contempt and are currently awaiting sentence. Hardly an encouraging sign of press freedom in Australia.

Meanwhile, Kelly’s conviction was overturned by the Victorian Court of Appeal on the grounds that while Kelly admitted he had spoken with Harvey and McManus, it could not be proved beyond reasonable doubt that he had leaked the information.

But it doesn’t stop there. Earlier this month, the federal police tried to subpoena the notes of a journalist at *The Australian*. Again they were looking for clues to see if another hapless public servant had leaked material to the paper.

Warren Beeby, group editorial manager of News Limited, was understandably concerned about the increase of forays into newsrooms to ferret out leaks.

“The federal police are making alarmingly regular incursions into newsrooms to unearth journalists’ sources as part of the federal Government’s policy of tracking down and prosecuting any public servant found to have leaked secret information,” he said in a recent speech.

“The crackdown is seen not only as an attempt to deter journalists from breaking news out of Canberra, but also as a bid to intimidate public servants.

“At the same time, federal and state governments employ spin doctors in their hundreds to ensure only approved versions of stories see the light of day, and to keep reporters off the scent of adverse or controversial stories.”

It is little wonder that Australia has slipped a couple of places to 35 in the annual World Press Freedom Index compiled by Reporters Without Borders. Even countries such as Estonia and El Salvador are rated more highly.

Kate McClymont is a Gold Walkley Award-winning investigative journalist with the Sydney Morning Herald

The introduction of laws protecting journalists from prosecution for maintaining the anonymity of their sources is merely nominal if whistleblowers can and will be uncovered and prosecuted by the authorities. The Alliance has written to the Attorney-General calling for the limiting of criminal charges for leaking official information, as recommended in the 1991 Gibbs Review of the Crimes Act. It also supports Labor’s election commitment to review whistleblower legislation if elected.²⁶

2.7 Freedom of Information

In March 2006 the Commonwealth Ombudsman, Professor John McMillan, handed down his report into the administration of Freedom of Information legislation, concluding that FoI reform at an Australian government level was “long overdue”.²⁷

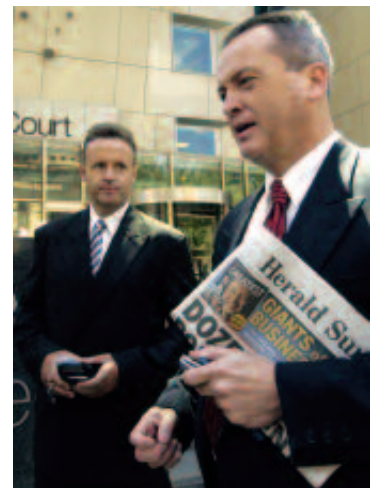
Requests were too often excessively delayed – one agency surveyed met the legislated 30-day timeframe only 31 per cent of the time - and the quality of responses was variable. Passive resistance by some departments and inconsistent administrative costs (sometimes in the tens of thousands of dollars) were also an issue. While the Act worked well in providing public access to personal information, the report concluded its track record on policy-related matters was sometimes lacking.

In April the NSW Court of Appeal handed down a landmark judgment in favour of granting access for the Law Society to WorkCover legal costings, imposing tough new tests for governments refusing to release internal working documents. FoI experts hailed it as “probably the most significant decision for FoI ever in NSW”, requiring governments to show the probability of “tangible harm” before they could withhold information.²⁸ However, the NSW Administrative Decisions Tribunal said the state government continued to fall short on FoI by failing to review secrecy provisions, relied on by agencies in deflecting applications.

On a federal level FoI suffered a major setback when the High Court, in September, failed to uphold an appeal of journalist Michael McKinnon in his case against the Treasury.

In a three-two judgment, the Court held that McKinnon, then-FoI editor for *The Australian*,

“Harvey and McManus did not place themselves above the law. They fulfilled their responsibilities as reporters in a free society.”



Herald-Sun journalists Michael Harvey and Gerard McManus leave the County Court in Melbourne. February 12, 2007. Photo by Julian Smith/AAP Image



Cartoon by Fiona Katauskas

was not entitled access to certain documents. The Court accepted Federal Treasurer Peter Costello's use of two conclusive ministerial certificates to block McKinnon's access to Treasury documents relating to the impact of bracket creep on income tax cuts and a government grant, the First Home Buyers' Scheme. The certificates are designed to protect documents which, if released, would threaten national security or act against the public interest.

It was successfully argued, in McKinnon's case, that disclosing the documents would inhibit the Government's ability to communicate openly with its ministers and staff, and could potentially confuse or mislead the public.²⁹

News Limited chairman and chief executive John Hartigan said the decision made it "difficult not to conclude that the Freedom of Information laws are now effectively lost as an avenue for making governments open, transparent and accountable" and freedom of speech was coming under increasing threat. "Australians need to become well informed about the threat to this basic democratic freedom which is occurring on numerous fronts".³⁰

Between October 1996 and September 2006 the Howard government issued 13 conclusive certificates, with an increase of FoI refusals from 4 per cent in 1996-97 to 6 per cent in 2004-05. Almost half of all requests for "non-personal" information on government policy and decision-making were partly or wholly unsuccessful in 2006: of 4,690 537 were refused and another 1,629 were only partially allowed. Departments closest to contentious policy areas were also slowest to process requests. The Department of Prime Minister and Cabinet took more than 90 days in 36 per cent of cases, Defence 27 per cent and Immigration 22 per cent.³¹

Former shadow attorney-general Nicola Roxon, in October, put forth the Freedom of Information Amendment (Abolition of Conclusive Certificates) Bill 2006 - a private member's bill with ALP backing. The Bill introduces an explicit provision that protecting a government from embarrassment is not sufficient reason to decline release of information, and aims to "rebalance the objective of providing access to government information against legitimate claims for protection".³²

Raising the Shield

CHRIS MERRITT

The free flow of information is one of the core strengths of free societies. It is just as essential as free elections and the separation of church and state.

All three factors are found in properly functioning democracies - a system of government that is increasingly under attack from theocratic fascists.

Yet in the face of this deadly challenge, the federal government is mounting its own attack on the free flow of information. If it succeeds it will diminish the quality of Australian democracy and help those who detest our freedoms.

The attack on freedom of communication is part of a creeping authoritarianism. This is apparent in the federal government's inability to produce real shield laws for journalists' sources.

Canberra's failure is linked inexorably to its fixation with control over public debate. This fixation has been given legislative effect through the imposition of criminal penalties on federal public servants who leak information to the press.

The government refuses to accept that some leaks are in the public interest. Until it does, it will never be able to pass a law giving journalists the right to protect the identity of confidential sources. To do so would undermine the government's ability to enforce criminal sanctions against leakers. And that would erode its control over the flow of information.

The federal government, with the assistance of the High Court, has also destroyed the Freedom of Information Act as a reliable method of obtaining contentious information from the bureaucracy. Private citizens can still use it to obtain their own personal information. But that does not mean the act is

working.

The real benefit of an FoI system is that it provides an independent method of obtaining reliable information about the formation of public policy. It enables the media to report with authority on the conduct of public affairs, without relying on government spin doctors.

When assessed on this ground, the federal FoI system is almost useless.

So if the only independent method of obtaining government information has been neutered, that increases the incentive for reporters to obtain information from unofficial sources.

And because there are no effective shield laws, more journalists are therefore likely to be charged with contempt of court for protecting their confidential sources.

Herald-Sun journalists Michael Harvey and Gerard McManus are the most recent reporters to be convicted for this offence. The legislative action - and inaction - that led to their conviction is a disgrace. It undermines a core value of democracy and brings federal law into disrepute. Nobody should be surprised that any Australian would respond to such outrageous behaviour by politicians with anything less than defiance.

Harvey and McManus did not place themselves above the law. They fulfilled their responsibilities as reporters in a free society. They found themselves in conflict with a network of laws that rightly embarrassed every true democrat in the federal government.

