

Journalism and Media Freedom

Volume | 458



Edited by Justin Healey

ISSUES
IN SOCIETY

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INTRODUCTION

Journalism and Media Freedom is Volume 458 in the 'Issues in Society' series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

KEY ISSUES IN THIS TOPIC

Recent controversial police raids of media premises and journalists, on the grounds of national security, have prompted a united campaign by news media rivals to promote and protect the public's right to know what governments are doing. According to media outlets represented before parliamentary and senate inquiries into the impact of law enforcement and intelligence powers on press freedom, Australians are being robbed of their right to know about vital issues that directly affect them by a culture of secrecy in the Australian government, and the use of draconian laws which threaten and intimidate whistleblowers and prosecute journalists as criminals.

There is growing pressure to undertake legal reforms to protect the public's right to information and to ensure media freedom in Australia. Is our healthy, functioning democracy under threat, or is the government simply protecting the security of the nation?

SOURCES OF INFORMATION

Titles in the 'Issues in Society' series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the 'Issues in Society' series lies in its diversity of content and perspectives.

The content comes from a wide variety of sources and includes:

- Newspaper reports and opinion pieces
- Website fact sheets
- Magazine and journal articles
- Statistics and surveys
- Government reports
- Literature from special interest groups

CRITICAL EVALUATION

As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda.

It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

EXPLORING ISSUES

The 'Exploring issues' section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

FURTHER RESEARCH

This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The 'Web links' section at the back of this book contains a list of useful websites which you can access for more reading on the topic.

PRESS FREEDOM IN AUSTRALIA

Introduction from a report on the erosion of press freedom, by Scott Ludlam and David Paris. Supported and endorsed by **GetUp!** and **Digital Rights Watch**

“Freedom of information is the freedom that allows you to verify the existence of all the other freedoms.”
– Win Tin, Burmese journalist

In June 2019, the Australian Federal Police raided the ABC and the home of a journalist from the *Daily Telegraph*. These alarming raids were undertaken because of journalists doing their jobs reporting on national security issues in the public interest, in part enabled by whistleblowers inside government agencies.

This was just the latest step in what has been a steady erosion of press freedoms in Australia. Since the terrorist attacks on New York on September 11, 2001, dozens of national security laws have been passed with bipartisan support by Australia’s Parliament. Many of these laws have targeted whistleblowers, journalists working on national security issues, and the privacy of the Australian public. Australians are now among the most heavily surveilled populations in the world.

Law enforcement agencies can access extraordinary amounts of information with scant judicial oversight,

and additional safeguards for journalists within these regimes are narrowly framed and routinely bypassed.

Australia already lagged behind when it comes to press freedom. We are the only democracy on the planet that has not enshrined the right to a free press in our constitution or a charter or bill of rights.

We have the most concentrated ownership of media in the developed world. Our defamation laws are less an instrument to address injustice and more a cudgel wielded by the wealthy to silence criticism.

Since the terrorist attacks on New York on September 11, 2001, dozens of national security laws have been passed with bipartisan support by Australia’s Parliament. Many of these laws have targeted whistleblowers, journalists working on national security issues, and the privacy of the Australian public. Australians are now among the most heavily surveilled populations in the world.



Added to this, the Abbott/Turnbull/Morrison government continues to undermine, attack and defund our ABC. They're teaming up with Pauline Hanson's One Nation and other far right parliamentarians to compel the ABC to give more airtime to fringe views like climate change denial.

Government transparency mechanisms are broken. The abuse of 'commercial in confidence' public interest immunity is routinely used to avoid accountability processes in parliament. Freedom of Information requests are overly complicated to complete, frequently resisted and often deliver the absolute minimum, providing little or no clarity in response to inquiries in the public interest.

Trust in the government is low. Trust in our public institutions is low. Commercial newsrooms are under heavy pressure from downsizing, mergers and intense cost-cutting. Traditional media revenues have been crushed by the emergence of digital platforms that now dominate advertising. These challenges are not insurmountable, but there is a lot to be done. Press freedom is an essential element of any broader public discussion around a charter or bill of rights for Australia, but there are critical issues we should address immediately.

Both GetUp! and Digital Rights Watch support a *Media Freedom Act* which will safeguard journalists,

Australia already lagged behind when it comes to press freedom. We are the only democracy on the planet that has not enshrined the right to a free press in our constitution or a charter or bill of rights.

ARTICLE 19 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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

Joseph Pulitzer said that the press must "always fight for progress and reform, never tolerate injustice or corruption, always fight demagogues of all parties, never belong to any party, always oppose privileged classes and public plunderers, never lack sympathy with the poor, always remain devoted to the public welfare, never be satisfied with merely printing news, always be drastically independent, never be afraid to attack wrong, whether by predatory plutocracy or predatory poverty."

sources and whistleblowers. It will put the public's right to know at the centre of any legislation that impacts journalism, and strengthen public interest protections to stop politicians and government agencies threatening journalists with legal action to silence critical reporting.

We need to tilt power away from politicians and back towards the people holding them to account: both the journalists who report and the voting public who decide.

Ludlam, S, and Paris, D. *Breaking: A report on the erosion of press freedom in Australia*, p.2. Retrieved from <http://digitalrightswatch.org.au> on 12 March 2020.



REFORMS NEEDED TO REVERSE CRIMINALISATION OF JOURNALISM

Australia's democracy is at risk due to growing attacks and restrictions on journalism and the right to know, according to the **Media, Entertainment and Arts Alliance**

On the release of its annual report into the state of press freedom in Australia today, the union for Australian journalists is calling for serious reforms to reverse a raft of 'national security' laws that can be used to criminalise journalism and punish whistleblowers for telling the truth, and which have sent Australia backwards on press freedom.

Australia's reputation as a healthy democracy is now at risk because of growing attacks and restrictions on public interest journalism and the right to know, says the Media, Entertainment and Arts Alliance.

MEAA Chief Executive Paul Murphy said journalists and their sources were increasingly being targeted by government agencies and police in a bid to block information being made available to the public.

Journalists and their sources were increasingly being targeted by government agencies and police in a bid to block information being made available to the public.

"Last year's Australian Federal Police raids on the home of a News Corp journalist and the offices of the ABC were deliberate attacks on the public's right to know and sent a chill through journalism," Mr Murphy said.

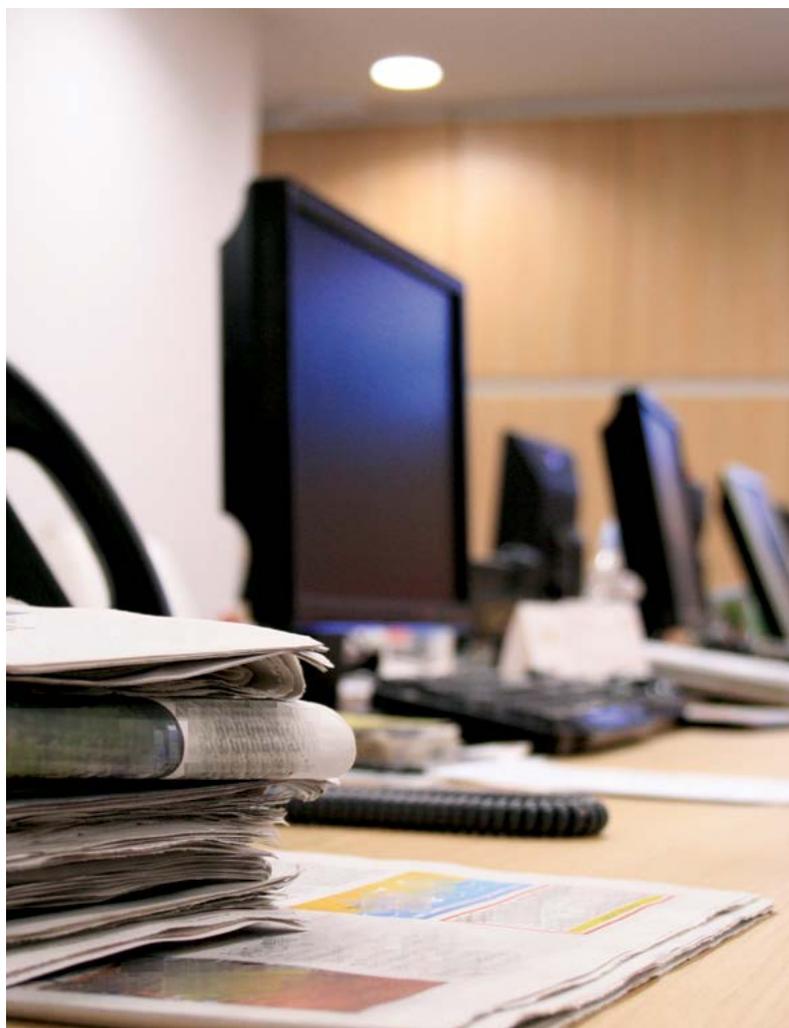
"It is shameful that on World Press Freedom Day, the three journalists still have the threat of prosecution hanging over their heads.

"Following the raids, these concerns about the deterioration of press freedom over the past two decades are now shared by the Australian public, and because of that public pressure there are some positive signs for reform."

There has been a sharp rise in concern about the health of press freedom in Australia over the past 12 months, according to the third yearly MEAA press freedom survey released today as part of the annual report into the state of press freedom, titled *The War on Journalism*.

Eighty-nine per cent of the 2,472 respondents to the survey said the health of press freedom was poor or very poor – a sharp deterioration from 71.5% in 2019. Among journalists, 84.4% rated the health of press freedom as poor or very poor, compared to 63.5% last year.

These concerns were even more pronounced when people were asked if press freedom in Australia had gotten better or worse over the past decade. An overwhelming 98% of people said it had gotten worse,



compared to 90.9% in 2019. This was marginally lower among journalists, with 95.1% saying it had gotten worse, compared to 84.9% in 2019.

"These raids were the culmination of almost 20 years of parliament legislating sweeping powers in the name of 'national security' which enable government agencies to reach into our homes and offices, into our phones and computers, and intrude into our lives in an effort to control the possession and flow of information."

"Those are the sort of numbers you would expect to see in a despotic police state, not in a country that prides itself in being a liberal democracy that chides the failings in others," Mr Murphy said.

"Clearly, the AFP raids have shaken Australians and led them to question how it has come to this.

Campaign explained: Your Right to Know

- Australia's Right to Know (ARTK) is a coalition of Australian media outlets and organisations who want the Australian public to be aware of the growing threat to their ability and right to know information that impacts their lives.
- The Your Right to Know campaign has unusually broad support across media competitors. Coalition members include Nine, ABC, SBS, News Corp, *The Guardian*, Seven West Media, Sky News, Ten, Prime Media and WIN network.
- Media freedom is a central part of our democracy. Over recent years federal parliament has been passing laws that have made it harder for people – notably journalists and whistleblowers – to tell the truth about what the government is doing in the name of the Australian people. Powerful people can avoid accountability and democracy is undermined.
- About 75 laws relating to secrecy and spying have been passed over the past two decades, which effectively criminalise journalism and penalise whistleblowing. Many impacts of these laws on the media are unintended consequences.
- Since 2007, the ARTK coalition has been pushing the government to make those laws fairer, submitting evidence to committees and arguing against rules that help the government to hide information from the public. The Australian media currently awaits the findings of parliamentary and senate inquiries into the impact of law enforcement and intelligence powers on press freedom.
- Journalists play a vital role in defending Australians' right to know, by holding to account politicians and the businesses and special interests that may influence them or engage in corruption. The campaign stepped up in mid-late 2019 with media outlets and prominent journalists calling for action from government regarding legislation changes to "recognise and enshrine a positive public interest protection for whistleblowers and for journalists". The campaign has featured a media blitz with print and television advertisements nationwide, including one day in which newspapers had blacked out their front pages to represent redacted information, in a challenge to government secrecy.
- Reporters and whistleblowers live in growing fear of criminal charges, police raids and damaging court battles. As their role comes under fire, your right to know is also being slowly and quietly eroded.
- In order to pursue this controversial work, journalists and their sources rely on basic freedoms and protections. The Right to Know coalition asserts that Australian governments and powerful people are eroding our collective right to know by becoming increasingly secretive about important information that affects peoples' health, wealth and basic rights, from aged care abuse to covering up details of land deals.
- According to ARTK, among other things, Australians have a right to know:
 - Which aged care facilities have a history of neglect and abuse when considering where their loved ones are cared for.
 - That Australian land is sold to foreign owners and the terms of those deals are kept secret.
 - That the government has plans to undertake secret surveillance of Australian citizens.
 - That the Australian Tax Office can take money from your account without you knowing.

Source: Australia's Right to Know (June 2020), www.yourrighttoknow.com.au



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THE STATE OF PRESS FREEDOM IN AUSTRALIA

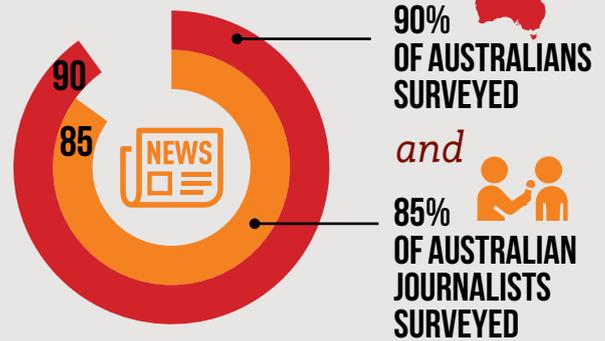
Introduction from a white paper produced by the **Alliance for Journalists' Freedom** in response to an inquiry on the impact of the exercise of law enforcement and intelligence powers on the freedom of the press in Australia

Responsible and representative government is a fundamental part of Australia's political system. The constitutional implied freedom of political communication helps to support this principle by protecting public oversight of the exercise of executive and legislative power.

This principle requires that the executive branch of government be held to account by parliament, and by citizens through elections. To do that, information about governments' performance must flow freely.¹ In a modern representative democracy like Australia, journalists and their sources are essential to making that happen.

Recent changes to the law have chipped away at the fundamental freedoms and protections that allow journalists to do their important work. The pillars supporting Australia's implied freedom of political communication have been significantly eroded. It's had a chilling effect on Australian journalism.

State of press freedom in Australia



Think the state of press freedom in Australia has deteriorated in the last decade

Source: Media Entertainment and Arts Alliance (MEAA), 'The Public's Right to Know: the MEAA Report into the State of Press Freedom in Australia in 2019' (3 May 2019), p 10. Survey of 1,532 people, conducted online by MEAA from February to early April 2019

Recent changes to the law have chipped away at the fundamental freedoms and protections that allow journalists to do their important work. The pillars supporting Australia's implied freedom of political communication have been significantly eroded. It's had a chilling effect on Australian journalism. In just the last year, Australia's position in the *World Press Freedom Index* has slipped two places to 21st.²



90% of Australians and 85% of Australian journalists think the state of press freedom in Australia has deteriorated in the last decade.

An urgent response is needed to support journalists and the level of press freedom needed for a modern representative democracy like Australia.

Australia has not experienced many political corruption scandals of the magnitude of Watergate and it has never been under a dictatorship. So it is easier in Australia to forget the importance of press freedom, open justice and the principles underlying our democratic process. Australians have not had to experience what a lack of these principles can entail.

We have not had to fully appreciate their importance to the way we live, the way we express ourselves, and the way we inform ourselves. However, this is not something that a representative democracy like Australia should need to test.

That said, where Australia has experienced scandals of this type and scale, such as in Queensland in the 1980s and in the case of the Reserve Bank of Australia (RBA) bribery scandal more recently, investigative journalists have played key roles providing the transparency needed to bring them to light.

Few would deny that it is becoming more common for representatives of the state to publicly attack



RECOMMENDATIONS FOR MEDIA FREEDOM

The AJF makes the following recommendations to improve media freedom in Australia:

1. *Positive media freedom*

Introduce a *Media Freedom Act* that positively enshrines the principle of freedom of the press.

2. *National security*

Address press freedom concerns in national security legislation by putting in place an appropriate balance in national security legislation between the imperatives of public accountability of government, and operational secrecy for national security agencies. That balance should recognise the fundamental importance of national security and the protection of certain Commonwealth activities and the identities of certain Commonwealth employees, whilst providing a basis for journalists to investigate and report on government misconduct.

3. *Confidentiality*

Protect journalists' confidential data where that data is gathered and held for legitimate journalistic work. Where confidential data is accessed due to national security concerns, the basis for doing so must be able to be objectively tested.

4. *Shield laws*

Enhance and harmonise the shield laws available under State, Territory and Commonwealth Evidence Acts to cover legitimate journalistic work in a uniform way.

5. *Whistleblowers*

Enhance whistleblower protections so that: all disclosures made in the public interest by whistleblowers to journalists are protected, regardless of any steps by the organisation subject of the disclosures to address its misconduct; and the concept of 'disclosable conduct' is abolished as a requirement for public sector disclosures.

6. *Defamation and the public interest*

Introduce a succinct and clearly set-out public interest defence to claims of defamation.

7. *Transparency around suppression orders*

Establish greater transparency in the issuing and recording of suppression orders.



legitimate news organisations in order to silence or discredit their critics; to erode the freedoms of the press through, for instance, extending the reach of legal sanctions against journalists and whistle-blowers; and to erect bureaucratic and sometimes legal barriers to the free flow of information to the public about governance and the state's administration. Perhaps the most concerning of the direct attacks on journalists is the current US President's repeated characterisation of the media as 'the enemy of the people'.

– Emeritus Professor Graeme Turner,
University of Queensland

1. Since Australia only enjoys an implied right to political communication following *Lange v The Australian Broadcasting Corporation* 189 CLR 520, statutory responses that support that right are welcomed to support media freedom. However, we understand that the High Court has declined to grant Special Leave to a large number of cases since Lange's case that sought to explain or expand the defence. Consequently, a more robust statutory environment to protect press freedom is required to support judges in their decisions.
2. Reporters Without Borders, *World Press Freedom Index* (2019), available online at <<https://rsf.org/en/ranking>>

Alliance for Journalists' Freedom (May 2019). *Press Freedom in Australia – White Paper*, pp. 4-6. Retrieved from www.journalistsfreedom.com on 12 March 2020.

ATTITUDES ABOUT PRESS FREEDOM

OUTCOMES OF MEAA'S 2020 ANNUAL PRESS FREEDOM SURVEY BY MARK PHILLIPS

Concerns about the state of press freedom in Australia have become considerably more pronounced over the past year, according to the third annual MEAA press freedom survey.

Most likely prompted by the Australian Federal Police raids on journalists from News Corp and the ABC, and the subsequent public education campaign by the Your Right To Know coalition of media organisations, the survey found a sharp deterioration in attitudes about press freedom compared to 2019.

The survey was conducted online from February to mid-April, with 2,472 people completing the survey, an increase of 61% on 2019.

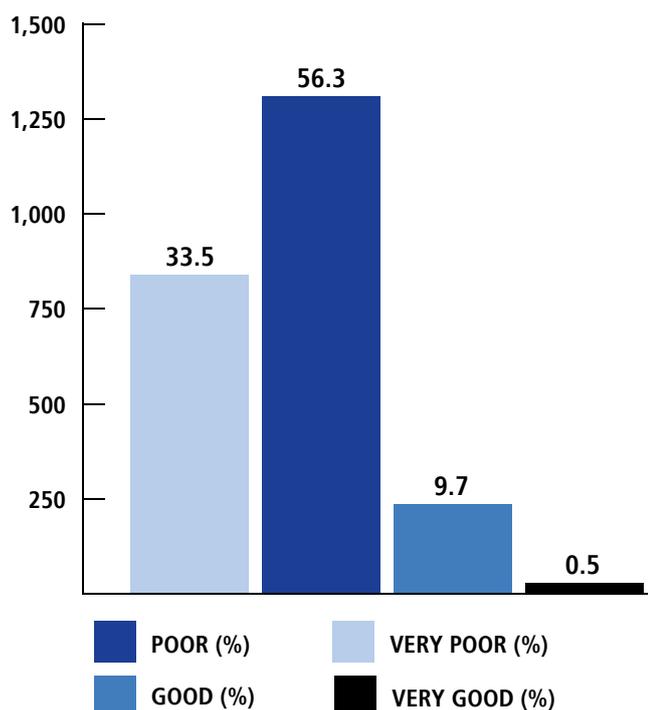
A lower proportion of the full respondents (8.3%) were working journalists this year, while an additional 9.7% were retired or unemployed media workers, or studying for a career in journalism. Of the working journalists, 44% described themselves as freelancers, while 27% were in permanent employment.

