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# Debunking Dreyfus on Free Speech and Freedom

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Being an Open Letter to  
ALP Shadow Attorney-General Mark Dreyfus MP QC  
regarding his speech to the  
HRC Free Speech 2014 Symposium

Cc: Director-General of Security – ASIO, David Irvine (pp. 62-65)

Online at: <http://victimsofdsto.com/debunking-drefyus/>

***NoFibs Journalist: “I’m a strong free speech advocate ... So I’m thrilled that shadow Attorney General Mark Dreyfus QC has taken a stand and wish him success in the long hard climb ahead.”***<sup>98</sup>

*Brendan Jones: “Mr. Dreyfus is no advocate for free speech, but the fact that he has convinced you he is – and in just one short speech – has persuaded me he’s a first class barrister.”*<sup>98</sup>

***Journalist Martin Hirst: “I loved that he rubbed their pretty little noses in it. He made the point strongly that the so-called “marketplace of ideas” is a conservative myth that bears little relation to reality.”***<sup>98 133</sup>

*Brendan Jones: “All Dreyfus did was say he rejected it. He never explained why. Google “Sophistry””*<sup>98 131</sup>

*US Supreme Court Justice Benjamin Cardozo: ‘Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom.’*

*US Supreme Court Justice Louis Brandeis: “Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth ...*

*Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.”*

*The UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeld: “Accordingly, the guarantees of freedom of expression as enshrined in article 19 of the Covenant can never be circumvented by invoking article 20”*

Samuel Adams: *“It does not take a majority to prevail...but rather an irate, tireless minority, keen on setting brushfires of freedom in the minds of men.”*

Thomas Jefferson:

*‘The Declaration of Independence is the declaratory charter of our rights, and the rights of man.’*

John Hancock (upon signing the Declaration of Independence):

*“There! His Majesty can now read my name without glasses.  
And he can double the reward on my head!”*

## Summary

The Free Speech 2014 Symposium was a farce. It pursued a limited agenda. It was over-represented by lawyers who have a conflict of interest; They make money out of defamation and litigation. Free speech is bad for business. It means less work for lawyers.

Not a single journalist spoke. And although the audience prided itself on inviting the brother of a journalist jailed in Egypt, they failed to acknowledge the fundamental hypocrisy that in Australia we have jailed journalists too; Where were Tony Barrass<sup>61</sup> and Joe Budd?<sup>62</sup>

You delivered your speech to the symposium using a lawyer's speech patterns:<sup>105</sup>

You would say you rejected something, but without explaining why. You would give examples which supposedly made your point, but without explaining why they were relevant. Between these you rambled,<sup>1</sup> and so the audience assumed you had made your point, even though you hadn't.

Nevertheless, it worked wonders with your audience. No one seemed to notice.

When you condemned George Brandis for not living up to Voltaire's principle, no one seemed to notice you didn't commit to it either;<sup>100</sup> And that far from defending free speech, you argued overwhelming against it.<sup>101</sup>

You hypocritically criticised the Liberal Party for laws to jail journalists, even though while you were Attorney-General you did the same thing.<sup>488 489</sup>

You said you rejected the marketplace of ideas.

Like everything, the marketplace of ideas has its weaknesses, but it works.

But your alternative is to let politicians and lawyers control which ideas can be discussed, or even determine which of those ideas are right or wrong.

This gives you the power to silence any ideas you disagree with, or which challenge your government's grip on power.

Although the Labor Party claims to be the party of social justice and the defender of rights, its record is far worse than that of the Liberal Party.

The Abbott and Gillard governments failed to defend the rights of myself and citizens like me. Worse; the Gillard government stood by and did nothing while those abuses took place.<sup>2 508</sup>

Political philosopher John Locke, the founder of the theory for liberal democratic government, said a government which does not protect the rights of its citizens loses its legitimacy and the people are no longer bound to obey it.<sup>536</sup>

Having exhausted all the avenues available, including the courts and the Governor-General, I no longer recognise your government; It is a lawless gang.<sup>54 533</sup>

Unfortunately 8 out of 10 Australians will vote only Liberal or Labor, no matter what.<sup>569</sup>

I have thus decided to emigrate due to your draconian *Defence Trade Controls Act*<sup>3</sup> and my lack of faith in your government; the Labor/Liberal duopoly,<sup>4</sup> and the federal public service.<sup>5</sup>

I encourage Australian journalists and citizen journalists to work with Americans who can safely report the criminality within the Australian government under the US SPEECH Act.<sup>657 658</sup>

I encourage all Australians to become active participants in the political process.

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September 10, 2014.

**Subject: Debunking Mark Dreyfus QC's Speech to the HRC Free Speech 2014 Symposium**

Dear Sir,

I was glad to hear Human Rights Commission would hold a Free Speech Symposium, but was disappointed that it pursued such a limited agenda from unrepresentative speakers.

The symposium was over-represented by lawyers.<sup>6</sup> Lawyers have a conflict of interest; They make money out of defamation and litigation. The ABC's Chris masters describes his 13 years in court fighting defamation: "*You watch your morale and assets erode all the while surrounded by lawyers who are having the time of their lives. Horrible.*"<sup>7</sup>

In Obeid v Fairfax, Obeid won \$162K in damages. His lawyers got over \$800K.<sup>8</sup>

In Thiess v Channel 9, Thiess got \$55,050 in damages.<sup>9</sup> The lawyers got over \$3M.<sup>10</sup>

With the Gunns 20, Gunns got \$205K in damages from one activist, but lost and so didn't get a cent from the other nineteen. Yet lawyers on both sides got over \$5.1M in legal fees.<sup>310</sup>

The activists who 'won' had feared the loss of their homes. One was fighting cancer while being litigated, and died weeks afterwards. But the courts don't award a successful defendant a cent for their time, stress and misery. Win or lose, it's the lawyers who collect the lion's share.

US Lawyer Pejman Yousefzadeh: "*Lawyers love litigation. The more litigation there is, the more secure our jobs, the greater our ability to make lots of money with which to pay off our onerous law school loans, buy nice cars, buy nice houses ... And we dislike anything that would lessen the litigation docket. For Lawyers, Litigation is a Good Thing*"<sup>11</sup>

Americans can safely talk without any risk of ending up in court.<sup>12 118</sup> Australians cannot;<sup>318 319</sup> They need lawyers to tell them what they can say, and then more lawyers to litigate it. Free Speech is bad for business. It means fewer lawyers.

No profession is going to stand up at a symposium and ask the government to put them out of a job. The 1964 *New York Times v. Sullivan*<sup>118</sup> decision caused the US defamation industry<sup>120</sup> to collapse.<sup>121</sup>

The symposium also relied too heavily on legal academics. The experience of myself and others is such academics lack a real-world understanding<sup>13</sup> of subjects in which they proclaim they are experts. They will address conferences and offer advice to parliament, but are generally reluctant to engage people with practical experience.<sup>14</sup>

Because most suppression of free speech doesn't take place within cooee of a court room, and because most corruption is never reported by the media, legal academics who don't engage people with practical experience will be ill-informed.<sup>15</sup>

The symposium did not engage actual journalists who could have told how Defamation law, sub judice<sup>16</sup> and court suppression orders<sup>17 18 19 20</sup> prevent them from reporting corruption.

The symposium did not engage newspaper editors, who could have told them how they pick stories; A major factor since there are strong disincentives to run corruption stories, *even without the threat of defamation*. Yet I doubt any of the speakers understood how that editing process works.<sup>21</sup>

It did not engage whistleblowers, nor Whistleblowers Australia, nor victims of government abuse, nor ordinary people who have been sued, prosecuted or prevented from speaking out.<sup>22</sup>

It did not engage public servants who have suffered at the hands of the government when they tried to speak out on matters of public interest and concern.<sup>23</sup>

The symposium failed to consider academic censorship;<sup>24</sup> e.g. That LNP Education Minister Christopher Pyne encouraged universities to silence academics with controversial views,<sup>25</sup> apparently unaware that many scientific ideas accepted today were initially controversial.<sup>26</sup> For example, continental drift, or even that surgeons should wash their hands.<sup>27</sup>

The symposium ignored the *Defence Trade Controls Act*, even though University of Sydney DVCR Jill Trehwella warned '*This legislation could mean a conference speech, publication of a scientific paper or sending an email to colleagues could require a Defence permit or become a serious crime.*'<sup>28 29</sup> (However the DTCA generates more income for lawyers,<sup>30</sup> even as high-tech businesses<sup>31</sup> and academics<sup>32</sup> abandon Australia to head overseas.)

And while the symposium acknowledged the dangers of metadata surveillance, it completely ignored the incredible powers Labor gave the public service to conduct surveillance of high-tech businesses and universities, nor that these laws suspended the right to silence, the right against self-incrimination, and the need to obtain a warrant before entry and seizure.<sup>33</sup>

It did not discuss the right to protest,<sup>34</sup> nor the knee-jerk reaction of the police to oppose protests.<sup>35</sup> It did not discuss the lack of free speech protection for satire or parody in Australia.<sup>36 37 38 39 40 41 42</sup> It did not discuss public servants using intimidatory letters to chill public criticism.<sup>43</sup>

It did not discuss the Commander of the Defence Force General Hurley warning Senator Lambie not to criticise the military in the media, nor Lt General Campbell standing by while a journalist was harassed at Manus, nor his outburst at being asked about a cover up.<sup>44 45 46 47 48 49 50 51 52</sup>

It did not discuss how Australia's sedition laws can jail people who "*urge disaffection against the Constitution, Government of the Commonwealth or either House of Parliament,*"<sup>53</sup> even when the former is weak<sup>115</sup> and the latter two corrupt, abusive and lawless.<sup>54</sup>

It did not discuss how lawyers and politicians can use *Privilege* to unfairly attack members of the public, yet use the threat of defamation and contempt to silence their own critics.

Instead we had defamation lawyer<sup>55</sup> Roy Baker telling the symposium he wanted corporations to get back their right to sue for defamation.<sup>56</sup> (Even if he "*would hugely curb the damages corporations should recover,*" legal costs and the possibility of litigation are a strong incentive to stay silent. What sensible person wants a starring role in a Gunns 20 reboot?)<sup>57 68 58 59</sup>

And while the audience prided itself on inviting Peter Grete's brother to speak, they failed to acknowledge the fundamental hypocrisy that in Australia we have jailed journalists too.<sup>60</sup>

Why didn't we hear from jailed Aussie journalists Tony Barras<sup>61</sup> or Joe Budd<sup>62</sup>?

Why not one of the many journalists sued for defamation; Kate McClymont or Chris Masters?<sup>136</sup>

Why not whistleblowers Allan Kessing<sup>63</sup> (suspended jail term) or Mick Skrijel ("disappeared")?<sup>64 65</sup>

Why not political activist Albert Langer<sup>66</sup> (jailed) or political blogger Shane Dowling (sentencing)?<sup>67</sup>

Why not anyone from the Gunns 20 (whom you yourself represented)?<sup>68</sup>

Instead lots of lawyers and academics, and what Brendan Molloy called "*a big Facebook ad.*"<sup>69</sup> (Did no one tell the convenors Facebook is no longer cool?<sup>70</sup> Or did Twitter decline an invite after Tim Wilson publicly repeated criticism it was as Green-left echo chamber and a sewer<sup>71</sup>?)

***The symposium shunned 200 years of American expertise in favour of our own 'instant experts'***

The Symposium ignored American experts such as the ACLU,<sup>72</sup> even though America is the world centre of free speech research and has been debating its merits for over 200 years.

This is important because Free Speech is a fundamentally American concept;<sup>73 74</sup> not an Australian one.<sup>75</sup> Australian lawyers do not understand the merits for free speech,<sup>76</sup> though they do know how to sue for Defamation.<sup>77</sup> This limited knowledge was obvious by the poor quality of the arguments put forward by both sides over 18c,<sup>78 79 80</sup> leading to an ill-informed public debate.<sup>81</sup>

For example, no one warned 18c's supporters of a fundamental tenet of free speech: ***Laws that silence speech you disagree with can also be used to silence you.*** Now Mike Carlton, a supporter of 18c,<sup>82</sup> has himself been accused of anti-Zionism<sup>83</sup> under 18c.<sup>84</sup>

Likewise LNP Attorney-General George Brandis QC's proposal to change 18c so offence is "*determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community.*"<sup>85</sup>

... and former LNP A-G Neil Brown QC's proposal to let a jury do that instead of a judge: "*Who better to determine whether an act offended community standards than the community itself by way of a jury?*"<sup>86</sup>

But the purpose of rights – including the right to free speech – is to protect individuals from the tyranny of the majority.<sup>87</sup>

By giving the community – the majority – the power to decide what an individual can or cannot say, you give the majority the power to censor individuals.

Not because the individual's ideas are right or wrong; At that stage they haven't been debated, so how would they know? Instead the censor can take an initial emotional position which they are reluctant to reverse, or because the speaker's ideas challenge their own:

US Supreme Court Justice William Douglas: "*Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.*"

Americans determined neither the government nor courts have any business dictating to people which of their ideas are right and which aren't, let alone what ideas they are allowed to discuss; Let individuals put their ideas to the public, and let the public decide for themselves.

US Supreme Court Justice John Paul Stevens: "*For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas.*"<sup>88</sup>



How can the correctness of an idea be determined without open, rational debate?

Even the scientific community can take a long time to arrive at the truth; In 1911 Peyton Rous discovered certain viruses could cause cancer, but he was so stridently ridiculed he dropped his research. 56 years later he was awarded the Nobel Prize.<sup>89</sup>

In fact, nearly all great scientists begin as heretics. That doesn't mean that all heretics are right; The only way to sort out the good ideas from the bad ones is by rational debate.<sup>90</sup>

Majority views are not right simply because they are majority views.

Mr. Brown says of his own proposal for juries to decide: *"It would have the democratic effect of tethering case outcomes to what the community views as unacceptable"*<sup>86</sup>

Which misses the point. As an individual, the community does not own me. My mind is free. And just because the community outnumbers an individual does not automatically make community's views right and the individual's views wrong.

US Supreme Court Justice Stevens: *"It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression — at the hand of an intolerant society."*

I don't believe American judges are born any smarter than Australian judges, but they have had a 200 year head start debating free speech.

Even Britain, the birthplace of defamation, have backtracked because – in the words of the British Deputy PM, they have had made Britain *'an International Laughing stock.'*<sup>91 92</sup>

Had the HRC listened to wider views they might have learned:

***"Values Served by the Protecting of Free Speech: "***<sup>93</sup>

1. ***The Discovery of Truth.*** This value was first suggested by Milton, who first suggested that when truth and falsehood are allowed to freely grapple, truth will win out.
2. ***Facilitating Participation by Citizens in Political Decision-Making.*** Citizens will not make wise and informed choices in elections if candidates and proponents of certain policies are restricted in their ability to communicate positions.
3. ***Creating a More Adaptable and Stable Community (The "Safety Valve" Function)*** Society in which angry and alienated citizens are allowed to speak their mind – "vent" – will be more stable, as people will be less likely to resort to violence. It has also been pointed out that allowing the alienated and discontented to speak freely enables government to better monitor potentially dangerous groups who would otherwise act more clandestinely.
4. ***Assuring Individual Self-Fulfilment.*** Free speech enables individuals to express themselves, create and identity – and, in the process perhaps, find kindred spirits. Freedom of speech thus becomes an aspect of human dignity.
5. ***Checking Abuse of Governmental Power.*** As Watergate, Irangate, Clintongate (and all the other "gates") demonstrate, freedom of the press enables citizens to learn about abuses of power – and then do something about the abuse at the ballot box, if they feel so moved.
6. ***Promoting Tolerance.*** Freedom of speech, especially through our practice of extending protection to speech that we find hateful or personally upsetting, teaches us to become more tolerant in other aspects of life – and that a more tolerant society is a better society.
7. ***Creating a More Robust and Interesting Community.*** A community in which free speech is valued and protected is likely to be a more energized, creative society as its citizens actively fulfil themselves in many diverse and interesting ways."

## **I strongly disagreed with (almost all of) your speech.**

You delivered your speech to the symposium<sup>94</sup> using a lawyer's speech patterns; You would say you rejected something, but not explain why.<sup>95</sup> You would give examples you claimed made a point, but not explain why you believed they were relevant.<sup>96</sup> Between these (in my opinion) you rambled<sup>97</sup> and so the audience assumed you had made your point, when you hadn't.<sup>95</sup>

Nevertheless, it worked wonders with your audience. No one seemed to notice.

It worked with the media.<sup>98</sup> Although I was probably the most prolific tweeter of the day and debunked your speech in real-time, in their live blog of the event *The Guardian* repeated what you said – unchallenged – and avoided every point I raised, choosing other Tweets instead.<sup>99</sup>

When you condemned George Brandis for not living up to Voltaire's '*I don't agree with what you say, but will defend to the death your right to say it,*' no one seemed to notice you didn't commit to living up to it either;<sup>100</sup> That far from defending free speech, you argued overwhelming against it.<sup>101</sup>

They applauded your condemnation of the Liberal Party for proposing laws to jail journalists, even though as Attorney-General you passed such laws *despite* warnings from the media.<sup>488 489</sup>

The audience applauded your condemnation of the Liberal Party for refusing to allow taxpayer-funded NGOs to participate in political debate, even though both your parties refuse to let public servants do the same thing.<sup>102</sup>

Nor did anyone call out Labor's hypocrisy on metadata surveillance; That Labor heavily promoted it when they were in power.<sup>103</sup>

## **In this letter I shall debunk your speech**

It is understandable that the media ignored me. You are a former Attorney-General Defamation QC. Most journalists don't know me from a bar of soap. Those that do know me know I am, of all things, a software engineer. What could I possibly add to the debate?

I've been programming computers for 35 years, and I happen to be very good at it. Programmers have exceptional memories, are very good at learning new systems (Law is just another system), and have an exceptional command of logic; I have worked on programs with over a million lines of code. If just one of those lines contains a logic error, the whole program can crash. Programmers thus become very good at spotting errors in logic.<sup>104</sup>

Free speech is an unusual area of law, because it is about discovery of the truth through rational debate. You on the other hand are a politician and a barrister. In the court you must use sophistry to ensure your client wins, even if you believe your client is in the wrong.<sup>105</sup> Sophistry is defined as '*The art of lying is to make others believe things the liar knows are false.*'<sup>106 107</sup>

Sophistry is about hiding the truth. It is the opposite of free speech.