In response to that embarrassment, the government promised to introduce shield laws. But until it also loosens its grip on the flow of information from the bureaucracy, it will find it impossible to make any shield law effective.

Chris Merritt is Legal Affairs Editor for The Australian

Informing Freedom

MICHAEL MCKINNON AND MATTHEW MOORE

Another year, another pounding for public interest, at least for the Freedom of Information laws aimed at keeping politicians and bureaucrats accountable and honest.

In practice, all governments seek to thwart FoI at almost every turn.

State and Federal laws contain numerous provisions to grant access or concessions when there is a public interest, yet tribunals and courts in the last year have remained reluctant to flex the muscles required of an independent judiciary in a democracy.

There were some exceptions, such as the defeat for the NSW Government in the Workcover case. There, the NSW Court of Appeal threw out long-established exemptions available for internal working documents and ruled they should be released where there was public interest in doing so.

Agencies must now show tangible harm would flow from release rather than withholding them by relying on theoretical and secretive arguments based on the Howard case - a landmark 1986 ruling when the current Prime Minister was in opposition and lost a major FoI battle against then-treasurer Paul Keating. The arguments the Court of Appeal overturned had rested on the claims that public servants have to be secretive or they can't work; or that the public is too stupid to understand anything complex and would be confused by the truth held in government documents.

The NSW Court of Appeal decision was welcome, but it was an exception.

While FoI spreads into developing countries like China and India, under the encouragement of organisations like the WTO, World Bank and IMF, its application in Australia remains fraught with problems.

Extensive delays, heavy costs and the myriad of exemptions available to secretive agencies discourage many who should be using the laws.

The *Sydney Morning Herald* thought there was public interest in getting access to the economic modelling for the Welfare to

Work reforms with the case ending up in Administrative Appeals Tribunal.

The paper wanted a discount, available on public interest grounds, on the \$15,000, the government estimated as the cost of a decision.

The *SMH* lost. The AAT found because the request was "made in the ordinary course of the Herald's ...business" the paper was not entitled to a discount. The Sydney-based deputy president said he had not cut off access to the discount and that it was still available to big papers. But to qualify for it they'd need an FoI request of such vast expense they "could not commercially absorb the charges".

The media's appetite for fighting for legal improvements to FoI suffered a setback following News Ltd's valiant and far-sighted although unsuccessful appeal to the High Court in *McKinnon v Treasury*. The appeal came after Treasury issued conclusive certificates stopping the release of documents about bracket creep and the First Home Buyers Scheme.

But the split decision by the High Court and the NSW Court of Appeal judgment, may yet lead to an improvement in FoI practice thanks to a part-heard case called *McKinnon v PM and C*.

In what is the first certificate appeal since the High Court challenge, the AAT has heard arguments that documents can only be kept secret to protect essential public interests. A finding in support of that argument would be a big step forward.

While the case continues, the media's push for better FoI laws through the courts has helped spur the ALP at least to endorse a comprehensive reform package for this year's election campaign, with Opposition Leader promising its implementation shortly after taking the leadership.

It is now the media's role to force the government into matching the reform promise and making sure FoI reform is a core issue.

Michael McKinnon is FoI Editor with the Seven Network.

Matthew Moore is FoI Editor for the Sydney Morning Herald.

Labor has since affirmed its commitment to the bill and to establishing a pro-disclosure culture by changing the objectives of the Act, and through more rigorous and consistent application of the public interest test.

WA has also introduced legislation abolishing conclusive certificates.³³

2.8 Privacy and Access

In January 2006 the Attorney-General announced an ALRC review of the Privacy Act 1988, to address the challenges of rapidly evolving information technology and consider public perceptions of privacy and its protection.

The Alliance echoes the submission of the Australian Press Council that there is a growing over-emphasis on privacy rights, evident in extreme restrictions imposed by governments on reporting of their dealings; closure of courts; withholding of information about crimes and their alleged perpetrators by police and a crackdown on photographers.

Fewer than five per cent of complaints received by the Council related to invasion of privacy, with figures from the NSW Privacy Commissioner similarly indicating only 1.6 per cent of complaints regarded media intrusions.³⁴ The Office of the Privacy Commissioner also noted in its submission to the ALRC that it had received very few complaints or inquiries regarding the media.³⁵

"The difficulty of leaning more heavily towards more privacy protection is that it seems impossible to avoid reinforcement of trends towards more secrecy on matters where public debate is essential for the proper functioning of a liberal democracy," the Council said.³⁶

The Alliance believes that the current self-regulated system of codified professional standards is functioning effectively and that, in the absence of real and pressing evidence for tighter privacy controls on the media, their exemption to the Act should remain.

"There should be a clear, open and uniform approach from all courts. Open justice means doing more than opening the courtroom door."

Patterson's Curse

TIM DICK

Wayne Patterson is a convicted serial fraudster in New Zealand. Police found \$750,000 buried in his garden, gold bars under his shower, and boxes stuffed with fake birth certificates and driver licences.

He is otherwise of little interest, except for how a Kiwi judge dealt with his bid to hide his face from photographers.

For some time, media cameras have been allowed inside New Zealand courtrooms, subject to strict conditions, to capture proceedings for the benefit of the absent public.

Patterson's plan was simple - hold a piece of paper to his face - but the judge rendered it ineffective by ordering him to lower his hands following media complaints.

The judge said Patterson could either cooperate or be handcuffed. "There is immense public interest and the public has the right to know who Mr Patterson is," he reportedly said.

Patterson's face was on the television news that night, and in newspapers the next day, for the public he swindled to see.

To Australian journalists, it is an enviable example of freedom to report the proceedings of a democratic cornerstone: the courts.

The New Zealand guidelines acknowledge both the importance of fair trials and interests of witnesses, but also say: "the media have an important role in the reporting of trials as the eyes and ears of the public."

Without newspapers, television and radio, virtually no-one would know what happens in the courts.

Allowing pooled cameras in to the courtroom, under conditions similar to the New Zealand model, would further the interests of open justice, and reduce the need for an

unedifying media scrum on the courtroom steps.

It behoves a democracy to make it as easy for journalists to accurately report the courts as possible. Make it easy, and it's hard to get things wrong.

But as documents have replaced speech in the modern courtroom, the reporter's job has become more difficult.

Statements and affidavits are taken as read, a convenient shortcut for those involved, but a legal fiction which hinders accurate reportage.

Some barristers will provide documents, if it's in their client's interests to do so, but that usually comes after the day's proceedings, not when the court's attention is directed to them and everyone save the journalist is reading them.

There should be a presumption of access to most of the court record - including statements of claims, defences and transcripts - unless justice otherwise requires.

Access to affidavits and other evidence should be made available to reporters when they are tendered in court, otherwise criticism about later reporting of them is misplaced.

Different courts have different rules. Some facilitate access, others don't. Few make it easy. Sometimes, cumbersome applications have to be made in the shadow of deadlines, if a friendly barrister can't be found.

There should be a clear, open and uniform approach from all courts. Open justice means doing more than opening the courtroom door.

It means ensuring anyone can know what is going on in a courtroom, and so journalists can inform others what happened, and to whom.

Tim Dick is former Legal Affairs Editor with the Sydney Morning Herald



Freed miner Brant Webb is the first to be driven out by ambulance, Beaconsfield, Tasmania. May 9, 2006. Photo by Wayne Taylor/*The Age*

Calls from the NSW Law Reform Commission for the introduction of a plaintiff-friendly privacy tort have also sparked press freedom fears. Commissioner Michael Tilbury said the removal of the public interest test for defamation had greatly increased the risk of privacy violation, and there needed to be a legal counter-balance. Such changes should also be rolled out Australia-wide, he said.³⁷

There remains a real concern that civil privacy actions could be used as a backdoor muzzle on free speech, and the Alliance rejects such overly litigious moves.