Asked how they would rate the health of press freedom in Australia, 89.9% of survey respondents said poor or very poor. This is a substantial increase from 2019, when the same question resulted in 71.5% replying poor or very poor.

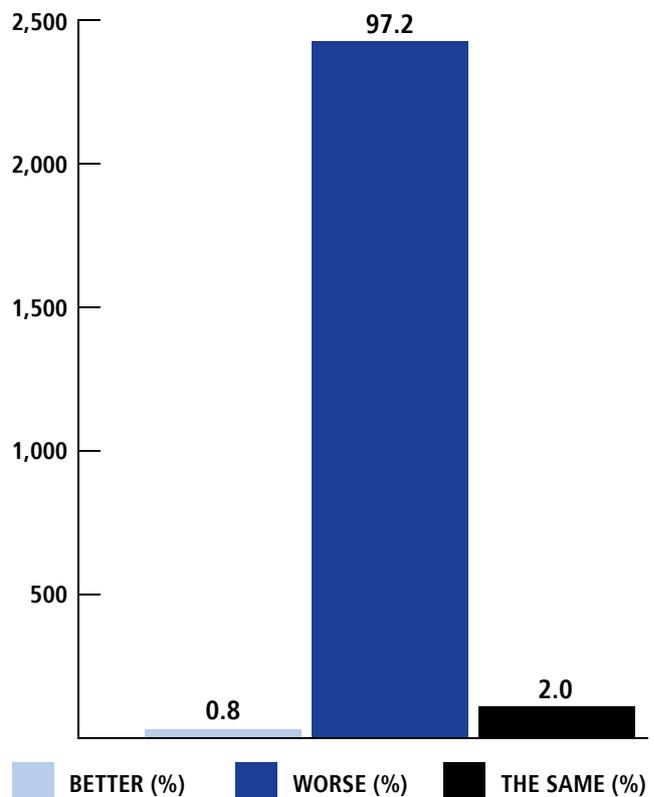
There was a large rise in concern about the overall health of press freedom among journalists as well, with 84.4% rating it poor or very poor, compared to 63.2% in 2019.

These concerns were even more pronounced when people were asked if press freedom in Australia had

HOW WOULD YOU RATE THE OVERALL HEALTH OF PRESS FREEDOM IN AUSTRALIA?



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



gotten better or worse over the past decade. An overwhelming 98% of people said it had gotten worse, compared to 90.9% in 2019. This was marginally lower among journalists, with 95.1% saying it had gotten worse, compared to 84.9% in 2019.

Most likely prompted by the Australian Federal Police raids on journalists from News Corp and the ABC, and the subsequent public education campaign by the Your Right To Know coalition of media organisations, the survey found a sharp deterioration in attitudes about press freedom ...

Asked to rank in importance current press freedom issues, almost a quarter of respondents (23.22%) put funding of public broadcasting first, followed by government secrecy and lack of transparency (22.73), diversity of media ownership (13.7%), national security laws which criminalise journalism (11.97%), and whistleblower protection (10.56%).

This was a change from last year, when diversity of media ownership, national security laws, and whistleblowers were the three top ranking issues.

When asked to assess the health of particular press freedom issues, 85.5% rated government transparency

as very poor, 85.03% said diversity of media ownership was very poor, and 83.4% said whistleblower protection was very poor.

By contrast, two issues which have become a significant financial cost for media organisations in recent years – defamation and court suppression – were only rated as very poor by 36.4% and 38.6% of respondents.

While only 5% of journalists who completed the survey said they had received a defamation writ in the past two years, 88.8% said they believed defamation laws make reporting more difficult. This was reflected by 31% of journalists saying they had had at least one news story spiked in the past 12 months because of fears of defamation action (compared to 28% in 2019).

Almost two-thirds of journalists (63.9%) said they believed judges were actively discouraging open courts and taking a more aggressive view of media reporting, while 16.6% said their reporting had been hindered by a suppression or non-publication order.

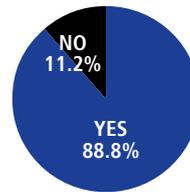
Victoria has been regarded as having the most active use of suppression orders, highlighted by the blanket non-publication order during the trial of Cardinal George Pell in 2018. In Victoria, a slightly higher 24.2% of journalists said their work had been hindered by a suppression order, with 93.3% of them saying it had been excessive.

Thirty per cent of journalists said they used information from a confidential source to publish or broadcast a news story, but in a worrying trend, only 2.9% said they believed legislation in the public and private sector was adequate to protect whistleblowers. This compares to 8% in 2019.

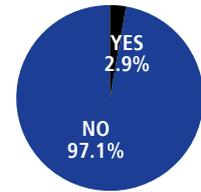
Just over half (52.7%) of journalists said they or their employer took steps to ensure they did not generate metadata that could identify a confidential source,

JOURNALISTS' VIEWS ON PRESS FREEDOM ISSUES

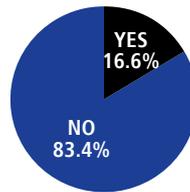
Do you believe Australia's defamation laws make reporting more difficult?



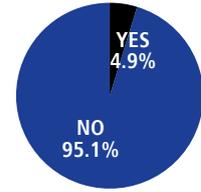
Do you believe legislation in public and private sector is adequate to protect whistleblowers?



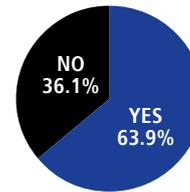
In the past 12 months, has any of your reporting been hindered by a court issuing a suppression/non-publication order?



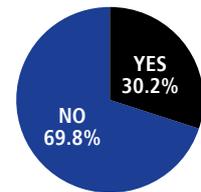
Have you received a defamation writ in the past two years?



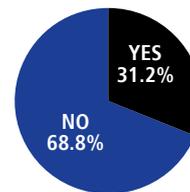
Do you believe judges are actively discouraging reporting of open courts and are taking a more aggressive view of media reporting?



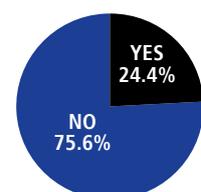
In the past 12 months, did information from a confidential source whose identity you protected lead you to publish/broadcast a news story?



In the past 12 months, have you had a news story spiked or dropped a story because of fears of defamation action?



In the past 12 months, have any of these laws affected your ability to produce your journalism?



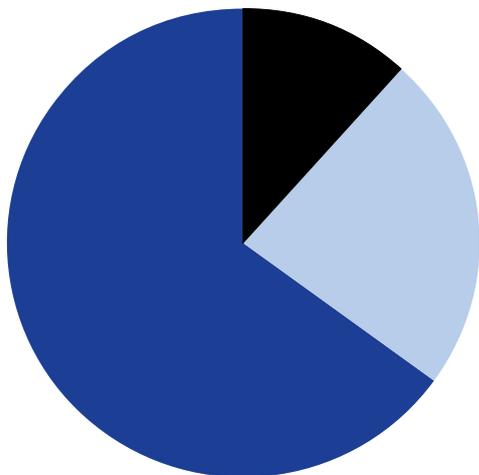
TOP 10 PRESS FREEDOM ISSUES IN 2020

1. Funding for public broadcasting (2019=5)
2. Government secrecy and lack of transparency (4)
3. Diversity of media ownership (1)
4. National security laws which criminalise journalism (2)
5. Whistleblower protection (3)
6. Freedom of Information (8)
7. Political attacks on journalism (6)
8. Journalist shield laws (9)
9. Defamation (7)
10. Court suppression orders (10)

but only 20.5% were confident this would be sufficient to protect their source. Additionally, only a third of employed journalists (excluding freelancers) said their employer kept them informed of changes to national security laws and how they may affect their work.

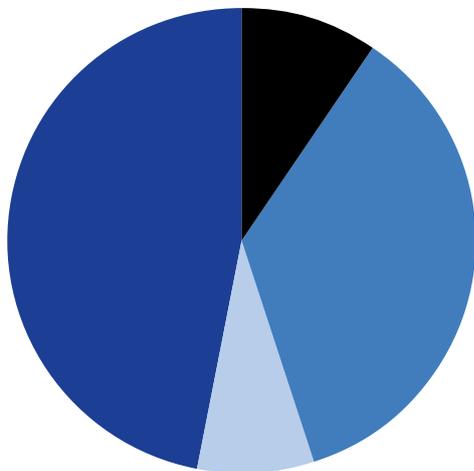
This year's survey also asked some new questions only for MEAA members about MEAA's *Journalist Code of Ethics*. Slightly under half (46.8%) said they knew the code well and followed it to the letter, while 35.5% said they knew it existed but were not sure of all the details. Almost one in five MEAA members (18.6%) said they had at some stage in their career felt pressured to do something in breach of the Code, and about 47.5% of

IF YOU WORK FOR A MEDIA COMPANY, IS YOUR EMPLOYER KEEPING YOU INFORMED OF CHANGES TO NATIONAL SECURITY LAWS AND HOW THEY MAY AFFECT YOUR JOURNALISM?



- YES 11.7%
- NO 23.4%
- I'M A FREELANCER/SELF-EMPLOYED 64.9%

HOW FAMILIAR ARE YOU WITH THE MEAA JOURNALIST CODE OF ETHICS?



- I DON'T KNOW IT WELL 9.7%
- I KNOW IT EXISTS BUT I'M NOT SURE OF ALL THE DETAILS 35.5%
- IT DOESN'T APPLY TO THE WORK I DO 8.0%
- IT KNOW IT WELL AND FOLLOW IT TO THE LETTER 46.8%

employed journalists (excluding freelancers) said their employer promoted the Code of Ethics. Sixty-two per cent of journalists say what they read, hear or see in



the media is their main source of information about press freedom issues, followed by MEAA (25.9%). But less than 1% said their employer informed them about press freedom issues.

Mark Phillips is MEAA's Communications Director.

The War on Journalism: the MEAA Report into the State of Press Freedom in Australia in 2020 is available at pressfreedom.org.au

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© Media, Entertainment and Arts Alliance (3 May 2020). *The War on Journalism: the MEAA Report into the State of Press Freedom in Australia in 2020*, pp. 48-50. Retrieved from www.meaa.org on 3 May 2020.

THE MEAA JOURNALIST CODE OF ETHICS

MEAA INITIATED AUSTRALIAN MEDIA SELF-REGULATION IN 1944 WHEN IT CREATED THE MEAA JOURNALIST CODE OF ETHICS

Under MEAA's rules, registered with the Fair Work Commission, MEAA's *Journalist Code of Ethics* only applies to MEAA Media's journalist members. MEAA can undertake no action or investigation that involves individuals who are not MEAA members. Also, MEAA cannot investigate media outlets, publications, programs or social media posts.

Complaints about non-MEAA members or media outlets should be taken up directly with the media organisation and/or the relevant media industry body:

- **Print and digital media.** The Australian Press Council has guidelines and standards for print and digital media outlets.
- **Broadcasting.** Several industry bodies also operate a complaints process: Free TV Australia; Commercial Radio Australia; the ABC and SBS; the Community Broadcasting Association of Australia and Australian Community Television Alliance. The government regulator, the Australian Communications and Media Authority, offers a mechanism for complaints about broadcasting.

Download a PDF step-by-step guide to *How MEAA's Journalist Code of Ethics complaints process works* at: www.meaa.org/download/meaa-code-of-ethics/
You can download a PDF of the *MEAA Journalist Code of Ethics* at: www.meaa.org/download/meaa-code-of-ethics/
and a poster version at: www.meaa.org/download/media-code-of-ethics-poster/

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MEAA can undertake no action or investigation that involves individuals who are not MEAA members.

MEAA cannot investigate media outlets, publications, programs or social media posts.

Respect for truth and the public's right to information are fundamental principles of journalism. Journalists search, disclose, record, question, entertain, comment and remember.

They inform citizens and animate democracy. They scrutinise power, but also exercise it, and should be responsible and accountable.

MEAA members engaged in journalism commit themselves to:

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

Journalists will educate themselves about ethics and apply the following standards:

1. Report and interpret honestly, striving for accuracy, fairness and disclosure of all essential facts. Do not suppress relevant available facts, or give distorting emphasis. Do your utmost to give a fair opportunity for reply.
2. Do not place unnecessary emphasis on personal characteristics, including race, ethnicity, nationality, gender, age, sexual orientation, family relationships, religious belief, or physical or intellectual disability.
3. Aim to attribute information to its source. Where a source seeks anonymity, do not agree without first considering the source's motives and any alternative attributable source. Where confidences are accepted, respect them in all circumstances.
4. Do not allow personal interest, or any belief, commitment, payment, gift or benefit, to undermine your accuracy, fairness or independence.
5. Disclose conflicts of interest that affect, or could be seen to affect, the accuracy, fairness or independence of your journalism. Do not improperly use a journalistic position for personal gain.
6. Do not allow advertising or other commercial considerations to undermine accuracy, fairness or independence.
7. Do your utmost to ensure disclosure of any direct or indirect payment made for interviews, pictures, information or stories.
8. Use fair, responsible and honest means to obtain material. Identify yourself and your employer before obtaining any interview for publication or broadcast. Never exploit a person's vulnerability or ignorance of media practice.
9. Present pictures and sound which are true and accurate. Any manipulation likely to mislead should be disclosed.
10. Do not plagiarise.
11. Respect private grief and personal privacy. Journalists have the right to resist compulsion to intrude.
12. Do your utmost to achieve fair correction of errors.

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

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© Media, Entertainment and Arts Alliance. *MEAA Journalist Code of Ethics*. Retrieved from www.meaa.org on 6 May 2020.

A CHARTER FOR A FREE PRESS IN AUSTRALIA

THE AUSTRALIAN PRESS COUNCIL AGREED ON THE FOLLOWING CHARTER IN 2003 AND ENCOURAGES OTHER ORGANISATIONS TO ADOPT IT

PREAMBLE

Freedom of opinion and expression is an inalienable right of a free people. Australia is committed to the *Universal Declaration of Human Rights*.

Article 19 of the Declaration provides:

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

In a truly democratic society open debate, discussion, criticism and dissent are central to the process of generating informed and considered choices. These processes are crucial to the formation of values and priorities and help in assessing and finding solutions to social, economic and political problems.

A free press is a symbol of a free people. The people of Australia have a right to freedom of information and access to differing opinions and declare that the following principles are basic to an unfettered flow of news and views both within Australia and across the nation’s borders.

THE PRINCIPLES

1. Freedom of the press means the right of the people to be informed by the press on matters of public

interest so that they may exercise their rights and duties as citizens.

2. The press shall not be subject to government licence and government authorities should not interfere with the content of news nor restrict access to any news source.
3. The press has a responsibility to the public to commit itself to self-regulation which provides a mechanism for dealing with the concerns of members of the public and the maintenance of the ethical standards and journalistic professionalism of the press.
4. It is in the public interest for the press to make available to the people a wide diversity of views and opinions.
5. It is the responsibility of the press to protect the people’s right to know and to contest encroachments upon that right by governments, groups or individuals.
6. Laws, regulations and practices which in any way restrict or inhibit the right of the press freely to gather and distribute news, views and information are unacceptable unless it can be shown that the public interest is better served by such laws, regulations or practices than the public interest in the people’s right to know.

Australian Press Council. *A Charter for a Free Press in Australia*. Retrieved from www.presscouncil.org.au on 12 March 2020.



The rule of law and the implied freedom of communication in Australia

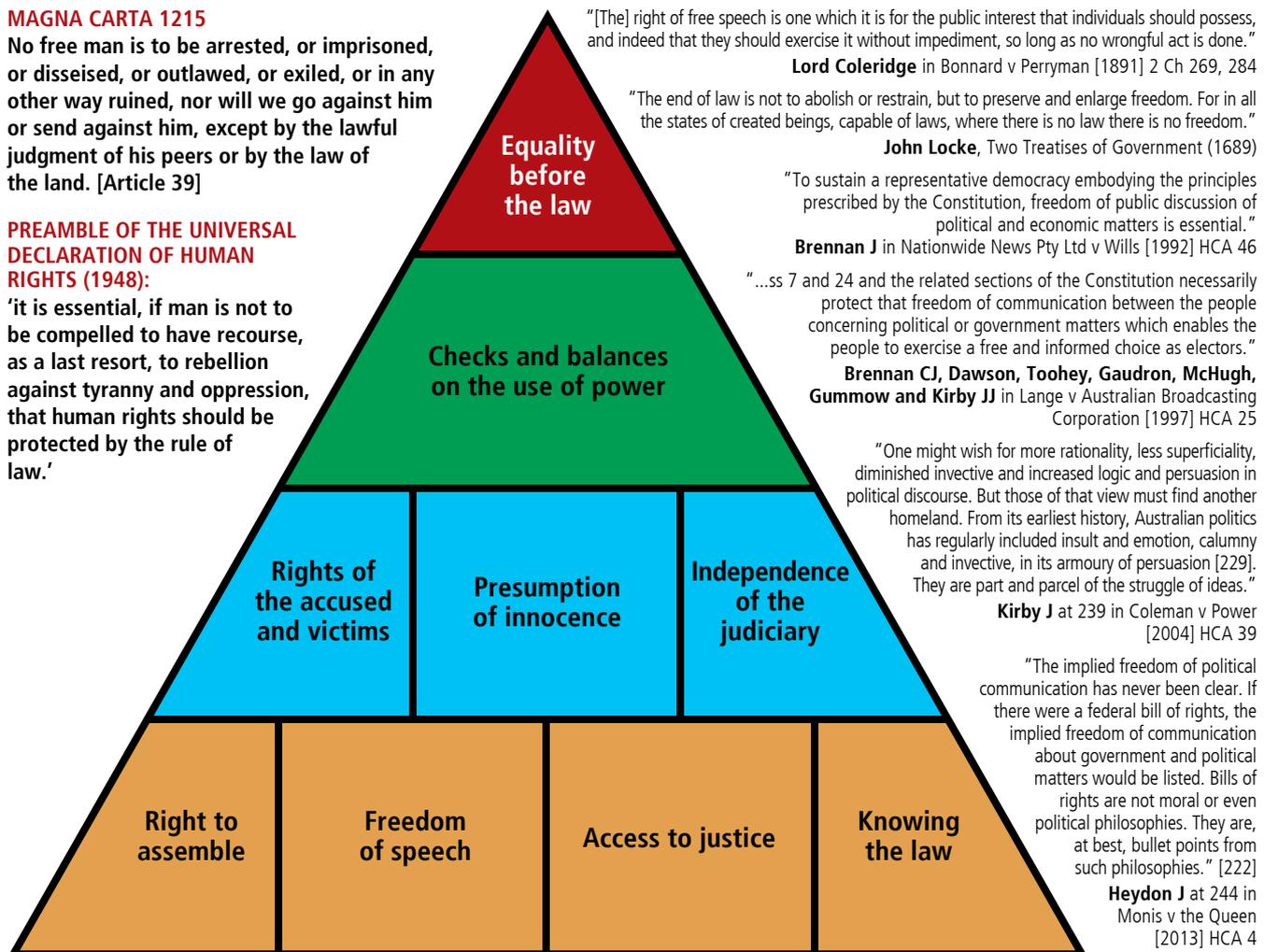
AUSTRALIA'S MAGNA CARTA INSTITUTE EXPLAINS THE FREEDOMS TO COMMUNICATE, FROM A LEGAL PERSPECTIVE

MAGNA CARTA 1215

No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land. [Article 39]

PREAMBLE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (1948):

'it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.'



INTERNATIONAL AGREEMENTS AND AUSTRALIAN LAW

Freedom of speech allows an individual to express their opinion publicly without being punished for it. It is one of the most important, and most debated, freedoms in many societies.

People have been debating freedom of speech, and what, if any, limits should be placed on it, for thousands of years. Over that time, many different approaches have come about.

One of the most well known laws which protects free speech is the First Amendment to the United States Constitution. However, this law has no effect outside the borders of the United States of America.

A number of international agreements such as the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* (ICCPR) provide broad protections for freedom of expression.

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred

that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."
Article 20, ICCPR (1966)

Freedom of speech allows an individual to express their opinion publicly without being punished for it. It is one of the most important, and most debated, freedoms in many societies.

However, international law does not provide protections for freedom of expression – as we know international law is not enforceable except when a national parliament, such as Australia, passes a law that explicitly protects freedom of expression.

THE IMPLIED FREEDOM OF POLITICAL COMMUNICATION IN AUSTRALIA

Freedom of speech or expression is not explicitly mentioned in the Australian Constitution. However,



beginning in the early 1990s, the High Court developed the idea of the ‘implied freedom of political communication,’ which they said was a constitutional right that limited the power of government and protected political communications.