Politicians are sophists too;<sup>108</sup> The public trusts politicians even less than lawyers.<sup>109</sup>

Unlike politicians and lawyers, engineers don't care about winning an argument. We only care about the discovery of the truth through rational debate.

There is little point an engineer tricking their peers to win an argument over bridge design if they turn out to be wrong, and the result is several hundred dead people in a ravine.<sup>110</sup>

For these reasons we are very good at spotting logical flaws in people's arguments, particularly politicians and lawyers who are not using a rational argument.

In a court room you would no doubt win. The courts have rules and procedures to prevent the discovery of the truth and stop rational debate.<sup>274</sup> Brian Martin: *"Many people think of the law as a great protector, as a place where justice is dispensed. If only it were true! Actually, the legal system serves best those who have the most power and money."*<sup>111</sup>

But in an open forum, and when my voice is heard, it is easy to pick your arguments apart.

This is not the first time we have locked horns; When you attempted to discredit an article I wrote for *Crikey* about the flaws in your new whistleblowing laws, I thoroughly debunked you.<sup>112</sup> One observer commented: *"Holy S\*\*t! You p0wned him! What a shut-down!"*

I did not hear from you again.

And if readers take objection to my directness, I think you would agree on April 4, 2013 when I first wrote to you I was exceedingly polite, deferential and respectful.<sup>113</sup> And you ignored me.<sup>114</sup>

I live in a country where the citizens have very few rights. We are entirely reliant on public officials such as yourself to protect us from harm.<sup>115</sup> But when I brought to your attention the harm others and myself had suffered at the hands of your fellow public officials, you failed to act.<sup>116</sup>

So on this occasion in the best traditions of free speech and rational debate I will think as I will, and speak as I think.

On this occasion I will do so in an open letter, instead of an easily ignored private one.<sup>113</sup>

### **Your own potential conflict of interest**

Further you, yourself, as a Defamation lawyer, have a potential conflict of interest.

Investigative Journalist Kate McClymont says: *"The nation's wealthy and powerful have often used legal threats to stop journalists' inquiries or at least to put the frighteners on them."*<sup>117</sup>

The 1964 US Supreme Court Decision of *New York Times v Sullivan* upheld that the press must have absolute immunity from Defamation in reporting the conduct of public figures,<sup>118</sup> because anything less would *"leave the free press open to destruction."*<sup>119</sup>

After that ruling it was the US defamation industry<sup>120</sup> rather than the free press which destructed. A survey showed by 1991 there were more defamation law suits in Sydney alone than there were in the entire USA.<sup>121</sup>

Defamation law only benefits lawyers and the rich.<sup>39</sup> And sometimes not even the rich.<sup>39</sup>

Upton Sinclair: *"It is difficult to get a man to understand something when his salary depends upon his not understanding it."*

## Your 'absolutist free speech' straw-man

This reductionist understanding of what free speech entails is mistaken on several counts.

First, what I will call the 'absolutist' position on free speech ignores the fact that government restraint is not the only threat to freedom of speech.

Your '**absolutist**' claim is a straw man.<sup>122</sup> Absolutist free speech would mean no restrictions on child pornography, incitement to commit a crime,<sup>123</sup> perjury,<sup>124</sup> nor information that would endanger national security. I do not know anyone pushing for that,<sup>125</sup> and certainly not from the Liberal Party.

Rather supporters of free speech advocate the **Primacy of Free Speech**; That free speech should only be limited as a last resort, and only then when there is imminent danger of an unlawful action with no opportunity for further discussion, and only when that danger is a serious one.<sup>126 127</sup>

In their rulings the US Supreme Court try very hard to let free speech reign, only curtailing it if there are compelling reasons to the contrary.<sup>128</sup> Without sophistry, they explain their decisions with a wisdom and reasoned logic I do not see from the Australian courts.<sup>129</sup>

When the answer is unclear, they give freedom of speech the benefit of the doubt:<sup>130</sup>

US Supreme Court Justice Paul Stevens: "*Political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse*"

## Your rejection of the Marketplace of Ideas

I firmly reject the false argument put by some that practically any regulation or restriction on what we say infringes our right to free speech. I reject the simplistic notion that our only legitimate recourse against harmful or hateful speech is to be found in an imagined 'marketplace of ideas'. This reductionist understanding of what free speech entails is mistaken on several counts.

Here you use a lawyer's speech pattern where you announce you "reject" something, but without explaining why.<sup>131</sup>

After reading your speech carefully, you only seem to offer two possible "reasons"; That there are already restrictions on free speech, and that free speech needs to be balanced with other rights.<sup>131 132</sup>

But neither of these debunk the marketplace of ideas.<sup>131</sup>

The marketplace of ideas doctrine emerged from the US Supreme Court<sup>133</sup> who have been extensively debating the merits of free speech for over 200 years.<sup>134</sup> If Mark Dreyfus knows something that the collective wisdom of the US Supreme Court does not, he should clearly articulate it.<sup>131</sup>

I shall return to the marketplace of ideas later

## **Your claim existing restrictions on free speech are a justification for even more restrictions**

Regulation can secure the freedom to speak and to engage meaningfully in civic life. Our most important and long-standing democratic institutions reflect this insight. They always have.

You go on to justify restrictions on free speech because:

- The press work within defamation laws and journalist's code of ethics.
- Parliamentary standing orders limit what politicians can say, even outside of Parliament.
- The courts have strict rules and procedures to keep proceedings "fair."

You do not offer sound reasons as to why any of these existing restrictions are necessary.

Instead you only say that we have restrictions. And so because we have some restrictions, it's acceptable for us to have even more restrictions.

The technical terms for your position is *"But we've always done it that way."*

In fact, defamation law is used to intimidate the press. Corrupt<sup>135</sup> ALP politician Eddie Obeid won a defamation suit against investigative journalist Kate McClymont for an earlier implication he was corrupt, and warned her off against further reporting: *"You put one word out of place and I will take you on again. You are a lowlife. I will go for you, for the jugular."*<sup>136</sup>

Evan Whitton,<sup>137</sup> five-time Walkley-winning investigative journalist, legal historian, honorary QC and former editor of the *National Times* and *Sydney Morning Herald* says: *"Libel law has thus protected rogues, including organised criminals, some powerful and respectable, for seven centuries."*<sup>138</sup>

Restrictions which you claim are to keep court proceedings "fair" are in fact to hide the truth from juries, on the basis they're not intelligent enough to weigh up the evidence themselves, and so judges and lawyers must decide what they can and cannot be allowed to know.<sup>280</sup>

Evan Whitton writes: *"Lawyers began to defend criminals in 1695, but not enough evidence was concealed; conviction was fairly certain; only about a third of accused wasted money on lawyers in 1795. Judges then began to concoct rules which conceal important evidence and encourage rich criminal to pay lawyers."*<sup>139</sup>

Finally you yourself draw attention to the discrepancy between Parliamentary standing orders and the *"orderly, dignified and appropriate manner"* parliamentary debate they are supposed to foster.

## The Great Defamation Myth

You give defamation law as an example of the restriction of free speech, but you offer no argument whatsoever to justify its existence.

The free press, which fulfils a critical role in our democracy, must be careful in its reporting or risk breaching our defamation laws.

The US Constitution recognises the importance of the free press in the First Amendment because representative government requires the free flow of information about matters of public interest.

US journalists<sup>140</sup> are protected from Defamation law suits. US Supreme Court Justice Hugo Black: *“In my opinion, the Federal Constitution has dealt with this deadly danger to the press in the only way possible without leaving the free press open to destruction – by granting the press an absolute immunity for criticism of the way public officials do their public duty.”*<sup>119</sup>

Australian journalists have no constitutional protection, and indeed the *“implied”*<sup>141</sup> free speech protection in the Australian constitution is so weak it cannot reliably be used.<sup>142</sup>

The worst thing that can happen to a US Journalist is having to retract their story.<sup>143</sup>

US Investigative Journalist Jesse Eisinger: *“Fortunately, I’ve never made the kind of huge factual error that meant the story required retraction. Thank God.”*<sup>144</sup>

The worst thing that can happen to an Australian journalist is bankruptcy.  
Crikey founder Stephen Mayne had to sell his family home.<sup>145</sup>

Editors must weigh the upside of a scoop (one day’s worth of web hits) against the downside (years in court, the distraction and stress of court on the staff, a huge legal bill – even if they win, and the possibility of paying out millions if they lose, even if their story is true.)<sup>146</sup>

Under Australian law the truth is a defence to defamation, but the truth can be extremely difficult to arrive at:

The *Courier-Mail* and whistleblower Toni Hoffman<sup>147</sup> took a considerable risk reporting the circumstances of the deaths of Dr. Patel’s patients at Bundaberg Base Hospital.

Robin Speed, Rule of Law Institute: *“What would the Courier-Mail have done if Dr Patel had, right at the beginning, obtained an injunction against publishing his record as a surgeon in the USA? Whilst it is easy to see the position in hindsight, at the time without the evidence from the Commissions of Inquiry, the newspaper was on risky legal grounds even under the existing law. With the proposed new legislative remedy for “invading” a person’s privacy the story may never have been published and Dr Patel may still be operating at Bundaberg Hospital.*

***It was only by reason of the investigation by a Government Inquiry hearing over 100 witnesses and examining thousands of pages of exhibits that the truth about Dr Patel came out. No newspaper had or has the time, power or resources to reach such a conclusion before publishing.”***<sup>148</sup>

And in any case, Geoffrey Robertson QC: *“There have been celebrated cases where newspapers have published the truth, yet lost.”*

By comparison, under US law the Patel story could have been safely reported by the media so long as they did not maliciously print something they knew to be false.<sup>149</sup>

In Australia merely asking Dr. Patel for comment invites him to obtain a court injunction.<sup>150 151</sup>

Recently the Australian government obtained a court injunction to prevent Australians discussing<sup>152</sup> what could be a major corruption case against certain politicians.<sup>153</sup> In another case political blogger Shane Dowling was sued for defamation by a powerful person whom he alleged was corrupt, but had a suppression order placed on him so he couldn't even tell anyone he was being sued.<sup>67</sup>

### ***The threat of defamation has a chilling effect on free speech***

All this has a chilling effect on free speech.<sup>154</sup>

Jonathon Biggins: *"The mere receipt of a solicitor's letter threatening a defamation suit is usually sufficient to have the material in question censored because the cost of continuing the correspondence, let alone defending the action, is simply prohibitive."*<sup>155</sup>

Investigative Journalist Kate McClymont: *"The nation's wealthy and powerful have often used legal threats to stop journalists' inquiries or at least to put the frighteners on them."*<sup>156</sup>

For example, defamation threats kept the Australian media from telling the people of New South Wales that their Premier Robert Askin was corrupt, until he was dead.<sup>157 158</sup>

Currently Joe Hockey is suing Fairfax for defamation.<sup>159</sup> So is Sydney Water's Nick Di Girolamo, also suing three investigative journalists for \$12.5M.<sup>160</sup> Craig Thomson sued Fairfax.<sup>161</sup> Eddie Obeid sued Kate McClymont and was awarded \$1M+ for an implication he was corrupt.<sup>162</sup>

Mick Skrijel was a fisherman who blew the whistle on drug smuggling without realising the police were part of it. ALP politician Duncan Kerr threatened every media outlet in Tasmania with defamation if they reported Skrijel's allegations of a cover-up. None would report it.<sup>222</sup>

Speaking out is dangerous. When Dick Smith criticised Ian McPhee's approach to Aviation safety, Mr. McPhee sued him for defamation.<sup>163</sup> A reviewer of a book about uranium said *"I object to the author's lack of moral concern."* The author sued for defamation and won more than \$100,000.<sup>164</sup>

It's safer to say nothing.

ABC's Chris Masters says: *'Australia is a very secret society and the defamation laws are a big contributor to this culture. Self-censorship is all about self-preservation and it is everywhere.'*<sup>165</sup>

Compare that to the US. Thomas Jefferson: *"Let those who fear flatter. It is not the American way."*

### ***The media is reluctant to speak to whistleblowers***

Public perception is journalists elbow each other out of the way to get whistleblowers' scoops. In practice, whistleblowers find journalists are reluctant to report their stories.<sup>166</sup>

Dr. Kim Sawyer: *"I was the convenor of three national conferences of Whistleblowers Australia in Melbourne. On each occasion, I asked specific investigative journalists to attend. The only ones who ever bothered were a reporter from SBS and Damien Carrick from ABC's the Law Report."*<sup>167</sup>

When I researched an article *"The Whistleblowers' Guide to Journalists"* published in *The Whistle*, most journalists (even investigative journalists)<sup>168</sup> and their union<sup>169</sup> declined to contribute. Perhaps they were simply busy, but it makes the point they're hardly falling over themselves for whistleblowers' stories. In practice, only about 5% of tangible leads supplied to media organisations are ever published;<sup>170</sup> Most of the stories you read and see are in fact PR and spin.<sup>171</sup>

Several new services have appeared recently promising to securely connect whistleblowers directly with journalists.<sup>172</sup> But these overlook Australian journalists already ignoring whistleblowers' leads,<sup>173 185 186</sup> and that anonymity is of little use when Australian whistleblowers can be convicted purely on circumstantial evidence anyway.<sup>174 284</sup>

## Media self-censorship

The media engages in much self-censorship.

When I approached the media regarding the IP thefts by Department of Defence public servants, I was surprised to learn they already knew, having been approached by other victims. But there was an 'editorial' decision not to run the story.<sup>175</sup>

If the media had reported it when they first heard about it, myself and other victims could have known and stayed out of harms way.

As Attorney-General when you introduced the Commonwealth's deeply-flawed whistleblowing laws you claimed that politicians should be granted immunity from them because were already held accountable by Parliament.<sup>253</sup>

But I approached the media (and yourself)<sup>254</sup> with evidence that was ***not*** the case; That no one in Parliament was prepared to challenge a particular ALP minister over alleged criminality with documentary evidence.<sup>176</sup> Fairfax, Newscorp and the ABC all ignored it.<sup>177</sup>

When the *Senate Committee for Legal and Constitutional Affairs* refused to accept my submission regarding this flaw in your whistleblowing laws,<sup>256</sup> the media still wouldn't run it.

Instead news outlets carried stories praising the new whistleblowing laws and encouraging people to use them,<sup>178</sup> but I couldn't even get a 150-word letter to the editor published to warn people.<sup>179</sup>

One of that law's architects told me privately they knew whistleblowers using them would be harmed, but publicly promoted their new laws anyway.<sup>180</sup> I thought that exceptionally reckless.

Only the independent *Crikey* would publish an article warning would-be whistleblowers.<sup>181</sup> Unfortunately most of the public rely on the mainstream media for their news.

I have since learned of public servants who were fooled by the good press at the time and came forward to blow the whistle, and who were themselves later destroyed as a result.<sup>180</sup>

Again, if the media had reported the danger to whistleblowers under the new laws when they first heard of it, those victims could have known and stayed out of harms way.

A particular low point was the Gillard prime ministership. During this period the media printed fawning articles about the public service, and suppressed stories critical of them.

US Supreme Court Justice Louis Brandeis said: "*I have talked to you about the wickedness of people shielding wrongdoers & passing them off (or at least allowing them to pass themselves off) as honest men. ... If the broad light of day could be let in upon men's actions, it would purify them as the sun disinfects.*"

We had the bizarre spectacle of a *Canberra Times* editorial white-anting reports of endemic federal public service corruption which appeared in *The Sydney Morning Herald*. ALP Public Service Minister Gary Gray used *The Canberra Times* editorial to dismiss the allegations, and Fairfax dropped the story.<sup>182</sup> For whatever reason, the ABC and Newscorp would not pursue it either.

Similarly Journalist Margo Kingston says of the Canberra Press Gallery, '*If [the] Gallery hadn't closed ranks behind Abbott 2003 on slush fund secret donors he wouldn't be Prime Minister.*'<sup>183</sup>



And despite Fairfax's refusal to report the IP thefts by the Department of Defence, they were quick off the mark to run a story (an apparent official leak) by the CSIRO claiming they were the victim of IP theft by a Chinese National. Not only did Fairfax fail to acknowledge the DSTO IP thefts which by then had been reported in *Crikey*, but they also failed to report two cases of IP theft reported by others to Fairfax where the CSIRO was the one doing the stealing.<sup>238</sup>

However the media has been a commercial enterprise since its inception. They are businesses under no obligation to pursue matters of public interest to their own commercial detriment. In my own personal dealings with journalists I have found most wanted to pursue corruption, but they need permission from their editors who give commercial considerations priority. If they didn't, they'd all be out of a job. There are safer, easier and cheaper stories out there.

Given the limitations they work within, I praise the media for reporting as much as they do.<sup>184</sup> The trouble is unlike the *New York Times* whose motto is "*All the News that is fit to print*," in Australia about 95% of stories are never told;<sup>170 185</sup> Chris Masters wrote a book on this.<sup>186</sup>

Former *Canberra Times* journalist Crispin Hull: "***In the nearly two decades or so that I had carriage of most of the defamation cases at The Canberra Times in several executive roles, I always dreaded the solicitor's letter. The odds were stacked against media defendants – we were reviled by the politicians who made the law and detested by the judiciary who interpreted it. You knew the letter meant trouble – costly trouble.***"<sup>187 188</sup>

## The ABC is not a public interest safety valve

Public perception is the ABC fills the gap because they are taxpayer-funded and have a public interest charter. But while the ABC does some commendable investigative reporting, unfortunately it also engages in some self-censorship.