Sporting bodies have also taken an unprecedented swipe at the media, with Cricket Australia and the AFL both trying to lock photographers and online news services out in the interests of exclusive commercial rights to images.³⁸ The Alliance is deeply troubled by such a push.

Commercialism was again at play when Eric Nerhus, who fought free from the jaws of a great white shark, was promptly quarantined from the media by management firm Harry M Miller. Miller, who specialises in "crisis management", auctioned the survival tale to the highest bidder, refusing access to all other media in the interests of a lucrative exclusive.³⁹ Miller missed out in the bidding war for Beaconsfield miners Todd Russell and Brant Webb.

3.0 Government Action Restricting Press Freedom

3.1 Media Ownership and Digital Broadcasting

The Broadcasting Services Amendment (Media Ownership) Bill passed through Parliament in October 2006 – the biggest shake-up of the Australian media in 20 years. Since the laws were passed some \$17 billion in deals have been flagged or completed, with concentration and centralisation increasing daily.

The legislation caps the number of media companies in a capital city at five, and limits regional areas to four – more than halving current numbers in Sydney and Melbourne. It also requires no owner hold more than two of three platforms (TV, radio and print) in the same market, and relaxes foreign ownership provisions. The laws came into effect on April 4.

The competition watchdog has warned ability to influence control over a company may trigger at well below the 15 per cent mark. The threshold under Corporations Law is 20 per cent.⁴⁰

History shows that where regulations provide minimums, industries default to the lowest standard. In a country which already has the highest concentration of media in the developed world, any further contraction of voices represents a real threat to vigorous and balanced public debate.⁴¹

During the last major shake-up of Australia's media in 1987, a flurry of mergers and takeovers led to job losses and varying degrees of corporate collapse. All three free-to-air television networks and the leading two magazine publishers became majority foreign-owned. Two of the three TV networks and Fairfax ended up in receivership and News came close.⁴²

Fairfax Media has already warned of job losses as a result of its merger with Rural Press.⁴³

When the Howard government last tried to change the cross-media laws in 2003, Paul Keating – architect of the 1987 laws - warned it would be naive to assume that expanded news groups such as News Ltd would not use newly-acquired television stations as “political



Senator Helen Coonan delivering her speech, *Media: Unpacking the Package*, to the Menzies Research Centre, Sydney. August 4, 2006. Photo by Robert Pearce/*The Sydney Morning Herald*

“Press freedom would be thrown out the window if a dogmatic proprietor began interfering with editorial processes - either demanding stories that favour his/her business interests or stories that at least reflect their opinion.”

Cash for Credibility

JANE SCHULZE

The monetary value of journalistic credibility is expected to gain greater prominence as Australia's media industry prepares for its largest ownership shake-up in 15 years.

The removal of foreign ownership restrictions on Australian TV and newspapers and of the cross-media restrictions applying to each of TV, radio and newspapers may deliver a number of new media owners with varying views on press freedom.

The ability for journalists to write without fear or favour has always required tolerance from media owners.

But in this new world where billions of dollars are being paid for media assets – often funded with record levels of debt – it also requires them to make a call on the economics of journalism.

In my opinion, that decision is likely to make or break any new media owner as it will be a key determinant of a group's profitability and therefore its ability to repay what is likely to be a huge interest bill on its pile of debt.

And this directly relates to press freedom.

For example, Fairfax Media, owner of *The Australian Financial Review*, is soon expected to become a \$9 billion company if its merger with regional rival Rural Press succeeds.

While Rural Press chairman and majority owner John B. Fairfax will emerge with about 14 per cent of the combined business, it still has a relatively open share register so remains vulnerable to a multi-billion takeover offer.

Most takeovers require the bidder to pay a premium of at least 20 per cent to the current share price so at a minimum an offer for an enlarged Fairfax Media would cost \$11 billion, much of which would be debt-funded.

But for the interest on that huge debt to be repaid requires Fairfax to retain reliable earnings.

Historically, Fairfax's profits have been underscored by its tradition of balanced reporting.

That has attracted a valuable audience (mostly the AB demographic) which in turn makes the company attractive to advertisers with a similar audience.

But imagine Fairfax's future if an egocentric owner bids for the company and decides to use it as his/her own mouthpiece.

Press freedom would be thrown out the window if a dogmatic proprietor began interfering with editorial processes - either demanding stories that favour his/her business interests or stories that at least reflect their opinion.

It would, in short, be nothing less than a journalistic nightmare.

But media audiences should never be taken for granted, and it's highly likely Fairfax's readers will soon notice the obvious opinions and lack of balance.

More importantly, premium advertisers will notice the change and leave the paper in droves.

Fairfax papers will instead become yet another mass product, fighting against numerous competitors across various media for advertising dollars with often discounted advertising rates.

So while revenue will decline, the cost of printing a paper remains the same so profits will be crunched. The interest bill will be harder to repay and what was once a financially sound business is now in jeopardy.

All of which highlights the economic cost of journalistic credibility.

Jane Schulze is Media Writer for The Australian newspaper and Sky Business Report



Cartoon by Andrew Weldon

propaganda tools". "An enlarged media company will align its television and print whenever it suits it. Not every day, but when it counts."

Keating continued: "The crunch is this: If ...the television groups acquire Fairfax, or News Corporation acquires free-to-air television, the diversity of our media goes backwards. Pretty simple: they get bigger, our range of news and opinion gets smaller."⁴⁴

Rural and regional Australia is particularly vulnerable to this loss of diversity. A 2005 Communications Law Centre case study of media ownership in four regional areas found the proposed floor of four media owners would not provide adequate diversity. The study, which examined the likely impact of the changes in Wollongong, Townsville, Toowoomba and Launceston, found the floor underestimated the importance of local daily newspapers and ignored the impact of media mergers on the local news culture.

"Local print media are seen as democratic institutions of paramount importance in sustaining local public spheres. Citizens

now feel that their newspapers are letting them down. Corporate pressures are prominent among the reasons for this. If their ownership becomes even more driven by corporate values, as is to be expected from any deregulation, this will further erode these public spheres," the report concluded.⁴⁵

Additionally, the diversification of news organisations across media platforms may result simply in more work for the same amount of journalists and syndication of their content – a reduction in reporting and an increase in repackaging. The argument for the internet as a vessel for diversification is also a moot point – all the major players are dominated by existing media giants: ABC Online, ninemsn, Fairfax and Yahoo!7.

A Roy Morgan poll of Alliance members, conducted in conjunction with Crikey.com.au, last year found journalists already believed media owners had too much influence, with many saying they already felt pressures from their employer. They also overwhelmingly

NGOs and Public Debate

SARAH MADDISON

Non-government organisations (NGOs) have been an important part of Australian society and politics for decades. Organisations such as the Red Cross, the Brotherhood of St Lawrence, Community Aid Abroad and the Australian Conservation Foundation, along with thousands of smaller organisations all around the country, are admired and respected not just for the services they deliver to marginalised and disadvantaged groups but for their contribution to public debate and the democratic process.

Good policy must reflect a range of perspectives and be based on knowledge of real people's lives and experiences. NGOs are the repository of an enormous amount of information about how things work in their part of the world and governments today simply cannot make effective policy without access to that bank of knowledge. Despite the discomfort that public criticism may produce, a mature government, with a commitment to a robust democracy, must recognise that criticism from NGOs provides a kind of feedback loop by which they can be informed of problems with their policies and programs. Advice from those organisations closest to the problem will help governments provide the best services and develop the best policies for all members of a society.

In Australia, recent years have seen an unprecedented attack upon NGOs, most particularly upon those organisations that disagree with the current federal government's views and values. The attacks have come both from government itself and from close allies such as the Institute of Public Affairs. Questions have been raised about NGOs' representativeness, their accountability, their financing, their charitable status and their standing as policy advocates in a liberal democracy

such as Australia.