The implied freedom of political communication is narrower than the freedom of expression described by the ICCPR, and relates to the requirement in the Australian Constitution that the Federal Parliament be elected:

‘To sustain a representative democracy embodying the principles prescribed by the Constitution, freedom of public discussion of political and economic matters is essential.’

Brennan J in *Nationwide News Pty Ltd v Wills* [1992] HCA 46

The freedom of political communication is one of the few constitutional rights found in the Australian Constitution. A legal test called the McCloy Test has been developed to make decisions about whether a law or decision of government is incompatible with the Australian Constitution because it burdens political communication.

THE RULE OF LAW, ACCOUNTABILITY AND THE USE OF POWER

The rule of law requires that power is used according lawfully. Those who have power, like governments, are accountable for how they use it.

The freedom to speak out publicly about the use of power, or the law, and the freedom of the media are essential principles that support the rule of law in Australia.

The rule of law is strong in a country where people can participate in a debate about legislation and the decisions of those in power openly, and in public. People should not be afraid of the government and its officials: judges, politicians, police, and other government officers.

The freedom of political communication is one of the few constitutional rights found in the Australian Constitution.

Appropriate checks and balances on the power of officials ensure that an individual does not feel fearful of being persecuted if they criticise someone who has power.

THE SEPARATION OF POWERS AND FREEDOM OF SPEECH

The separation of powers in Australia can be seen in action when the courts decide cases about the freedom of political communication. In these cases the courts are interpreting the Australian Constitution and considering whether the Parliament has passed laws that are compatible with the Constitution. If the law is found to be incompatible by the courts then the Parliament is required to either strike out or read down the law as instructed by the court.

THE IMPORTANCE OF JOURNALISTS

Australian society often relies on journalists to investigate the actions of those in power. Freedom of the media is an essential part of maintaining the rule of law.

While many journalists are fearless in trying to expose issues where abuse of power occurs, this can raise difficult legal questions about where journalists get their information.

If a whistleblower gives confidential government information to a journalist, they may be guilty of a criminal offence, and the journalist may be guilty of an offence if they publish that information publicly. Many journalists feel that increased surveillance and coercive powers of police and law enforcement, as well as a lack of legal protections for journalists and their sources have a ‘chilling effect’ on the freedom of the media in Australia.

GLOSSARY

Representative government – that the Australian Constitution requires the people of Australia elect people to the Parliament to represent them.

Responsible government – that members of the executive (who run the country) are held to account by the legislature (who make the laws).

Struck down – where a law is found to be invalid (unconstitutional) and is declared to no longer be a law.

Read down – where the court decides that words in a law have a more specific or narrower meaning.

The Australian Constitution – the supreme law of Australia which outlines the structure and powers of government.

Constitutional right – a right that is found in the Constitution.

Implied right/freedom – a right or freedom found by a judge(s) to exist because the law suggests it does.

Freedom of political communication – an implied freedom found in legal cases that limits the power of government to make laws or decisions which burden communicating about political issues. The Australian Constitution suggests it exists because it requires a system of representative democracy.

Coercive powers – these are powers given to law enforcement and intelligence agencies that allow them to compel people to provide information, either oral or documentary, to them when asked. If people refuse to provide the requested information they can be jailed in some circumstances.

Impugned law – a law whose operation/wording is being challenged in a case. In implied freedom of political communication cases a party is arguing that the law burdens the implied freedom (removes or limits it).

The freedom to speak out publicly about the use of power, or the law, and the freedom of the media are essential principles that support the rule of law in Australia.

It is important for the rule of law in Australia that press freedom is protected.

Australia's Magna Carta Institute. *The Rule of Law and the Implied Freedom of Communication in Australia*. Retrieved from www.ruleoflaw.org.au on 12 March 2020.



REPORTING FACTS: FREE FROM FEAR OR FAVOUR

A RESOURCE PUBLISHED BY **UNESCO**,
WRITTEN BY MARIUS DRAGOMIR

Independent media play an essential role in societies. They make a vital contribution to achieving sustainable development – including, topically, Sustainable Development Goal 3 that calls for healthy lives and promoting well-being for all. In the context of COVID-19, this is more important than ever.

Journalists need editorial independence in order to be professional, ethical and serve the public interest. But today, journalism is under increased threat as a result of public and private sector influence that endangers editorial independence.

All over the world, journalists are struggling to stave off pressures and attacks from both external actors and decision-making systems or individuals in their own outlets.

By far, the greatest menace to editorial independence in a growing number of countries across the world is *media capture*, a form of media control that is achieved through systematic steps by governments and powerful interest groups.

This capture is through taking over and abusing:

- Regulatory mechanisms governing the media,
- State-owned or state-controlled media operations,
- Public funds used to finance journalism, and
- Ownership of privately held news outlets.

Such overpowering control of media leads to a shrinking of journalistic autonomy and contaminates the integrity of the news that is available to the public. However, there is push-back, and even more can be done to support editorial independence and professional journalism.

EDITORIAL INDEPENDENCE: KEY THREATS

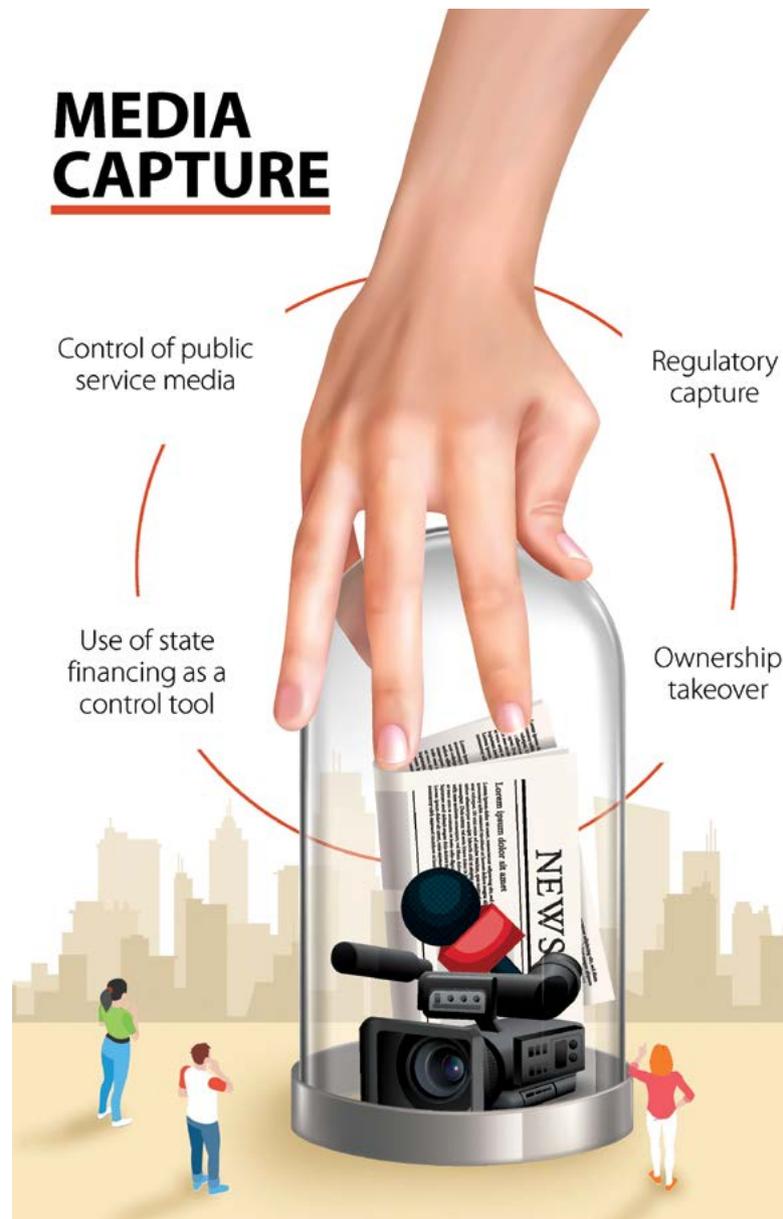
Media capture

Besides media capture, journalistic independence is also threatened by a variety of other factors, which include:

- Undue influence of public relations (PR) shops and the power of big advertisers.
- *Churnalism*, which is content generated through

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MEDIA CAPTURE



prepackaged PR materials combined with multiple news sources.

- Challenges to business models which have pushed many media outlets to carry “native advertising”. This paid advertising is presented as if it was authentic journalistic content.

Although internet has provided outreach opportunities never seen by journalism before, it has also had negative consequences for independent reporting.

Journalistic failings

The data-driven attention and advertising model of content distribution of giant internet companies has not only damaged a financially ailing media industry but also pressured some media outlets to adopt a content distribution logic of sensationalist, viral content produced to grab attention.

Gender continues to remain a problem in the news media, skewing the meaning of editorial independence and leading to unbalanced and less diverse coverage.

On top of all these pressures, editorial independence is sometimes also affected by journalists' own failure to follow professional norms and standards. Conflict of interest, involving both financial gains and collusion with politics and at times stemming from a lack of adequate compensation and job security, damages editorial integrity and journalists' reputations.

Ties that bind

- Spin and PR
- Pressures from advertisers
- Effects of the tech company business model i.e native advertising
- Gender imbalance
- Churnalism

THE PUSH BACK

While the pressures on editorial independence have proliferated in recent years, there are also intensified reactions from civil society, journalists, international organisations, internet companies and the media industry to mitigate the impact.

Trends include:

- Media outlets have been increasingly successful in experimenting with new financing models. Subscription in particular, has proved to be one of the most resilient to "capture".
- Examples of solidarity among journalists, albeit rare, are especially important in today's increasingly polarised media environments where a financially

struggling independent journalism field is often pitted against a well-funded, government-backed, propaganda-driven media sector.

- Journalism carried out by decentralised, cross-border investigative networks remains a powerful example of reporting that escapes many of the constraints of captured media environments.
- The response of civil society, manifested mainly through advocacy and public protests, has sometimes forced economic and/or political elites to step back from control.
- Advocacy from various international organisations including intergovernmental bodies, and or global NGOs has helped to boost transparency of ownership in various countries.

More must be done, especially as the global crisis triggered by the COVID-19 pandemic is inflicting even more harm on independent journalism.

The new challenges are that:

- Economic constraints on media have multiplied as economies have shrunk,
- Public resources for independent journalism are dwindling as priorities are rapidly shifting,
- Legal and regulatory restrictions on free speech are being rapidly imposed in many countries, creating a regulatory environment that further limits independent reporting on the crisis and responses to it.

WHAT TO WATCH: FUTURE RISKS FOR EDITORIAL INDEPENDENCE

Increased control of media (especially after COVID-19)

- Requirements for news media to register with regulators and authorities.
- Provisions on regulation of fake content to be misused for censoring critical journalists.
- Abuse by authorities of data regulations to stop journalists from publishing content deemed to affect personal data and privacy.

State media

- More influence of governments in state media.
- Increased investment in propaganda media including at international level.

Shifts in journalism funding

- Massive financial crisis for independent media.
- Accelerated spending by governments on media raising questions about editorial independence.

To minimise the negative consequences, there is a need to ensure that:

- Independent and verified information can be delivered by the media
- Newly enacted policies and regulations do not further restrict the space for independent reporting
- Political and other leaders speak out in favour of journalists reporting freely



- Media outlets and journalists fully adhere to editorial policies and abide by professional standards
- More funding is provided for independent reporting but with safeguards against capture
- Global internet companies step up to promote quality journalistic content.

THE WAY FORWARD

Independent journalism all over the world is struggling to survive in increasingly captured, polarized environments. Yet more important than ever is media's role in fact-checking and countering disinformation, providing life-saving information, and holding public authorities and companies to account.

Society must act now to ensure that journalists can practise without fear or favour, and to protect the continued role of independent media. This is essential for democracy and sustainable development, especially in today's critical times but also for the years to come.

Anchored in research and inspired by good practices, the recommendations below are aimed at strengthening editorial independence and reducing the negative effects of media capture on journalists' independence and freedom.

STATE AUTHORITIES

State-owned or controlled media

- As the COVID-19 pandemic has shown, in times of extreme crisis, media outlets built as propaganda channels lack public credibility. Along with spreading disinformation or by failure to inform timely and accurately, this can add to the negative impact of such crises.
- To allow for independent reporting and free flows of news, governments – where applicable – should move from a propaganda-based state media model towards a public service media model providing for diversity of content and public interest journalism.

Independence of the judiciary

- To ensure protection of journalists from legal harassment, the independence of the judiciary must be scrupulously respected.

Independence of regulators

To ensure regulatory fairness for all media actors, the independence of media and communications authorities should be guaranteed by legal and practical mechanisms to ensure their political, organizational and financial autonomy.

Public funding

- To prevent distortion of the market and economic pressures used to control media outlets, laws and rules on fair and transparent allocation of government funding to media should be in place. This applies to subsidies, state advertising or other forms of public financing, and it needs independent oversight mechanisms to ensure that the rules are implemented.

Media ownership

- To prevent the formation of dominant interest groups in the media, regulations should be introduced on media ownership, including rules aimed at reducing ownership concentration and ensuring transparency of ownership. There should also be provisions forbidding media ownership by companies that have lucrative contracts in other industries that are obtained through public procurement.

Regulation of content online

- To prevent political control over the internet, government regulation of online content should follow international standards where free flow is the norm, and restrictions the exception.
- Regulation should focus on ensuring the transparency of the algorithms and policies used to distribute, detect and remove online content.
- Regulation could also require multi-stakeholder accountability of these companies for their policies and practices.
- Incentives for internet companies and media outlets to work together on countering disinformation online should also be considered.

INTERNATIONAL ORGANISATIONS

Promotion of standards

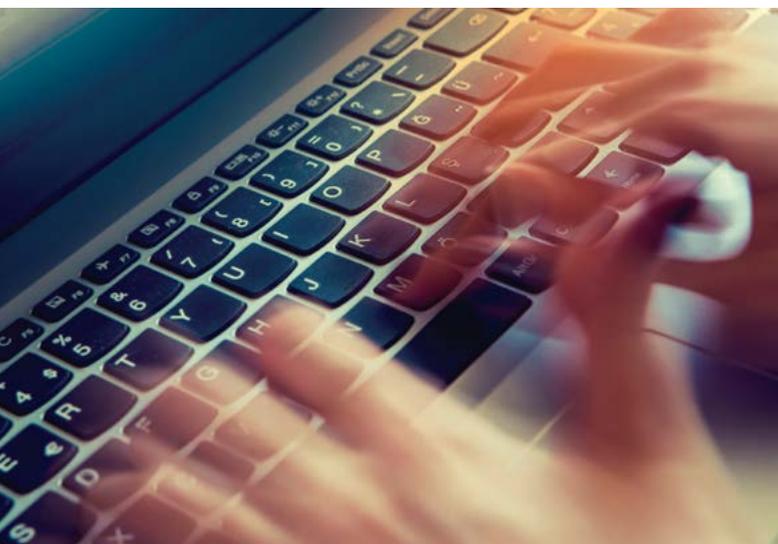
- International intergovernmental organisations including UNESCO and other UN bodies, and regional bodies such as the African Union, Council of Europe, EU, and OSCE, should promote professional journalistic standards as well as legal and regulatory standards and good practices ensuring editorial independence.

Journalism funding

- International intergovernmental organisations should encourage governments to include journalism among the financing priorities during the COVID-19 pandemic, and ensure the need for criteria of transparency, impartiality and independent oversight on how those funds should be operated.
- Donors should urgently prioritise media and media freedom in their financing policies as a way to support independent journalism initiatives.

Legal measures

- International intergovernmental organisations including UNESCO and other UN bodies, as well as regional bodies, should call on governments to refrain from excessive legal measures that harm freedom of speech and prevent journalists from doing their job independently.
- These international bodies should enhance programmes of capacity building of judicial operators to empower these actors when applying international standards of freedom of expression in their decisions.



INTERNET COMMUNICATIONS COMPANIES

Tackling disinformation

- To tackle the spread of disinformation on their platforms and avoid attracting potential restrictions that are over-broad, internet companies should take measures to identify, downgrade or (where applicable) remove disinformation, through processes that are transparent and in line with international standards, including protecting the rights to freedom of expression, privacy and redress.

Promotion of independent reporting on social media

- Especially during these times of crisis, as people need and seek true information, social media companies should promote the accessibility of independent journalism.

MEDIA OUTLETS AND JOURNALISTS

Application of editorial policies

- To ensure that editorial independence is given substantive meaning, journalists should enjoy financial security, proactively apply editorial policies for their work, and strengthen their self-regulatory practices and mechanisms such as media councils or an ombudsman.

Gender equality and diversity

- To ensure inclusive reporting, media organisations' policies and practices aimed at promoting gender equality and diversity in the news media should be adopted and enforced, building on UNESCO's Gender Sensitive Indicators for Media.

Solidarity

- To boost resilience in the face of attacks from dominant interest groups and governments, journalists and media institutions should step up efforts such as establishing clubs, associations or other forms of unions, to foster solidarity in the journalism field.
- Collaborative reporting projects should be started or strengthened.

MEDIA DEVELOPMENT AND DONOR ORGANISATIONS

Emergency funding

- To help independent media outlets survive the impact of the COVID-19 pandemic, media development and donor organisations should help to cover the core operational costs of such outlets. Internet companies have a role to play.

Support for advocacy and policy work

- Where authorities are introducing disproportionately restrictive policies and regulations, such as during the COVID-19 pandemic, there should be support for grassroots NGOs that advocate against such measures.

JOURNALISM EDUCATION AND TRAINING INSTITUTIONS

Enhancing training to avoid and mitigate media capture and strengthen knowledge and skills

- Tertiary and other journalism training institutions should reinforce their curricular content to prepare current and future journalists to cope with media capture, negotiate with power and affirm journalistic integrity.
- This means spreading the knowledge and skills needed to protect editorial independence and to deliver ethical and professional journalism about the key concerns of the public.

This brochure provides a preview of a forthcoming study on media independence, part of the *World Trends in Freedom of Expression and Media Development* series. The series is supported by UNESCO's Multi-Donor Programme for Freedom of Expression and Safety of Journalists.

ABOUT THE AUTHOR

Marius Dragomir is the Director of the Center for Media, Data and Society. He previously worked for the Open Society Foundations (OSF) for over a decade. His research is specialised in media and communication regulation, digital media, governing structures of public service media and broadcasting, spectrum management, and ownership regulation. He has authored expert studies and articles on journalism and media policies that have been published and translated in more than 60 countries.

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Retrieved from <https://en.unesco.org> on 6 May 2020.

Australia slips in World Press Freedom Index

THE DOWNWARD TREND IN MEDIA FREEDOM IN AUSTRALIA IS CONCERNING TO THE HUMAN RIGHTS LAW CENTRE

Australia's ranking in the *World Press Freedom Index* has fallen by five places in the latest annual assessment from Reporters Without Borders to 26th place behind countries such as Ireland, Uruguay, Germany, and Latvia

Daney Faddoul, a campaigner at the Human Rights Law Centre, said recent police raids on journalists and Australia's excessive espionage laws that threaten journalists, and secrecy laws that intimidate people that blow the whistle on government wrongdoing with lengthy jail terms, were a key factor in the downgrade.

"A thriving democracy needs an independent, free and fierce media to keep us informed about important issues and to help keep our politicians honest. This downward trend when it comes to media freedom in Australia is very concerning," said Mr Faddoul.

Norway, Finland, Denmark, Sweden and the Netherlands made up the top five countries in the rankings and New Zealand made the top ten list at ninth spot. China, Eritrea, Turkmenistan and North Korea were ranked worst in the world.

The Human Rights Law Centre supports the calls from the journalists union, the Media, Entertainment and Arts Alliance, as well as the Right to Know coalition,

for laws to protect journalists reporting in the public interest and the whistleblowers that reveal the truth the public has a right to know.

Mr Faddoul said Australia also needs a broader legal reform to better protect everyone's rights. He said it was time to create an Australian *Charter of Human Rights and Freedoms*.

"A *Charter of Human Rights and Freedoms* is about ensuring government laws, policy and decision making is always guided by values like fairness, dignity, respect and compassion. A Charter also provides people with a powerful tool to challenge injustice or take action if their rights are violated," said Mr Faddoul.

Australia's fall in the *World Press Freedom Index* follows a similar fall in a *World Democracy Ranking* last year by a global alliance of human rights organisations.

"Democracy is not a spectator sport. If we don't tend to the systems we use to have productive policy debates and solve our problems, then slowly but surely our standards will continue to slip," said Mr Faddoul.