The turning point for the ABC seems to be 30 years ago after *4 Corners* aired their Walkley-winning story '*The Moonlight State*' on endemic corruption in Queensland.<sup>189</sup>

Following that story the ABC and investigative journalist Chris Masters spent \$1M and 13 years in-and-out of court fighting off a defamation law suit. They won, twice, but at great cost, after which Chris Masters warned: ***“Journalists and broadcasters are just not going to do stories when defamation proceedings become as arduous and lengthy as this one was” ... “The hardest things that I ever did in my career were not to do with gathering the story in the first place but in defending it ... The worst thing is the emotional burden waking up every day knowing you’ve got court matters to deal with ... it gets to a point where it can be extremely demoralising. You begin to say to yourself, I didn’t get into this to be a professional witness or professional defendant.” ... “I call it my death by a 1000 courts. The emotional drain tends to be understood only by those who experience it. You watch your morale and assets erode all the while surrounded by lawyers who are having the time of their lives. Horrible.”***

### *4 Corners’ coverage of the Defence Abuses*

Although abused soldiers were glad to see *4 Corners* recently run a story on defence abuses, some were angry at the material the ABC held back.<sup>190</sup> Most glaringly, the program did not reveal serious allegations that the DART<sup>191</sup> itself has been accused of mistreating victims,<sup>201 192</sup> stonewalling complaints, and of aggressive legal tactics.<sup>193</sup>

@TJW: *‘My Prime objection is that 4 Corners had written documentation giving MUCH more info than they covered in their program, & they lied by stating their (upcoming) program was similar. It was not. And what little they did show merely glossed over the known facts, was [allegedly] full of lies by the senior ADF/ex-ADF concerned, and 4 Corners just let them get away with it.’*<sup>194 195</sup>

For whatever reason, neither the ABC nor Defence would publicly acknowledge the existence of the Victims Of ADF Abuse Association.<sup>196</sup> Defence perhaps because it wants to downplay the abuses, but why would the ABC play along with that?<sup>196</sup>

After running a story about suicide, the media usually give a number to call. Why run a story about Defence abuses, but say nothing about a support organisation? Instead *4 Corners* had General Hurley telling a victim to contact him or the DART.<sup>197</sup> But *4 Corners* did not warn victims of allegations of mistreatment by the DART itself,<sup>198 201 199</sup> or that Hurley was about to retire.<sup>200</sup>

Earlier still when the Head of the DART Len Roberts-Smith<sup>201</sup> and former Chief of the Defence Force<sup>202</sup> spoke on Fairfax and the ABC, abused soldiers sought the right of reply but for whatever reason the media would not give them one.

[On September 5 the ABC – *though not 4 Corners* – finally reported the alleged mistreatment of victims by the DART, and existence of the Victims association, but only after Len Roberts Smith resigned, the Association’s testimony to Parliament, and revelations that three abused soldiers before the DART still awaiting counselling had committed suicide.]<sup>203 204</sup>

And for whatever reason, the ABC’s Defence correspondent has declined to speak to me from day he took up the job.<sup>205</sup> Why would a Defence correspondent be so uninterested in reporting corruption within the Department of Defence?<sup>206 207</sup>

Retired RAAF Air Commodore Ted Bushell concludes: *“All the editors seem to taking pains not to brush Defence up the wrong way.”*<sup>208</sup>

#### **4 Corners' coverage of Government Corruption**

Recently *4 Corners* aired a report on government corruption.<sup>209</sup> Although it talked about corruption in NSW and argued a Federal ICAC was needed, it made no mention at all of any corruption within the federal government, let alone of endemic corruption.<sup>210 211 212</sup>

Frances Jones: *'I learned nothing new from tonight's 4 Corners. I expected something ground-breaking about former Howard cabinet as lobbyists for coal and CSG. I had high expectations. Sadly not a Chris Masters-style one.'*<sup>213</sup> Steve Davies: *"I think they are actually self-censoring."*

The allegations against NSW politicians which had been made at ICAC could safely be reported by the ABC under court privilege, and if *4 Corners* made allegations against a federal politician it could find itself sued for defamation, such as Joe Hockey's defamation suit against Fairfax.<sup>159 214</sup>

But it's harder to understand why *4 Corners* did not raise the allegations of public service corruption which the ABC journalist (who is well-respected by his peers, the anti-corruption community and myself) had been allowed to report while he was at Fairfax.<sup>212</sup>

In their own summary of that episode, the ABC makes absolutely no mention whatsoever of any corruption in the public service, only saying: *"The secretaries of Australia's Commonwealth public service have long argued there is no need for an ICAC-style body in Canberra."*<sup>215</sup>

Yet Fairfax recently reported *"More than 100 allegations are being made each month of crime, corruption or serious incompetence by Commonwealth government officials under new whistleblower protections laws"*<sup>216</sup> and a year ago the Public Service Commissioner himself said *'as many as 20,000 federal public servants had witnessed serious internal misconduct in the latest 12-month reporting period but that less than half of them had made internal reports, usually because they distrusted the official process or they feared reprisal'*<sup>217</sup>

I can't find any coverage of this whatsoever on the ABC web site.

Tony Abbott's argument against a Federal ICAC is they don't need one because *'Canberra has a pretty clean polity.'*<sup>218</sup> Withholding allegations of federal corruption allows Mr. Abbott to promote a falsehood.<sup>219</sup>

Victims' Advocate:<sup>220</sup> *"Last time I met with [Senior ABC Executive] he agreed the corruption and criminality in the APS [federal public service] is the central pole of the tent of the Greatest Story yet to be told. We discussed a laddering approach, that is a series of stories that, ... alas, the internal workings and politics within [...] the ABC as a whole, makes such an approach somewhat hazardous and subject to inappropriate manipulation."*<sup>221</sup>

The ABC has self-censored in the past. In 1996 the ABC pre-emptively censored whistleblower Mick Skrijel at the request of an ALP party official.<sup>222 223</sup>

*To the ABC's credit they do produce quality current affairs and investigative journalism tackling difficult issues which other electronic media outlets avoid.*<sup>224 225</sup> *In my own personal dealings with ABC journalists I have found most are morally outraged by corruption and want to pursue it, but seem unable to get permission from management.*<sup>226 227</sup>

*I do note 4 Corners was one of the few news organisations which contributed to the Whistleblowers Guide to Journalists and credit the ABC's non-investigative divisions (ABC TV's *The Business*,<sup>228</sup> ABC radio's *The World Today*)<sup>229</sup> for doing difficult stories about whistleblowing, and that on September 5 ABC National news<sup>203</sup> and PM<sup>204</sup> revealed the existence of the victims association and the allegations against the DART which were not aired on 4 Corners.*

**The problem is that self-censoring gives corrupt officials a false veneer of integrity;**<sup>230</sup>

I can imagine someone watching the recent *4 Corners* on corruption going away thinking:  
'Well NSW is as corrupt as hell, but at least Canberra is clean.'

**My point is that the ABC is not the public interest safety value that many people think it is.**<sup>184</sup>

**It's ironic that the Chinese state-controlled media can openly report corruption within their own government, yet the Australian state-controlled media won't do the same about ours.**<sup>584</sup>

### ***Fairfax appears to be outperforming the ABC on reporting federal corruption***

One of the strongest arguments for the ABC's existence is their taxpayer-funding and public interest charter let them pursue investigative reporting which no other media outlet will touch.

Because of Chris Masters' excellent *4 Corners* 30 years ago, and occasional excellent investigative reporting since, I had simply assumed the ABC would be the leader.

So I was taken aback when I checked the media sources for my '*30 cases of uninvestigated / whitewashed federal government corruption*' royal petition,<sup>54</sup> and found that (privately-owned) Fairfax appeared to be reporting much, much more corruption than the ABC was.<sup>184</sup>

### ***The ABC web site gives more coverage to Holocaust deniers***

I couldn't find any coverage of the endemic public service corruption on the ABC web site.<sup>212 231</sup>

Yet the ABC web site has editorial space for over 300 hits about Holocaust deniers David Irving and Gerald Töben, and nearly 400 hits for Climate change denier Lord Monckton.<sup>232</sup>

I know victims of government abuse and whistleblowers who would die for just \*one\* hit on the ABC's web site.

## **Defamation law has a chilling effect on the free speech of ordinary people**

Unable to get media coverage, whistleblowers, victims of government abuse and members of the public find it difficult to speak out by themselves:

Brian Martin:

***'I found out that many people - not just whistleblowers - are frightened by defamation issues. ...***

*Media organisations are quite familiar with the intricacies of defamation law. They have lawyers on tap to check contentious material as well as strategies to deal with legal actions. But the resources wielded by a large organisation are unavailable, indeed unknown, to most individuals.*

*Some concerned citizens wanted to expose corruption in a major corporation by writing to politicians, but were afraid of being sued. What could happen if they wrote letters? ...*

*A man running his own website received a demand that he remove certain material. Should he acquiesce or refuse to budge?...*

*A few cases do go to court, with enormous impacts on those who are sued. Hiring legal advocates is expensive and there's lots of effort required in preparing the case. Matters can drag on for years. In some ways the worst part of the process is the fear of an adverse judgement and a big pay-out, though very few cases against ordinary citizens end up this way.'*

The time and cost are the biggest disincentives. It will take over your life and run for years. It will harm your family and work. Litigation is very stressful. The possibility that something will go wrong in court, that you'll lose and be bankrupted by legal fees is a terrible sword to have hanging over your head.

Lawyers play on that. Government lawyers Clayton Utz (albeit for a non-Defamation case) would send me antagonistic letters making terrible threats. These never arrived first thing in the morning, but just before the close of business,<sup>233</sup> ensuring me a sleepless night before I could talk to anyone.

In litigation you live with a constant sick feeling in the pit of your stomach. It's with you 24/7; Your only release is sleep. And as soon as you wake up, you remember.

Chris Masters: *"The worst thing is the emotional burden waking up every day knowing you've got court matters to deal with ... it gets to a point where it can be extremely demoralising." ... "The emotional drain tends to be understood only by those who experience it."*

The same isn't true of your opposition. Powerful people and public servants' lives continue as normal. They have the money to hire lawyers to do all the work for them. Those lawyers win by outspending and making your life a misery until you beg them to stop. If they lose, your legal costs are small change (or picked up by taxpayers).

Chris Masters did in fact win his defamation case, twice. Because his opponent lost, he didn't collect any damages. But he did get to make Chris Masters' life a misery for 13 years; torture. That's a cruel and unusual punishment far worse than most crimes. Arguably his opponent extracted his revenge, thanks to lawyers and defamation law.

***People who want to speak out face the same problem whistleblowers do. They have nothing to gain and everything to lose. Why take the risk? It's safer to remain silent.***

Brian Martin: *"Defamation law is supposed to protect reputations, but in practice it often serves to suppress free speech. Whatever the virtues and vices of the law for the media, it is an absolute disaster for ordinary individuals. It doesn't protect reputations and it is regularly used to squelch open discussion."*<sup>234</sup>

**Your claim: “The courts squarely grapple with the boundaries of lawful speech.”**

In my practice at the Bar I specialised in, among other areas, the law of defamation. In that area of the common law, which I assure you is far more restrictive of speech than anything in a human rights statute such as the Racial Discrimination Act, the courts squarely grapple with the boundaries of lawful speech.

You are correct that Defamation law is far more restrictive than 18c. It is unfortunate that the Liberal Party chose 18c as the only plank of their free speech platform, instead of the free speech rights of journalists and public servants so that they could expose corruption.

But as for your other comments...

Evan Whitton: *“Mark Dreyfus wrongly says “the courts squarely grapple with the boundaries of lawful speech.” In fact, libel law protects the corrupt by obviously false presumption: all slurs are presumed to be false, damaging and intentional.*

*“There is thus a presumption of guilt for the defendant, and the onus of proof is reversed; the defendant has to prove it was true.”*

*“The person suing does not have to prove actual damage, say to his career, as he has to in other civil damage cases, e.g. medical malpractice.”*

*“American judges abolished the false presumptions, but Australian judges have not.”* <sup>235</sup>

Further if the court finds that the allegation is untrue, then why does the subject of the story need to be compensated for damage to their reputation?<sup>236</sup>

These same loud devotees of 'free speech' are very quiet indeed when the freedom of community groups and activists to participate in important debates is threatened, or the freedom of community legal services to advocate for law reform is removed. They are nowhere to be found when overzealous or clumsy lawmaking threatens the ability of real journalists to do their vital work.

...

Though the Government is fond of reactionary opinion columnists, it does not appear to have much interest in defending real, independent journalism.

Labor's failure to protect journalists from defamation, even as Labor politicians such as Eddie Obeid and Craig Thomson bring defamation suits against the press, is hypocritical.

**Your claim the Journalists Code of Ethics is an example of a good restriction on free speech**

Even more importantly, the journalists who work in our media are bound by a rigorous set of professional ethics, though the extent to which they adhere to these ethics, and what can be done if they do not, are complex issues worthy of a speech in themselves.

You give no reason why this is 'Even more important' than defamation law.<sup>237</sup>

In any case when I raised ethical concerns about a story run by *The Age* with *The Age*, baselined against the journalists' union's code of ethics, they simply ignored it.<sup>238</sup>

In fact, the journalist's union's code of ethics is “*notoriously ineffective.*”<sup>239</sup> Large numbers of journalists aren't union members and so not subject to the code. And in 40 years, only three journalists have ever been rebuked for violating it. None have ever been expelled.

You yourself acknowledge “*the extent to which they adhere to these ethics*” is debatable.

Thus you cannot call the code a “*rigorous set of professional ethics*” nor use it to justify restrictions on free speech, because in practical terms, the code might as well not exist.

### ***What about the Lawyers' Code of Ethics?***

If the Journalists' Code of Ethics is so important, what about the Lawyer's Code of Ethics?

In theory lawyers are subject to a code of ethics. In practice, it's a farce:

Legal Journalist Richard Ackland: *"This week there was a flurry of activity at the Bureau de Spank. This is the name informally nominated for the creaking disciplinary mechanism to which members of the legal profession are subjected.*

*More often than not it involves the application of wet lettuce leaves to the buttocks of those unlucky enough to have been caught.*

*It's a squid-like apparatus with the Legal Services Commissioner, the Law Society and the Bar Association all waving disciplinary fronds at members of the profession."*<sup>240</sup>

The pro bono lawyers who helped me recommended I make ethics complaints about the conduct of the government lawyers.

The first complaint was to the ACT Law Society about a Department of Defence lawyer. But the ACT Law Society fobbed me off,<sup>241</sup> and then the ACT Ombudsman fobbed me off.<sup>242</sup> Neither gave a convincing explanation.

I was later told by the abused soldiers that this particular Department of Defence lawyer has been a key figure in the abuse cover ups.<sup>203 204 243</sup>

It would be alarming if the ACT Law Society, given the opportunity to censure an unethical lawyer, exonerated him on bogus grounds, allowing him to continue to practice, even while his cover-up contributed to ongoing mistreatment of abused soldiers, resulting in suicides and attempted suicides.<sup>203 204 244</sup>

The second complaint was to the Queensland Legal Services Commission about the conduct of a pair of lawyers in government law firm Clayton Utz. The LSC fobbed me off too.<sup>245</sup> Shortly before that I had been threatened by an AFP officer after writing to ask ALP Justice Minister Jason Clare why the AFP had not acted on my complaint.<sup>246</sup>

Fearful of abuse by the AFP,<sup>588</sup> I decided it would be unsafe to proceed while Labor was still in power.

A week after Labor lost the federal election,<sup>247</sup> I wrote to the Queensland Ombudsman<sup>248</sup> appealing the LSC's refusal to act. The Ombudsman refused to accept my complaint, saying I needed a good reason for not appealing within twelve months.<sup>249</sup> (By then it was seventeen months.) I told them about the AFP's threat, but the Ombudsman wouldn't even acknowledge it in their letters.<sup>250</sup>

You know of these, as I documented them to you in my letter of April 4, 2013.<sup>251</sup>

## Parliamentary Privilege

### *Why should only politicians be guaranteed the right to freedom of speech?*

Parliaments, ostensibly the ultimate forum for free political debate in our society ...  
the laws of privilege free me from the constraints of defamation law inside the Parliament

The American Bill of Rights guarantees freedom of speech to all people:

US Supreme Court Justice Louis Brandeis:

*‘The right to speak freely concerning functions of the Federal Government is a privilege of immunity of every citizen of the United States.’*

But the English Bill of Rights only guarantees freedom of speech for Parliamentarians:

#### **“BILL OF RIGHTS 1688. Freedom of speech**

*That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”*<sup>252</sup>

But what use is that if no Parliamentarian will speak for you?

As Attorney-General when you introduced the Commonwealth’s deeply-flawed whistleblowing laws you claimed that politicians should be granted immunity from prosecution under them because were already held accountable by Parliament.<sup>253</sup>

But I told you of a fellow ALP minister who was not being held accountable by Parliament.<sup>254</sup>

Despite speaking to ALP, LNP, Green and independent politicians I could not find a single one who would stand up in the house or senate and ask that ALP minister to explain his actions.

This is the first shock that greets whistleblowers and victims of government abuse; The discovery that although they have been loyally supporting a particular political party, MP and senators for years that when they approach them for help they find themselves ignored.<sup>255</sup>

Likewise when I made a submission to the *Senate Committee on Legislative and Constitutional Affairs*, the Secretary told me the committee refused to accept it, adding “*You are advised that you are not covered by parliamentary privilege in respect of the content of the documents you have provided.*”<sup>256</sup>

My experiences aren’t unique:

A military policemen blew the whistle on a \$20M travel fraud found some in the Labor Party sympathetic,<sup>257</sup> but none willing to act on it or raise the matter in Parliament. Finally after 16 years Independent Senator Nick Xenophon is now asking questions at Senate Estimates on his behalf, although the media has still completely ignored it.<sup>258</sup>

ATO Victim Gary Kurzer: *‘If there is even one honest, decent politician on twitter prepared to represent citizens, please contact me. The silence is eerie.’*<sup>259</sup>

In my case a veteran journalist told me if a politician would ask a question in Parliament, it would open the door for the press to pursue the story. Yet no politician would; not even politicians from the LNP who stood to embarrass the ALP over the matter.<sup>260</sup>



This is the second great shock that confronts whistleblower and victims of government abuse; Public perception is that the LNP and ALP are rivals, and that politicians from those two parties will vigorously pursue allegations of wrong-doing by each other. Yet time and again, myself and others have found that in practice that simply is not the case; The LNP will not pursue allegations of wrongdoing by the ALP, nor vice versa.<sup>261</sup>

So I researched corruption stories which had been reported by the media to see what had happened. One would expect to find following the media reports there was an investigation and the matter resolved. If the alleged perpetrator is still walking around, they must have been exonerated.<sup>262</sup>

But what I found was the corruption either went uninvestigated, was whitewashed, or a lengthy investigation dragged it out and did not reach a conclusion in a timely manner, if ever. But what really surprised me was the discovery that instead of the ALP and LNP holding each other accountable, they were in fact covering each others asses.<sup>263</sup>

Thus parliamentary privilege is of little use, because as evidenced by the Royal Petition on Federal Government Corruption, the LNP, ALP and APS [Australian Public Service] will not pursue allegations of corruption by one another.<sup>264</sup>

Although this quote actually refers to the tripartite separation of powers, it fits here too: *'Instead of checking state power, might [it] in fact create three bodies of knaves pursuing their own interest at the expense of taxpayers.'*<sup>265</sup>

**So why should politicians only be guaranteed the right free speech, but not the public, when politicians consistently fail to represent their constituent's interests?**

Likewise the hypocrisy that public officials can use parliamentary privilege to criticise members of the public,<sup>266</sup> yet members of the public criticising public officials can be sued for defamation:<sup>267</sup>

The Courier Mail: *"Who would have imagined that complaining about the conduct of a public servant to an appropriate politician, like the Premier, could land one in a defamation case?"*<sup>268</sup>

So too the hypocrisy that lawyers in court can knowingly tell falsehoods and unfairly attack a person's character, and that those attacks may be retold in public using court privilege.<sup>290</sup>

Was I not allowed to testify (let alone make a submission<sup>256</sup>) to the *Senate Committee for Legal and Constitutional Affairs* because the ALP and LNP feared embarrassment when their own misdeeds came under the public spotlight?<sup>533</sup> Is this why I was denied the right to be heard?