These attacks have been driven by the political objectives of the Government. It is not so much NGOs as such that have been targeted but those NGOs that are seen to have an agenda that differs from that of the Government. While there is a general view that NGOs have had too much influence and have too loud a voice in the public debate, certain 'tame' NGOs have been spared criticism and threats and indeed have been actively cultivated through increased public funding and the promotion of individuals to various government boards and bodies.

But the continued attacks on the advocacy work of critical NGOs paint a bleak picture of the state of public debate in Australia. Many NGOs are reluctant, if not afraid, to speak out. As a result of these shifts many disadvantaged groups that had taken years to organise themselves sufficiently to have a voice have found themselves increasingly excluded from the policy-making process.

The outcome for the broader Australian polity is that the knowledge and breadth of experience collected together in the NGO community are having much less influence on how we develop as a society than they should. The media has less access to on the ground expert opinion, and in many instances buy into the marginalisation of critical voices.

Like individual citizens, community groups are being worn down and are increasingly reluctant to engage in the democratic process because they no longer believe that they can make a difference. There are grounds for serious concern that the longer this continues the more difficult it will be to reshape and rebuild the structures of democratic participation.

Dr Sarah Maddison is a lecturer in the UNSW School of Politics and International Relations and co-editor of "Silencing Dissent: How the Australian Government is Controlling Public Opinion and Stifling Debate" from which this edited extract is taken.

opposed the cross-media changes, saying they would reduce diversity and undermine journalistic integrity.⁴⁶ Among the key findings:

- 48.4% have felt obliged to take their employer's commercial position into consideration
- 37.7% have been ordered to toe the commercial line
- 31.6% have felt obliged to take into account their employer's political position
- 16.3% have been instructed to take into account their employer's political position
- 52.9% felt unable to criticise their employer
- 71.4% felt media owners had too much influence on the political agenda
- 62.3% felt media companies had too much say on how Australian electors vote
- 87.2% disagreed with the proposals
- 74.3% disagreed with the removal of foreign ownership restrictions for TV stations
- 69.8% believed the limit of three commercial free-to-air TV stations in capital cities should be lifted to allow for the entry of new players
- 84.8% believed the changes would reduce media diversity
- 82.6% felt the changes would negatively impact reporting integrity

The Government's delay of analogue TV switch-off to 2012 further undermines diversity in the Australian media. The media reforms ruled out the allocation of two extra digital channels as a new free-to-air network, instead setting one aside for mobile TV and another for in-home digital TV services. They are expected to go to auction in August and October.

The Alliance, in its submission to government on the media reforms, argued there was insufficient incentive for digital take-up, and the allocation of the two additional channels did little to encourage diversity, or engender a space where a free and democratic press could flourish.

The Productivity Commission, in its 2000 report on Broadcasting, said new players would drive the digital conversion. Conversely, it has also been observed, only diversity of content will drive consumers to take up digital services.⁴⁷

The Government's media reforms fail to provide appropriate incentives for broadcasters, receiver manufacturers/importers and consumers to move to digital. The reforms also act to protect and entrench existing media players (particularly by failing to allow a fourth free-to-air commercial network), and do not embrace the full capability of multi-channelling.

3.2 Content Regulation

The Howard government plans to introduce in the 2007 autumn session of parliament the ambitious Communications Legislation Amendment (Content Services) Bill. The publishing industry in particular has taken great issue with the draft legislation, which has wide-ranging censorship implications. Taking the view that all media is fast moving to mobile, the Bill seeks to extend current film classification guidelines to all content – effectively rendering content which is currently legal illegal. Books and magazines, for example, which are viewed online will now be censored according to motion picture, not publication, guidelines.⁴⁸

Thousands of books and magazines could subsequently be banned just because they are read online. Spoken-word radio programs will also come under the stricter regime once they are podcast or otherwise remotely accessed. This has dangerous consequences for media under the terror laws. A journalist interviewing a particularly outspoken terrorist or militant on the radio could, were the interview later podcast from a website, attract a charge of sedition. The Bill would seem to allow, under R18+ guidelines, the viewing of terrorist bombings whilst paradoxically banning the exploration of the politics behind it. The Alliance sees the Bill as a dangerous grab for freedom of speech and sets a worrying precedent for a government that has already displayed a readiness to exercise its censorship powers.

3.3 Censorship

Following the failure of the Classification Board to agree with his stance that books and a film seized from a Sydney Muslim bookshop breached sedition laws, federal Attorney General Philip Ruddock announced the Board and its Review Board would be split from the Office of Film and Literature Classification. The administrative functions of the Board and Review Board were instead brought under the auspices of his own department.⁴⁹

Five months after the restructure, Ruddock referred the eight books and film to the Review Board. They had previously been cleared by the AFP, NSW DPP and Classification Board. The Review Board unanimously banned two of the books, saying they promoted jihad and incited terrorism. They were the first books banned in Australia since 1973. The other six books were refused classification.⁵⁰

Later that month, at the Standing Committee of Attorneys General, while insisting he was “not about curtailing free speech” Ruddock asked the states to draw up new guidelines banning material “counseling, urging, proving instruction or praising terrorist acts.”⁵¹

Ruddock again successfully appealed the publication of a book to the Review Board in February 2007. Dr Phillip Nitschke's *The Peaceful Pill Handbook*, was refused classification on the grounds that it “instructs” in the crime of the manufacture, possession and importation

“The continued attacks on the advocacy work of critical NGOs paint a bleak picture of the state of public debate in Australia. Many NGOs are reluctant, if not afraid, to speak out.”



Voluntary Euthanasia advocate Phillip Nitschke holds a copy of his latest book. September 22, 2006. Photo by Mark Baker/AP/AAP Image

of barbiturates. It is now no longer allowed to be sold, displayed or even imported into Australia. Dr Nitschke, who plans to appeal the decision to the Federal Court, said free speech was “dead” and the latest casualty of a conservative government being pushed by Christian reactionaries. “The government’s attempt to push ideas, words and speech underground sets a dangerous precedent,” he said.⁵²

The Attorney-General also picked up the infamous *Big Brother* turkey slap incident of 2006 as a hobby horse for restricting live and reality TV programming. The incident – which involved one contestant placing his genitals near the face of another – was investigated by the Communications Authority and informally rated at no more than MA15+, and therefore suitable for viewing by people older than 15 and after 9pm.⁵³

3.4 Work Choices

The Australian building industry has become the testing ground for a new and unprecedented model of government control under the Work Choices laws, extending a gag over its members punishable by fine or prison.

The Office of the Australian Building and Construction Commissioner was set up in late 2005 in response to the findings of the Cole inquiry into the construction industry. A government-funded and hand-picked agency, the ABCC has the power to force builders to answer questions under oath in a secret interrogation over workplace issues. Failure to comply can result in six months in prison. Up to June 2006 27 people were interrogated in such a fashion and made to give an undertaking of confidentiality, precluding them from speaking to anyone except their lawyer.⁵⁴ The secrecy provisions have been adapted from the ASIO legislation, and make speaking out – including to journalists – punishable by jail or a fine.⁵⁵

The construction industry laws also make it a criminal offence to refuse to answer questions or hand over documents, extinguishing the long-held legal right to silence. The evidence, given under official coercion, can then be used in prosecution of workers and their colleagues. The ABCC has absolute discretionary power over who it takes to court.

The construction union says the laws are a tool for “browbeating” political dissent. “These laws go much further than employer/employee relations,” said the CFMEU. “They have changed the relationship between Australian citizens and the state. They are authoritarian and profoundly undemocratic.”

Unions and other scrutineers have been increasingly refused entry to construction sites, with smaller operators using the ABCC as a shield to block access.⁵⁶ Such closed-shop conditions defy freedom of speech.