Human Rights Law Centre (24 April 2020). *Australia's slip in the world press freedom index a reminder that we need a Charter of Human Rights and Freedoms*. Retrieved from www.hrlc.org.au on 6 May 2020.

INVESTIGATIVE JOURNALISM IN DANGER

The latest *World Press Freedom Index* by Reporters Without Borders expresses concerns over political attacks on investigative journalism in Australia

In 2019, Australian journalists became more aware than ever of the fragility of press freedom in their country, whose constitutional law contains no press freedom guarantees and recognizes no more than an "implied freedom of political communication."

Federal police raids in June 2019 on the home of a Canberra-based political reporter and the headquarters of the state-owned Australian Broadcasting Corporation in Sydney were flagrant violations of the confidentiality of journalists' sources and public interest journalism.

"National security," the grounds given for these raids, is used to intimidate investigative reporters. They also have to cope with a 2018 defamation law that is one of the harshest of its kind in a liberal democracy, and terrorism laws that make covering terrorism almost impossible. Prime Minister Scott Morrison is also a climate change sceptic and his government tends to obstruct coverage of environmental issues.

These political attacks on investigative journalism are all the more worrying because pluralism in Australia has been badly eroded by one of the world's highest levels of media ownership concentration. Almost all of the privately-owned media are now owned by two media giants, Rupert

AUSTRALIA'S RANKING

Ranking in 2020 World Press Freedom Index: 26

Previous ranking (2019): 21 (-5)

Global score: +3.66

Previous score (2019): 16.55

Rankings since 2013

2019: 21/180

2018: 19/180

2017: 19/180

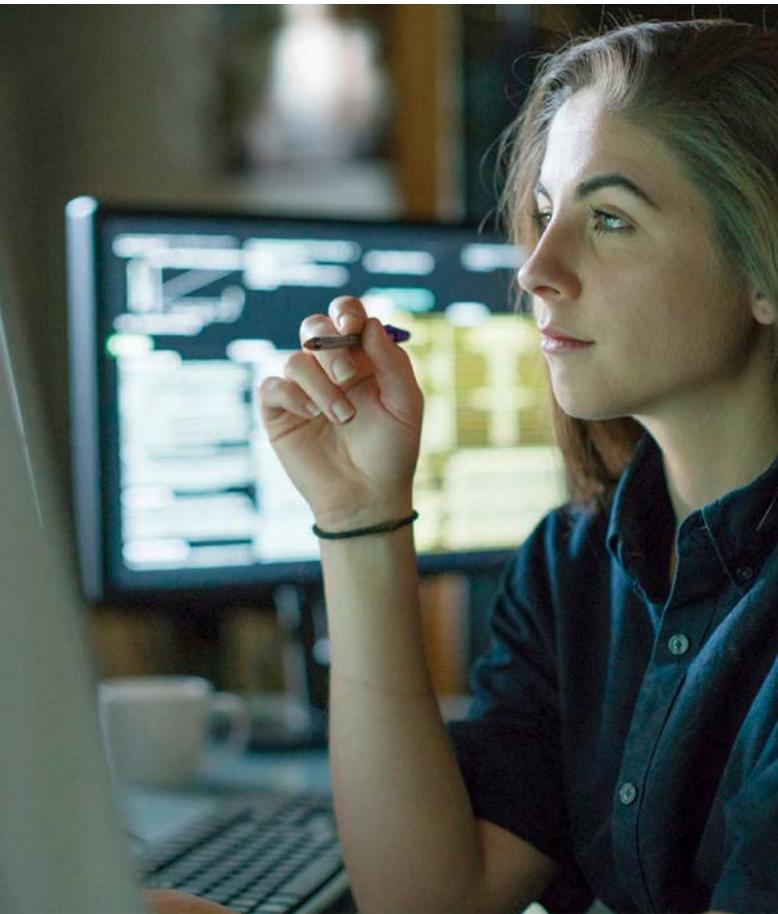
Murdoch's News Corp and Nine Entertainment, the heir to a consortium created by the Packer family. This oligarchic media model, in which media outlets focus above all on cost-cutting and profits, constitutes an additional curb on public interest investigative journalism.

The situation became even worse in early 2020 when the Australian Associated Press, the country's only national news agency, ceased operating after 85 years because it was deemed insufficiently profitable by its two main shareholders, News Corp and Nine Entertainment.

Reporters Without Borders (April 2020). *2020 World Press Freedom Index*. Retrieved from <https://rsf.org> on 6 May 2020.

WHY INVESTIGATIVE REPORTING IN THE DIGITAL AGE IS WAVING, NOT DROWNING

Recent federal police raids on media outlets raised fears of a chilling effect on investigative journalism, but a new book by **Andrea Carson** finds it is thriving against the odds



You don't need to look far to find doom and gloom stories about traditional media in the digital age. Yet linking media hardship to a view that investigative journalism is dying is a misconception.

Yes, media outlets face many challenges. Last week's 600-page ACCC report showed traditional media organisations face a difficult economic environment as advertising and audiences have migrated to online tech giants like Google and Facebook.

Since the turn of the century, media companies' revenue has been in free fall. Thousands of journalism jobs have gone, scores of mastheads have closed. Certain types of reporting, particularly on regional and local news, remain under threat for established Australian media outlets.

Then there were the recent Australian Federal Police raids on News Corp and ABC journalists, highlighting the political and legal pressures reporters face in the post-September 11 era.

By doing their jobs reporting on stories in the public interest, journalists risk fines or even jail time. And their sources, the whistleblowers, face similar or worse fates.

Media freedom is a pressing global problem. Using the Australian example, human rights lawyer Amal Clooney warned at the recent Defend Media Freedom conference in London that the decline in press freedom is not limited to non-democracies like North Korea.

Another gloomy tale for news outlets is falling levels of public trust as more fake news confuses people about what is real and what is not. In turn, powerful world leaders from Donald Trump to Rodrigo Duterte weaponise the term "fake news" to weaken news media's legitimacy.

The old model of single-newsroom investigations marked by cut-throat rivalry has given way to a new model of multiple newsrooms cooperating and sharing information to expose systemic wrongdoing.

These pressures on journalists matter because, as the ACCC reported, the news media play an important role in our democratic health. They inform us, and hold the powerful to account.

Notwithstanding the market failure of news, my new book, *Investigative Journalism, Democracy and the Digital Age*, finds that the watchdog role of journalism – investigative reporting – is adapting to its austere media environment. It is enduring, even thriving, in the digital age.

I undertook a nine-year study of investigative journalism in liberal democracies. This showed that journalists and their outlets undertake investigative reporting – which I define as a relatively uncommon form of journalism requiring more time and effort to unearth public interest information that others prefer were kept hidden – for different reasons.

Some are commercial, to increase revenues; others are purely ideological with a commitment to be the "fourth estate"; others are a mix of the two.

In any case, we are witnessing a seismic shift in reporting practice. The old model of single-newsroom investigations marked by cut-throat rivalry has given way to a new model of multiple newsrooms cooperating and sharing information to expose systemic wrongdoing. A case in point is *The Age* and *Sydney Morning Herald* teaming up with Channel Nine's *60 Minutes* this week to expose the dodgy dealings of Crown Casino and apparent regulatory failure.

Investigative collaborations can challenge global power in ways not previously possible. For example, the reporting of the Panama Papers brought together

almost 400 International Consortium of Investigative Journalists (ICIJ) members to shine a spotlight on global tax avoidance. These stories led to governments recovering US\$1.2 billion through lost taxes and penalties.

The ICIJ is just one example of more than 100 non-profit investigative reporting organisations in 50 countries driving the new model of global investigative journalism.

Through 50 interviews with media experts, including investigative journalists from across the globe, analysing six decades of Australian newspapers, and analyses of prestigious journalism awards in Australia, Britain and the USA, I find that although traditional media has experienced immense hardship, it's time to debunk the myth that investigative journalism is dying.

Instead, investigative journalism is often protected from newsroom cost-cutting. It is in better shape than other forms of journalism because of its value to corporate branding and/or the public interest. Evidence-based investigative reporting re-establishes its publishers as quality media outlets in the digital age – when competition for attention is fierce – by offering unique public interest stories for which audiences are prepared to pay.

Here are seven of the book's key findings:

1. The digital age is a renaissance period for investigative reporting. This has been made possible through collaboration and scaling up investigations to national and transnational levels.
2. The downside to scaling up investigations is that local inquiries may suffer. Investigations may also be more narrowly targeted to assure a story outcome. This means there is less tolerance for “fishing exercises” than in more profitable times for media.
3. There are different models of collaboration and established media play a critical role in all of them. Some partnerships have been more successful than others. WikiLeaks collapsed, in part, because power in the partnership was not distributed equally, and personal relationships were strained.

Investigative journalism is often protected from newsroom cost-cutting. It is in better shape than other forms of journalism because of its value to corporate branding and/or the public interest.

4. Data journalism plays a vital role in enabling reporters to interrogate information and find patterns in the data indicating systemic wrongdoing. This includes incorporating social science methods such as statistical analysis to reveal “hidden truths”.
5. Mass anonymous data leaks combined with large-scale investigative collaborations push back against national governments' national security laws that hamper journalists' access to, and use of, sensitive documents and hinder whistleblowers' capacity to speak out.

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6. Investigative journalism is evidence-based reporting. This makes it a vital counter-narrative to fake news. Verified news returns authority to mastheads and media brands, which can offset falling public trust in media. This is illustrated by the “Trump bump” – an increase in donations and newspaper sales for outlets undertaking investigative reporting. ProPublica, a specialist US investigative reporting bureau, tripled its philanthropic income from US\$14.3 million in 2016 to US\$43.5 million in 2017 after Trump's election and demonisation of journalists.

When all other means of redressing injustice fail, investigative journalism is the “court of last resort”.

7. There is no single solution for funding news or investigative journalism this century (yet). Rather, what is evident is the role of experimentation, adaptation and flexibility to find effective ways to fund investigative reporting. These include crowdsourcing, philanthropy and paywalls. Typically, news outlets adopt a hybrid funding model that relies on multiple revenue streams.

While my book does not ignore limitations to investigative reporting, the evidence gathered suggests watchdog reporting's future is one of optimism.

This matters because, in the words of one interviewee, Pulitzer Prize-winning investigative reporter Brant Houston, when all other means of redressing injustice fail, investigative journalism is the “court of last resort”.

DISCLOSURE STATEMENT

Andrea Carson is the author of *Investigative Journalism, Democracy and the Digital Age*, published by Routledge.

Andrea Carson is Associate Professor at La Trobe University, Department of Politics, Media and Philosophy.

THE CONVERSATION

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THE REAL NEWS ON 'FAKE NEWS': POLITICIANS USE IT TO DISCREDIT MEDIA, AND JOURNALISTS NEED TO FIGHT BACK

Australian politicians have “weaponised” fake news language to attack their opponents, assert **Andrea Carson** and **Kate Farhall**

During the 2019 election, a news story about the Labor Party supporting a “death tax” – which turned out to be fake – gained traction on social media.

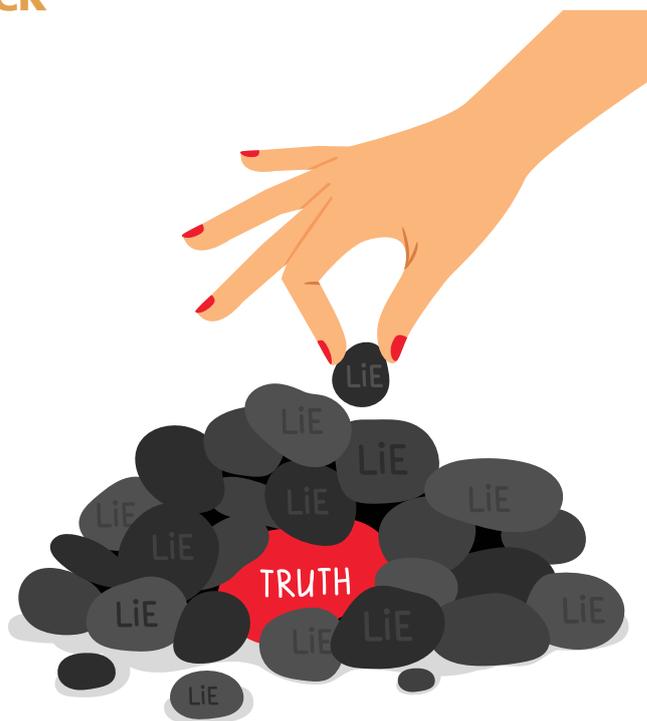
Now, Labor is urging a post-election committee to rule on whether digital platforms like Facebook are harming Australian democracy by allowing the spread of fake news.

While the joint standing committee on electoral matters (JSCEM) will not report until July next year, our latest research finds that politicians are key culprits turning the term “fake news” into a weapon.

Following the election of Donald Trump as president of the United States, we investigated if Australian politicians were using the terms “fake news”, “alternative facts” and “post-truth”, as popularised by Trump, to discredit opponents.

With colleagues Scott Wright, William Lukamto and Andrew Gibbons, we investigated if elite political use of this language had spread to Australia. For six months after Trump’s victory, we searched media reports, Australian parliamentary proceedings (Hansard), and politicians’ websites, press releases, Facebook and Twitter communications.

We discovered a US contagion effect. Australian politicians had “weaponised” fake news language to



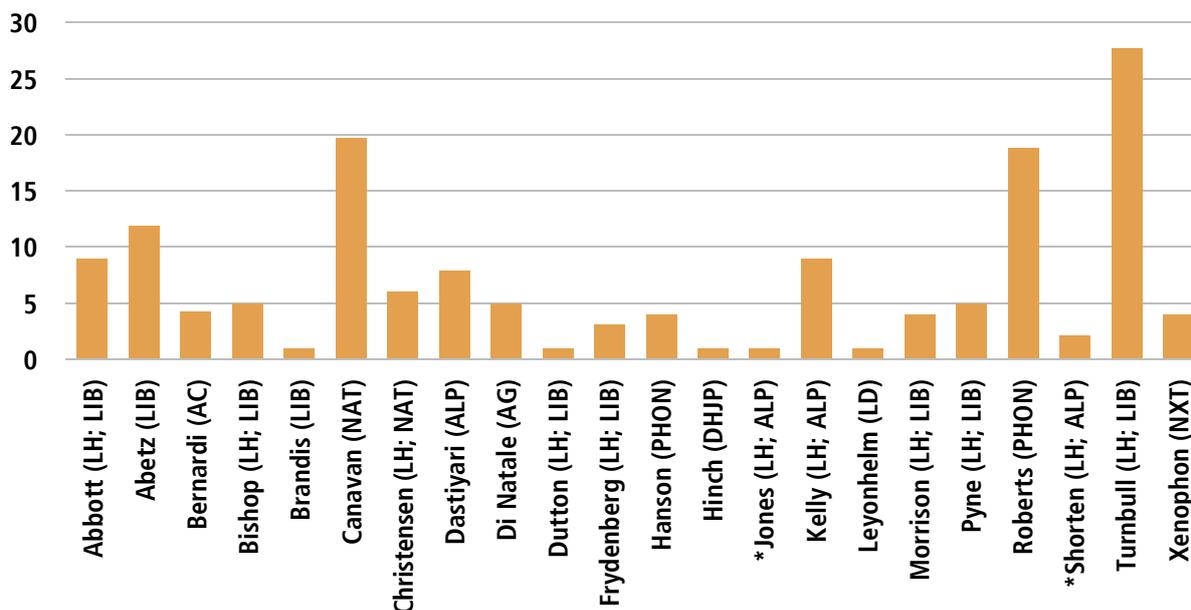
attack their opponents, much in the way that Trump had when he first accused a CNN reporter of being “fake news”.

Significantly, these phrases were largely absent in Australian media and parliamentary archives before Trump’s venture into politics.

Our key findings were:

- Conservative politicians are the most likely users of “fake news” language. This finding is consistent

FEDERAL MPS USING FAKE NEWS DISCOURSE



Total number of instances of fake news discourse use between 8 November 2016 to 8 May 2017 by politician. N = 22 MPs; N = 152 events.

*MPs who use fake news discourse to refute it rather than allege it. Authors.

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Journalism and Media Freedom

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with international studies.

- Political users were either fringe politicians who use the term to attract more media coverage, or powerful politicians who exploit the language to discredit the media first, and political opponents second.
- The discourse of fake news peaks during parliamentary sitting times. However, often journalists introduce it at “doorstops” and press conferences, allowing politicians a free kick to attack them.
- ABC journalists were the most likely targets of the offending label.
- Concerningly, when the media were accused of being fake news, they report it but seldom contest this negative framing of themselves, giving people no reason to doubt its usage.

Here is one example of how journalists introduce the term, only to have it used against them.

Journalist: Today, we have seen a press conference by President Trump where he has discussed at length this issue as fake news. Prime Minister Turnbull do you believe there is such a thing as fake news?

Prime minister: A very great politician, Winston Churchill, once said that politicians complaining about the newspapers, is like a sailor complaining about the sea – there’s not much point. That is the media we live with.

This kind of sequence suggests journalists play a role in driving and reinforcing fake news discourse to the likely detriment of trust in media.

One Nation’s Malcolm Roberts provides the most extreme example of the weaponisation of fake news discourse against mainstream media:

Turns out the ABC, in-between spewing fake news about our party, ruined ANZAC day for diggers The ABC are a clear and present threat to democracy.

Roberts was not alone. Politicians from three conservative parties claimed the ABC produced fake news to satisfy so-called leftist agendas.

What we discovered is a dangerous trend: social media users copy the way in which their politicians turn “fake news” against media and spread it on the digital platforms. Despite this, our findings, published in the *International Journal of Communication*, offer hope as well as lessons to protect Australian democracy from disinformation.

We discovered a US contagion effect. Australian politicians had “weaponised” fake news language to attack their opponents ...

First, our study of politicians of the 45th Parliament in 2016 shows it was a small, but noisy minority that use fake news language (see graph on previous page). This suggests there is still time for our parliamentarians to reverse this negative communication behaviour and serve as public role models. Indeed, two Labor politicians, Bill Shorten and Stephen Jones, led by example in 2017 and rejected the framing of fake news language when asked about it by journalists.

Second, we argue the media’s failure to refute fake news accusations has adverse consequences for public debate and trust in media. We recommend journalists rethink how they respond when politicians accuse them of being fake news or of spreading dis- and misinformation when its usage is untrue.



Third, academics such as Harvard's Claire Wardle argue that to address the broader problem of information disorders on the web, we all should shun the term "fake news". She says the phrase:

is being used globally by politicians to describe information that they don't like, and increasingly, that's working.

On the death tax fake news during the 2019 election, Carson's research for a forthcoming book chapter found the spread of this false information was initiated by right-wing fringe politicians and political groups, beginning with One Nation's Malcolm Roberts and Pauline Hanson.

One Nation misappropriated a real news story discussing inheritance tax from Channel Seven's *Sunrise* program, which it then used against Labor on social media. Among the key perpetrators to give attention to this false story were the Nationals' George Christensen and Matt Canavan. As with the findings in our study, social media users parroted this message, further spreading the false information.

While Labor is urging the JSCEM to admonish the digital platforms for allowing the false information about the "death tax" to spread, it might do well to reflect that the same digital platforms along with paid television ads enabled the campaigning success of its mischievous "Mediscare" campaign in 2016.

In a separate study, Carson with colleagues Shaun Ratcliff and Aaron Martin, found this negative campaign, while not responsible for an electoral win, did reverse a slump in Labor's support to narrow its electoral defeat.

Perhaps the JSCEM should also consider the various ways in which our politicians employ "fake news" to the detriment of our democracy.

DISCLOSURE STATEMENT

Andrea Carson received funding in 2017 from Facebook for a report on the future of newsrooms. She also has Australian Research Council funding to use big data to examine public debate and public policy decisions: DP180101711. Kate Farhall does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond her academic appointment.

Andrea Carson is Associate Professor at La Trobe University, Department of Politics, Media and Philosophy.

Kate Farhall is Postdoctoral research fellow, RMIT University.

THE CONVERSATION

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Retrieved from <http://theconversation.com> on 12 March 2020.



HOW CAN WE RESTORE TRUST IN MEDIA?

FEWER BIASES AND CONFLICTS OF INTEREST, A NEW STUDY SHOWS

Researchers at the **Queensland University of Technology** and the **University of Canberra** have undertaken a survey on levels of trust and mistrust in news

The COVID-19 global pandemic has seen news consumption rise in Australia. Audiences for TV news are up and Australians are spending more time on news websites seeking reliable information about the virus and the social and economic consequences of our policy responses. This makes trust in the media more imperative than ever.