Free speech in Australia is a very one-sided affair; The rich and powerful hold all the cards.

***Your claim Parliamentary Standing Orders are an example of a good restriction on free speech***

Parliaments ... impose very prescriptive standing orders. ... even here, outside the Parliament, I am forbidden as a parliamentarian to reflect on the Speaker of the House of Representatives. The standing orders try to ensure that parliamentary debate is conducted in an orderly, dignified and appropriate manner, though watching question time you might have your own opinion on how successful this framework is. In almost any forum where our society debates important issues we impose rules governing speech.

... which makes the example you have given to justify this restriction a very unconvincing one.

Public Perception is that Ms. Bishop is doing a poor job as Speaker of the House,<sup>269</sup> and that Parliament is suffering as a result. I fail to see how preventing you, or any of your colleagues from openly saying she is doing a poor job makes parliament work effectively.

It smacks of the Emperor's New Clothes.

Indeed some of your Labor colleagues have been taking swipes at Ms. Bishop anyway.<sup>270</sup>

Thus you cannot use this as a justification for restrictions on free speech.

## Your claim court rules and procedures are an example of a good restriction on free speech

You claim that ‘*strict rules and procedures about how parties are to argue their case*’ – in effect restrictions on free speech – are justified because – in court – they ‘*ensure proceedings are fair.*’

Courts, for example, lay down strict rules and procedures about how parties are to argue their case to ensure that proceedings are fair.

It’s curious that you would use the word ‘*fair*’, which Oxford defines as ‘*without cheating or trying to achieve unjust advantage.*’<sup>271</sup>

Your claim cannot go unchallenged.

Evan Whitton: “*Mark Dreyfus is wrong. Justice means fairness and fairness requires a search for truth otherwise the wrong side might win. When the common law conceals the truth, no court proceeding is fair.*”<sup>272</sup>

Have you as a Barrister ever walked into court and said ‘*Your Honour, As a matter of fairness I must tell the court that my client is as guilty as sin*’?

If you did, you would be disbarred. Instead, short of telling a direct lie, lawyers are expected to use any and all means available to ensure their client wins, even if they know their client is guilty.<sup>273</sup>

Lawyers do this by using ‘*Sophistry*’ in the court room, defined as the art of convincing the jury to believe something is true which the lawyer knows to be false.<sup>105</sup>

Lawyers aren’t supposed to lie to a court, but they are allowed to mislead it. They can lie by omission. They can trick a judge into taking a position they will be reluctant to reverse, trapping them in confirmation bias. They use emotional tricks to manipulate the jury, such as trick questions or repeating falsehoods until they sound true. They can cloud facts with irrelevant emotional arguments. They will mock, bully and yell at witnesses who aren’t allowed to yell back.<sup>274</sup>

One of the standard devices is asking the judge to conceal evidence of their client’s guilt.<sup>275</sup>

Evan Whitton: “***The common law makes it relatively easy to get the guilty off.*** A jury is only as good as the evidence put before it, and cross-examination is as great an engine for obscuring the truth as for exposing it. The elements of the classic defence of a guilty man are thus: his lawyer persuades the judge to conceal relevant evidence; the guilty man exercises his right to avoid cross-examination; his lawyer uses verbal thuggery to confuse prosecution witnesses sufficiently to create a reasonable doubt; his lawyer shifts the goalposts, e.g. from accused to victim.”<sup>276</sup>

Is it “**fair**” that the Daniel Morcombe jury were not told that the man accused of his killing:<sup>277</sup>

- Took a seven-year-old boy from a playgroup and molested him in a toilet block, putting his hands around the boy’s throat when the distraught child threatened to tell his mother;
- Left a second child, aged six, with horrific and life-threatening injuries after raping him in Darwin;
- Admitted to abusing up to 30 children while a child himself by luring them into the change rooms of a local swimming pool;
- Sexually assaulted children in the lead-up to Daniel’s disappearance in a series of incidents not reported to police;
- Forced a girlfriend into a bizarre and violent kidnap and rape role play years after killing Daniel;
- Subjected partners to violent sex acts, including repeatedly choking one into unconsciousness.

Although Cowan was convicted despite the concealed evidence,<sup>278</sup> Journalists tell me there have been many cases where criminals have walked free, but warned me if I listed them here I could (wait for it...) be sued for Defamation.<sup>279</sup>

Lawyers claim these restrictions on what the jury can be told keeps court proceedings “fair” because juries are supposedly not intelligent enough to weigh up the evidence themselves, and so lawyers must decide amongst themselves what they can and cannot be allowed to know.<sup>280</sup>

Lawyers defend these restrictions by claiming it’s better to let many guilty men go free than a single innocent man go to jail.<sup>281 282</sup> But that’s disingenuous, because the Australian justice system has a much higher rate of false imprisonment than the European truth-seeking system of justice which does *not* hide evidence.<sup>283</sup>

Judges everywhere see all the evidence. European juries and lay-judges see all the evidence too. Why aren’t Australians allowed to?

In the case of Allan Kessing, the AFP withheld evidence of Mr. Kessing’s innocence, ensuring his conviction.<sup>284</sup> When this became public the ALP refused to reopen his case<sup>285</sup> and denied him a pardon,<sup>286</sup> even though Nick Xenophon said: *“The scandal here is that this man, who deserves a medal for the work that he did 10 years ago, was actually persecuted through the courts, had his life effectively ruined by virtue of being charged under Section 70 of the Crimes Act. ... How many Australians have overdosed on narcotics as a result of corrupt customs officials allowing those drugs to be brought into the country. How many Australians have been injured or killed as a result of weapons being brought into the country as a result of corrupt Customs officials?”*<sup>287</sup>

Hardly seems “fair” to me.

Is it “*fair*” that judges allow lawyers to bully witnesses in court?

Jean Lennane: *“Once in court, plaintiffs face major problems with bullying - an integral part of the adversarial system. Compliant judges make no attempt to see fair play, as vulnerable plaintiffs are bullied by opposing counsel, cross-examined for days on end, about anything at all, no matter how repetitive or irrelevant, regardless of their state of health - often until they collapse and have to give up the case.”*<sup>288</sup>

For example: *“[The Commonwealth’s lawyers] kept [CSIRO victim] Mr Williams on the witness stand for 5 days and continued to throw dispersions at him even after he collapsed due to a medical condition. To put this in perspective Rudolf Hess was questioned for only 4 days at the Nuremberg trials following WWII.”*<sup>289</sup>

Is the “**sluts and nuts**” attack which lawyers use to discredit rape victims “*fair*”?<sup>290</sup>

Is it “*fair*” that barristers are able to bully child victims of sexual abuse to tears, to the point the jury believes the child is ‘*too emotional*’ to be credible witnesses at their own rape?<sup>291</sup>

**Russel Clutterbuck, Defence Lawyer:**

Now, can you tell me now, can you tell us now, why are you crying please?

**John:** 'Cause the story isn't true.

**Russel Clutterbuck, Defence Lawyer:** 'Cause the story isn't true, or is true?

**John:** Is.

**Russel Clutterbuck, Defence Lawyer:** Well why are you crying if the story is true, John?

**John:** 'Cause you said it isn't.

In this particular case:

**ABC's Peter George:** An extraordinary South Australian case shows just how difficult it is for juries to believe the horrific stories they hear in court. It's the story of Samantha who says she returned home one night to hear her five-year-old son weeping in the room of a lodger in her house.

**Mother:** Yeah, and come out with his shorts in his hand, and I didn't say nothing to him until I got him up into the kitchen, and I shut the kitchen door and asked him what he'd done to him, and he goes that he stuck his dick up his bum.

**ABC's Peter George:** The case was almost unique: There was a witness, the complaint was made almost immediately to police, and there was tangible evidence - the boy was taken to hospital where doctors found semen in his anal passage.

**Jayne Rickard, NAPCAN Child Protection Agency:** In that particular case there was forensic evidence and therefore there seemed a much greater chance of achieving a conviction.

**ABC's Peter George:** It was the most solid case prosecutors could remember, but even so clear-cut a case proved beyond them. The jury's verdict: Not Guilty.

Is it “*fair*” that Magistrate Simon Cooper who sexually abused two boys escaped a jail sentence,<sup>292</sup> with prominent figures from Melbourne’s legal fraternity including the Chief Crown prosecutor providing favourable character references for him?<sup>293</sup>

And then there is the Commonwealth’s own *Model Litigant Policy*; a law which requires government lawyers to act fairly and honestly in litigation.<sup>294</sup>

Even before you became Attorney-General there were abundant media reports of it being abused by government lawyers.<sup>295</sup>

On April 4, 2013 while you were Attorney-General I wrote to you warning the *Model Litigant Policy* was being violated by two senior public servants, including one inside your own department.<sup>296</sup> You did not respond to my letter and to the best of my knowledge you did not hold those public servants accountable, nor act to curtail the ongoing abuses; You failed to act,<sup>297</sup> as had your predecessor Nicola Roxon,<sup>298</sup> and I am told your successor George Brandis.<sup>299</sup> At great waste of taxpayers’ money and great profit to government law firms, *Model Litigant Policy* breaches continue to this very day without any criticism from either of the major parties.<sup>300</sup>

US Supreme Court Justice Louis Brandeis: “*Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.*”

Whistleblowers Australia’s Jean Lennane published this about the “fairness” of the courts:<sup>301</sup>

*“The over-riding problems with our courts are the adversarial system, which seems designed to hide rather than search for the truth ... An enormous problem with the whole legal system is the lack of ethics of most legal practitioners, as shown by countless examples of corruption in the system, and the almost complete absence of lawyers prepared to blow the whistle on it. Other people can and do - police for example, often at enormous personal risk - but lawyers almost never.*

*Before a plaintiff gets to a court hearing, they have to cope with their own lawyers’ incompetence and procrastination. Few lawyers seem to have even basic competence in this area, a major problem being that their training removes any previous tendencies to be goal-directed, so they become entirely process-directed. (Billing by the hour of course encourages this.) ... because so many cases in the end are settled (often very badly) out of court, most can’t get motivated to prepare a case until the day before the hearing if you’re lucky, and often not until the day itself.*

*Plaintiffs then have to cope with the tactics of large organisations with money, who can and do use the legal processes to exhaust the plaintiffs' emotional and financial resources, until they are forced to give up and go away, or to settle, usually badly, just before a definitive hearing that could have set a precedent for other victims. The Westpac letters, and the Justice Callinan issue, are examples of what is widespread and accepted practice. I have yet to hear of a judge taking any action - or even saying anything - about these blatant delaying and other tactics. **They seem quite happy to preside over an abusive process that also, most conveniently, keeps matters of great public interest 'sub-judice' and safe from public scrutiny until they are no longer news.**"*

## *The Myth of Pro bono*

Several speakers including yourself noted Australians watch too many US court and cop dramas, and mistakenly believe that Australians have the same rights as Americans.

Likewise many Australians falsely believe that if they ever get into trouble, there is an army of pro bono civil rights lawyers and celebrity barristers waiting to take up their case.<sup>302</sup>

It simply isn't true. You can get a few hours of pro bono advice, but usually nothing more.<sup>303</sup>

Whistleblower Allan Kessing got one pro bono barrister, but had to pay for his solicitors and subsequent barristers.<sup>304</sup> He had to use his superannuation to pay for them. When he ran out of money, his appeal was abandoned.<sup>305</sup>

I myself contacted sixteen law firms seeking help. I learned the only firms with the resources to take on the government are the so-called "Big Law" firms, but they won't represent you because the government has them all "on retainer." Smaller law firms don't have dedicated pro bono departments, and explain that lawyers are businessmen first-and-foremost.<sup>306</sup>

A partner at a medium-size law firm told me: *'You're not the first person to be screwed over by the government and you won't be the last, but it's not our role to make the world a better place. I'm not saying the justice system is fair. It isn't, but it's not my job to fix it.'*<sup>307</sup>

Lawyers who take on pro bono cases have their legal costs paid if they win. Thus there is a strong incentive to pick "sure win" cases. Cases against the Commonwealth are difficult to win; Lawyer: *"Such is the justice system. The nastiest, baddest, richest litigant holds all the cards."*<sup>308</sup>

Sacked public servant Michaela Banerji's fair work case was ultimately taken on by PIAC; *"An independent, non-profit law and policy organisation, dedicated to providing legal help to the most vulnerable and disadvantaged people in our community."* She had expected them to work pro bono or recover their costs from her settlement. Instead they separately billed her at \$500 per hour; as much as a large commercial law firm.<sup>309</sup>

Some people do get pro bono, but it is rare. The Gunns 20 received some pro bono support.<sup>310</sup> Karen Kline is the only person I know who received pro bono. She challenged the government's keeping secret its procedures awarding Honours.<sup>311</sup>

Hers was a "sure win" case, but the High Court ruled against her in a unanimous decision criticised by politicians, legal academics and privately by a former High Court judge. Although she didn't have to pay for her pro bono lawyers, she was still liable for the Commonwealth's costs. Four out of five of those judges, the ones who had Orders of Australia, awarded costs against her.<sup>312</sup>

*"No Win No Fee"* lawyers only take on simple "sure-thing" cases, such as personal injury; These are straight-forward and usually settled without ever stepping foot into court.<sup>313</sup> If victims lose they don't need to pay their lawyer, but they still have to pay court costs and their opponent's legal fees.

To your credit, I understand you did ask the Productivity Commission to look at ways to make the justice system fairer.<sup>314</sup> Unfortunately I am told that the Productivity Commission have opted to maintain the status quo.<sup>315</sup>

But surely the quickest way for you to have made the justice system fairer was as Attorney-General to have enforced the *Model Litigant Policy*, as Robert McClelland had tried to do.<sup>294</sup>

As for the many taxpayer-funded NGOs and CLCs who purport to advocate for human rights and civil liberties, we find despite their public rhetoric about rights and freedoms in practice they will not support victims of government abuse.<sup>316</sup>

## *The High Court of Australia*

And, as is the case with so many areas of the law that require the balancing of competing societal interests, the law of defamation continues to change. And I am happy to say that when it comes to human rights, our laws are generally changing for the better. From my perspective, that means that our laws are becoming better at protecting human rights, including the right to free speech.

A good example is the establishment by the High Court of Australia's implied constitutional freedom of political communication in *Theophanous v Herald & Weekly Times*, *Lange v ABC* and *Levy v State of Victoria*.

Americans have a clear understanding of their right to free speech. Their First Amendment reads:

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*

Australians on the other hand are expected to rely on the courts for an interpretation of their “*implied freedom of political communication*,” which the High Court progressively narrows every time they are asked what it means.<sup>317</sup> Richard Ackland called one such instance “*one of the poorest and lowest moments for the High Court.*”<sup>318</sup>

Commenting on recent High Court decisions, the IPA's Simon Breheny wrote: “*Decisions such as these demonstrate how weak the implied right to freedom of political communication is. It simply can't be relied upon for protection against laws that restrict our right to freedom of speech.*”<sup>319</sup>

Alexander Hamilton and James Madison: “*It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is today, can guess what it will be tomorrow.*”<sup>320</sup>

Karen Kline's case was based on the perfectly reasonable premise that people should be allowed to see how their taxpayer dollars were being spent, especially in light of some dubious decisions.<sup>321</sup>

The decision against Karen Kline erodes public confidence in the court as an avenue for obtaining justice. One victim of government abuse responded: “*The decision was unexpected ... although it is consistent with the conservative nature of this High Court ... I wouldn't recommend going up to the HCA either. It's hard work, expensive and risky.*”

Further there is the matter of costs. Under American costs rules each party pays their own costs. But Australia has inherited British cost rules, under which the loser must pay the winner's costs. That is a strong disincentive for any citizen to seek clarification on their rights in the courts.<sup>322</sup>

I was told it would cost \$2M to appeal my case all the way to the High Court; \$50K just for the first hearing, and I would be required to pay the courts a large bond to proceed.<sup>323</sup>

And that's on top of a threat by the Commonwealth to get a costs order against me at the first hearing, which would have bankrupted me.<sup>324</sup>

Mr. Dreyfus may be heartened by High Court action, but it is too expensive for most of us.

I write this letter to you on the assumption the “*implied freedom of political communication*” provides me no protection. After all, it provided no protection to Michaela Banerji, Allan Kessing, Dave Burgess or Will Saunders.<sup>325</sup>



Nor can I afford to pay a lawyer \$230-\$500 per hour to check every letter I write. As a layperson I have studied defamation law as best I can, but every letter I write is a nerve-wracking because I know one word out of place could result in me being sued and bankrupted.

All this has a “*Chilling Effect*” on free speech. You can say something, but by the time you get to court you may discover you are not protected. You might be bankrupted by legal fees and damages, or find yourself in breach of some criminal law.<sup>326</sup>

The result is that even if you want to say something, it’s safer not to. That is not free speech.

My second criticism of the absolutist position on free speech is that it ignores the relationship between free speech and other human rights. ... Implementing an authentic human rights agenda requires careful balancing of competing rights against one another.

The US gives free speech primacy. It balances the right to free speech with the right to privacy ('the right to be left alone')<sup>327</sup> and the right to be heard.<sup>328</sup>

But the US does not ban speech as Australia does. Instead the US moves speech out of inappropriate forums (e.g. abuse on a bus; a barricade outside an abortion clinic) into appropriate ones (e.g. printing an opinion in the press; a protest at a safe distance).

In Australia there are sound arguments for the repeal of 18c, but these were ignored by both sides of the debate.