An outspoken Tristar worker was sacked for giving interviews about the troubled factory to Sky News and *A Current Affair*. Tristar management said Marty Peek’s comments were “false and misleading”.⁵⁷

3.5 Attacks on the ABC

The independence and integrity of the ABC was compromised in March 2006 when the government scrapped the position of a staff-elected representative to the ABC Board. Since 1983 the staff-elected director has fought numerous battles to keep commercial influences from undermining the public broadcaster’s values. Journalist Quentin Dempster had been elected staff representative before the position was axed.⁵⁸

Liberal party senators last year repeatedly attacked the ABC during Senate Estimates hearings. NSW Liberal Party Senator Concetta Fierravanti-Wells claimed there had been instances of left-wing bias on an internet guestbook and that crowd sizes at trade union protests were exaggerated in some reports. She questioned ABC executives about the corporation’s guidelines for editorial staff, and accused the broadcaster of bias in its Lebanon war coverage.⁵⁹ Senator Fierravanti-Wells also successfully pressured the ABC into standing down NSW south coast presenter Peter Hand over bias claims. He has since been reinstated.⁶⁰

The ABC’s director of news and current affairs, John Cameron, told a May Estimates hearing that the ABC produces thousands of news and current affairs reports a week and that while he was unhappy about some of the examples raised during the hearing, almost all of the reports broadcast conformed with the guidelines. “Every media organisation Senator, has a style guide of sorts, this is our one, it’s mandatory that people are aware of it, that they follow it to the letter where they can, there are qualifications through it as I explained earlier, there will obviously be,” he said.⁶¹

Enough Rope presenter Andrew Denton said the use of the Senate to pick through ABC content line by line was “verging on censorship”. “It’s a very dangerous exercise to do what the critics of the ABC are doing, to cherry-pick a line here and a line there to try and make the argument that (the ABC) is some sort of screaming left-wing cabal”⁶²

Senate Estimates exposed SBS to a similar lambasting in November, with

“There is pressure not to do stories critical of the government, especially in the Asia Pacific”



Cartoon by Fiona Katauskas

Senators accusing the service of airing “pro-Arab” sentiments, “siding” with David Hicks and exhibiting “systematic bias” in its reporting of terrorism.⁶³ SBS staff were also told by management that Foreign Affairs minister Alexander Downer refused to appear on the *Dateline* program because it was too left wing. “There is pressure not to do stories critical of the government, especially in the Asia Pacific,” said one SBS journalist.⁶⁴

The ABC’s role in promoting Australia’s image, particularly within the region, has also come before the Senate Foreign Affairs Defence and Trade Committee’s public diplomacy inquiry. The Institute of Public Affairs, a conservative think-tank, submitted that ABC programming broadcast overseas should be required to actively promote “Australian values”. These values – which the IPA outlines as liberal democracy, human rights and free markets – should be enforced through an oversight committee of private sector representatives, the submission suggests. It accuses the ABC of “lacklustre support” for these values, placing it in breach of its Charter obligations to boost awareness of Australia and Australian attitudes.⁶⁵ Such censorship would threaten the integrity of ABC programming both here and overseas.

In late 2006, new ABC managing director Mark Scott introduced a new editorial policy to promote “balance” and appointed Paul Chadwick to the newly-created position of director of editorial policy. Scott has denied claims from Labor that the position is nothing short of “chief censor”.⁶⁶ The new ABC policy places the gamut of programming, from children’s to



Quentin Dempster speaks at an ABC staff protest over the federal government’s plans to abolish the appointment of a staff-elected director of the ABC, March 30, 2006. Photo by Ben Rushton/*The Sydney Morning Herald*

And Now a Word From Our Sponsors

QUENTIN DEMPSTER

The Australian public broadcasters - the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS) - are now being commercialised by an informal arrangement between the Howard Government and the broadcasters’ government-appointed boards. The Australian public has not been consulted about this change in strategic direction for either of the taxpayer-funded public broadcasters. SBS breaking into programs with ads and the ABC’s current consideration of advertising on its online websites and charging commercial rates for podcasts and vodcasts were not part of the Liberal Party’s 2004 federal election policy manifesto. Neither the government nor the boards have a mandate from the public to change the long standing funding arrangements for either broadcaster.

The obvious concern is that by pursuing a fully commercial business and programming plan to enhance revenues, the editorial independence of both broadcasters will be compromised. And while the boards justify their decisions as a practical means of securing more funding for Australian-made programs, there is the probability that the federal government will further reduce the taxpayer appropriation which has underpinned editorial independence since the broadcasters were created.

The Zampatti Board at SBS has obtained highly questionable legal advice to justify its decision to take advertising in what is laughably described as ‘natural breaks’. The practice, started in 2007, has enraged the SBS audience, particularly when confronted with ads on erectile dysfunction and groceries during serious and intellectually confronting quality documentaries.

The Newman Board has restructured the ABC’s divisions, creating a new ‘commercial division’ to drive commercial revenues above and beyond the long-standing ABC shops and centres which retail CDs, DVDs, books (with the exception of Chris Masters’ *Jonestown*) and other products.

As ‘click-per-view’ through ABC Online will soon provide

immediate access to daily and weekly ABC TV programs (like *The 7.30 Report*, *ABC News*, *Lateline*, *Four Corners*, *Foreign Correspondent*, *Stateline* and *Catalyst*) the board is considering wrapping these programs’ online sites with commercial advertising.

The ABC Act, which directly prohibits advertising on free-to-air radio and television, was written before the internet was invented. While the ABC Board has legal advice that nothing in the current Act would prevent the ABC taking advertising from its online platforms, the spirit of the ABC Act and its Charter is clear - no advertising.

The public broadcasters exist as a complementary service to Australia’s commercial broadcasting sector with special obligations to provide quality, innovative and comprehensive programs and services which the commercial networks do not provide.

Already at SBS there is evidence that the pursuit of a fully commercial business plan is compromising that public broadcaster’s editorial independence.

The ABC has been under sustained attack from the federal government through what has been described as ‘culture wars’ but which, in reality, has been nothing but an attempt to intimidate the broadcaster away from robust examination of government transparency and accountability.

The ABC is one of Australia’s most trusted institutions. The commercialisation of the ABC and its programs can only destroy the unique relationship the ABC has enjoyed with all its audiences.

There are those who say the relationship between ‘church and state’ - editorial and commercial - can be managed by the ABC’s new managing director, Mark Scott (a former editorial director at John Fairfax Holdings Pty. Ltd.). This is laughable as the ABC becomes dependent on and ultimately addicted to the commercial dollar. Programs and content will be commissioned for their bankability - how many ‘hits’ they can attract to enhance revenues. Only a casuist would proclaim otherwise.

Quentin Dempster is a Walkley award-winning journalist and presenter with the ABC



ABC Managing Director Mark Scott launches new editorial policies at the ABC in a talk at the Sydney Institute. October 16, 2006. Photo by Jenny Evans/The Sydney Morning Herald

“The ABC is one of Australia’s most trusted institutions. The commercialisation of the ABC and its programs can only destroy the unique relationship the ABC has enjoyed with all its audiences.”

religious shows, under the same scrutiny as news and current affairs – bringing with it similar expectations of balance and impartiality. *Media Watch* was singled out by Scott in his speech launching the new guidelines, which he hailed as a vehicle for tackling bias accusations head-on, and of “ensuring the ABC is the town square where debate can flourish”.⁶⁷

Satirical ratings-winner *The Glass House* was axed in the wake of the new guidelines, one day after Senator Fierravanti-Wells accused co-host Corinne Grant of a conflict of interest, as the “public face” of the ACTU’s Your Rights At Work Campaign. The ABC’s director of television Kim Dalton insisted the decision not to renew the show’s contract had nothing to do with the guidelines, from which comedy and satire are exempt.⁶⁸

At the time it was axed, *The Glass House* was attracting some of its highest-ever numbers of viewers, was consistently out-rating its commercial rivals, and had been nominated for an AFI Award. Host Wil Anderson said Grant, co-host Dave Hughes and himself had been told who they could and couldn’t make jokes about. “People think you can say what you want at the ABC but

it’s not true,” he said.⁶⁹

Following a concerted campaign by the Alliance and other lobby groups the government agreed to increase funding for the public broadcaster in the 2006-07 budget. ABC Chairman Donald McDonald described it as the best budget in 20 years, featuring a renewal of the ABC’s triennial funding – including \$30 million over three years for television dramas and documentaries and \$13.2 million for boosting regional and local programming. A further \$45 million was also allocated for capital renewal.