Researchers at the Queensland University of Technology and the University of Canberra have undertaken a survey of 1,045 Australians to gauge levels of trust and mistrust in news and what influences it.

THE MOST TRUSTED VOICES IN NEWS

We found people trust the news they personally consume more than the news in general, and that trust in news was higher than trust in business or government, although lower than trust in friends and educational institutions.

Our participants deemed television the most credible source of information that provides good analysis of current events. Online news sources (including online only and mainstream media) were not viewed to be as credible or professional as traditional offline media.

Some brands were more trusted than others. Trust in established news brands and public broadcasters was highest. Measured on a scale of 1-5 with 5 being the highest, ABC TV (3.92) and radio (3.90) ranked highest, followed by SBS TV (3.87).



Factors that promoted mistrust in news included a past history of inaccurate stories, opinionated journalists or presenters, a lack of transparency, sensationalism and excessive advocacy on behalf of particular points of view.



Performance by media platform. Flew, T., Dulleck, U., Park, S., Fisher, C. & Isler, O. (2020). Trust and Mistrust in Australian News Media. Brisbane: Digital Media Research Centre.

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Among commercial media, the most trusted news brand was *The Australian Financial Review* (3.74), followed by *The Age* (3.69) and *The Australian* (3.69). More recently established brands had lower levels of trust, with *Guardian Australia* (3.45) being the most trusted.

DECLARING CONFLICTS OF INTEREST IS IMPORTANT

To find out why people do or don't trust the news, we asked them to rank a range of possible influences.

Factors that promoted mistrust in news included a past history of inaccurate stories, opinionated journalists or presenters, a lack of transparency, sensationalism and excessive advocacy on behalf of particular points of view.

Factors that promoted trust included depth of coverage, the reputation of the news brand, the reputation of particular journalists or presenters, and openness to comments and feedback from audiences.

The single most significant measure that would restore trust in news brands was journalists declaring any conflicts of interest or biases with regards to particular stories. These measures were supported most by both trusters and mistrusters of news.

The negative impact of perceived bias and conflicts of interest appears consistently in studies about trust in news. News outlets need to take this seriously.

HIRING MORE JOURNALISTS AND SOCIAL MEDIA ARE NOT THE ANSWERS

Our research also reveals some interesting contradictions in how to improve trust in the media. On the one hand, there was a clear desire for more in-depth reporting. However, most respondents simultaneously showed less support for media outlets employing more journalists. This suggests audiences want better-quality journalism, but not necessarily more of it.

In fact, employing more journalists and being more active on social media were deemed the least likely to increase public trust in media – two approaches that feature prominently in the business models of most news organisations.

As with institutional trust more generally, there is also a “trust divide” between educated elites and the wider population when it comes to the news media. Older people also have higher trust in news than younger people.

TRUST IN NEWS IS HARD TO RESTORE

Importantly, our findings show that people who don't trust the news are less supportive of ways to improve it. In contrast, people who do trust the news are more enthusiastic about options to boost it further.

In particular, mistrusters do not see employing more journalists or reporters using more social media as a way to boost trust. Doing either of those things would only increase the circulation of news they already mistrust.

This suggests it is harder to improve trust of those who are already sceptical and mistrustful of news. This is an important message for news outlets to take on board. Once lost, trust in news is harder to restore.

DISCLOSURE STATEMENT

Caroline Fisher has received funding from the Department of Communication and Arts, Google News Initiative and the Social Science Research Council. Sora Park receives funding from the Australian Research Council, Social Science Research Council and Google News Initiative. Terry Flew currently receives funding from the Australian Research Council for the Discovery-Project “The Platform Governance Project: Rethinking Internet Regulation as Media Policy” (DP1900222).

Caroline Fisher is Assistant Professor in Journalism, University of Canberra.

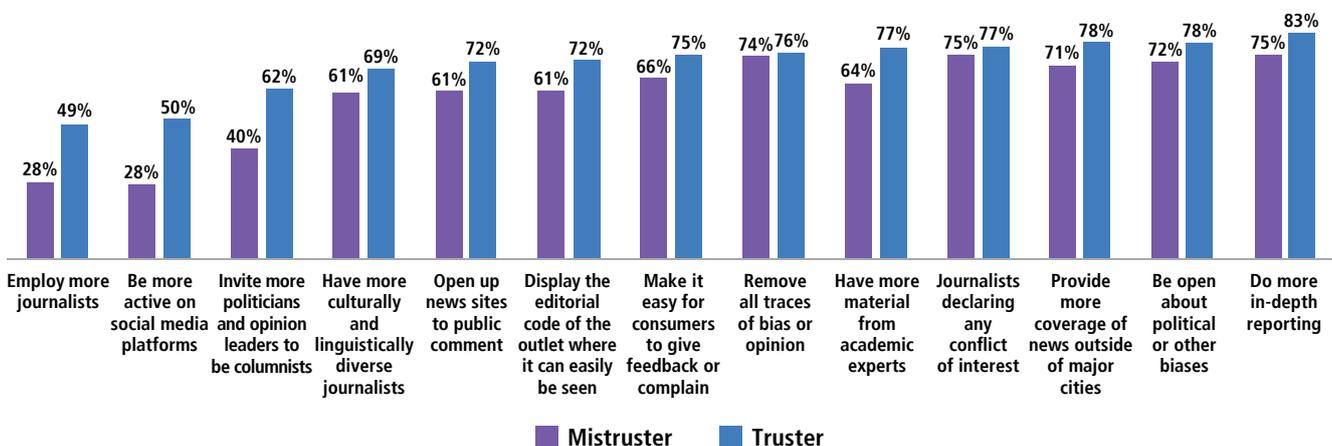
Sora Park is Associate Dean of Research, Faculty of Arts and Design, University of Canberra.

Terry Flew is Professor, Digital Media Research Centre and Centre for Behavioural Economics, Society and Technology, Queensland University of Technology.

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The High Court rules in favour of News Corp, but against press freedom

PRESS FREEDOM IS AN ILLUSION WITHOUT SIGNIFICANT REFORM, ARGUES FORMERLY JAILED JOURNALIST PETER GRESTE

It is easy to assume Australia has a free press. Our squawky newspapers are filled with stories about the failings of government, acid-tongued columnists routinely lash our politicians, and until May last year the police hardly ever raided newsrooms or journalists.

On Wednesday, the High Court appeared to uphold the principle of press freedom when it ruled that the warrant the Australian Federal Police used to search News Corp journalist Annika Smethurst's home in 2019 was invalid.

You might recall that the police raided her home (and searched through her underwear drawer) looking for the source of a story Smethurst had published in *The Daily Telegraph* more than a year earlier. Her story revealed the government was considering expanding the powers of our international electronic eavesdropping agency, the Australian Signals Directorate, so it could turn its sophisticated bugs on Australian citizens. (The very next day, the AFP searched the ABC's Sydney headquarters looking for the sources of another story – the Afghan Files – about Australian Special Forces in Afghanistan.)

Smethurst's story was important because it revealed details of a shift in policy that affected all Australians. Regardless of what you think about the rights or wrongs of such a change, it is hard to argue it shouldn't have been part of an open public debate.

At the same time, nobody has ever suggested national security suffered as a result of the story. It was a fine example of a free press doing its job by uncovering government actions that we all ought to know about.

News Corp went to the High Court to argue that the police had written the warrant so badly that it failed to explain why they were conducting the search and what they were looking for. In a unanimous slap-down for the police, all seven judges on the bench agreed the warrant "lacked clarity" and ruled it invalid.

A victory for journalism? Not quite.

News Corp also asked the court to order the police to either return or destroy any evidence collected during the raid. In a decision split 4:3, the judges rejected the request. This effectively allowed the police to still use the evidence for any investigation and prosecution.

The reasoning is complex and highly technical, but its overall effect is to undermine the already paper-thin protections for press freedom in Australia.

This is not the fault of the court. It was doing its job adjudicating on narrow points of law and police procedure, but it does underscore the urgent need for robust reform of our legal code.

Australian journalists operate freely in spite of the law, rather than because of it. While the United States Constitution has its *First Amendment* and the UK has

Article 10 of its *Human Rights Act* (to name just a few), the most we have is a hopelessly weak "implied freedom of political communication" that's merely inferred in our constitution. Without more explicit protections, we have seen a slew of national security laws undermining the ability of journalists to investigate government and keep their sources safe.

This matters because the ability of the press to act as a noisy (and nosy) watchdog is vital to the way our democracy works. Nobody is arguing for complete and unfettered protection for journalists. Much of the work of our security agencies, individuals' private details and commercially sensitive information must be off-limits, but there are ways of striking a balance between those imperatives.

A host of organisations have already proposed a set of reforms. The Alliance for Journalists' Freedom (which

Without more explicit protections, we have seen a slew of national security laws undermining the ability of journalists to investigate government and keep their sources safe.





subject to prosecution. It would also help the police avoid being accused of launching politically motivated inquiries.

Our press might look free and fearless, but without significant reforms that remains a dangerously fragile illusion.

DISCLOSURE STATEMENT

Prof Peter Greste is the UNESCO Chair in Journalism and Communication at the University of Queensland. He is also a founding director and spokesman for the Alliance for Journalists' Freedom.

Peter Greste is Professor of Journalism and Communications, The University of Queensland.

THE CONVERSATION

Greste, P (15 April 2020). *The High Court rules in favour of News Corp, but against press freedom*. Retrieved from <http://theconversation.com> on 6 May 2020.

Our press might look free and fearless, but without significant reforms that remains a dangerously fragile illusion.

I represent) published a white paper on press freedom in Australia three weeks before the raids.

The AJF proposes:

- Protections for journalists' sources
- The chance for news organisations to contest warrants even before the police carry out their searches
- An "exemption from prosecution", so that when journalists are engaged in legitimate work, press freedom is assumed.

It would then be up to the police to show a judge why there is enough of a risk to national security to justify setting aside that principle and issuing a warrant.

It is impossible to reform every corner of our statute books, though, so we also need a *Media Freedom Act* that enshrines the principle of press freedom in our legal code. That way, every court up to and including the High Court has to take it into account in every case that threatens to undermine media freedom.

Together, those kinds of protections would give comfort to journalists and their sources: as long as they are not violating clear and strictly set-out rules on national security and privacy, and are otherwise acting in accordance with the law, they should not be

MEDIA FREEDOMS – STRIKING A BALANCE

This speech was delivered at a media and communications seminar by **Arthur Moses SC**, then President of the Law Council of Australia

Distinguished guests, ladies and gentlemen. I would like to thank the Business Law Section for organising this event on this very important and pressing issue.

I am honoured to be here today to talk to you about an issue that has become a key area of advocacy for the Law Council of Australia in 2019 – the issue of press freedom. The attendance today is an indication of the interest in this significant legal challenge in the communications sector.

Before I begin, I would like to acknowledge the Gadigal people of the Eora Nation, the traditional custodians of this land. I pay my respects to the Elders past, present and emerging.

Let me start by quoting the legendary US broadcaster Walter Cronkite. He once said:

“Freedom of the press is not just important to democracy, it is democracy.”

This year, the Law Council has strongly advocated for greater protections for Australia’s independent press. Not because it is for the benefit of our journalists, but because the vital work that our journalists undertake protects Australians from abuse of and misinformation by government.

A free press, that can function without fear or favour, lies at the very heart of our democracy. It is vital to all Australians, not just politicians, lawyers and journalists.

Australia’s media is critical to holding government and its agencies accountable for their actions and scrutinising the exercise of power. This leads to better decision-making and a stronger democracy that respects rights and freedoms and upholds the rule of law.

Protecting our community and the safety of Australians must be the government’s priority. But our parliament is also the guardian of the rights and freedoms of Australian citizens.

In this it is aided by the media, which plays a key role in defending the public interest. These responsibilities of the government, parliament and media should not be taken lightly.

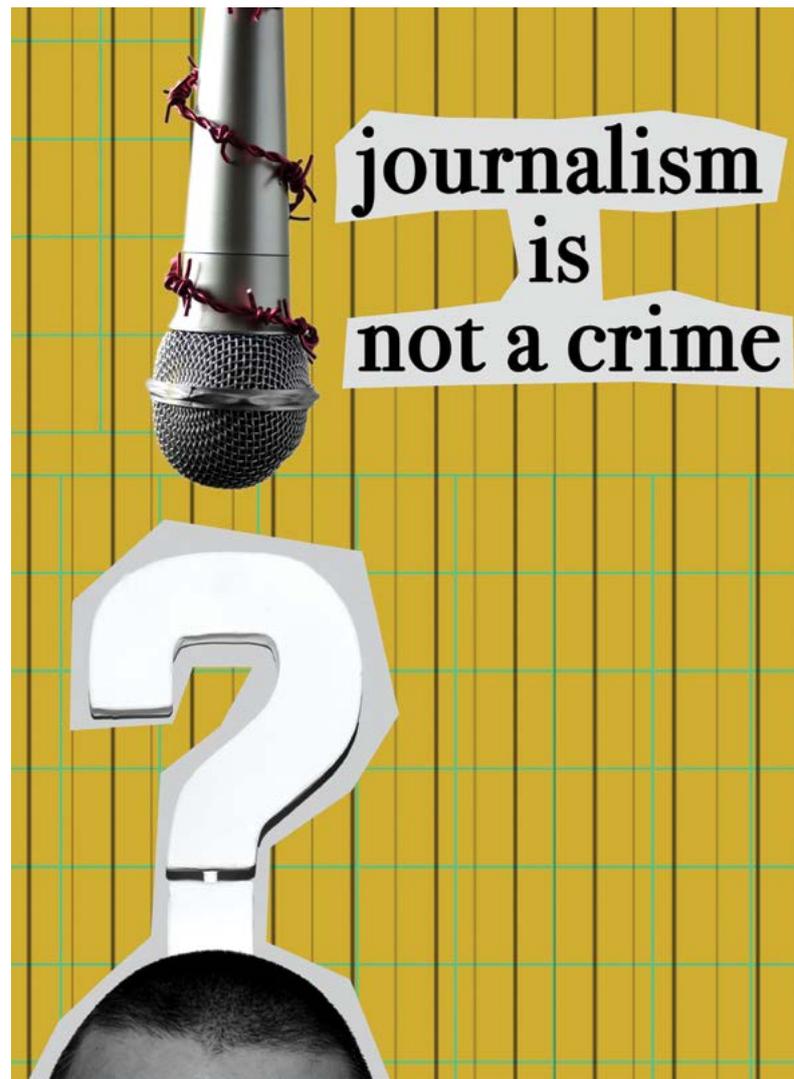
Unfortunately, after 9/11, in efforts to preserve our rights and freedoms, governments here and around the world found themselves increasingly encroaching upon them. This has been accompanied by a growing culture of secrecy.

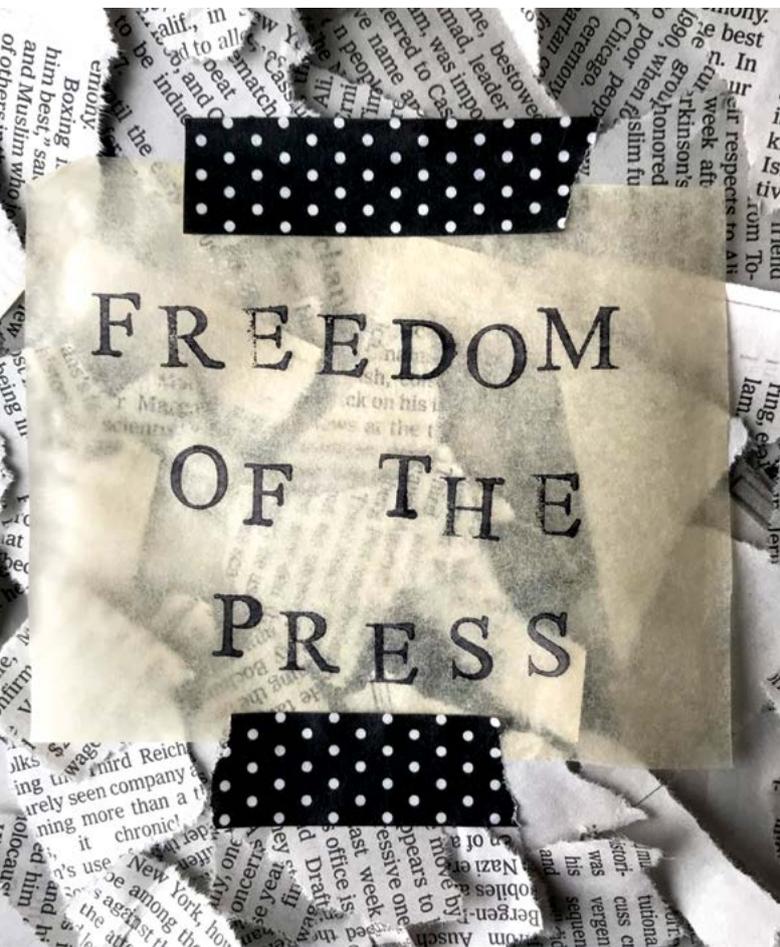
Over centuries, the notion developed that human rights are inherent to who we are as humans. This concept of inherent, universal and inalienable rights is found in the first article of the *UN Declaration of Human Rights*: “All human beings are born free and equal in dignity and rights”.

The common law too has placed a premium on rights and freedoms and been reluctant to limit them. This is known as the principle of legality. The principle presumes that parliament does not intend to abrogate rights and freedoms unless there is a clear intention to do so. But with a proliferation of statutes with a clear intention by parliament to abrogate rights and freedoms we can no longer rely on this principle to protect them.

Since September 11, about 75 pieces of federal national security legislation have been passed. And there has been a slow erosion of our freedoms. This year’s media raids shone a powerful light on the limits of freedoms – of people and of the press – in Australia.

The Law Council believes all national security and secrecy legislation should be reviewed and reconsidered to ensure it is appropriately calibrated. While protecting our community must always be a priority for the government, this must be considered in conjunction with potential impacts on human rights and freedoms.





A free, independent press is a critical safeguard of human rights. The United Nations Human Rights Committee has said that: “A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other ... rights. It constitutes one of the cornerstones of a democracy”.

Until the raids Australians for the most part believed press freedom was protected by law. They were wrong.

Since 9/11, Australia’s national security provisions have developed inconsistently, in an environment of increasing powers to intercept and access data. This has exposed the media because of its role as the fourth estate.

Public interest journalism must be protected. Disclosure of classified information by the media should only be criminalised if it can be proven to have posed real harm to national security. For this reason, the concept of ‘harm’ must be clearly defined in section 122.4A of the *Criminal Code*. And it must be more than just embarrassment to government. Such a legislative change would not only make clear muddy waters but would also help protect against overuse and arbitrary use of executive power.

Currently, the notion of ‘harm’ in section 121.1 relates to information that is ‘inherently harmful’ or information if communicated is likely to cause harm to Australia’s interests, which means to harm or prejudice Australian security, defence Australia’s international relations or the health or safety of Australians or

interfere or prejudice a criminal investigation or AFP investigation.

These categories are too broad, poorly defined and as a result, have the potential to be applied arbitrarily. They also extend considerably beyond the essential public interests the Australian Law Reform Commission (ALRC) identified for new general secrecy offences.

In its 2010 report, *Secrecy Laws and Open Government in Australia*, the ALRC recommended secrecy offences should be “reserved for behaviour that harms, is reasonably likely to harm or intended to harm essential public interests”.

The ALRC noted general secrecy offence should be limited to ‘unauthorised disclosures’ likely to: damage the security, defence or international relations of the Commonwealth; prejudice the prevention, detection, investigation, prosecution or punishment of criminal offences; endanger the life or physical safety of any person; or prejudice the protection of public safety.

In contrast, the secrecy offences in division 122 relate to communications of, or dealings with, information relating to one of the many listed categories in proposed section 121.1 relating to the definitions of ‘cause harm to Australia’s interests’ and ‘inherently harmful information’.

The categories of ‘inherently harmful information’ may not, depending on the circumstances of the case, amount to a matter that would, or would be reasonably likely to, cause harm to a public interest of the Commonwealth.

Though a public interest defence currently exists for journalists in section 122.5 subsection 6 of the *Criminal Code*, it is poorly defined. The Law Council believes the question of whether the disclosure is not in the public interest should be a key element of the offence.

A free, independent press is a critical safeguard of human rights ... Until the raids Australians for the most part believed press freedom was protected by law. They were wrong.