In the US the ACLU defended the free speech rights of Nazis,<sup>329</sup> <sup>330</sup> and the gay-hating Westborough Baptist Church.<sup>331</sup> Not because the ACLU agreed with them, but because their opponents had tried to stop them from speaking using the same laws that racist Southern townships attempted to stop the 1960's Black civil rights marches – which they found 'offensive' and a 'threat to public order.'

And when the Nazis finally spoke in Chicago they were outnumbered and jeered by thousands of counter-protestors.<sup>332</sup> The WBC remains incredibly unpopular and was recently chased out of town; not even gay-friendly San Francisco, but a small conservative mid-western town.<sup>333</sup>

Gay Jewish Journalist Jonathan Rauch: "*Above all, the idea that hate speech always harms minorities is false. To the contrary: painful though hate speech may be for individual members of minorities or other targeted groups, its toleration is to their great collective benefit, because in a climate of free intellectual exchange hateful and bigoted ideas are refuted and discredited, not merely suppressed. The genius of the open society is that it harnesses the whole range of public criticism, including offensive and hurtful speech, in a decentralized knowledge-making process that has no rival at the job minorities most care about: finding truth and debunking bigotry. That is how we gay folks achieved the stunning gains we've made in America: by arguing toward truth.*"<sup>367</sup>

I wrote to the HRC with these arguments and research to back them up, but their commissioners did not respond either directly nor in their public statements.<sup>334</sup>

Perhaps Tim Soutphommasane did not respond because he was winning and a victim of confirmation bias.<sup>335</sup> Changing his public position or acknowledging its weaknesses, even in the light of new evidence would look like 'flip flopping,' which as a former ALP staffer<sup>336</sup> he would know is political poison.<sup>337</sup> But others had raised similar concerns to those I did long before me, to no avail either.<sup>80</sup>

Tim Wilson did not respond either, perhaps because he preferred to argue 'The Right to Offend',<sup>338</sup> or George Brandis' 'The Right to be a Bigot.'<sup>339</sup> Had Tim Wilson educated the public on the merits of free speech, and warned how laws that restrict speech can be turned on their head, I believe he might have succeeded.<sup>340</sup> Instead he appealed to offensiveness for no other reason than the right to offend,<sup>341</sup> which of course alienated the public who generally loathe bigotry.

Tim Soutphommasane has won, but his victory is hollow. He has only driven racism underground. The irony is that Andrew Bolt's public column ultimately led to the debunking of the unfair stereotype against fair-skinned aborigines.<sup>342</sup> Such talk will now be held privately or in pubs where it is unlikely to go challenged.

They still don't get it. They still have an undergraduate understanding of political philosophy and of human rights. The Abbott Government still doesn't understand, as any human rights lawyer could explain, that the human right to free speech has always been subject to the human right to be free from racial discrimination.

Yet you, who seem to imply you have a postgraduate understanding of political philosophy and human rights, are confusing “speech” with “conduct.”<sup>343</sup>

You show no understanding for the danger of applying subjective tests to offensive speech.<sup>344</sup>

You do not appear to understand that laws which restrict the free speech of majorities can also be used to restrict the free speech of minorities.<sup>345</sup>

You overlook that free speech through rational debate can arrive at the truth, that free speech can promote tolerance and provide a forum for people who believe they are oppressed to air their grievances, so that the government can hear and address those grievances in an orderly manner.<sup>346</sup>

You fail to consider that those stereotypes will persist in private conversations or pub talk.<sup>347</sup>

You fail to recognise that people who believe those stereotypes will find other ways to upset minorities.<sup>348</sup> For example, unexplained rudeness<sup>349</sup> or political dog whistling.<sup>350</sup>

You seem to believe that if the government suppresses speech of certain topics in public forums, that people will simply cease to hold those views.<sup>351</sup>

Take the gang rape<sup>352</sup> in Sydney by African migrants or the Lebanese gang rapes as examples.<sup>353</sup> Do you really think by preventing concerned residents from publicly expressing their concerns they will simply cease to be concerned?<sup>354 355</sup> (Or will they take the law into their own hands?)

Likewise the recent incident where five youths were arrested for verbally abusing Jewish schoolchildren on a bus.<sup>356</sup> That incident was cruel; the targets were after all politically-inactive children with no control over what is happening in Gaza (and whom might even personally disagree with it), and they were on a bus; which is a textbook example of abuse of a captive audience.<sup>357</sup>

Others have been also accused of anti-Zionism too, such as Mike Carlton.<sup>358</sup>

So too Fairfax who allegedly published ‘an anti-Semitic cartoon portraying an ugly, hook-nosed Nazi stereotype of a Jew<sup>359</sup> causing anguish and distress<sup>360</sup> within Australia’s Jewish community:

Australian Jewish News: *‘The Sydney Morning Herald could face legal action after widespread community outrage at a “clearly anti-Semitic” cartoon that could lead to the “inciting of hatred of Jews”. The Executive Council of Australian Jewry (ECAJ) didn’t pull any punches this week when it responded ... “In our view this is racial vilification not only in the sense of offending, insulting, humiliating and intimidating Jews as a group but also in the sense of inciting third parties to hatred of Jews.”’*<sup>359</sup>

With a sympathetic judge and jury<sup>361</sup> could the Jews whom Mr. Carlton and Fairfax offended convict them under 18c?<sup>362</sup> Tim Soutphommasane said 18c is needed because it ‘sends a clear message about what is unacceptable in Australian society.’<sup>363</sup> Surely anti-Zionism is unacceptable? Yet Mr. Soutphommasane said he was ‘agnostic’ on Mr. Carlton’s offensive speech,<sup>364</sup> and has now as Racial Discrimination Commissioner himself been accused of hypocrisy.<sup>365</sup>

Censorship can backfire. It has already made a martyr out of Mr. Carlton, and if anything I suspect his recent sacking by Fairfax would have only polarised his feelings.

This is the danger of suppressing free speech, even offensive free speech.

18c encourages people not to debate their personal feelings about matters such as Gaza publicly, and instead only discuss them in private with trusted audiences. This is a recipe for lawlessness.

It allows negative stereotypes to form the target community has no opportunity to publicly debunk. They won't even know until the first brick sails through their living room window or the first beating in a back alley occurs.<sup>366</sup>

This is why Tim Soutphommasane's victory is hollow.

Jonathan Rauch: *"How do you enforce a hate-speech policy apolitically? How do you prevent it from being coopted by bigoted majorities or opportunistic politicians? How do you prevent overdeterrence and the chilling of important but controversial conversations? Who determines trigger thresholds for actionable speech, and on what basis? What's the cost of stereotyping minorities as vulnerable and defenseless? What's the cost of denying the agency of the listener, who, to some considerable extent, can choose how to react to offensive or hateful speech? And why stop with speech deemed harmful to minority participation, when there is so much other socially harmful speech out there? Doesn't it harm society to let climate-change deniers yammer on?"*<sup>367</sup>

Instead you might take a leaf out of Israel's own book where, to their credit, they allowed an incredibly divisive debate between Secular and ultra-Orthodox Jews. That debate resulted in extremely large protests with some violence. But the authorities had the good judgment not to stop it, because they realised doing so would only cause tensions to simmer and could result in larger and uncontrollable violence. Ultimately the issue was resolved, and while not everyone is happy with the outcome, everyone had their say.<sup>368</sup>

It was the mistaken belief that an absolute freedom of speech trumps other important rights which drove the Abbott Government's misguided attempt to repeal s 18c of the Racial Discrimination Act.
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I think Hugh Riminton hit the nail on the head: *"Whatever reasoned arguments there might have been for a review of 18c were torpedoed by ideological over-reach and downright nastiness."*<sup>369</sup>

## The Marketplace of Ideas

The marketplace of ideas holds that people have freedom of thought, and it is not the role of government nor the courts to tell the people which of their ideas is right and which isn't.

US Supreme Court Justice John Paul Stevens: *"For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas."*<sup>370</sup>

Instead of being dictated to by government or judges, let the people arrive at their own conclusions by free and transparent public discourse. The more voices contributing to a debate, the more ideas to choose from, and the more minds to debunk bad ideas.

***But for the marketplace of ideas to work, all voices must be heard.***

Historically government only listens to itself and the powerful.<sup>371</sup> They use their influence over the media, the courts<sup>372</sup> and the police<sup>64</sup> to silence critics.

HRC Tim Wilson infamously tweeted: *"Walked past Occupy Melbourne protest, all people who think freedom of speech = freedom 2 b heard, time wasters ... send in the water cannons."*<sup>34</sup>

Freedom of Speech is useless without the Right to be Heard. The ACLU's Aryeh Neier argues that intolerance develops only when a minority is not able to respond to hate speech<sup>373</sup>

***The weaknesses in the marketplace of ideas is that powerful voices are always heard,<sup>130 374</sup> it is exceptionally hard for the weak to be heard, and that debate is not always rational.<sup>375</sup>***

But instead of finding ways to overcome these weaknesses, your solution is to give an elite group of people – politicians and the courts – the power to censor speech; To control which ideas the public are permitted to consider, and which are too dangerous for their feeble minds to contemplate.<sup>376</sup>

This gives you the power to silence any ideas you disagree with.

From your statements it seems you reject Voltaire's principle. That being so, how can we trust that you won't silence speech simply because it contradicts your own political beliefs?

And how can we trust you won't silence speech because it's an embarrassment to your party?

I put to you that this happened when:

- (i) As Attorney-General you failed to act on my letter of April 4, 2013;<sup>377</sup>
- (ii) When the *Senate Committee for Legal and Constitutional Affairs* refused to accept my parliamentary submission, seemingly rubbing my nose in the fact it would not have parliamentary privilege which would have let me speak publicly, and allowed the press to safely pursue the corruption allegations;<sup>256</sup>
- (iii) When that Committee failed to engage other whistleblowers, who also complained *"we were not listened to;"*<sup>378</sup>
- (iv) Instead the Committee chose to hear only testimony from the government's own experts<sup>379</sup> (whom had the same information as you, but did not discuss it at the hearings).<sup>380 381</sup>

Had you acted on the contents of the April 4 letter, several Labor ministers may have faced criminal charges,<sup>382 533</sup> which would have challenged the minority Labor Party's grip on power.<sup>383</sup> (I understood the Labor Party paid Craig Thomson's legal expenses for similar reasons.)<sup>384</sup>

In my opinion, this is a textbook case of a governing majority using its power to control speech to suppress a minority from challenging it.

I usually don't quote fictional characters, but on this occasion I'll make an exception:

Tyrian Lannister: *"When you tear out a man's tongue, you are not proving him a liar; You're only telling the world that you fear what he might say."*

Which is to say the government cannot be trusted with the power to control speech, because it's first instinct will be to protect its own grip on power.<sup>385</sup>

Glenn Greenwald: *"People who advocate these laws somehow convince themselves that if they give the power to the government to prosecute people for expressing 'hateful' or dangerous ideas, those laws will only be applied against ideas that they dislike. But that is never how laws work. And it is particularly mystifying to me that anyone who has watched our current administration and its followers in action, seizing every power they can get their hands on in order to control information and criminalize dissent, would think that it is a good idea ever to allow the government – any government – to punish people for their ideas and comments."*<sup>386</sup>

US Supreme Court Justice William Douglas: *"The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote ..., it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes."*

*Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.*

*Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, ..., is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. ....*

*There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups."*<sup>387</sup>

Which flies in the face of LNP Attorney-General George Brandeis QC's proposal to change 18c so offence is *"determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community."*

Chris Merritt in *The Australia* asks: *'Is it appropriate for the law to impose duties on judges that, to many, look more like those of an editor?'*<sup>388</sup>

It's no more appropriate for a judge to censor ideas than it is for politicians (representing the majority), or the community (the majority itself) via a jury or a democratic referendum.

What if the individual's ideas are in fact correct? And how can the correctness of that idea even be determined without rational debate in the marketplace of ideas?

US Supreme Court Justice Stevens: *"It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression — at the hand of an intolerant society."*

### ***The Political marketplace of ideas in practice***

Glen Greenwald: *“Although [critic] mocks the marketplace of ideas as some sort of obsolete relic of the past, it is undeniably true that arguments in favor of equality for women and gay people have triumphed over bigotry, not because bigots have been imprisoned, but because those ideas have proven more powerful, more persuasive.”*<sup>389</sup>

Gay Jewish Journalist Jonathan Rauch: *“That is how we gay folks achieved the stunning gains we’ve made in America: by arguing toward truth.”*<sup>367</sup>

Joshua Goldberg: *“People are not braindead, glassy-eyed automatons who mindlessly accept absolutely everything that they read or hear without even thinking about it. People respond positively to well-thought-out, persuasive, and reasonable arguments – not to crude, obnoxious, and offensive vitriol. Why encourage people that you hate to express views that you loathe in a civil and reasonable way rather than in a crass and despicable way?”*<sup>390</sup>

If hate speech is as dangerous as claimed, shouldn’t we now be removing from our libraries, internet and history classes any references to the Nazis and Hitler less anyone read about them and be seduced?

It is true you will never convince everyone. 93% of Australians and New Zealanders have heard of the Holocaust. Of those that have heard of it, 12% question the accuracy of its historical portrayal. Yes, 1 out of 10 Australians are Holocaust deniers, albeit of varying intensity.<sup>391</sup>

But does anyone think banning public speech about Holocaust denial will turn them into believers? If anything, publicly challenging their views, as Derryn Hinch challenged David Irving, has a better chance of convincing them and discouraging new converts.<sup>392</sup>

Holocaust denier David Irving does have a small band of loathsome customers, but if anything, the more you know of them, the more you dislike them.<sup>393</sup>

When African-American students laughed at Steven Spielberg’s film *Schindler’s list*, he visited them, found common ground when he learned that they found it hard to empathise with another minority when they themselves were victims of ongoing discrimination, and arranged free screenings for other high schools.<sup>394</sup>

But if he had publicly condemned them and stood by while the school authorities punished them, it would have likely backfired and bred resentment.

## *The Scientific marketplace of ideas in practice*

The scientific marketplace of ideas is better than most. Scientists are expected to argue rationally, to use scientific method, and have peer-reviewed journals in which to publish ideas.

But Science Journalist Matt Ridley points out: *“Scientists are human. They allow their prejudices, their interests and their loyalties to get in the way of reason. Sometimes, ideas in science cannot prevail until their diehard opponents have died hard. Theory, it is said, advances ‘funeral by funeral.’”*

Australian scientist Barry Marshall is famous for two things: drinking a petri dish of bacteria, and winning the Nobel Prize for the discovery those bacteria caused stomach ulcers.

Barry Marshall and co-winner Robin Warren weren’t ostracised, but their idea was ridiculed.

Barry Marshall: *“I presented that work at the annual meeting of the Royal Australasian College of Physicians in Perth. That was my first experience of people being totally sceptical. To gastroenterologists, the concept of a germ causing ulcers was like saying that the Earth is flat. After that I realized my paper was going to have difficulty being accepted. You think, ‘It’s science; it’s got to be accepted.’ But it’s not an absolute given. The idea was too weird.”*<sup>395</sup>

The journal’s first instinct was not to publish, but even when they did, it was ignored anyway: *“Q: You published a synthesis of this work in The Medical Journal of Australia in 1985. Then did people change their thinking? A: No, it sat there as a hypothesis for another 10 years.”*

Just as free speech reform would put defamation lawyers out of work, a cure for stomach ulcers would have the same effect on gastroenterologists: *“Whenever we presented our stuff to gastroenterologists, we got the same campaign of negativism. I had this discovery that could undermine a \$3 billion industry .... Every gastroenterologist was doing 20 or 30 patients a week who might have ulcers, and 25 percent of them would. Because it was a recurring disease that you could never cure, the patients kept coming back.”*

Drug companies would not support their research either: *“They all wrote back saying how difficult times were and they didn’t have any research money. ... There was no incentive to find a cure.”*<sup>396</sup>

Although some microbiologists supported their work, those voices were drowned out by the majority: *“But those papers were diluted by the hundreds of papers on ulcers and acid. It used to drive me crazy.”*

The turning point wasn’t drinking the petri dish of bacteria. He did that back in 1984, and by the following year found he could cure nearly anyone who walked through the door.

Rather in 1993 it was the involvement of public relations firm Hill & Knowlton (working for drug company Procter & Gamble who by sheer fluke had an over-the-counter medicine which killed the same bacteria): *‘Publicity would come out. Stories had titles like “Guinea-Pig Doctor Experiments on Self and Cures Ulcer,” and Reader’s Digest and the National Enquirer covered it. Our credibility might have dropped a bit, but interest in our work built. ... ultimately, the NIH and FDA ... said to the journals: ‘We’re going to move forward and get the news out.’ That happened quite quickly in the end. Between 1993 and 1996, the whole country changed colour.’*

The marketplace of ideas is inefficient, subject to vested interests, wealth distorting access, a loud majority, and elite voices dismissing newcomers who challenge established thinking. No doubt many revolutionary ideas have been lost along the way.

But for all its flaws, it works.



Mark Dreyfus rejects the marketplace of ideas as being “imagined.”<sup>397</sup> How is this imagined?

His alternative is to let the elite (in his case, politicians and the courts) control which ideas can be discussed, or even determine which ideas are right or wrong.

But what if Edward Jenner, inventor of the smallpox vaccine, yielded to the elite Royal Society who rejected his paper, telling him: “*a Fellow of the Society ought not to risk his reputation by presenting to the learned body anything which appears so much at variance with established knowledge, and withal so incredible.*”

Mark Dreyfus might say the scientific marketplace of ideas is different, because it doesn’t have offensive ideas:

But some doctors found offensive Ignaz Semmelweis’s suggestions to wash their hands.<sup>398</sup>

Many people find the idea of racial intelligence offensive.<sup>399</sup> Similarly hereditary intelligence.<sup>400</sup>

The Soviet Union censored science which contradicted their political philosophy.<sup>401</sup>

Mark Dreyfus might say that only “dangerous” ideas should be censored:

I’m pro-vaccination, and am concerned anti-vaccination advocates are persuading people not to immunise their children, and that this is dangerous.

But I know two anti-vaccination families. Having understood how they reached their conclusions, I can see their beliefs are founded flawed premises. These people could benefit from rational debate. (See below).

There is also a plausible theory that contaminated polio vaccinations caused the AIDS virus to jump from monkeys to humans.<sup>402</sup> Matt Ridley: “*I hope it is not true, yet I have always thought the circumstantial evidence Hooper exhaustively gathered was strong enough to merit serious discussion.*”<sup>90</sup>

It’s possible that this theory might be used as fuel for anti-vaccination campaigns. But it must be tested by rational debate. If it’s false, we can all breathe a sigh of relief. If it’s true, medicine needs to adapt so it can reassure the public it won’t happen again.