The ABC remains woefully underfunded, however. In real terms funding cuts, inflation and other economic factors have shrunk the budget significantly – about 25 per cent over the past 20 years. The Howard government sheared \$55m, or 12% from the ABC’s budget in 1997 and, until last year, had not increased its funding.⁷⁰ Of 17 OECD countries, Australia spends the second least of any country on its public broadcaster.

A KPMG report, commissioned last year by the government into adequacy and efficiency of ABC expenditure found the broadcaster was both efficient and chronically under-funded. Communications minister Helen Coonan raised the spectre of advertising on the ABC, saying it was up to the board to consider it for its 2009 funding bid. A national meeting of ABC Alliance delegates in March 2007 passed a resolution in support of a commercial-free ABC – particularly ABC Online – saying the introduction of advertising was “contrary to the spirit of the ABC Charter and will change irreversibly the nature of the ABC’s relationship with its audience”.

3.6 Downer Speaks

Foreign Affairs minister Alexander Downer put himself in the firing line in August, launching an extraordinary attack on the media over its reporting of an incident during the 2005 Israeli action against Lebanon. In a speech to the National Newspaper Publishers’ Conference on the Gold Coast, Downer accused the media of dishonest, lazy and biased journalism over, among other things, its reportage of an Israeli air-strike on a Lebanese Red Cross ambulance. Based on comments from a blog site, Downer asserted that “After closer study of the images of the damage to the ambulance, it is beyond serious dispute that this episode has all the makings of a hoax.” The International Committee of the Red Cross, who investigated the incident, rebuked Downer for his claims.⁷¹

Downer subsequently conceded he could have been wrong⁷², and the Israeli army has since admitted it may have fired on the ambulance.⁷³

In the same speech, Downer noted that a free media was as important to society as the executive, legislature or judiciary. “But that freedom comes with responsibilities. Standards of decency and respect for others and self-restraint are clearly important elements for the media to consider. Freedom cannot be unqualified and cannot operate without regard to the effect on others”. Selecting the examples of the Redfern and Cronulla riots, which gave overseas audiences the false impression that “law and order had broken down across Sydney”, Downer said there was a need to balance foreign policy interests and Australia’s overseas image against press freedom, “to get the story right, even when that story might not necessarily conform to your own opinions or prejudices.”⁷⁴

Alliance federal secretary Chris Warren said Downer’s comments displayed a “profound misunderstanding” of the pressures facing journalists in their daily work. “I don’t think journalists have got it so egregiously wrong as some governments did on weapons of mass destruction,” he told *The Australian*.

4.0 Safety

4.1 Crews Under Attack

Entertainer Barry Humphries admitted punching freelance photographer Malcolm Ladd in the face on May 3, 2006. Ladd was trying to capture Humphries eating lunch in Double Bay, Sydney when the comic icon lashed out, knocking his glasses off. "It's the first time I've been attacked and I've photographed just about everyone before," Ladd told News Ltd.⁷⁵



Former Opposition leader Mark Latham was found to be "way out of line" when he took a news photographer's \$6700 camera home and smashed it, a magistrate found in June 2006. Latham had pleaded guilty to maliciously damaging News Ltd photographer Ross Schultz's camera on January 19 2006. Latham approached Schultz, took the camera and smashed it with a mallet in his shed when he got home, but not before obtaining 50 photographs from the memory chip. The Director of Public Prosecutions had earlier dropped charges of assault and theft against Latham. No conviction was recorded but Latham was placed on a two-year good behaviour bond.⁷⁶

A group of violent protesters turned on a Channel 10 news crew during demonstrations outside the November G20 economic summit in Melbourne. Shouting "Get the media", the group jumped on reporter Gerard Scholten and his crew. "I was trying to defend myself with the monopod but they just laid into me, kicking and punching," Scholten said. A member of the crowd intervened, allowing Scholten to escape. His crew's camera was smashed.⁷⁷

Five relatives of Melbourne terror suspects were convicted of affray, with one jailed for three months, after they attacked a cameraman as he filmed them leaving court. All five

Seven Network cameraman Matt Rose after he was attacked by relatives of terror suspects outside Melbourne Magistrates Court. November 8, 2005. Photo by Jason South/*The Age*.

"My camera can't undress you, nor does it blow stuff up. It takes pictures. It keeps light."

Alert Not Alarmed

JON REID

Recently, on leave, I was photographing people climbing up rocks and jumping into a creek at Wattamolla, in Sydney's Royal National Park, when a woman approached. "Take a picture of my daughter and I'll rip ya f***ing head off," she shouted.

Obviously, she thought I was up to no good. I didn't persist. I was there with family and friends, and didn't want to be part of a scene.

In Australia, photography is legal and consent does not need to be obtained from the subject. Even photographing over someone's fence is OK.

Councils have tried to ban photography (unsuccessfully) and the Commonwealth government reviewed all aspects of 'unauthorised' photography in 2005. The Coffs Harbour Eisteddfod Society was so afraid of breaching child protection laws it banned parents from photographing performances featuring their children. Whether it had the right to do so was never tested.

Basically, if you are on public property, you can shoot it. Public property and publicly accessible places are two different things. Train stations and beaches are public property, the QVB (in Sydney) and Westfields aren't.

"A person, in our society, does not have a right not to be photographed" stated Justice John Dowd in 2001 in the NSW Supreme Court. If you don't want to be photographed sun-baking topless on a beach, then don't sun-bake topless on a beach.

Indeed, if you don't want to be photographed, think twice about leaving home. If you go to a shopping centre, train station, or carpark, you are probably being photographed. Ever wondered who controls the images? What policies there are

regarding its use? It's easy to whip up fear around photography and most of the fear and paranoia concerns the use of pics on kiddie-porn websites.

People's attitude to candid photography has changed since I entered the industry, especially over the last few years. Our government would have you believe that cameras are dangerous as they feature in the anti-terror "if you see something, say something" posters. My camera can't undress you, nor does it blow stuff up. It takes pictures. It keeps light.

Candid photography has many advocates. Photographers working this way see themselves as documenting life. By interfering as little as possible in the scene, they help portray the state of affairs in a particular place at a particular moment. When the 35mm camera freed them from their tripods, pioneering photographers realised the potential for capturing reality and, in my view, we are all richer for it. Try to imagine the world of photography without Cartier- Bresson's contribution. Or that of contemporaries like Alex Webb, Eugene Richards. Imagine not having Robert Frank's *The Americans* in your bookcase.

Just because photography is legal and there's no right to privacy doesn't give photographers carte blanche. Defamation laws apply to published images as does the national classification system. Any image used commercially requires consent for anyone identifiable in the image. Offensive behaviour laws may also apply.

If you see someone photographing on the street, or in the park, or near a beach, why not watch a while? Are they a tourist or a street photographer (is their camera silver or black? - a dead giveaway) or are they up to no good? I like to shoot bins, not because I want to put bombs in them but because I like the way they look.