The prosecution should lead evidence on this – it should not be the journalist’s responsibility to show why it was in the public interest. For example, the government should have to prove in open court why it was not in the public interest for a journalist to expose the fact that an agency was seeking more power to access citizens’ personal details without consent.

Presently, if charged with a secrecy offence under division 122 of the *Criminal Code*, a journalist must discharge an evidential burden of proof. A journalist must provide evidence, possibly in the witness box, that they reasonably believed their story was in the public interest.

It is no answer to say that the standard of proof a journalist must meet is lower than the standard of

proof the prosecution must meet – to prove guilt beyond reasonable doubt. It is nonetheless a burden of proof a journalist should not bear at all for what appears to be a key component of criminal liability.

In terms of formal investigation of a journalist suspected of breaching secrecy provisions, the Law Council believes law reform is needed at every step of the process – from the moment a matter is referred to the Australian Federal Police for investigation, not at the end of the process when the Commonwealth Director of Public Prosecutions (CDPP) proposes to launch a prosecution.

Regarding search warrants that relate to journalists, the Law Council proposed three key reforms to the Parliamentary Joint Committee on Security and Intelligence (PJCIS) inquiry into the impact of law enforcement and intelligence powers on press freedom.

First, the issuing officer of the search warrant must be a judge of a superior court of record, not a registrar.

Second, when considering whether to issue a search warrant, the judge should apply a statutory public interest test, similar to the test that already exists in section 180T of the *Telecommunications (Interception and Access) Act 1979* (Cth) when seeking a journalist information warrant for access to a journalist's metadata.

Third, adopting a Public Interest Advocate or Monitor model would provide greater transparency and accountability to search warrants relating to journalists.

The Law Council does not support a ministerial direction requiring the CDPP to have the consent of Attorney-General Christian Porter in relation to charging journalists. This direction puts the Attorney-General – a politician – in the position of authorising prosecutions of journalists who may have written stories critical of his or her government.

This will not improve press freedom. It is not an "important extra safeguard", as stated by the Attorney-General. Conversely, it could act as yet another deterrent to public interest reporting.

Though there is no doubt the intention of the ministerial direction is not to stifle journalistic discourse, it could in effect create an environment in which journalists are afraid to report on particular matters, lest they get offside with the government. Without further reform, a scenario could still arise where journalists face criminal investigation, even if they are not ultimately prosecuted. This would still have a chilling effect, even with the new direction.

Another area that deserves our attention in this context is how the complex and rapidly evolving nature of the digital platform marketplace has altered power and knowledge relations between consumers, digital platform providers, digital intermediaries, media organisations and advertisers.

Many digital platforms have achieved an extraordinary level of integration into the daily lives of Australian citizens. With this success should come

a corresponding responsibility to operate the platforms in a way that protects people's privacy unless an individual has actively expressed a wish to surrender such rights.

This is an important emerging area for privacy regulation in Australia.

Public interest journalism must be protected. Disclosure of classified information by the media should only be criminalised if it can be proven to have posed real harm to national security.

Data about activities, preferences and interests of individuals has become a new currency which consumers knowingly or otherwise trade for services offered over digital platforms. These changes have significant implications for data regulation of transparency, choice, unambiguous consent, reciprocity of benefits, and data handling practices of many entities.

In July 2019, the Australian Competition and Consumer Commission (ACCC) released the *Final Report on the Digital Platforms Inquiry*. I understand that this report has been the focus of this morning's sessions.

This is an important report, and while the Law Council does not agree completely with all 23 recommendations, we strongly agree with the ACCC's position that Australia's data and privacy laws, as well as our consumer protection laws, have a role to play in increasing the privacy and safety of Australians online and potentially enhancing competition between digital platforms.

The business practices of a range of business entities impact the depth, range and value of data about activities, preferences and interests of individuals that are the currency of digital platforms.

Those business practices need to be scrutinised from a number of perspectives: competition policy, consumer protection, privacy regulation, advertising and marketing regulation – particularly rules protecting children and other vulnerable persons, and protection of human rights. We believe regulation to date has not been entirely satisfactory in addressing some of the issues that the rise of digital platforms either creates or exacerbates.

This is why the recommendations by the ACCC in respect of strengthening and streamlining Australia's privacy regime and regulatory frameworks dealing with media, communications and advertising are so important. To support this, the Office of the Australian Information Commissioner, as Australia's main privacy regulator, must be properly resourced.

Ours is a way of life the envy of others the world over. It is worth protecting. Lawyers and politicians often refer to the rule of law as though that was the start and end of the argument. We forget the term is not well understood, even amongst ourselves.

When words like the rule of law or freedom or security are thrown around carelessly, they become white noise. We fail to stop and reflect on what the words mean – and why they are important.

The rule of law means no one is above the law, including the government.

It means government decisions are made according to known rules, are not made capriciously. It is embodied by fairness and transparency. Illustrated through accountability.

All people, no matter where they are from or what they do, are equal before the law. Can this be said of modern Australia?

We are the only western democracy without a *Charter of Rights* or *Human Rights Act*. The Law Council believes a *Charter of Rights* would offer a coherent legal framework to express and protect rights and freedoms. To promote the universal, indivisible nature of human rights, inherent in the Australian psyche but strangely not its law. And provide a vehicle to balance tensions between freedom of speech, freedom of the press, public safety, national security, and other fundamental human rights.

Our Constitution provides minimal protections. We do not have a First Amendment such as that which exists in the US Constitution that:

“Congress shall make no law prohibiting ... or abridging the freedom of speech, or of the press.”

A *Charter of Rights* would set out a clear list of fundamental rights, values and freedoms that deserve legal protection.

Last month, in a bid to highlight the increasing environment of secrecy journalists are operating under, media companies from across Australia redacted the front pages of their newspapers. The Right to Know Coalition includes more than a dozen of the nation’s top media companies, which have banded together in response to the media raids.

They are seeking six key legislative reforms:

- The right to contest any kind of search warrant on journalists or news organisations before the warrant is issued;
- Law change to ensure public sector whistleblowers are adequately protected;
- A new regime that limits which documents can be marked ‘secret’;
- Review of Freedom of Information laws;
- That journalists be exempt from national security laws enacted over the past seven years that currently can put them in jail for doing their job; and
- Reform to defamation laws.

A survey conducted by Right to Know found that while 87 per cent of respondents said it was important Australia was a free, open and transparent democracy, only 37 per cent felt that described the current environment.

Of the respondents, 88 per cent agreed whistleblowers were critical to holding the government to account and should be protected. Furthermore, 80 per cent said whistleblowers should not be treated like criminals even if the law was broken for them to disclose the truth.

Seventy-six per cent said journalists should be protected from prosecution and imprisonment when reporting on matters in the public interest. Only 35 per cent said the government was keeping them as informed as possible regarding such information.

Finally, respondents felt the government was less transparent on many matters of public interest than it was a decade ago. Key issues included political campaign funding, climate change and immigration.

It is an important time to be having this discussion about press freedoms. This week, the High Court heard oral submissions in the case of *Annika Smethurst & Nationwide News v Commissioner of Police*. Those oral submissions were confined to the validity of warrant executed against Ms Smethurst and any relief flowing from that question.

We should always remember that a free press exists for the benefit of all Australians – it is a guarantee against misconduct and misinformation by government.

But the plaintiffs also raised in their written submission the question of whether s.79(3) of the *Crimes Act* effectively burdens the implied freedom of political communication. That question may be ventilated at a later time.

Should this question be considered, I note the important observations of US Supreme Court Justice Black in the case *New York Times v United States 403 U.S. 713 (1971)* – the Pentagon Papers Case. This case arose from an attempt by the Nixon Administration to seek an injunction to stop the *New York Times* from continuing to publish extracts from a report that had been commissioned by Secretary of Defence McNamara as to determine how the United States had become involved in the Vietnam war.

The case grappled with the circumstances when the media comes into possession of information concerning a matter of significant public interest. The critical issue was whether national security took precedence over the First Amendment right of free speech and a free press.

As I have already noted Australia does not have the equivalent of a First Amendment. But the comments of Justice Black are no less relevant:

“The press was to serve the governed, not the governors. The government’s power to censor the press was abolished so that the press would remain forever free to censure the government ... in revealing the workings of government that lead to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.”



In the last month, the government has falsely responded to the Right to Know campaign by stating that “no one is above the law”.

The implication that journalists are seeking to place themselves above the law is wrong and fundamentally misunderstands why freedom of the press is important to secure democracy, as the comments by Justice Black elucidate.

This is not about journalists seeking exemptions from the criminal law. It is about citizens being able to hold government to account for what they do in their name, not whether journalists are above the law. Citizens have the right to know the basis of governments decisions and what information they hold, so that when they cast their vote at the ballot box, they can make a fully informed decision. For this to occur, it is critical that journalists can shine a light on these decisions and information.

No better example of the creeping culture of secrecy in Australia is the recent example of a Freedom of Information request by the ABC about waiting times on the NDIS. A large amount of that document was redacted on the basis that it was “irrelevant material”. But a critical document providing advice to the Minister from the NDIS about how it would tackle wait times for young children was blacked out on the basis it was deliberative material.

There are few issues as important to the Australians than how the government is going to reduce wait times for young children under the NDIS. They deserve better than large slabs of black.

The government should not conflate the critical issue of the operation of a free press, with a concern about public servants leaking to the press. That is a different question altogether. The way to address this concern is to have a robust whistleblower regime that allows

individuals to have their concerns about corruption or maladministration properly dealt with, without needing to go to the press.

The answer to this concern, is not to criminalise the work of journalists and shut down a free press.

It is now incumbent on the government to swiftly and in good faith address the issues. Misleading talking points will not suffice.

We should always remember that a free press exists for the benefit of all Australians – it is a guarantee against misconduct and misinformation by government.

In 1939, Sir Robert Menzies said: “The greatest tragedy that could overcome a country would be for it to fight a successful war in defence of liberty and to lose its own liberty in the process”.

Thank you.

This speech was delivered by Arthur Moses SC, President of the Law Council of Australia, at the Media and Communications Seminar, November 2019 in Sydney.

Arthur Moses SC is no longer President of the Law Council of Australia.

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RIGHT TO KNOW: MEDIA FREEDOM AND AUSTRALIAN DEMOCRACY ARE ON THE LINE

To Rex Patrick – a crossbench senator who regularly wrestles with government secrecy to access official information – the recently redacted front pages of Australia’s major newspapers looked all too familiar.

Last week the front pages of Australia’s major newspapers, including Australian Community Media mastheads *The Canberra Times*, *Newcastle Herald*, *Illawarra Mercury* and many others, were blacked out in a protest against the culture of government secrecy that’s stifling public debate and the public interest.

For me, a crossbench senator who regularly wrestles with government secrecy through Freedom of Information applications, Senate committee inquiries and other processes to access official information, the redacted front pages looked all too familiar.

Political and bureaucratic timidity have made secrecy the default position at every level of government.

Huge blocks of black ink and very little information are all too often the outcomes of months of effort, litigation and hundreds of dollars devoted to FOI requests.

Time and time again I’ve encountered censorship, suppression, redaction, half-truths and sometimes

outright falsehood as I’ve sought to extract information on everything from Australia’s multi-billion-dollar defence programs to water allocations in the Murray-Darling Basin.

Ministers and bureaucrats live in fear that the release of information, anything other than the most innocuous disclosures and utterly anodyne statements, will cause political trouble that must be avoided. Sometimes they have much to hide.

Sometimes they just fear what they don’t know.

Political and bureaucratic timidity have made secrecy the default position at every level of government.

Triggered by last year’s high-profile police raids on journalists and media organisations, the Australian media’s Your Right to Know campaign is calling for a major shift away from excessive government secrecy and back towards the rights of the media, the parliament and the public to know the business of government. This change is sorely needed, because the public’s satisfaction with the way democracy works in Australia has crashed.

While many politicians are focused on Newspoll and other surveys of the ups and downs of partisan support, a more important story has been told by the joint research of the Trust and Democracy in Australia Project by the Museum of Australian Democracy and the Institute for Governance and Policy Analysis at the University of Canberra.

That work has progressively revealed the darkening mood of the Australian people with barely one in three voters saying they trust the federal government, and the majority of Australians saying they want a different political system.

Successive national surveys have shown public satisfaction with the way Australia’s democracy works has fallen precipitously over the last decade.

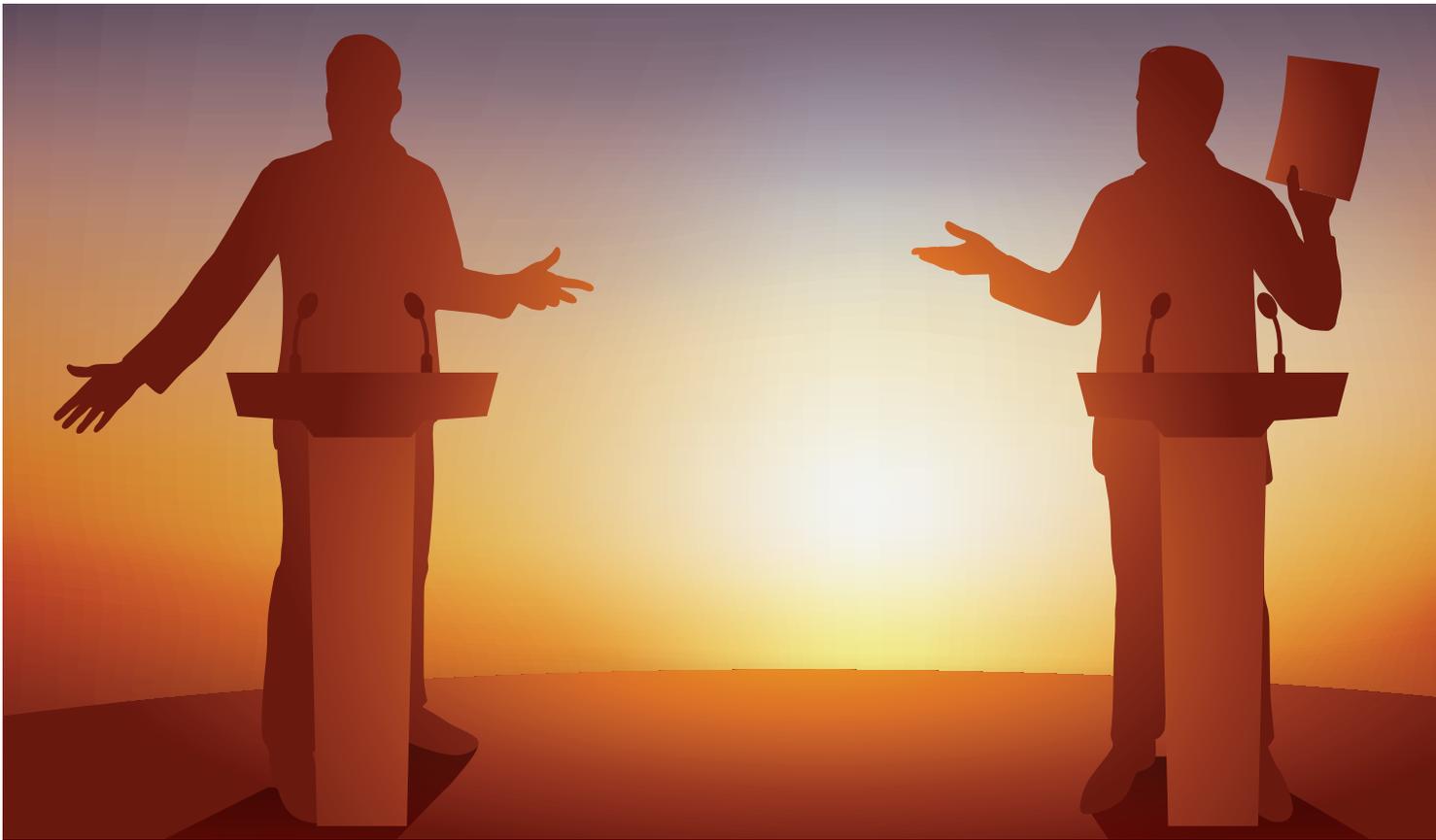
In 2007, 86 per cent of voters were satisfied with Australia’s democracy, but that figure dropped to 72 per cent by 2010 and then went into freefall from 2013, plummeting from 72 per cent to 41 per cent between 2013 and 2018.

Voter satisfaction with Australian democracy, as it is currently being practised, has more than halved in 10 years.

If nothing is done and the trend of the past decade continues, fewer than 10 per cent of Australians will trust their politicians and political institutions by 2025 – a state of affairs that would unquestionably amount to a crisis in democratic legitimacy.

Meantime the steady growth of public dissatisfaction is reflected in keen support for measures such as a national Independent Commission Against Corruption. That’s another very important reform that must be implemented, but public support for creating such an





institution is also another reflection of the deepening public distrust toward our government and parliamentary institutions.

It is perhaps no surprise that government secrecy has intensified over the past decade as public trust in government has declined. Ministers and bureaucrats have reacted to the changing political climate by pulling down the shutters.

Routine government obfuscation has in turn driven public cynicism and a widespread belief that government is secretive, corrupt, ineffective and unable to advance the public good.

Urgent action is needed to break this vicious cycle of secrecy and distrust. In this it's important to understand that the Your Right to Know campaign is not just about media freedom, it's about the fundamental underpinnings of Australia's democratic system.

Urgent action is needed to break this vicious cycle of secrecy and distrust. In this it's important to understand that the Your Right to Know campaign is not just about media freedom, it's about the fundamental underpinnings of Australia's democratic system.

And for that reason it can't be a one-week wonder, to be replaced in short order by another hashtag.

What is required is a sustained public campaign, directed at all parliamentarians and parties in the Federal Parliament, and at their state and territory counterparts, to get real commitments on protecting

media freedoms, implementing FOI reform, reducing government secrecy and security classification, protecting whistleblowers, fixing our draconian defamation laws, and establishing a strong national anti-corruption body.

No one should take no, maybe or later as an answer.

In principle agreement isn't enough. Reforms should be adopted on a bipartisan basis in the life of the current parliament, and one would hope that all major parties go to the next Federal election with very clear commitments to wind back government secrecy and improve democratic openness and accountability.

It isn't just media freedom that's at stake; it's the health of Australian democracy that's on the line.

Rex Patrick is a Centre Alliance senator.

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To protect press freedom, we need more public outrage – and an overhaul of our laws

RECENT POLICE RAIDS HAVE FORCED US TO THINK AGAIN ABOUT THE ROLE OF THE MEDIA IN A DEMOCRACY, OBSERVES **PETER GRESTE**

A few days ago, Waleed Aly asked a not-so-rhetorical question in *The Sydney Morning Herald*. He wondered how many Australians were worried about the fact that the Australian Federal Police had spent a good portion of this week raiding the offices and homes of journalists who've published stories clearly in the public interest.

His conclusion? Not many. He went on to argue that it is because we have developed a culture of accepting excessive state power, with no real thought about the consequences for civil liberties or the functioning of our democracy.

Sadly, I would have to agree with Aly, but as with so many surveys, the answer you get depends on the question you ask.

What if we asked, "Hands up who feels comfortable with relying on the Facebook posts and Twitter feeds

of our politicians and departmental spokespeople for information about what our government is up to? Who thinks that is a good way to run a democracy?" Then, I bet you'd get a very different answer.

I agree that Australian media are hardly trusted by the public, but I am also convinced that most Australians recognise the need for some kind of independent watchdog keeping track of politicians and the government on our behalf. It might be imperfect and messy, but a free press has performed that role well enough to keep us broadly on track for much of our history.

Earlier this week, my colleague and fellow University of Queensland researcher Rebecca Ananian-Welsh laid out the intricate web of national security laws passed in recent years that collectively serve to straight-jacket journalists and threaten legitimate whistle-blowing.

In a number of research projects, we have been looking at both these laws and their impact on reporting, and while we still have a long way to go, the early results suggest something deeply troubling.

While they may have helped shore up national security, the laws have also led to a net loss of transparency and accountability. It has become harder for journalists to reach and protect sources and keep track of wrong-doing by government officials.

It has also become harder for them to safely publish

Australian media are hardly trusted by the public, but I am also convinced that most Australians recognise the need for some kind of independent watchdog keeping track of politicians and the government on our behalf. It might be imperfect and messy, but a free press has performed that role well enough to keep us broadly on track for much of our history.



in the public interest without risking long years in prison or crippling expensive and traumatic court cases.

AN OVERHAUL OF AUSTRALIA'S LEGAL LANDSCAPE

My organisation, the Alliance for Journalists' Freedom, has published a white paper that offers a better way of balancing those two crucial elements of our democracy – national security and press freedom.