Suppressing it would be the worst of both worlds. Governments can forcibly censor public speech, but it is still difficult for them to censor private speech.<sup>403</sup>

## ***Overcoming weaknesses in the political marketplace of ideas***

### ***The Right to be Heard***

The first weakness of the political marketplace of ideas is that most people still rely on the mainstream media for news and opinion, but the mainstream media lends their platforms almost exclusively to the government and powerful people.

I’m far from convinced that these people know any better than we do. In researching this open letter I read articles from many powerful people; Mark Dreyfus, Neil Brown, Tim Soutphommasane, Tim Wilson, and others. Once stripped of sophistry, self-righteousness,<sup>404</sup> faux authority<sup>405</sup> and (in my opinion) feigned intellectual elitism, their arguments were appallingly weak.

Politicians and lawyers must become so used to winning arguments by sophistry, they lose their ability for rational debate, if they ever had it. No wonder they are so terrified of town hall meetings.

Realistically, the media won't change. They're in the business of making money, and the *Brisbane Times* wouldn't keep Jessica Rudd on the payroll unless people were reading her blog.<sup>406</sup>

Social media offers the public an alternative, although it's in need of much improvement.

The best exchanges I have ever seen are long dialogues between people with alternate views, rationally arguing towards truth. (Not arguing to win, as happens in a court room.)

Unfortunately Twitter is too choppy for a serious debate on anything.

Sites such as *The Conversation*, *Online Opinion* and *the Drum* are more like monologues, putting up elite views which are not challenged, nor the basis for an ongoing debate. The comments on news websites are no better; You can have your say, but no one is listening.

Social media from politicians is similarly a one-way monologue. The public are well aware most of our e-mails are never even read. Politicians are not interested in publicly debating their party's performance (because they know it is indefensible.)<sup>407</sup>

There are a lot of frustrated people out there trying to be heard. Twitter is a sea of voices who want someone to listen to them; Their politicians aren't. And I've come to realise that some journalists are frustrated pseudo-politicians using their platform to preach to the public. They're not interested in dialogues either.

But social media offers people a way to be heard, which is better than what we have at the moment; An inclusive social media platform allowing meaningful debate is a worthy goal.

### ***Rational Debate***

The second weakness of the political marketplace of ideas is that debate is not always rational. Speakers use tricks to manipulate listeners, which listeners often fall for. And speakers and listeners are both victims of flaws in the human brain which interfere with rational thinking.

Social psychologist Robert Cialdini points out that if people are aware of these flaws, they can spot and avoid being trapped by them, and improve their own thinking.

**Vulnerability to Sophistry.** Some politicians are extremely bad liars, but others – notably lawyers – are extremely good liars. Sophistry can be very hard for a listener to spot, yet it can persuade them to enthusiastically support positions or politicians detrimental to them.<sup>105</sup>

Logic is a powerful tool for analysing arguments;<sup>408</sup> Strip away sophistry and self-righteousness.<sup>409</sup>

**Vulnerability to Backfire.** *'Facts don't necessarily have the power to change our minds. In fact, quite the opposite. ... Researchers at the University of Michigan found that when misinformed people, particularly political partisans, were exposed to corrected facts in news stories, they rarely changed their minds. In fact, they often became even more strongly set in their beliefs. Facts, they found, were not curing misinformation. Like an underpowered antibiotic, facts could actually make misinformation even stronger. This bodes ill for a democracy...'*<sup>410</sup>

**Vulnerability to Misinformation.** *"Misinformation stays in memory and continues to influence our thinking, even if we correctly recall that it is mistaken. Managing misinformation requires extra cognitive effort from the individual. If the topic is not very important to you, or you have other things on your mind, you are more likely to make use of misinformation. Most importantly, if the information fits with your prior beliefs, and makes a coherent story, you are more likely to use it even though you are aware that it's incorrect."*<sup>411</sup>

**Vulnerability to Cognitive Dissonance, Confirmation Bias, Self Delusion.** Only seeking data which supports our existing views; Ignoring any data we come across contradicting them.<sup>412 413</sup>

Neil DeGrasse Tyson says a good way of overcoming this is “*Follow the evidence wherever it leads, and question everything.*” Take nothing for granted; Challenge every premise; Don’t begin with a particular conclusion in mind; Beware of subconscious biases, of favouring what we are familiar with, or focusing only on recent events; Beware of early subconscious decisions as they skew subsequent ‘reasoning’; Expose yourself to alternate points of view – not trolls, but others holding genuine views; Ask yourself ‘Could I be wrong?’

**Vulnerability to Conformance.** Human beings are herd animals who conform with the herd. We tend to agree with majority views, especially if uncertain. But the majority can be wrong.<sup>414</sup>

**Vulnerability to Fear of Change.** Given a choice between or something that may leave us much better or worse off, and the status quo, most people will pick the status quo.<sup>415</sup> ‘Play it safe’ and ‘Why take the risk?’ are common themes in marketing<sup>416</sup> and politics.<sup>417</sup>

The ALP and LNP play on this fear to discourage people from voting for new parties, and the ‘danger’ of a hung Parliament. But politicians don’t run this country. The public service does.<sup>636</sup> If Parliament was shut down for six months, it would make little if any difference.

**Vulnerability to Emotional Decisions.** People tend to make quick emotional decisions on a subject, then having made it, stick with it no matter what. The best advice I ever received in engineering was: “*Never get emotionally attached to an idea. You might turn out to be wrong.*”

**Vulnerability to Authority.** People are suckers for authority. That’s why people take their free speech advice from Mark Dreyfus QC and not from me.<sup>418</sup>

Some people exploit that to keep laypeople out of a debate. For example, in a *Guardian* opinion piece Tim Wilson wrote “*Before anyone screams "free speech", they should actually know what they are talking about.*” But having read Tim Wilson’s own writings on free speech, I’ve come to the conclusion he himself doesn’t know what he is talking about.<sup>419</sup>

**Vulnerability to misplaced Authority.**

The **Dunning Kruger effect** is that people presenting themselves as experts can be incompetent or unskilled, yet earnestly believe they are geniuses.<sup>420</sup>

A variant, **Instant Expert Syndrome**, is people assuming they have an deep intuitive knowledge of a subject without needing to do any research.<sup>420</sup>

This would include politicians, censors and public servants who set policy (e.g. ignoring academics while drafting the *Defence Trade Controls Act*, ignoring doctors trying to reform the health system.)

Tanya Crothers makes an insightful observation regarding politicians ruling on gut instinct:

**“Gut reaction poor basis for foreign policy.**

*In common with other commentators, Peter Hartcher implies that, despite budget difficulties, “Team Australia’s” forceful response to international events makes Tony Abbott a serious commander-in-chief of foreign affairs.*

*No. Abbott is displaying the same reckless tendency to go with his gut reactions that characterises nearly all his policies – he pursues perceived short-term gains with no serious thought for long-term consequences. ...”*

Letters to the Editor. *The Sydney Morning Herald*. September 8, 2014.<sup>421</sup>

**Judging by words, not by actions.** Unless we are on our guard, we assume organisations and people will live up to their words. But often what they do, and what they say they do, are very different. People are especially prone to falling into this trap when judging themselves.<sup>422</sup>

**Vulnerability to Trust and Liking.** If people like someone, they're more likely to assume their views are correct and to trust them. Politicians are particularly good at exploiting this.<sup>423</sup>

**Failure to recognise conflicts of interest.**<sup>424</sup> *'Follow the money.'* My experience is people's loyalty is not guided by morality nor public duty, but where they get their money from, or who put them where they are.<sup>425</sup> This is far stronger than many realise; it is almost absolute, seen in politicians,<sup>426</sup> public servants,<sup>427</sup> academics,<sup>428</sup> NGOs<sup>429</sup> and many (though not all) journalists.<sup>430</sup> Groups will always defend their members against outsiders.

People should never take authority on its word; Authority is prone to conflicts of interest; James Madison: *"All men having power ought to be distrusted to a certain degree."*

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I'm scratching the surface here. Sociology, psychology, neuroscience and critical thinking all provide ways for us to better understand and improve our thinking.

Every man and his dog is trying to get their own agenda into the school curriculum, but surely society as a whole would benefit if students were taught critical thinking and encouraged to be clear-headed rational participants in the political process instead of easily-manipulated bystanders.

This is not to be confused with school debating. If you examine the rules for such debates, it's not about the pursuit of the truth; It's about winning an argument, the same way that lawyers and politicians win.<sup>431</sup> The whole concept of a 'debating championship' is an oxymoron because if we are seeking the truth then the truth should win every time.<sup>432</sup>

We don't need more politicians and lawyers. (Japan has more flower arrangers than lawyers.)<sup>433</sup>

We need more well-informed citizens capable of rational debate:

US Supreme Court Justice Brandeis: *'The greatest menace to freedom is an inert people; Public discussion is a political duty; this should be a fundamental principle of Government.'*<sup>434</sup>

## Your claim the ICCPR justifies government restriction of free speech

That free speech is limited by reference to other human rights is apparent on the face of the international agreements we have agreed to. Article 19 of the International Covenant on Civil and Political Rights ('ICCPR') states that everyone shall have the right to freedom of expression. That article goes on to stipulate, however, that the exercise of this right 'carries with it special duties and responsibilities'. The right to freedom of expression may be curtailed in order to protect the rights of others.

The ICCPR<sup>435</sup> grants<sup>436</sup> the people of the world to right to free speech, but gives government the right to restrict speech *'for respect of the rights or reputations of others; for the protection of national security or of public order (ordre public), or of public health or morals.'*

The ICCPR does say that those restrictions *"shall only be such as are provided by law and are necessary."*

But governments pass laws, so can pass any laws they like, and claim they are "necessary."

In other words, we have the Right to Free Speech... except when the government decides we don't.

### ***Rights the government can take away are not rights at all***

The purpose of rights is to protect the individual from abuse by the government;  
A right the government can simply take away is worthless.

The European Convention of Human Rights declares ***'Everyone has the right to freedom of expression'*** and then gives a long list of exceptions: *'may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'*<sup>437</sup>

The *Victorian Human Rights Charter* is drafted along those lines.  
It has so many exceptions it isn't worth the paper it's written on.<sup>438 439 440</sup>

### ***Restricting speech: 'for the protection of public order.'***

For example, take the restriction of speech *"for the protection of public order."*

Governments can exploit this to stop any speech they disagree with, simply by claiming the speaker's supporters might be whipped into a frenzy or their opponents enraged by what they hear, and will attack each other, or simply riot, destroying property and attacking bystanders.

There doesn't even need to a genuine possibility of violence; The government only need claim there *might* be. This gives the government the power to arbitrarily suppress any speech they dislike.

But Professor of Law at the University of Chicago, Geoffrey R. Stone says even if there would be uncontrollable violence, *"But is this a reason to suppress speech? Isn't the obligation of the government to protect the speaker and to control and punish the lawbreakers, rather than to invite those who would silence the speech to use threats of violence to achieve their ends?"*<sup>441</sup>

US Supreme Court Justice Louis Brandeis: *"Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly."*

That is, punish people for what they do. Not what they say.

Having a listener apply subjective tests about a speaker's intent is dangerous. It allows one group of people to be able to punish another if they don't like the speaker or what they are saying.<sup>442</sup>

Further when you give the government the power to restrict free speech, you also give them the power to also restrict speech which is embarrassing to the government or their financiers;<sup>443</sup> Defamation law, sub judice and court suppression orders can all be used for this.

***Restricting speech: Criticism of the courts as 'a threat to public order.'***

Likewise Australians who criticise the courts can be fined or jailed for contempt on the basis that challenging the court is also a threat to public order.<sup>444</sup> Criticising a judge can also result in a large defamation penalty.<sup>445</sup> As a result, criticism of the courts in Australia is almost unheard of.

The result is a curious anomaly. While we hear of endemic corruption in other branches of the government, we scarcely read a word about judicial corruption. This promotes a public stereotype that judges are wise and incorruptible. I myself accepted that stereotype, until one day a lawyer asked me: *'What do you think of lawyers? What do you think of politicians? Do you realise that judges are lawyers appointed by politicians?'*

Yet in America journalists are allowed to openly criticise the courts and their judges,<sup>446</sup> and somehow civilisation has not yet collapsed.

***Restricting speech: 'To protect reputations'***

Mr Dreyfus would no doubt claim this justifies his profession as a Defamation lawyer. But I have shown that Defamation does not protect reputations, except for the rich, and even then sometimes not even the rich.<sup>39</sup>

Brian Martin: *"Defamation law is supposed to protect reputations, but in practice it often serves to suppress free speech.... It is an absolute disaster for ordinary individuals. It doesn't protect reputations and it is regularly used to squelch open discussion."*<sup>447</sup>

***Restricting speech: 'To protect public morality'***

The ICCPR allows governments to protect free speech to 'protect public morality'.

It's contradictory that the government (read 'the majority') aren't allowed to force their religious beliefs on someone, yet are allowed to enforce their morals, even those morals which come from religious beliefs in the first place.

Consider the West's loathing of any hint homosexuality, founded in the Bible's condemnation of homosexuality.<sup>448</sup> Even today in Queensland, an unwanted homosexual advance downgrades a charge of murder to the less serious offence of manslaughter.<sup>449</sup>

Contrast that to the (non-Christian) East's ambivalence; Gay Samurai<sup>450</sup> and Thai Ladyboys.<sup>451</sup>

Hypocrites are by definition blind to hypocrisy.<sup>452</sup> An otherwise rational Christian man once told me he was offended by homosexuals at the Mardi Gras; *'What they do in private is their own business, but why do they have to be like that in public?'*

But he was married to a woman from another race, and it didn't occur to him that when they go out in public together bigots might find their 'mixed marriage' offensive.

Giving the government (read 'the majority') a license to restrict free speech to protect 'public morality' is little different from forcing them to live according to someone else's religion.

Same with a governing minority; Christian conservative Joh Bjelke-Petersen used an electoral Gerrymander to rule Queensland with a minority government for twenty years.<sup>453</sup> Pubic hair wasn't shown in Queensland *Playboy* to protect public morality,<sup>454 455</sup> and *Penthouse* was banned.<sup>456</sup>

Live and let live. Gays and pubic hair have been around practically forever, and somehow civilisation has not yet collapsed.

***Restricting speech: The HRC's bogus claim that Article 20 nixes Article 19***

The Australian HRC claims 18c is a legitimate restriction of speech, consistent with the ICCPR.<sup>459</sup>

But the UN Special Rapporteur (SR) on freedom of religion or belief, Heiner Bielefeld, warns signatory countries they cannot use Article 20 (Freedom from Hatred)<sup>457</sup> of the ICPPR to thwart free speech (Article 19).<sup>458 459</sup>

He says the “root causes” for hatred are “***political authoritarianism which discourages people from communicating openly and participating actively in public debates....Governments may also instrumentalize religion as a means of shaping and reinforcing narrow concepts of national identity, tapping into feelings of religious belonging for the purpose of strengthening political loyalty.***” ... “***It cannot be emphasized enough that this provision does not demand a prohibition of sharp or even hostile speech in general: instead it concentrates on such forms of hatred advocacy that constitute ‘incitement’ to real acts of discrimination, hostility or violence.***”<sup>460 461</sup>

That is, punish incitement to commit crimes. Not subjectively offence.

Punish people for what they do. Not what they say.

More plainly, the UN SR says: “***Accordingly, the guarantees of freedom of expression as enshrined in article 19 of the Covenant can never be circumvented by invoking article 20.***”<sup>462</sup>

This contradicts Mark Dreyfus's claim that:

... any human rights lawyer could explain, that the human right to free speech has always been subject to the human right to be free from racial discrimination.
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## Inalienable rights cannot be taken away by the government

The preamble to the Universal Declaration expressed the General Assembly's recognition of 'the inherent dignity and of the equal and inalienable rights of all members of the human family'.

If these rights are '*inalienable*,' then neither you nor the government can take them from us.<sup>463</sup>



## Taxpayer-funded NGOs advocating political positions

Though this Government says it has a 'profound' commitment to free speech, it has deliberately sidelined expert NGOs from policy discussion.

Senator Brandis has changed the terms on which the Commonwealth funds community legal centres ('CLCs') right around the country to prevent them from speaking out on ways in which the law might be usefully reformed, or even from responding to Government inquiries and consultations.

He has amended the sector's funding agreements to exclude Commonwealth funding for 'law reform and advocacy'.

Senator Brandis' moves may well be motivated to silence opponents to his political agenda, and I do applaud your condemnation of his proposals to silence environmental activists.<sup>464</sup>

However he has a point about NGOs. NGOs receive taxpayer dollars to provide services to the community. They are not paid taxpayer dollars to participate in the political process.

I myself have spent far too much time away from my business writing publicly-minded letters such as this one which I hope will influence policy. But I do not receive so much as a cent of taxpayers' money in doing so. Indeed, the time away from my business results in a loss.

I should quite like to sit at home writing letters such as these and be paid to do so out of the public purse. I assume many bloggers and people on Twitter would also take you up the same deal. One might argue HRC commissioners Tim Wilson and Tim Soutphommasane have dream gigs; able to promote their political beliefs while paid enormous salaries from the public purse.<sup>465</sup>

You might argue that only lawyers are entitled to such taxpayer funding. However I think Ozloop's Steve Davies has been a better advocate for the rights of public servants than any taxpayer-funded NGO or CLC; Recently he helped an abused whistleblower whom no NGO nor CLC would touch. Likewise I believe I have a better understanding of free speech and rights than the HRC,<sup>466</sup> or, for that matter, yourself.<sup>467</sup>

Further one would reasonably expect that any NGO which purports to be a human rights organisation or civil liberties council would take an interest in any infringement of human rights. But their focus appears to be on criminal law and policing, or for some, refugees.