Jon Reid is a photographer with the Sydney Morning Herald



Protestors and police clash as the media look on at anti-globalisation demonstrations near the G20 venue in Melbourne. November 18, 2006. Photo by Julian Smith/AAP Image



The ABC headquarters in Brisbane, following the announcement of an independent inquiry into cancer at the site. July 13, 2006. Photo by Dave Hunt/AAP Image



Family and friends of crash victim Morgan Mellish gather around his coffin during the repatriation ceremony at the RAAF Fairburn base in Canberra for the five Australian victims of the Garuda Airlines Flight 200. March 14, 2007 Photo by Sahlan Hayes/The Sydney Morning Herald

pleaded guilty to the attack on Seven Network cameraman Matt Rose and freelance sound recordist Daniel McCarthy outside the Melbourne Magistrates Court on November 8, 2005. Rose suffered neck pain, cuts to his face, chipped teeth and bruising on his back in the attack. Victorian County Court judge Jane Campton found: "Although members of the media may have been somewhat intrusive on this day, they were doing their job in an age where we are saturated with media coverage." The prosecution had pushed for jail terms for all five men.

During a pre-sentence hearing, the men apologised through their lawyers for their actions, which included kicking Rose while he was on the ground.⁷⁸

4.2 ABC Toowong

The ABC finally acknowledged staff concerns over conditions at its Brisbane studios and relocated staff just before Christmas. An independent panel, headed by Professor Bruce Armstrong, from Sydney University's Sydney Cancer Centre, investigated an apparent cluster of breast cancer at the ABC's Toowong studios, where 13 employees or former employees have been diagnosed with the invasive form of the disease since 1994. Seven of the 13 worked in the newsroom and the most recent case was diagnosed in July 2006.

ABC managing director Mark Scott announced an immediate relocation after the panel concluded the incidence of the disease at the site was significantly higher than within the general public. Despite testing at the Toowong site for ionising radiation levels, chemical risk factors, radio frequency energy and extremely low energy frequencies, no explanation has yet been found. The women have expressed frustration that some management were focussed on "absolving the site" rather than working to confirm it was safe.⁷⁹

4.3 Loss on the Job

In a sobering and tragic reminder of the very real daily risks journalists face working in foreign countries, *Australian Financial Review* journalist Morgan Mellish and DFAT Jakarta embassy spokeswoman Liz O'Neill lost their lives when a commercial airline crashed in Yogyakarta, Indonesia, on March 7, 2007. Fairfax journalist Cynthia Banham was also critically injured in the crash, losing a leg and suffering severe burns. The trio were covering an Indonesian visit by Foreign Affairs Minister Alexander Downer. The Alliance supports call from Fairfax and News Limited for larger government VIP aircraft, to enable journalists to travel with ministers on overseas official visits. The news organisations have written to the Government stating they will no longer send correspondents to countries where air safety is an issue if there is no room for them on ministerial aircraft.⁸⁰

5.0 Media Attacked at Work

5.1 Raids, Redundancies, Recourse

Two Australian Federal Police officers raided the Sydney offices of *The Australian* newspaper in early March 2007, attempting to serve a subpoena on a reporter as part of legal action against a public servant accused of leaking a report on airport security. The agents allegedly refused to answer questions on what they knew about the requirement of journalists to protect their sources, and did not produce their badges until requested. The incident flies in the face of the government's commitment to introduce uniform shield laws.⁸¹

A wave of redundancies was triggered when Fairfax decided to relocate production of the Melbourne-based *BRW* magazine to Sydney, with many designers, sub-editors and photographers – some with decades of experience on the title – losing their jobs. A revamp of *BRW* also forced many highly experienced journalists to take redundancy.

The Nine Network also wielded the axe, offering 100 voluntary redundancies, with 80 to come from a news and current affairs workforce of 450 in Sydney, Melbourne and Brisbane. The sackings followed the loss of 140 staff in 2005.⁸²

Nine was accused of trying to muzzle the media in 2006, taking their bid to keep a damaging leaked affidavit of former news chief Mark Llewellyn from being published to court. Nine sought an injunction against publication of the explosive claims in the NSW Supreme Court, and also tried to force journalists to reveal where they'd got the information. The now-infamous affidavit was sworn in proceedings Nine had taken, attempting to prevent Llewellyn from defecting to Seven. Fairfax corporate affairs director Bruce Wolpe slammed Nine's actions as "breathhtaking". "By demanding that we disclose our sources, the Nine Network is seeking to eviscerate a principle that is indispensable to the operation of a free press in a democracy. That a leading media company such as Nine, would wilfully undercut a fundamental tenet of broadcast and print journalism that you protect your sources, is a disgrace."⁸³

With the damning contents already widely published, Nine was forced to abandon the bid.

The ABC Board dumped publication of Chris Masters' controversial biography of Sydney broadcaster Alan Jones after receiving a letter from his lawyers threatening to sue for defamation. ABC managing director Mark Scott told a Senate Estimates hearing the ABC abandoned publication of the book, which has since gone on to become a best-seller for Allen and Unwin, over fears legal costs would outstrip profits. It had spent \$100,000 on the book before dropping it.⁸⁴

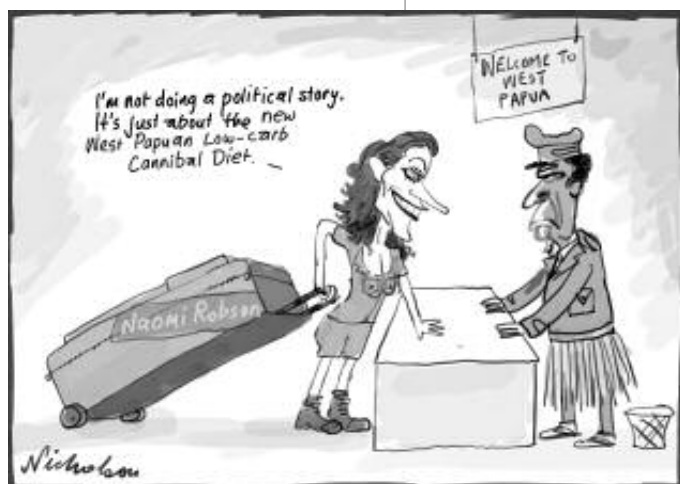
The ACCC in January 2007 approved News Ltd's proposed acquisition of 49 per cent of FPC's 16 community newspapers, finding "there were sufficient advertising alternatives to provide a competitive constraint on News Ltd".⁸⁵ The Alliance believes the significant overlap between News and FPC titles will result in redundancies, diminished diversity for readers and undermine public scrutiny in the communities.



Cartoon by Peter Nicholson

6.0 Immigration and International Matters

6.1 Dili, Papua, Fiji and Afghanistan



Cartoon by Peter Nicholson

“The Times chose not to go to print rather than have military censors direct content.”

In May 2006, a gang attacked an ABC television news crew in Dili, the capital of East Timor. The news crew’s vehicle was stopped at a roadblock and their interpreter was assaulted. ABC TV reporter Mark Bowling and cameraman Rob Hill were attacked when their local interpreter was set upon by a rival ethnic group. As they attempted to drive away their car was pelted with rocks. Bowling and Hill suffered cuts from shattered glass and bruises to their faces. The interpreter was bashed and punched in the head.⁸⁶

In May 2006, Indonesia severed ties with Deakin University because of views held by two academics. The Indonesian Government accused Damien Kingsbury and Scott Burchill, both regular contributors to *The Age*, of promoting separatism in West Papua. Deakin University defended the academics’ right to speak out, saying it “supports the academic freedom of our staff members to comment, within the law, on matters within their research expertise”.⁸⁷ Burchill told the ABC Indonesia was trying to intimidate people into silence over Papua.