The most important of its seven recommendations is a *Media Freedom Act*. Australia has no legal or constitutional protection for press freedom. It isn't even formally recognised in law; the High Court has merely inferred that we have a right to "political communication."

That needs to change. The AJF is proposing a law that would write press freedom into the DNA of our legal system. It would both prevent our legislators from unnecessarily restricting journalists from doing their jobs and give judges a benchmark they can use whenever they are adjudicating cases that deal with media freedom issues.

That alone isn't enough though. The second recommendation in the white paper calls for changes to the national security laws themselves.

Currently, many of the current laws that Ananian-Welsh laid out in her article include a "public interest" defence for journalists. But as we have seen in this week's raids, that does nothing to stop the AFP from trawling through journalists' documents for sources and forcing everyone into court.

Instead, there should be an exemption for journalists and their sources when reporting on matters of public interest.

That isn't to suggest that journalists should be immune, though. Rather, the onus should be shifted to the authorities to show why the public interest defence should not apply. It is also important that the exemption include whistleblowers.

Beyond national security, there are a host of other laws that have contributed to a wide culture of secrecy at odds with the principles of open government.

Payouts under defamation laws now routinely run to millions, potentially destroying news organisations and chilling further investigative work. Shield laws that allow journalists to protect their sources in court are also inconsistent across states and need to be strengthened.

Suppression orders that judges use to smother reporting of certain court cases are being applied with alarming frequency and urgently need review. And whistleblower legislation needs to be strengthened to encourage and protect anybody speaking out about wrongdoing in government or elsewhere.

While the raids of the past week have been shocking, they have forced us all to think again about the role of the media in a democracy.

If it leads to better legislation that both protects



While the raids of the past week have been shocking, they have forced us all to think again about the role of the media in a democracy. If it leads to better legislation that both protects national security and media freedom, then some good might have come out of it after all.

national security and media freedom, then some good might have come out of it after all.

DISCLOSURE STATEMENT

Prof. Peter Greste is the UNESCO Chair in Journalism and Communication at the University of Queensland. He is also a founding director and spokesman for the Alliance for Journalists' Freedom.

Peter Greste is Professor of Journalism and Communications, The University of Queensland.

THE CONVERSATION

Greste, P (8 June 2019). *To protect press freedom, we need more public outrage – and an overhaul of our laws*. Retrieved from <http://theconversation.com> on 12 March 2020.

AUSTRALIAN GOVERNMENTS HAVE LONG BEEN HOSTILE TO MEDIA FREEDOM. THAT'S UNLIKELY TO CHANGE ANY TIME SOON

The “blackout” campaign by media outlets attracted much attention, but the government’s mindset appears to be fixed, notes **Denis Muller**

The unprecedented blackout of front pages by Australia’s newspaper publishers this week is a highly significant event in Australian political and media history.

It represents the completion of a deep rupture in the relationship between government and media, which for many decades was marked by a preparedness on the part of the media to take notice of government advice where matters of national security were concerned.

It also represents the first concerted, unified, co-ordinated campaign by the Australian media – outside of wartime, when there were constant rows about censorship – to assert press freedom in the face of government oppression.

It defies the prevailing political climate of fear created and sustained by both sides of politics since the terrorist attacks on New York and Washington on September 11 2001.

It defies the aggressive hostility towards the press shown by the federal government, with its determin-

ation to continue the prosecution of ABC and News Corp journalists for revealing government secrets that the public clearly had a right to know, and by the head of the Home Affairs Department, Mike Pezzullo, who says he wants people jailed if they leak government information to the media.

And it defies the contemptuous attitude to press freedom shown by the Australian Federal Police in raiding the ABC and the home of News Corp journalist Annika Smethurst over stories. This attitude was reinforced by new AFP commissioner Reece Kershaw, who told Senate estimates on October 21 that he had not turned his mind to the question of why the newspapers might have embarked on this campaign for press freedom.

Those AFP raids led to two concurrent parliamentary inquiries, one by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) and the other by the Senate Standing Committee on Environment and Communications.

The raids also galvanised the media industry. On June 26, the heads of all the main news organisations presented a united front at the National Press Club in accusing the government of criminalising journalism. They called for a thorough overhaul of laws on national security, government secrecy, whistleblower protection, freedom of information and defamation.

At the same time, they acknowledged the media had done a bad job of raising public awareness of the threat to press freedom. The “blackout” of October 21 was a dramatic first step in redressing this.

The involvement of News Corp, with its command of two-thirds of Australia’s daily newspaper circulation and its proven political clout, has given powerful impetus to the campaign. Whether it would have joined in had not one of its own journalists been raided is a matter on which Kershaw might care to reflect as he conducts his promised review of how the AFP handles these matters.

Meanwhile, Prime Minister Scott Morrison used Question Time in parliament to reassert his previous position that journalists are not above the law. His response ignored the fundamental point that the problem lies in the law itself.

There is a natural time frame for the media industry’s campaign. The PJCIS is due to report on November 28 this year and the Senate inquiry on March 16 2020. That gives the industry roughly five months in which to put enough political pressure on the government for it to make a serious attempt at law reform.

However, the antagonism to this from the federal bureaucracy and the security services was revealed in their appearances at the PJCIS inquiry. They gave no

If the government does attempt genuine reform, it will face sustained opposition from its own public service. The government will also have to explain to the Australian people why the fear on which this whole politico-legal edifice has been built is no longer quite as acute as they have been led to believe.



ground at all. They regard the current regime of laws as right and necessary.

So, if the government does attempt genuine reform, it will face sustained opposition from its own public service. The government will also have to explain to the Australian people why the fear on which this whole politico-legal edifice has been built is no longer quite as acute as they have been led to believe.

It would also be turning its back on a history of government oppression of the media, a fixture in Australian political life that goes back at least as far as the earliest days of the Cold War.

The bugbear then was communism. ASIO kept files on Australian journalists whom it suspected – often on comically flimsy grounds – of being “reds”. ASIO then used these assessments to blight people’s careers by passing them on to media executives who were prepared to listen.

In those more quiescent days, the media were also prepared to be part of what was called the D-notice system, under which the media voluntarily agreed not to publish material on subjects defined in the D notices. These included material on atomic bomb testing in Australia, defence capabilities, and the whereabouts of Vladimir Petrov, a Soviet diplomat and spy in Canberra who defected with his wife in 1954.

The system lasted from 1952 to 1982, by which time the media had woken up to the fact that it was a betrayal of its public duty to collude with the government like this.

The old Fairfax newspapers in particular began to publish embarrassing leaks of intelligence material. Some of it showed how Australia was double-crossing Indonesia at a time when, publicly, Australia was doing its best to appease Jakarta.

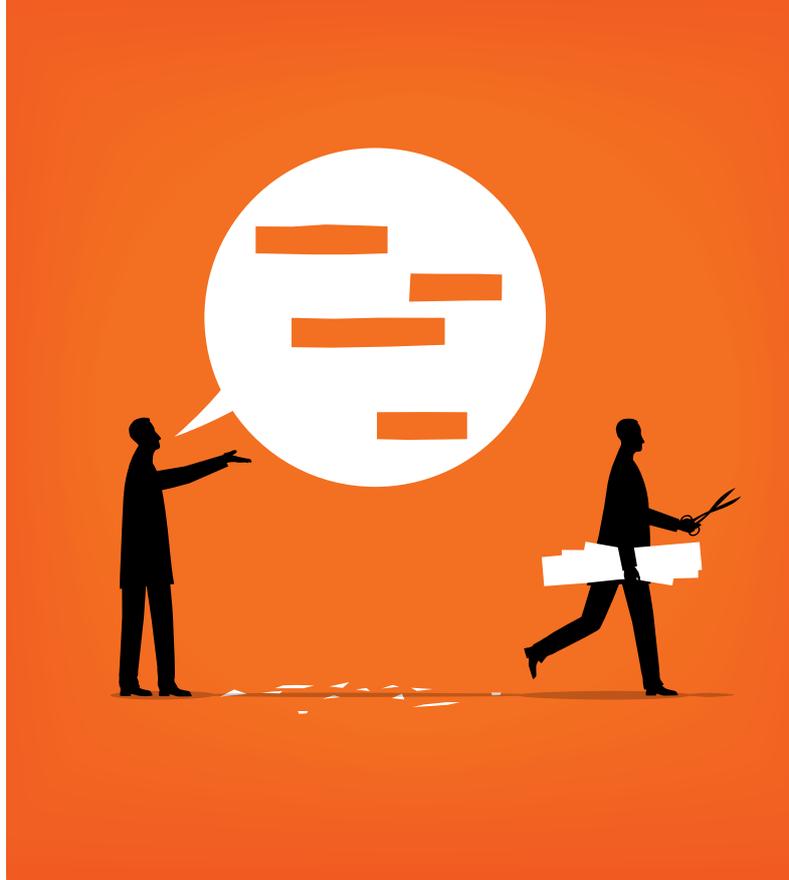
The Sydney Morning Herald got out one such story on the front page of its first edition before an injunction was served in the middle of the night restraining it from further publication. The second edition of the paper appeared with a large white space where the story had been, carrying the word “censored” and recounting what had happened to the story readers were no longer allowed to see.

More spectacularly, Fairfax journalist Brian Toohey became the target of successive governments outraged over his stories based on leaks about intelligence activities. He became the bete noir of the then head of the Defence Department, Sir Arthur Tange. Toohey has now written a book called *Secrets* about the ways governments continually wage war against journalists and whistleblowers.

In the recent PJCIS inquiry, the same Mike Pezzullo who said he wanted leakers sent to jail also proposed reviving the D-notice system. Given the current level of hostility between government and media, it seemed quixotic, to say the least.

However, it also showed that nothing changes in the culture and mindset of the Australian public service.

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It [the government] would also be turning its back on a history of government oppression of the media, a fixture in Australian political life that goes back at least as far as the earliest days of the Cold War.

The same instinctive resort to secrecy and control of information that has been its hallmark for decades remains its hallmark today. The only difference is that it has now been supercharged by the passage of 82 pieces of national security legislation since the September 11 terror attacks.

DISCLOSURE STATEMENT

Denis Muller does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond his academic appointment.

Denis Muller is Senior Research Fellow in the Centre for Advancing Journalism, University of Melbourne.

THE CONVERSATION

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Four laws that need urgent reform to protect both national security and press freedom

DENIS MULLER EXPLORES HOW SECRECY LAWS COULD BE MADE LESS REPRESSIVE

In a perfect world, Australia would introduce constitutional protections for freedom of the press. But since the chances of that are next to zero, it might be more productive to look instead at what might be done to make the existing web of secrecy laws less repressive. As a starting point, four laws in particular need reforming.

THE SECRECY OF INFORMATION LAW

Part 5.6 of the *Criminal Code Act 1995* is headed “Secrecy of Information”. It defines two general categories of information that are to be regarded as secret:

- Inherently harmful information
- Information likely to harm Australia’s interests.

Inherently harmful information means any information that has a security classification attached to it, or belongs to one of the intelligence services, or relates to the operations of an intelligence service or a law-enforcement agency.

Information “likely to harm Australia’s interests” is not defined. It is an open-ended catch-all that is used

to go after public servants who leak and the journalists who publish those leaks.

The effect is to leave it open for the government to decide what information can be used to form the basis of prosecutions. This means the law is vulnerable to abuse through arbitrary enforcement of the kind that the Australian Federal Police has come to specialise in.

Journalists’ liability is set out in the same part of the *Criminal Code* as public servants’ liability.

It states that anyone who receives, deals with or publishes the classes of information described in the law are also liable to be prosecuted, along with the leaker. That is a clear attack on the freedom of the press.

There is a defence of public interest, but how it works is very uncertain. The law says it is a defence if:

the defendant was acting in the capacity of a journalist reporting news, presenting current affairs or expressing editorial or other content in news media, and reasonably believed that receiving and publishing the information was in the public interest.

This looks all right on the surface, but there are several pitfalls in it.

First, who is a journalist? Everyone engaged in doing news journalism, including bloggers and citizen journalists? Or only those employed by big media organisations?

Second, what is in the public interest?

Third, what constitutes a “reasonable belief”?

Finally, the onus is on the journalist to prove his or her innocence beyond reasonable doubt. That is the reverse of the usual practice in criminal law where the onus is on the prosecution to prove guilt.

Four laws in particular need reforming, involving: the secrecy of information, national security, metadata, and whistleblower laws.

The entire Part 5.6 of the *Criminal Code Act* needs to be rewritten, narrowing its scope to information that, if leaked, would present a clear, present and serious danger to the public good.

The public interest needs to be defined; the act needs to make it clear that anyone doing journalism is presumed to be entitled to the public interest defence. “Reasonable belief” needs to be dropped, and the onus of proof should be laid on the prosecution.

NATIONAL SECURITY LAWS

There is not space here even to scratch the surface of the repressions built into the 75 or so national security





laws that Australia has enacted, the overwhelming bulk of them since the terrorist attacks of September 11 2001. However, they need to be comprehensively reviewed against a set of principles concerning freedom of the press.

These principles should include, as a minimum:

- That the press is entitled to a public interest defence in every case
- That the laws should be enforceable only in cases of clear, present and serious danger to national security
- That the term national security refers to the sovereignty and safety of the nation and – for the purposes of press freedom – not more than that
- That the performance of the security services should be just as much an object of public scrutiny as that of any other part of government
- That judicial supervision of any warrant system used for pursuing journalists or their sources should be in the hands of a judge of a superior court and no one else
- That intention to harm national security should be the fault standard for any prosecution of the press, not mere accident or inadvertence
- That the onus of proof rests with the prosecution.

METADATA LAWS

These are a subset of the national security laws and are contained in the notorious *Telecommunications (Interception and Access) Amendment (Data Retention) Act*, which caused such a public outcry when it was enacted in May 2015.

The act requires internet service providers to retain everyone's metadata for two years, plus information about their telecommunications accounts and services.

Metadata tells anyone who looks at it who called whom, when, where, for how long and on what device. The implications for journalists dealing with confidential sources are obvious.

Recognising this, parliament included in Division 4C of the act some window-dressing to give the impression there is some protection for journalists and their sources.

The protection applies to “a person working in a professional capacity as a journalist” or to an employer of such a person and their sources. Again, it is unclear if this includes bloggers and citizen journalists, and their sources.

The process for issuing a “journalist information warrant” is byzantine in its complexity.

In some circumstances, the director-general of security gets one through the minister in charge of the security services. If that minister cannot be reached, the director-general can try the prime minister, the foreign minister or the defence minister.

In an emergency, the director-general can issue a warrant to him- or herself.

In other circumstances, a law enforcement agency can apply to a judge, magistrate, member of the Administrative Appeals Tribunal or a lawyer with five years' experience.

The warrant can remain in force for six months. That is a long time in journalism.

These arrangements make a mockery of the concept of press freedom and show up the protective mechanism for the sham it is.

Clearly, the warrant system has to be placed in the hands of a superior court judge if it is to have any meaningful judicial supervision.

The scope of the law also needs to be limited to national security, narrowly defined.



WHISTLEBLOWER LAWS

The *Public Interest Disclosure Act* of 2013 is meant to provide protection for Commonwealth public servants who disclose wrongdoing by government agencies.

Professor A.J. Brown, a distinguished legal and public policy academic who had a hand in drafting it, is reported to have called it “a dog”.

That is true, but the original version of the bill that he and the then Labor attorney-general, Mark Dreyfus, worked up into the present law was a genuine mongrel. It contained no fewer than nine hurdles a public servant had to jump if disclosure to the public was to be protected.

There is no specific provision in the present law to protect a whistleblower who goes to the media, even after they have tried and failed to get the wrongdoing fixed by reporting it internally.

The consequences are being seen now in the prosecution of the Tax Office whistleblower, Richard Boyle, in Adelaide. He faces 66 charges and a possible 161 years in prison for revealing cruel and aggressive debt-collecting practices by the Tax Office.

And David McBride, a former Defence Department lawyer, is being prosecuted for revealing that some Australian troops in Afghanistan were alleged to have committed a war crime.

Justice John Griffiths of the Federal Court has reportedly described the law as “technical, obtuse and intractable”.

No one pretends that whistleblowing laws cannot be abused by people with personal agendas or

vendettas to pursue. But the law as it stands makes the whistleblower the victim of vendetta.

It is a question of prioritising the public interest over the private interests of the bureaucracy in protecting itself from scrutiny, and from the risk that occasionally a rogue whistleblower will cause trouble.

This involves amending the laws to give explicit protection to whistleblowers who go to the media after having tried in vain to have the wrongdoing fixed internally, as both Boyle and McBride tried to do.

Australia has been sleepwalking into its present position, lulled by the largely bipartisan approach of the Coalition and Labor, the latter not wishing to seem soft on national security despite harbouring manifold reservations about some of these laws.

To make matters worse, among the “Five Eyes” intelligence-sharing countries – the US, UK, Canada, Australia and New Zealand – Australia alone has no constitutional or equivalent protection for the freedom of the press.

DISCLOSURE STATEMENT

Denis Muller does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond his academic appointment.

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THE CONVERSATION

Muller, D (19 June 2019). *Four laws that need urgent reform to protect both national security and press freedom*. Retrieved from <http://theconversation.com> on 12 March 2020.

CANBERRA'S SECRECY OBSESSION FEEDS ON SECURITY FEARS

*Journalists aren't pleading for special privileges. The watchdogs are barking about stuff that is biting everyone, observes **Graeme Dobell** in this post from *The Strategist**

The prime minister makes a good, glib debating point: nobody is above the law, including journalists. The problem Scott Morrison glides by is a Canberra mindset and a pile of new laws that squeeze our democracy and freedoms – the classic problem of smothering, even killing, the thing you want to protect.

If a newspaper is a nation having a conversation with itself, Australia's major papers – and broadcasters – have united to shout at the nation. Savour a remarkable moment in Oz journalism, when the newspapers blacked out their front pages to protest at the culture of secrecy.

The media's 'Your Right to Know' campaign asks for a suite of reforms:

- The right to contest the application for warrants for journalists and media organisations;
- Exemptions for journalists from laws that would put them in jail for doing their jobs, including security laws enacted over the last seven years;
- Public sector whistleblowers must be adequately protected – the current law needs to change;
- A new regime that limits which documents can be stamped secret;
- A properly functioning freedom of information (FOI) regime; and
- Defamation law reform.

They are all big asks, reflecting the size of the problem.

It takes much provocation for editors to stand back from the daily fight with each other. Discussion of Oz newspapers tends to descriptions like 'polarisation' and 'a war of left versus right'. So it's a significant moment when the princes of print and the queens of screen stand united, because of a 'deep rupture in the relationship between government and media'.

Secrecy and security are different things. Secrecy is binary, while security has many different degrees and aspects. Canberra's obsession means secrecy is the all-purpose tool. Make it secret to make it safe.

Anyone who believes in journalist conspiracy theories has never seen four hacks trying to agree on where to lunch.

Hacks all rush towards a big yarn, but they spend as much time hacking at each other as reaching for the headline. Journalists catch and kill their own; see this stark instinct in the way that three generations of the Murdoch family have sought to castrate if not kill the ABC.

Professor George Williams sets out the 'right to know' case:





Australia leads the world in enacting national security and counter-terrorism laws. About 75 have been passed by our federal parliament since September 11, 2001. This far exceeds the number of similar laws passed by Britain and the US. Our laws also differ because they go further in heightening government secrecy. They represent an assault on freedom of the press unique to Australia.

Australia has a statute book littered with laws that enable sources to be identified, whistleblowers to be shut down and journalists to be jailed. Time after time when politicians were questioned about these laws, they said that they would not be used against the media.

A recent audit put the total number of substantive anti-terror laws since 2001 at 82, with a further six bills before parliament or about to be introduced.

Canberra's habitual obsession with secrecy has fed on security fears in the age of terrorism, the age of cybercrime, and now the new age of great-power competition. No matter the security problem, more secrecy is the answer.

Secrecy and security are different things. Secrecy is binary, while security has many different degrees and aspects. Canberra's obsession means secrecy is the all-purpose tool. Make it secret to make it safe.

The public service makes secrecy a default setting. With secrecy as the central operating imperative, the tough argument inside the bureaucracy is always about how much, if anything, to make public.

Up in Parliament House and in the executive wing, the public service secrecy obsession feeds into the fight over power and policy. The political class

knows knowledge is power, and secrecy builds the ammunition store.