Apart from the CLA, confronted with government abuse of the individual rights of ordinary Australians, no other NGOs nor CLCs showed any no interest whatsoever.<sup>468</sup> One, run by a QC, told another whistleblower: '*But Dear, whistleblowers are different...*'<sup>469</sup>

Some NGOs and CLCs appear to promote the political<sup>470</sup> and professional interests<sup>471</sup> of their founders, or provide government-funded employment for lawyers, like the Legal Aid rort.<sup>472</sup> This was in fact Kevin Rudd's response to Father Frank Brennan's Human Rights Report; not to protect us with a Bill of Rights, but bankroll NGOs with taxpayer funds instead.<sup>473</sup>

It isn't working; I already discussed the case of Michaela Banerji; the public servants sacked for anonymously tweeting criticism of the government on her own equipment on her own time. She approached many NGOs but all refused to defend her free speech rights.<sup>474</sup>

Yet some of those same "Human Rights" NGOs who claimed they could not help her were vocal advocates quick to defend the "Freedom of Association" of Queensland Bikies.<sup>475</sup>

So Freedom of Association by criminal gangs is worth fighting for? But free speech by public servants and the abuse of ordinary Australians by the government isn't?

In the 18c debate, Australian NGOs argued for suppression of free speech. Joshua Goldberg said: *'I find it nothing less than absolutely disgusting and depressing how people who claim to campaign for "human rights" are so opposed to the most basic human right of all: freedom of speech.'*<sup>476</sup>

NGOs funded by the government would be understandably reluctant to take on the cases of victims of government abuse, which could embarrass the government, putting at risk the NGO's ongoing funding.<sup>309</sup>

Thus the absurdity of expecting NGO's reliant on government-funding to defend people's rights, when the greatest threat to human rights has always been from government.<sup>477</sup>

Indeed another NGO, who turned away victims of government abuse, gave a corrupt public official a platform to publicly boast of his integrity.<sup>478</sup>

Some NGOs allegedly have close links to political parties.<sup>479</sup>

(By comparison, the American Civil Liberties Union is non-partisan, and provides legal assistance in any case where it considers civil liberties at risk.<sup>72</sup> Australian NGOs supports some causes,<sup>480</sup> but not others with excuses such as *'limited resources'* and *"others better placed to help on that one,"* even when no one else will.)

**Why should taxpayers be forced to bankroll NGOs and CLCs who are so selective about whose rights they uphold, let alone NGOs and CLCs pursuing their own political agenda?**

Ayn Rand: *'Every dollar the government spends is one it took from someone by threat of force.'*

Robert Heinlein said *"There is no worse tyranny than to force a man to pay for what he does not want merely because you think it would be good for him."*

Let those NGOs use taxpayer funds only for their intended purpose. If they wish to play politics, let them set up separate organisations and raise money from places other than the public purse.

Mr. Dreyfus says it's an attack on free speech to *'deliberately sideline expert NGOs from policy discussion.'*

But this is at odds with Mr. Dreyfus and the Labor Party's failure to defend the Free Speech rights of public servants, even though: *"The general legal theory is that the public's interest in how public dollars are spent and public safety decisions are made is very strong, and public employees are in a very good position to address those public interests."*<sup>481</sup>

When public servants have spoken out the Labor and Liberal Parties have shown them no mercy. Mr. Dreyfus cannot have it both ways; That NGO's receiving taxpayer money should be allowed to provide 'expert advice,' promote a political agenda and be participants in the political process, while public servants can't, even on their own time.<sup>482</sup>

We might conclude that the Government cut funding to these community organisations simply because they don't like what those organisations sometimes say and what they sometimes advocate for, regardless of the benefits they consistently provide to our community and our environment.
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Surely that is true of both sides of politics? If Labor had offered to fund the IPA, they could have pursued their libertarian ideals without the need to rely on Gina Reinhardt(?) for their funding.<sup>483</sup>

## “National Security” as a bogus excuse for restricting free speech

I have no desire to politicise national security issues. I have said publicly numerous times, and privately to the Government, that I will always work constructively to help the Government on any legislation necessary to keep our nation safe. Senator Brandis' national security legislation has been referred to the bipartisan Parliamentary Joint Committee on Intelligence and Security for just this purpose.

Perhaps you should challenge “*National Security*.”

“*National Security*” is frequently given as a reason for suppressing free speech, where conveniently for the government they don’t even need to tell us why, ‘for our own good.’<sup>484</sup>

But the Department of Defence’s chronic waste and its indifference to forging security clearances demonstrates the government’s much trumpeted concern for “National Security” is faked.<sup>485</sup>

Likewise “National Interest.” It’s supposedly okay for ASIO to spy on East Timor for Woodside (an LNP Donor) because it’s in the National Interest that Australia gets cheap energy.<sup>486</sup> But that stance is contradicted by the Manildra incident where the Liberal Party added an excise *increasing* energy costs, which happened to benefit of Manildra, another LNP donor.<sup>487</sup>

## Hypocrisy over Shield Laws and Section 70 of the Crimes Act

It is clear to me however that the proposed s 35P as currently drafted is not necessary. It is an unprecedented overreach of government power which poses a real threat to the freedom of the press. Senator Brandis has spent more than two years now fulminating over a civil prohibition on race hatred, and now his own legislation would criminalise an activity of journalists.

The Government must amend the legislation to remove this threat to freedom of speech and freedom of the press. Labor will oppose it in its current form. We will not tolerate legislation which exposes journalists to criminal sanction for doing their important work. Work that is vital to upholding the public's right to know.

Yet you yourself as Attorney-General passed a law which threatens journalists who identify a whistleblower with 6 months jail, even when that whistleblower wants their story to be told.<sup>488</sup>

I recently spoke to a whistleblower whose life had been ruined but found the press unable to tell his story for this reason. The media's own submissions warned you of this.<sup>489</sup>

And as far as “*unprecedented overreach of government power*” goes, Labor's *Defence Trade Controls Act* is an far greater abuse of government power the likes of which have not been seen since 1761:

Rob Oakeshott MP: *'I didn't support [the DTCA]. I spoke strongly against it on its impact on higher education research. LNP+ALP were hand in hand on it though. [The DTCA] was bipartisan overreach.'*<sup>490</sup>

In Government, Labor began working with State and Territory Attorneys-General to create uniform national system of journalist shield laws. We were serious about making sure that journalists were able to do their vital work and uphold their ethics without risking contempt charges and even gaol time. Senator Brandis, stalwart of freedom that he is, has abandoned this work.

The purpose of Shield Laws are to allow journalists to protect their sources, such as federal public servants who under *Section 70* of the *Crimes Act*<sup>491</sup> face two years in jail for revealing “confidential information” (read: anything that embarrasses the government) to journalists; Anything from reporting ongoing drug smuggling by corrupt public servants<sup>492</sup> to telling the public about mismanagement at the National Gallery.<sup>493</sup>

They can be convicted on purely circumstantial evidence, making it extremely dangerous for them to have any contact with journalists whatsoever, or even express at work an interest in stopping ongoing corruption – which might single them out as a person of interest.<sup>494</sup>

For these reasons Whistleblowers Australia says most whistleblowers do not want to speak to journalists anyway.<sup>495</sup> The threat of two years jail is a further disincentive.

So in addition to promoting Shield Laws, would it not also make sense to repeal Section 70,<sup>496</sup> so that public servants can speak out on matters of public interest and concern,<sup>497</sup> without the risk of being hauled off to jail and their lives ruined, as Labor has done to Allan Kessing?<sup>498</sup>

## Labor's hypocrisy on Human Rights

I suggest to you that these attacks on free speech shows what a façade this Government's professed commitment to free speech is.
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The Labor party's professed commitment to free speech, human rights and social justice (*'equality and fairness between human beings'*) is just as farcical, if not more so.

Today Julia Gillard has many fans.<sup>499</sup> Perhaps she wouldn't have so many if the public knew that under her, the Labor Party allowed unprecedented abuse<sup>500</sup> of the public by public servants.<sup>501</sup> And although the Abbott government have also failed to stop federal crime and corruption, they have, to their credit, never used the AFP to threaten me.<sup>502</sup>

I grew up in a Labor family, believing the Liberal Party only cared about the rich,<sup>503</sup> but the Labor party cared about all Australians.

That was reinforced when Labor party politicians went on TV to tell us how deeply they cared about the plight of ordinary Australians, their promises that no one would be left behind, and that they would protect our dignity with social benefits.

Before these events I admired Labor politicians like Julia Gillard, Nicola Roxon, Mark Dreyfus, Stephen Smith, Warren Snowdon (and others I shall not name here) because I thought they cared.

But when I dealt with them, I found their public and private personas to be polar opposites.<sup>504</sup>

In hindsight, I was naïve:

The Labor Party parallels the governments of Soviet eastern-bloc countries.

In theory eastern block countries were founded on Marxist-Leninist ideals like equality,<sup>505</sup> but in practice their governments were corrupt; Party officials used their positions for their own advantage, and the state sought to control every aspect of its citizens lives.

The Labor Party is no better.

They pay public officials obscene benefits,<sup>561</sup> tolerate their crimes,<sup>54 533</sup> and divert budget surpluses into the public service pension fund without most Australians even realising.<sup>564</sup> It's true Labor pays better social benefits than the Liberal Party, but consider this is money they take from the public in the first place, keep a big chunk for themselves, hand back the rest, and expect our gratitude.

Take Julia Gillard, who despite losing her job and her party being kicked out of office at the ripe age of 51 went on a \$200,000 per year pension with a private driver, an office, staff, a car and free travel for life.<sup>506</sup> Or the obscene benefits paid to politicians and senior public servants.<sup>561</sup>

Anyone who looks at this and claims the Labor Party believes in equality is a fool.

I'd heard, but not believed Liberal Party propaganda that the Labor Party was anti-business.

Yet when I read the Labor Party's constitution<sup>507 508</sup> I found it believed in "*establishment and development of public enterprises, based upon federal, state and other forms of social ownership, in appropriate sectors of the economy*" (which explains why Labor gave the Defence Department control over the universities and high-tech businesses<sup>509</sup>, and tolerates incompetence by the state-run DMO<sup>510</sup>) and their support for the private-sector is limited to "*maintenance of and support for a competitive non-monopolistic private sector, including small business and farming, controlled and owned by Australians, operating within clear social guidelines and objectives.*"<sup>508</sup>

This explains the apparent hostility of Warren Snowdon towards me.<sup>511</sup> I later learned that Snowdon is *'a member of the Socialist Left faction and of the hard left of the faction.'*<sup>512</sup>

Until that point I'd dismissed as Liberal Party propaganda claims that socialists were anti-business, but every single action of the Labor Party points towards that conclusion.<sup>513</sup>

At the time I was a Labor Party supporter, so this came as a shock to me. But in the words of Neil DeGrasse Tyson, you must *'follow the evidence wherever it leads, and question everything.'*

I was not a fan of Margaret Thatcher, but having dealt with your party, her description of Left-wing behaviour matches precisely what I have observed: *"Left-wing zealots have often been prepared to ride roughshod over due process and basic considerations of fairness when they think they can get away with it. For them the ends always seems to justify the means."*

Likewise her observation on the left-wing's failure to respect liberty and the rule of law: *"Being democratic is not enough ... In order to be considered truly free, countries must also have a deep love of liberty and an abiding respect for the rule of law."*

Although the Right-wing are indifferent and favour their wealthy donors, they have never treated me with the abuse, criminality and contempt for the rule of law which Labor's *'Party of Social Justice'* has. The worst abuse of whistleblowers has happened under Labor governments,<sup>63 64</sup> (although the Liberal Party is now fast catching up.<sup>514</sup>)

As for control of people's lives, the Labor party commenced a secret public mass surveillance program in 2007, and didn't even tell the public.<sup>543</sup>

## ***Labor hypocrisy on Public Data Surveillance***

*“We’ve seen yesterday, the prime minister and the attorney-general not even able to agree from one day to the next on what they have said they had agreed in principle about their mandatory data regime,” Dreyfus said. “The Australian people deserve a great deal better than this.”*<sup>515</sup>

To an untrained ear, that sounds like Mark Dreyfus is condemning mandatory data retention. Actually he’s only condemning that Abbott and Brandis haven’t “agreed in principle” what it is.

*[Dreyfus] said “a national discussion, a national debate and proper scrutiny” was needed...*<sup>515</sup>

There was no “national discussion” when Labor commenced metadata surveillance in 2007.<sup>544</sup>

They never announced it. The public did not know until Phil Dorling broke the story five years later in 2012.<sup>543</sup> (And no one paid any attention until Edward Snowden broke it again, in 2013).<sup>103</sup>

*Dreyfus said he would not be drawn on Labor’s stance on data retention until the government produced details of their own plan, including oversight and safeguards.*<sup>515</sup>

From the above, Labor’s is stance already clear.

Likewise Labor’s contempt for “national discussion”:

After public outcry on August 8, 2012 ALP A-G Nicola Roxon announced she was dropping a scheme to forcing ISPs to store our web histories as well (data retention):

*“Roxon puts web surveillance plans on ice,” Philip Dorling, SMH, August 10, 2012,  
“A controversial internet security plan to store the web history of all Australians for up to two years has been stalled by the federal government until after the next election.”*<sup>543</sup>

That took off the heat. Then two weeks later she pushed a ‘lite’ version through anyway:

*“Senate passes ‘lite’ data retention laws”, Darren Pauli, IT News, August 22, 2012.*<sup>543</sup>

*[Dreyfus] said that discussion should involve the existing powers that permit warrantless metadata collection by organisations like Bankstown council and the RSPCA.*<sup>515</sup>

Phil Dorling told us:

*“Be careful, She might hear you.” Philip Dorling, 2012-09-25, The Age.  
‘Federal government agencies gaining access to such data include ASIO, AFP, the Australian Crime Commission, the Tax Office, the departments of Defence, Immigration and Citizenship and Health and Ageing, and Medicare.  
Data is also accessed by state police and anti-corruption bodies, state government agencies, **local government bodies and even the RSPCA.**’*

Yes, city councils (including the corrupt Bankstown City Council)<sup>516</sup> have the ability to snoop on citizens without them ever knowing about it.<sup>517</sup>

But are we supposed to be relieved access by the latter two is being reconsidered, even though the Federal Department of Human Services alone was responsible for 170 breaches?<sup>545</sup>

*Mark Dreyfus, July 8, 2013: “Long before the recent leaks in the US, the Gillard government had a bill before the Parliament aimed at improving privacy and better protecting personal information. This bill is now before the Senate and, if supported by the Greens Party and the Coalition, will help Australians respond as quickly as possible when their privacy is compromised.”*<sup>518</sup>

Likewise that last year Mark Dreyfus piously tells us how much he cares about protecting our privacy, all while presiding over a government that spies on us.

### ***Father Frank Brennan's lost Human Rights Report***

In 2008 the Rudd government commissioned Father Frank Brennan to look into human rights abuses.<sup>519</sup>

His report claimed: “Australia has strong democratic institutions that function to protect and promote human rights — among them the Constitution, representative democracy, the federal system, the separation of powers, responsible government, bicameral parliaments, parliamentary committees, and a free press.”<sup>520</sup>

That may have been more true in 2008, just after Kevin Rudd had came to power; Victims’ advocates have attributed the decay of the federal system to Kevin Rudd’s decision to make public servants unaccountable to elected politicians.<sup>521</sup>

But our Constitution is weak.<sup>515</sup> Our representative democracy is corrupt.<sup>522</sup> The federal system is endemically corrupt.<sup>538</sup> The separation of powers has broken down,<sup>523</sup> to the point that public servants appear to have subsumed the powers of the head of state.<sup>524</sup> Bicameral parliaments<sup>525</sup> are of no use when the major parties control both and have similar agendas (e.g. surveillance, TPP, DTCA, refugees, etc). Parliamentary committees are a farce, demonstrated by refusal of the *Senate Legal and Constitutional Affairs Committee* to engage whistleblowers on specious grounds,<sup>526</sup> and completely ignoring the universities submissions<sup>527</sup> protesting the *Defence Trade Controls Bill*.<sup>549</sup>

And as this open letter demonstrates, we most certainly do not have a “free press.” Most Australians don’t know Australia’s first newspaper editors were jailed.<sup>528</sup> The First Chief Justice of NSW declared “A free press is not quite fitted to a servile population.”<sup>529</sup>

Nevertheless Father Brennan properly concluded “these institutions do not always ensure that human rights are considered and debated before the passage of legislation”<sup>549</sup> and do not always ensure that the rights of minority groups are protected.”<sup>530</sup>

Unfortunately Kevin Rudd backed away from Father Brennan’s Report very quickly.<sup>519</sup> Instead of giving us a Bill of Rights, he gave taxpayer money to NGOs.<sup>531</sup>

Thus the Labor Party gets the warm glow of commissioning a Human Rights report, and then shirks their responsibility by not implementing it.

### ***As bad as the Liberal Party is, the Labor Party is far worse defender of rights***

The protection of human rights should not be a matter for partisan contest. Despite what Senator Brandis sometimes suggests, human rights are not and never can be the province of any one party. Governments of both political complexions have made meaningful contributions to human rights protection in this country.

I am very disappointed that George Brandis had failed to honour his pre-election promises to uphold civil rights,<sup>532</sup> but to his credit while he was in opposition when I was threatened by the AFP his advisors sounded genuinely disgusted and arranged about 90 minutes of pro bono advice where I was told how to protect myself.<sup>533</sup>

The ALP on the other hand allowed certain ministers to commit alleged crimes to my detriment;<sup>533</sup> Something I phoned and wrote to Julia Gillard about but she made no effort to stop.<sup>534</sup>

I was interested to read the Victims of ADF Abuse Association recently thanked<sup>203</sup> George Brandis for his intervention to stop alleged mistreatment of abused soldiers by the DART. I have not heard a single case of a Labor politician stopping mistreatment of victims, even when Labor was in power.

So as disappointed as I am with Tony Abbott, I remind myself that the Labor party was far worse.



## **A government which does not protect the rights of its citizens may be overthrown**

As the Race Discrimination Commissioner noted in his excellent Alice Tay Lecture in Human Rights and Law at the ANU in March this year, freedom is not merely the absence of external restraint. We rightly speak of 'freedom to' as well as 'freedom from'.