The Indonesian government also blacklisted RMIT over claims the Papuan flag of independence was flown on the campus following the granting of visas to 42 Papuan asylum seekers.⁸⁸

A crew of five *Today Tonight* employees, including presenter Naomi Robson, were deported from West Papua for travelling on a tourist visa with the intention of reporting on events in the country. A journalist visa is required to work anywhere in Indonesia and an additional permit is required to enter Papua. The permits are notoriously difficult to get and applications are often rejected. The crew were apprehended by police on arrival at Papua’s Jayapura airport on September 13, 2006.⁸⁹

On December 5, 2006, armed troops loyal to coup leader Commodore Frank Bainimarama entered the offices of the *Fiji Times*, owned by News Ltd, and demanded that they monitor the newspaper’s editorial content. *The Daily Post* had closed earlier in the week, reportedly due to threats from the army, and editor-in-chief Robert Wolfgramm had his passport confiscated and was threatened with deportation for editorialising about the state’s loss of democracy. The *Times* chose not to go to print rather than have military censors direct content.⁹⁰

A chopper carrying Australian and other journalists and troops had a near miss when they were fired on by suspected Taliban militants on March 12, 2007. Journalists Karen Middleton, Justine O’Brien, Mark Wilton and John Hunter Farrell, from SBS, Nine, the *Northern Territory News* and *Australia & NZ Defender* magazine, and cameramen Jamie Kidston and Jeff Kehl were fired on as they flew over southern Afghanistan.⁹¹

As part of his extraordinary plea bargain with US authorities, Guantanamo Bay detainee David Hicks has been ordered not to speak to the media for 12 months, with any proceeds from interviews he gives after this period to be forfeited to the Australian government. The 12 month gag, which extends until after the federal election, has prompted allegations of politically expedient censorship.⁹²



Cartoon by Peter MacMullin

Incredible Secrets

HAMISH MCDONALD

A sense of disbelief gripped many of the lawyers, journalists and public activists in Courtroom No.2 of the NSW Coroners Court at Sydney's inner west suburb of Glebe on February 5.

The Deputy State Coroner, Dorelle Pinch, was opening an inquest into the death of Brian Peters, the Channel Nine cameraman who was one of the five Australian-based newsmen killed at Balibo, East Timor, on 16 October 1975.

Peters was a Brit, along with his Nine colleague Malcolm Rennie, but was the only NSW resident among the group. Rennie, like the Seven crew of Greg Shackleton, Gary Cunningham and Tony Stewart, was Melbourne-based.

Way back in 1997, Sydney activists of the International Commission of Jurists including former State Liberal leader and judge John Dowd and solicitor Rodney Lewis had convened a colloquium at the University of NSW bringing together bereaved family members, lawyers, journalists and activists who had tried to look under the whitewashes of the Balibo killings.

Out of this sprang the legal argument that as Peters was a state resident, the NSW coroner was obliged to inquire into the manner and cause of his death. Two years ago, this was accepted and, delayed by last year's Dili unrest and the logistics of locating, interviewing and presenting witnesses from several countries, the inquest has finally begun – more than 31 years after the Balibo incident.

As Sydney QC Mark Tedeschi noted in his opening address, the inquest is the first independent inquiry of a judicial nature into Balibo with the power to compel witnesses.

It quickly moved into evidence that completely undercut the findings of the two reports by the former Federal Government lawyer Tom Sherman in 1996 and 1999, which

controversially found the five newsmen had probably died in crossfire during a battle between Indonesian and Fretilin forces.

The first witness, a Timorese who led partisans attached to Indonesian special forces, fingered then-Captain Mohammad Yunus Yosfiah as the one who led the shooting of two newsmen trying to surrender, ordered the execution of the other three, and then staged a grotesque propaganda exercise of dressing up the bodies in uniform and posing them behind machine guns before they were burned.

As the inquest moved onto what the Defence Signals Directorate and other intelligence agencies knew about Balibo, Federal lawyers and spooks moved into the court as Coroner Pinch agreed to part of the evidence being held in closed court.

Incredibly, some of the intelligence techniques of the Morse code radio and telex era of 1975 are still secrets vital to national security, along with the information that we try to break Indonesian codes and share what we know with allies.

Even so, Pinch and Tedeschi managed to bring a lot into the public domain, and testimony by former DSD linguist Robin Dix stunned the court. At DSD's Shoal Bay base the same day of the killings, he quoted an Indonesian officer radioing his superiors that: "Five Australian journalists have been killed and all of their corpses have been incinerated/burnt to a crisp."

After four weeks, the inquest went into recess to allow leads to more witnesses and evidence to be followed up. It will resume on May 1. The coroner has appealed to former DSD personnel with information about Balibo to come forward, under measures to protect their official secrets obligations.

Hamish McDonald is a Walkley award-winning Fairfax journalist. He co-authored "Death in Balibo, Lies in Canberra", about the death of the Balibo Five

6.2 Balibo

A landmark public inquiry into the death of five Australian journalists in the East Timorese border town of Balibo in 1975 has been marked by continued secrecy. For the first time evidence has emerged that the men were targeted by Indonesian forces because they were journalists, and that the Australian government both knew of the circumstances of the deaths and was complicit in a cover-up.

Then-Prime Minister Gough Whitlam is alleged to have been handed an intercepted Indonesian military message on the day of the men's deaths stating that five Australian journalists had been killed and their corpses burnt.⁹³ The inquest has also heard evidence that the men stated they were journalists before they were shot, and that the Indonesian forces had prior knowledge there were foreign journalists in Balibo before they invaded the town.

Counsel assisting the inquest, Mark Tedeschi QC said: "The five journalists had seen clear evidence of the involvement of Indonesian forces in the attack on Balibo. The elimination of this evidence could have been seen as essential if the news was not to get out to the world at this critical stage. If the journalists were targeted for execution, and the motive was as suggested then this may enable one to reach the conclusion that they were murdered because they were journalists and because of what they had witnessed."⁹⁴

While the inquest is shedding long-overdue light on a shameful chapter in Australian history, the Alliance is concerned about the Government's continued success in keeping



Manuel da Silva, a witness at the inquest into the death of the newsman Brian Peters in East Timor in 1975, is comforted outside Glebe Coroners Court by Brian's sister, Maureen Tolfree. February 10, 2007. Lee Besford/*The Sydney Morning Herald*

“The murder of Peters and his colleagues, if because they were journalists, was perhaps the greatest single direct attack on press freedom in Australia’s history”

evidence secret, with the Commonwealth asking the Coroner to hear evidence from the Defence Signals Directorate and other officials in camera in the interests of “national security”. Counsel for the family of Brian Peters, whose death is the primary subject of the inquest, argued it was just more cover-up: “These events occurred 30 years ago and...there has been a 30-year history of deceit and cover-up in relation to the true story of how the Balibo Five were killed.”⁹⁵

Although pre-dating the 1977 Geneva Convention⁹⁶ - which explicitly states that journalists must not be deliberately targeted detained or otherwise mistreated more than any other civilian - the murder of Peters and his colleagues, if because they were journalists, was perhaps the greatest single direct attack on press freedom in Australia’s history.

The UN Security Council, in December 2006, passed a resolution condemning attacks on journalists in conflict situations and called for them to be respected and protected as civilians.⁹⁷

7.0 The Way Forward

Attacks on the Australian press are often indirect, pervading the law and its application, and filtering down through the attitudes of government and bureaucracy. An anti-disclosure culture prevails and is enforced by government and corporate attacks on the press. The media are increasingly managed and marginalised by public affairs personnel, their requests for information are refused and their professional obligations criminalised.

There are positive moves, however. Uniform defamation laws have curbed corporate attempts to gag debate, and the promise of uniform shield laws to protect journalists’ sources and proposal to scrap ministerial certificates against FoI requests represent a genuine desire for greater press freedom.

As we pause to reflect upon the achievements of 2006 and our hopes for the coming year, it is fitting to pay tribute to our fallen colleagues, who made the greatest sacrifice in the pursuit of justice.

It is for them we must continue to strive for a vibrant and democratic press, free from complacency, self-censorship and intimidation.

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