Politicians and minders constantly trade and exchange information. If you do it yourself, it's background or briefing. When done to you, it's a dangerous leak and breach of security and should be met with the full force of the law.

The hypocrisy of Canberra's great secrets apparatus is that the majority of 'breaches' come from politicians. Journalists trade in leaks, so they seldom talk too loudly about the two-faced nature of ministers who habitually trade in cabinet documents and secret papers; nobody is above the law, but the lawmakers give themselves a lot of leave passes.

The cumulative effect of all the new security laws is a breaking down of old inhibitions and tacit no-go areas.

Police raids on journalists certainly galvanised the media. But I was struck at the supine response from politicians when the Australian Federal Police raided Parliament House in 2016. The great issue of national security at stake? The plods raided the font of Oz democracy because of a leak about the cost of the national broadband network!

In the pre-9/11 era, such an assault on parliamentary privilege would have been an outrage. Careers would have crashed and ministers would have been assailed. No more. The culture of secrecy and the need for security combine to eat at much, even the independence of parliament.

Journalists aren't pleading for special privileges. The watchdogs are barking about stuff that is biting everyone.

The hacks muse about the need for a media freedom act to restore some balance. And as Williams notes, "We are the only democratic nation without strong national protection for freedom of speech and of the press."

Australia is working on giving constitutional recognition to Aboriginal and Torres Strait Islander peoples.

After that, it's time to give constitutional protection to freedom of speech and freedom of the press.

Graeme Dobell is the Australian Strategic Policy Institute's journalist fellow.

Dobell, G (28 October 2019). *Canberra's secrecy obsession feeds on security fears*. Retrieved from www.aspistrategist.org.au on 13 March 2020.

AUSTRALIA NEEDS A MEDIA FREEDOM ACT. HERE'S HOW IT COULD WORK

WHAT EXACTLY MIGHT A MEDIA FREEDOM ACT LOOK LIKE AND IS IT A GOOD IDEA? **REBECCA ANANIAN-WELSH** INVESTIGATES

Australians picked up their morning papers yesterday to find heavily blacked-out text instead of front-page headlines. This bold statement was instigated by the “Your Right to Know” campaign, an unlikely coalition of Australian media organisations fighting for press freedom and source protection.

A key reform advocated by a range of organisations and experts – including our research team at the University of Queensland – is the introduction of a *Media Freedom Act*. Unlike human rights or anti-discrimination legislation, there is no clear precedent for such an act.

So what exactly might a *Media Freedom Act* look like and is it a good idea?

RAIDS AND RESPONSE

It was the June raids on the home of News Corp journalist Annika Smethurst and the ABC’s Sydney headquarters that revealed the fragile state of press freedom in Australia. Two parliamentary inquiries into press freedom are on foot, with public hearings before the Senate committee starting last Friday.

Parliament will soon face the question: can we protect national security without sacrificing that cornerstone of liberal democracy, press freedom? If so, how?

Home Affairs Minister Peter Dutton’s immediate response to the raids was to state that journalists would be prosecuted if they received top secret documents. A month later, Dutton issued a ministerial directive to the AFP that emphasised the importance of press freedom and the need for restrained action against journalists.

Attorney-General Christian Porter’s subsequent directive was more moderate, ensuring that he would have the final say on whether journalists would be prosecuted on the basis of their work “in a professional capacity as a journalist”.

These directives may reflect a burgeoning appreciation within government of the importance of the press in ensuring democratic free speech and accountability.

However, the laws that undermine press freedom by targeting journalists and their sources remain on the books. These laws include many of the now 82 (and counting) national security laws enacted since September 11 2001. This is more than anywhere else in the world and some of these laws grant the government uniquely severe powers of detention and interrogation.

A *Media Freedom Act* could serve three key roles, making it an appropriate and advantageous option in the protection of national security, press freedom and democracy.

RECOGNISE THE FOURTH ESTATE

First, a *Media Freedom Act* would recognise and affirm the importance of press freedom in Australia. This recognition would support the fourth estate role of the media and demonstrate Australia’s commitment to democratic accountability and the rule of law. It would carry the weight of legislation rather than the relative flimsiness of ad hoc directives.

In this way, a *Media Freedom Act* would represent a clear commitment to the public’s right and capacity to know about how they are governed and power is exercised.

The act would also recognise that press freedom is not an absolute, but may be subject to necessary and proportionate limitations.

A CULTURE OF DISCLOSURE

Second, it would support a transition from a culture of secrecy to a culture of disclosure and open government across the public sector. This role could be served by requiring the public sector (including law enforcement and intelligence officers) to consider the impact of their decisions on press freedom and government

A Media Freedom Act is not a panacea; it would not avoid the need for a detailed review of Australia’s legal frameworks for their impact on press freedom.





The imperative to protect press freedom is fundamental and deserving of general recognition and protection. In light of these concerns, our international obligations and the rule-of-law concerns for legal clarity, consistency and proportionality, it is time for a Media Freedom Act.

accountability and to adopt the least intrusive option that is reasonably available.

This requirement echoes Dutton's directive. It is already part of the law of Victoria, the ACT and Queensland, where free expression is protected within those jurisdictions' charters of rights. Like the charters, a federal *Media Freedom Act* would aim to bring about a cultural shift and contribute to the gradual rebuilding of trust between government and the media.

At federal level, the parliament must already consider the impact of a new law on freedom of expression under the *Human Rights (Parliamentary Scrutiny) Act*. A *Media Freedom Act* could reinforce the importance of parliament and the public sector considering the impact on press freedom when it debates and enacts new laws.

JOURNALISM IS NOT A CRIME

Third, and most importantly, a *Media Freedom Act* would protect press freedom by ensuring legitimate journalism was excluded from the scope of criminal offences.

It is important that this be in the form of an exemption rather than a defence. This has no substantial legal impact. But, crucially, an exemption conveys that the journalist had not engaged in criminal wrongdoing.

It also places the onus on the prosecution to prove the exemption doesn't apply. This therefore alleviates the chilling effect on press freedom caused by the threat of court action.

The framing of the protection will attract debate (what, after all, is a journalist? And what is journalism?).

A good starting point is the existing journalism defence to the general secrecy offence in section 122.5 of the *Criminal Code*.

For that defence to apply, the person must have:

- Dealt with the information in their capacity as a "person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media"
- Have reasonably believed that engaging in the conduct was in the public interest.

A SINGLE ACT OR MANY AMENDMENTS?

A *Media Freedom Act* is not a panacea; it would not avoid the need for a detailed review of Australia's legal frameworks for their impact on press freedom.

In particular, protections for private sector, public sector and intelligence whistleblowers need attention. Suppression orders and defamation laws also have a serious chilling effect on Australian journalism. However, the present approach of considering dozens of individual schemes for their discrete impact on press freedom, and seeking technical amendments to each to alleviate that impact, is cumbersome, illogical and destined to create loopholes.

Australia's national security laws are uniquely broad and complex. At present, an inconsistent array of (notably few) journalism-based defences and exemptions from prosecution are scattered across these laws. Inconsistency leads to confusion, and overlapping offences make it even more difficult for journalists to know when they are crossing the line into criminal conduct.

The imperative to protect press freedom is fundamental and deserving of general recognition and protection. In light of these concerns, our international obligations and the rule-of-law concerns for legal clarity, consistency and proportionality, it is time for a *Media Freedom Act*.

DISCLOSURE STATEMENT

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THE CONVERSATION

Ananian-Welsh, R (22 October 2019). *Australia needs a Media Freedom Act. Here's how it could work*. Retrieved from <http://theconversation.com> on 12 March 2020.

EXPLORING ISSUES

WORKSHEETS AND ACTIVITIES

The Exploring Issues section comprises a range of ready-to-use worksheets featuring activities which relate to facts and views raised in this book.

The exercises presented in these worksheets are suitable for use by students at middle secondary school level and beyond. Some of the activities may be explored either individually or as a group.

As the information in this book is compiled from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Is the information cited from a primary or secondary source? Are you being presented with facts or opinions?

Is there any evidence of a particular bias or agenda? What are your own views after having explored the issues?

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Brainstorm, individually or as a group, to find out what you know about journalism and media freedom.

1. What is journalism, and why is it important?

2. What is freedom of speech, and how does it relate to journalism and the media?

3. What is the MEAA *Journalist Code of Ethics*, and why was it created?

4. What are 'whistleblowers', and why is their role important?



MULTIPLE CHOICE

Complete the following multiple choice questionnaire by circling or matching your preferred responses. The answers are at the end of the next page.

- 1. In what year did the Media, Entertainment and Arts Alliance (MEAA) create their *Journalist Code of Ethics*?**
 - a. 1901
 - b. 1923
 - c. 1944
 - d. 1990
 - e. 2001
 - f. 2014

- 2. Which of the following was legislated to protect Commonwealth public servants when disclosing wrongdoing in the Commonwealth public sector?**
 - a. *Commonwealth Informer Act*
 - b. *Whistleblower Act*
 - c. *Commonwealth Public Servant Act*
 - d. *Public Interest Disclosure Act*
 - e. *Reporting Freedom Charter Act*
 - f. *Commonwealth Government Disclosure Act*

- 3. Which of the following phrases became used more widely in both Australian media and parliament after Donald Trump ventured into US politics? (Select any that apply)**
 - a. Wacky facts
 - b. Post-truth
 - c. Fake news
 - d. Alt-lies
 - e. Alternative facts
 - f. Pro-fact

- 4. In what year did the Australian Federal police raid the home of NewsCorp journalist, Annika Smethurst, as well as the headquarters of the Australian Broadcasting Corporation (ABC) ?**
 - a. 1964
 - b. 1974
 - c. 1983
 - d. 1990
 - e. 1998
 - f. 2019

- 5. The legacy of the *Magna Carta* inspired the idea that liberty and freedom should be protected by the law. In what year was the *Magna Carta* written?**
 - a. 990
 - b. 1215
 - c. 1770
 - d. 1815
 - e. 1901
 - f. 2019



MULTIPLE CHOICE

6. What is the purpose of the World Press Freedom Index?

- a. To provide an up-to-date alphabetical index of media outlets around the world
- b. To rank the quality of news articles released in the past year
- c. To measure the level of freedom available to media around the world
- d. To ensure there is access to an up-to-date list of journalists around the world
- e. To evaluate the balance of news articles vs 'fake' news
- f. To provide an index of all media produced in the past year

7. 'Media capture' is a form of media control that threatens editorial independence. Which of the following mechanisms are used? (Select any that apply)

- a. Public-funded journalism
- b. Advocacy
- c. Free press
- d. Regulation measures
- e. Taking over ownership of private media outlets
- f. State-owned media ownership

8. Respond to the following statements by circling either 'True' or 'False':

- a. Australia has a *Human Rights Act* that directly protects freedom of the press in this country. **True / False**
- b. During the 2019 Australian election a 'fake news' story was spread widely on social media that incorrectly stated that the Labor Party supported a 'death tax'. **True / False**
- c. Since the September 11 terrorist attacks Australia has enacted over 75 national security laws, many of which affect journalists and whistleblowers. **True / False**
- d. In October 2019, the front pages of Australia's major newspapers were blacked out as a protest challenging government secrecy. **True / False**
- e. The Australian Federal Police raids on News Corp journalist Annika Smethurst's home were ruled valid in the High Court. **True / False**

MULTIPLE CHOICE ANSWERS

1 = c; 2 = d; 3 = b, c, e; 4 = f; 5 = b; 6 = c; 7 = a, d, e, f; 8 - a = F (Australia is the only Western democracy without a *Charter of Rights or Human Rights Act*), b = T, c = T, d = T, e = F (All seven High Court judges agreed the Australian Federal Police warrant 'lacked clarity' and it was ruled invalid).

- Since the terrorist attacks on New York on September 11, 2001, dozens of national security laws have been passed with bipartisan support by Australia's Parliament. Many of these laws have targeted whistleblowers, journalists working on national security issues, and the privacy of the Australian public (Ludlam, S, & Paris, D, *Breaking: A report on the erosion of press freedom in Australia*). (p.1)
- According to a 2020 survey, when people were asked if press freedom in Australia had gotten better or worse over the past decade, an overwhelming 98% of people said it had gotten worse, compared to 90.9% in 2019. This was marginally lower among journalists, with 95.1% saying it had gotten worse, compared to 84.9% in 2019 (MEAA, *World Press Freedom Day 2020: reforms needed to reverse criminalisation of journalism*). (p.3)
- Almost two-thirds of journalists have said they believed judges were actively discouraging open courts and taking a more aggressive view of media reporting (MEAA, *The War on Journalism: the MEAA Report into the State of Press Freedom in Australia in 2020*). (p.10)
- Victoria has been regarded as having the most active use of suppression orders, highlighted by the blanket non-publication order during the trial of Cardinal George Pell in 2018 (*ibid*). (p.10)
- The MEAA initiated Australian media self-regulation in 1944 when it created the MEAA *Journalist Code of Ethics* (MEAA, *MEAA Journalist Code of Ethics*). (p.12)
- The greatest menace to editorial independence in a growing number of countries across the world is media capture, a form of media control that is achieved through systematic steps by governments and powerful interest groups (UNESCO 2020, *Reporting Facts: Free from Fear or Favour*). (p.17)
- The data-driven attention and advertising model of content distribution of giant internet companies has not only damaged a financially-ailing media industry but also pressured some media outlets to adopt a content distribution logic of sensationalist, viral content produced to grab attention (*ibid*). (p.18)
- Gender continues to remain a problem in the news media, skewing the meaning of editorial independence and leading to unbalanced and less diverse coverage (*ibid*). (p.18)
- Australia's ranking in the 2020 World Press Freedom Index has fallen by 5 places in the latest annual assessment from Reporters Without Borders to 26th place behind countries such as Ireland, Uruguay, Germany, and Latvia. (Human Rights Law Centre, *Australia's slip in the world press freedom index a reminder that we need a Charter of Human Rights and Freedoms*). (p.21)
- Norway, Finland, Denmark, Sweden and the Netherlands made up the top 5 countries in the 2020 World Press Freedom Index rankings and New Zealand made the top 10 list at ninth spot. China, Eritrea, Turkmenistan and North Korea were ranked worst in the world (*ibid*). (p.21)
- Powerful world leaders from Donald Trump to Rodrigo Duterte weaponise the term "fake news" to weaken news media's legitimacy (Carson, A, *Why investigative reporting in the digital age is waving, not drowning*). (p.22)
- During the 2019 election, a news story about the Labor Party supporting a "death tax" – which turned out to be fake – gained traction on social media (Carson, A, & Farhall, K, *The real news on 'fake news': politicians use it to discredit media, and journalists need to fight back*). (p.24)
- The discourse of fake news peaks during parliamentary sitting times (*ibid*). (p.25)
- Factors that have promoted mistrust in news included a past history of inaccurate stories, opinionated journalists or presenters, a lack of transparency, sensationalism and excessive advocacy on behalf of particular points of view (Fisher, C, Park, S & Flew, T, *How can we restore trust in media? Fewer biases and conflicts of interest, a new study shows*). (p.28)
- A free, independent press is a critical safeguard of human rights. The United Nations Human Rights Committee has said that: "A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other ... rights. It constitutes one of the cornerstones of a democracy." (Moses, A, *Media freedoms – striking a balance*). (p.32)
- In October 2019, the front pages of Australia's major newspapers, including Australian Community Media mastheads *The Canberra Times*, *Newcastle Herald*, *Illawarra Mercury* and many others, were blacked out in a protest against the culture of government secrecy that's stifling public debate and the public interest (Patrick, R, *Right to Know: media freedom and Australian democracy are on the line*). (p.36)
- In 2007, 86% of voters were satisfied with Australia's democracy, but that figure dropped to 72% by 2010 and then went into freefall from 2013, plummeting from 72% to 41% between 2013 and 2018 (*ibid*). (p.36)
- Australia has no legal or constitutional protection for press freedom. It isn't even formally recognised in law; the High Court has merely inferred that we have a right to "political communication" (Greste, P, *To protect press freedom, we need more public outrage – and an overhaul of our laws*). (p.39)
- Journalists' liability is set out in the same part of the *Criminal Code* as public servants' liability. It states that anyone who receives, deals with or publishes the classes of information described in the law are also liable to be prosecuted, along with the leaker (Muller, D, *Four laws that need urgent reform to protect both national security and press freedom*). (p.42)
- There is no specific provision in the present law to protect a whistleblower who goes to the media, even after they have tried and failed to get the wrongdoing fixed by reporting it internally (*ibid*). (p.44)

Censorship

Examination by officials of publications, news reports, films, radio programs, websites, etc for the purpose of suppressing parts which have been deemed objectionable on moral, political, religious, military, or other grounds.

Data retention

Continued storage of an organisation's data for compliance or business reasons. An organisation may retain data for several different reasons. One reason is to comply with state and federal regulations.

Defamation

Oral or written communication of a false statement about another that unjustly harms their reputation and usually constitutes a tort or crime.

Fake news

When incorrect or false information is deliberately sent out, disguised as credible news; rampant on social media, can be difficult to spot, and shared by those who believe the often sensationalist headline.

Free press

Press which is not censored or controlled by a government. It allows us to find out what we want to know without restrictions.

Freedom of information

An extension of freedom of speech understood more generally as freedom of expression in any medium (spoken, written, printed, or via the internet or art). This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.

Freedom of speech

Also called freedom of expression. The right to express any opinions without censorship or restraint.

Journalism

Production and distribution of reports on events. The term applies to the occupation, as well as citizen journalists who gather and publish information. Journalistic media include print, television, radio and the internet.

Journalist information warrants

In Australia, these warrants allow at least 21 government agencies to access a journalist's telecommunications data or their employer's data for the express purpose of identifying a journalist's confidential source.

Media

The communication outlets or tools used to store and deliver information or data. The three main types of news media are print media, broadcast media and the internet.

Media freedom

Also known as press freedom, freedom of the media is the principle that communication and expression through various media, including printed and electronic media, should be considered a right to be exercised freely. Such freedom implies the absence of interference from an overreaching state; its preservation may be sought through constitution or other legal protection and security.

Media regulation

Use of legal means to control media ownership and the content of media communications.

National security

The security and defence of a nation state, including its citizens, economy and institutions, which is regarded as a duty of government.

Privacy

There is no absolute right to privacy in Australian law and there is no clearly recognised tort of invasion of privacy or similar remedy available to people who feel their privacy has been violated. Privacy is, however, affected and protected in limited ways by common law in Australia and a range of federal, state and territorial laws, and administrative arrangements.

Public interest journalism

When journalists cover issues that they feel the public has a right to know about. These kinds of stories are often published by public media organisations.

Reporting

Gathering and communicating information for news stories. Reporting is done by journalists.

Secrecy

Practice of hiding information from certain individuals or groups who do not have the "need to know", perhaps while sharing it with other individuals. Secrecy is often controversial, depending on the content or nature of the secret, the group or people keeping the secret, and the motivation for secrecy.

Shield laws

Legislation designed to protect reporters' privilege, which involves the right of news reporters to refuse to testify as to information and/or sources of information obtained during the news gathering and dissemination process.

Source

In journalism, a source is a person, publication, or other record or document that gives timely information. The use of anonymous sources has always been controversial. Some news outlets insist that anonymous sources are the only way to obtain certain information, while others prohibit the use of unnamed sources at all times.

Suppression orders

A court order which prohibits the disclosure of information about a legal case. These are ordered in Australia for a variety of reasons – in the interest of national security, to protect the safety of witnesses, or to guarantee a fair trial.

Whistleblower protection

Offered in Australia for certain disclosures under a patchwork of laws at both federal and state level. Not all disclosures are protected by law in Australia. At federal level, whistleblowers face potential imprisonment for making disclosures about certain subjects, including national security and immigration matters.

Websites with further information on the topic

Alliance for Journalists' Freedom www.journalistsfreedom.com
 Attorney-General's Department www.ag.gov.au
 Australian Press Council www.presscouncil.org.au
 Australia's Right to Know coalition www.yourrighttoknow.com.au/media-freedom/
 Freedom of the Press Foundation (US) www.freedom.press
 Human Rights Law Centre www.hrlc.org.au
 Law Council of Australia www.lawcouncil.asn.au
 Media, Entertainment and Arts Alliance (MEAA) www.meaa.org
 Press Freedom Report (MEAA) www.pressfreedom.org.au
 Reporters without Borders www.rsf.org
 Right to Know (OpenAustralia Foundation) www.righttoknow.org.au
 The Conversation www.theconversation.com

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THANK YOU

- The Conversation
- Alliance for Journalists' Freedom
- Media, Entertainment and Arts Alliance (MEAA).

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