That was also the lecture where Tim Soutphommasane pointed out the government's hypocrisy over Defamation law.<sup>535</sup>

But since you seem a sucker for poliscience quotes dropped at lectures bearing people's name, I will drop you one from the inaugural Brendan Jones Lecture on Abusive Government:

The Political Philosopher John Locke who formed the theory for liberal democratic government said: *"Thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject."*<sup>536</sup>

That is, when the government fails to protect the rights of its citizens, the government loses its legitimacy and may be justly overthrown:<sup>537</sup>

*"Whenever the Legislators endeavour to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence."*

*Whensoever therefore the Legislative shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavour to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty."*<sup>536</sup>

### ***Your government has not protected the rights of its citizens***

The Abbott government and the Rudd/Gillard government before it has failed to defend the rights of myself and many citizens like me.<sup>538</sup>

I, and many citizens like me, have tried every legitimate avenue available under the government. I myself approached my MP, my senators, the government's ministers, the opposition's shadow ministers, the agency heads, the Public Service Commissioner, the Merit Protection Commissioner, the police, the Commonwealth Ombudsman, the police watchdog, Attorney-Generals, the Prime Minister, the public service's oversight agencies, the courts and the Governor General himself.<sup>539</sup> All failed to act, and you yourself ignored me when I wrote to you.<sup>540</sup>

Labor is trying to claim the moral high ground on privacy and mass surveillance of the public,<sup>541</sup> but Labor hypocritically<sup>542</sup> did the exact same thing when they were in power,<sup>543 544</sup> despite numerous cases of public servants abusing their surveillance powers.<sup>545 546</sup>

Father Brennan's Human Rights Report concluded the majority on the Eastern coast have it pretty easy, but once you cross the Great Dividing Range things get very tough.<sup>519</sup>

Fracking and mining are an attack on rights; Congratulations on alienating a 92 year old Kokoda veteran! ***"What could turn these farmers into unlikely activists? ... Politicians and corporations have ignored them, so these everyday Australians have turned to the only thing they have left - people power. For 800 days and 800 nights they have bravely protected their land and their forests from Whitehaven's machines."***<sup>547</sup>

This is evident in Labor's *Defence Trade Controls Act* which gave the public service the power to control science and high-tech research; the power to force entry into businesses and universities to make copies of trade secrets, and the power to jail, fine and seize the work of any scientist who resists them; the power to decide what academics may publish and whom they may talk to.<sup>548</sup>

Having lost their fight with Department over the DTCA,<sup>549</sup> many universities<sup>550</sup> and companies<sup>551</sup> have signed DSTO "partnership" deals with Defence, because practically there is no other way to survive here.<sup>552</sup>

Labor claims to protect human rights and oppose racism. But it was they who started locking up asylum seekers<sup>553</sup> and their children;<sup>554</sup> people who had committed no crime, and it was Bob Carr who promoted the false stereotype<sup>555</sup> that '*people are coming here, not now as a result of persecution, but because they're economic refugees who've have paid money to people smugglers.*'<sup>556</sup>

It is also evident in Labor's lack of interest in ending the Defence abuses. Soldiers who had been abused, gang raped, sodomised, had their misery protracted when instead of acting definitively against the perpetrators, the Labor party yielded to public servants within the Department of Defence who had a conflict of interest in covering up the abuses.<sup>190 191 193 557</sup>

Head of the DLA Piper Review Gary Rumble condemns Stephen Smith. I condemn Stephen Smith. Janice Weightman, another whistleblower, said her case had shaken her belief in the system: "*Now I have very little faith in the Defence Department and the Labor Government, and especially Defence Minister Stephen Smith.*"<sup>558</sup>

We have seen nothing to suggest any remorse whatsoever by the Labor party leadership. Their resistance to a Federal ICAC shows nothing has changed.

Your government exists in a world where its officials can arbitrarily deprive the people of their rights, yet expects their victims to slink off with their tails between their legs, to find somewhere to curl up and die.

That was the impression I got from the Defence Investigator; a man who has perhaps never built anything of value in his life, but has spent his life suckling at the teat of the public purse. He abused me, and I later learnt his complaints unit had abused other whistleblowers.<sup>533</sup>

Fear and intimidation are standard tactics to conceal crime and stifle dissent.<sup>559</sup>

As if this isn't bad enough, shortly after he and his manger told me it would be a waste of taxpayer's money to investigate my complaint, the media reported their Defence Audit Fraud Control Division was dishonourably named for being amongst the biggest spenders on alcohol and entertainment.<sup>560</sup>

### ***Your government benefits public officials, but not the public***

Politicians and public servants are paid enormous salaries out of the public purse.<sup>561</sup> Canberra has higher salaries than anywhere else in the country.<sup>562</sup> Australia's senior public servants pay themselves much more than comparable positions in the UK and US.<sup>563</sup>

But politicians and public servants do not serve the people who vote for them, pay their wages, and prop up their speciously-named "Future Fund." Most people don't realise the "Future Fund" is not the sovereign wealth fund it's painted to be,<sup>564</sup> but is in fact the public service pension fund.<sup>565</sup>

People who applaud the government for budget surpluses don't realise the surplus is not banked for a rainy day, but "donated" to the "Future Fund" where any attempt to reclaim it for public spending brings howls of protests from the Fund's founder, Peter Costello.<sup>565</sup>

Ralph Borsodi: “*Nominally, government exists and functions for the public. Actually it exists and functions for the benefit of those who have in one of these absurd ways acquired power to govern.*”

Thomas Jefferson: “*I think we have more machinery of government than is necessary, too many parasites living on the labor of the industrious.*” <sup>566</sup>

The public service has swollen under Labor and Liberal alike. <sup>567</sup>

Your government lives off the public, but does not respect their rights.

Your government has no legitimacy.

Unfortunately in practical terms, we can do nothing to stop you. The benefits of incumbency make the Labor and Liberal Party’s 70 year duopoly on power unbreakable. <sup>568</sup> The minor parties are only polling 18% of the vote; no where near enough to challenge you. <sup>569</sup> And your parties have announced they will change the rules to remove the threat from newcomers at the next election. <sup>570</sup>

Your government may have no legitimacy, but its grip on power is unshakable.

I myself have chosen to move overseas to start afresh in a new country. I will have nothing further to do with Australia. If necessary I will renounce my citizenship to avoid becoming subject to your draconian *Defence Trade Controls Act*. <sup>571</sup>

I shall be free of you, but the outlook for Australia is far darker:

***Eventually you will push the people too far.***

I can't predict when that might be; It may be three years from now or three hundred.  
But just as corrupt, abusive and arrogant monarchs have been swept from power,  
so too shall corrupt, abusive and arrogant democracies.

Democracy is not Liberty, because Democracy can be the very opposite of Liberty; It allows a majority to gang up on a minority, or to allow harm to befall them by being apathetic to their plight.

People are inherently self-interested. They come together in times of crisis when they share a common threat (*'That could have been me!'*), but are unconcerned when individuals are picked off from the herd.

There were no public marches in support of whistleblowers Allan Kessing or Mick Skrijel. The public has benefited from the sacrifices of medical whistleblowers;<sup>572</sup> brave people who have been shockingly mistreated by the government, yet most people won't even take the time to e-mail their MP in protest, and keep voting for the same political parties that abused them.

Some are of course busy with other causes,<sup>573</sup> but most are disengaged.<sup>574</sup> One whistleblower<sup>575</sup> lamented, *'The only things people in this country care about are football and home cooking shows.'*

***Democracy is fatally-flawed***

Majorities are unmoved by the plight of minorities, and Ayn Rand points out the smallest minority is an individual.<sup>576</sup>

America's Founding fathers thus recognised Democracy to be a fatally-flawed institution, and so made America a Republic which protected its citizens with inalienable rights.<sup>577</sup>

Walter Williams: *"So what's the difference between republican and democratic forms of government? John Adams captured the essence of the difference when he said, 'You have rights antecedent to all earthly governments; rights that cannot be repealed or restrained by human laws; rights derived from the Great Legislator of the Universe.'"*

The great flaw of Australia's Democracy is that it makes people like me entirely reliant on the good will of public officials such as yourself;<sup>578</sup> A good will I have found well and truly lacking.<sup>113</sup>

The American Constitution doesn't use the word "Democracy;" Not even once:

James Madison:

*"Democracies have been found incompatible with personal security or the rights of property; and have in general been as short lived in their lives as they have been violent in their death."*

John Adams: *"There was never a democracy yet that did not commit suicide."*

Elmer T. Peterson: *'A democracy cannot exist as a permanent form of government. It can only exist until voters discover that they can vote themselves largesse from the public treasury. From that moment on, the majority always votes for the candidates promising the most benefits from the public treasury, with the result that a democracy always collapses over loose fiscal policy, always followed by a dictatorship.'*<sup>579</sup>

Democracies are as prone to criminality as any other form of government.<sup>580</sup>

***Democracy is already on the nose.***

Leigh Sales: “*The Lowy Institute for International Policy and in its annual poll it reported that only 42 per cent of Australians aged 18-29 believe “democracy is preferable to any other kind of government.” When asked to choose between “a good democracy” and “a strong economy,” only 53 per cent chose democracy.*”<sup>581</sup>

John Micklethwait, Editor of *The Economist*: “*If you ask people who live in democracies, “Do you like your government?”, they all pretty much universally say no. Levels of satisfaction are very low, they’re pissed off about how there’s a failure to do the right things. ... And to believe that situation can always carry on is complacent because you’re already seeing that in the emerging world people are saying, “Well look, democracy doesn’t seem to work very well.”*”<sup>581</sup>

An absolute monarch who only had an approval rating of 53% would be looking nervously over their shoulder. But under Democracy the major parties game the system, ignoring safe seats, and concentrating on marginal seats, getting just enough to get over the line. Abbott in fact won by 53% at the last election. Thus under a Democracy we’re expected to accept a leader nearly half of the electorate don’t want, don’t support.<sup>570</sup>

The chairman of National Australian Bank Michael Chaney praises China: ‘*When I go to China, the Chinese shake their heads. They can’t believe how inefficient you guys are in your economy. We all know we don’t want their system, but they do marvel at the fact that as soon as a government comes out with a proposal the opposition comes out and condemns it and it does lead to great inefficiencies and compromises in the economy.*’<sup>582 583</sup>

If not a republic, I myself would rather be ruled by a just absolute monarch or a Singaporean-style meritocracy under the rule of law than Australia’s corrupt, abusive, arrogant, lawless government.

Even the Chinese government openly acknowledges they have a corruption problem which their state-controlled media openly reports,<sup>584</sup> unlike Australia, so one can argue they are a better run government with a freer media than our own.<sup>585</sup>

Unlike Australia, Chinese public servants are allowed to speak out on matters of public interest and concern.<sup>586</sup>

China executes corrupt officials.<sup>587</sup> In Australia, they’re never even charged.<sup>588</sup> From that perspective, I would be far better off under a Chinese autocracy.

Indeed, Australia’s democracy is so corrupt<sup>589</sup> it exports corruption to Asia.<sup>590</sup>

***Should Australian Democracy fail, public officials such as yourselves shall be to blame.***

## Surveillance

I don't buy ASIO boss David Irvine and AFP Andrew Colvin's excuse that they need metadata surveillance to fight crime.<sup>591</sup> If that were true, why haven't they swung into action on the rampant crime inside their own government?<sup>54</sup>

### *The AFP cannot be trusted with surveillance*

When Sir Robert Peel formed the world's first police force, he had to convince Londoners they would respect civil rights and '*not be an army enforcing the will of a centralized power*,'<sup>592</sup> but today police in some liberal democracies have turned into just that: "*the government's gang*."<sup>593</sup>

The AFP are worse than most; politicised<sup>594</sup> since inception.<sup>595</sup> The NSW Police quickly arrested the alleged whistleblower on the Frances Abbott scholarship.<sup>596</sup> Yet federally months and years after federal crimes were reported allegedly corrupt powerful people are still walking around; never charged.<sup>54 597</sup>

The police are already huge abusers of surveillance.<sup>545</sup> The AFP have a long history of persecuting whistleblowers and covering up corruption.<sup>588</sup> In the 1995 Royal Commission into corruption in the NSW police force it was alleged that 15% of AFP officers are corrupt.<sup>598</sup> Mick Skrijel's allegations of high-level police corruption have not been investigated to this day.<sup>64</sup> In 2011 a former AFP internal investigator said the AFP is rife with corruption.<sup>598</sup> The ACLEI is not effective.<sup>599</sup>

Why should these criminals be allowed to peer into the details of our lives?

The government trusting the AFP to pursue corruption is a farce;<sup>600</sup> Everyone knows they don't.<sup>601</sup>

### *ASIO cannot be trusted with surveillance*

David Irvine's Terrorism is a great bogeyman, because you can't dismiss it entirely.

USMC Major General Smedley Butler,<sup>602</sup> then the most decorated Marine in US History, said: "*I believe in adequate defense at the coastline and nothing else. If a nation comes over here to fight, then we'll fight.*"<sup>603</sup>

If you make war overseas, it's inevitable your enemies will eventually strike you at home. And as much as I hate what the Taliban<sup>604</sup> and ISIS<sup>605</sup> does to their own people (and to journalists such as James Foley<sup>606</sup> and Steven Sotloff),<sup>607</sup> if you want to free people from oppression, there are plenty of other countries we should be invading too.

ASIO's spying for the commercial advantage of party donors and antagonising our nearest neighbours itself endangers national security.<sup>608</sup> The profligate waste in Defence<sup>609</sup> and apathy over forged security clearances<sup>610</sup> demonstrates the government does not genuinely believe Australia is under any genuine "national security" threat.<sup>611</sup>

Bernard Keane says: '*The value of mass surveillance data inevitably means it will be abused*,'<sup>546</sup> ASIO counters claiming they are willing to accept more oversight. But the intelligence watchdog, the Inspector-General of Intelligence and Security (IGIS), failed to act on ASIO's spying for LNP donor Woodside.<sup>612</sup> This completely undermines public faith that oversight works.

Recently when Eric Abetz suggested<sup>613</sup> I report Australian public servants whom violated the US *Computer Fraud and Abuse Act*<sup>614</sup> to the IGIS, I laughed for that very reason.<sup>613</sup>

Corruption expert Howard Whitton said: '*Systemic corruption is corrupt conduct which undermines a system which is put in place to ensure integrity. ... Systemic corruption is real in Australia, and I think that ICAC has demonstrated that it is very widespread.*'<sup>615</sup>

### ***The public service cannot be trusted with surveillance***

There have already been numerous privacy abuses by public servants.<sup>545</sup>

The Australian government has numerous business enterprises and business partners.<sup>616</sup> It competes with the private sector<sup>617</sup> and has abused insider information for commercial advantage.<sup>618 619</sup> Right now even junior public servants without a warrant can use metadata surveillance to determine what private-sector companies are working on.<sup>544</sup>

By comparison in the US public policy is that the government should not compete with not compete with private enterprise; Consider the inherent unfairness of a business being forced to pay taxes,<sup>620</sup> which are then used to finance a government business enterprise which competes against them.<sup>616</sup>

The Australian public service tolerates crime and corruption by its staff.<sup>621</sup>  
Why should criminals be allowed to peer into the details of our lives?

### ***Why we have privacy rights***

The reason we have privacy rights in the first place is because historically public servants would break into a person's home just to snoop around.<sup>622</sup>

Today the many surveillance abuses already taking place show they still cannot be trusted.<sup>545</sup>

In 1760 the bogeyman used to violate privacy was smuggling,<sup>623</sup> (which cut into the profits of the corrupt East India Company's trade monopoly,<sup>624</sup> a gift from the English Parliament.)<sup>625</sup>

Today the bogeyman is terrorism. The "War of Terror" has cost Australia \$30B+<sup>626</sup> (enough to build 120 hospitals) and most years more people are killed by sharks, and a lot of more by cars.<sup>627 628</sup>

I accept David Irvine may earnestly believe terrorism is the greatest threat to his government.<sup>629</sup>  
If so, with respect, he has made the classic mistake of re-fighting the last war.

A greater threat is the crime, abuse and corruption of his own government. That will end in one of two ways; a bloody revolution, or our weak democracy replaced by a totalitarian state; Kevin Rudd started the rot when he made public servants unaccountable to elected politicians.<sup>630</sup>

Today most Australians don't realise they are ruled by a public service who are, in practice, unaccountable to Parliament,<sup>631 632</sup> the courts,<sup>633</sup> the police and <sup>601</sup> the Governor-General.<sup>54</sup> Most Australians don't realise the push for metadata surveillance,<sup>634</sup> the TPP and DTCA<sup>635</sup> have not come from politicians, but from public servants.<sup>636</sup>

UN SR Heiner Bielefeldt points out major sources of social instability are endemic corruption and lack of fairness by public institutions: (e.g. The Australian Parliament<sup>637</sup> and public service<sup>638</sup>).

Not just because of a desire to overthrow the government, but because the lack of trust in fair functioning public institutions fosters "*an inward-looking mentality, in which people strongly cling to their own groupings while largely avoiding meaningful communication with people outside of their own circles*"<sup>639</sup> *Cracked* recently told the story of a youth who joined a neo-Nazi group not because he was a racist (he'd never even met a Jew), but because the group offered him someone to blame for his ills.<sup>640 641</sup> On a larger scale, Sicily's La Cosa Nostra has its roots in a weak government justice system which forced people to look elsewhere for protection.<sup>642</sup> Even now in Australia, when encountering government criminality people find out the hard way the police, especially the AFP, are the last people they should be talking to.<sup>588 643 644</sup>

Mr. Irvine should spend less time looking for ~~reds~~ burkas under the beds in the private homes of ordinary Australians, and more time looking at the people he shares power with; They present a far greater danger to stable government.

## ***The Benefits of Anonymous Speech***

Pervasive government surveillance means speech cannot be anonymous.

US Supreme Court Justice Stevens: *“Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression — at the hand of an intolerant society.”*<sup>645</sup>

The US Supreme Court found that anonymous speech must be protected to:

- 1) Enhance authority: Be judged on the merits of one arguments, rather than on who one is.
- 2) Encourage open discourse – *“The interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry.”*
- 3) Safety from retaliation – *“The decision in favour of anonymity may be motivated by fear of economic of official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.”*<sup>646</sup>

For example, without anonymity medical whistleblowers cannot safely report malpractice;<sup>572</sup> Pervasive government surveillance will remove the only safe avenue for whistleblowing.

## ***Metadata = Surveillance***

Governments conducting metadata surveillance trivialise it, claiming: *“This is just metadata. There is no content involved.”*<sup>647</sup> Security Expert Bruce Schneier demolishes that argument:

*“Imagine you hired a detective to eavesdrop on someone. He might plant a bug in their office. He might tap their phone. He might open their mail. The result would be the details of that person's communications. That's the "data."”*

*Now imagine you hired that same detective to surveil that person. The result would be details of what he did: where he went, who he talked to, what he looked at, what he purchased, how he spent his day. That's all metadata.*

*When the government collects metadata on people, the government puts them under surveillance. When the government collects metadata on the entire country, they put everyone under surveillance.”*<sup>648</sup>

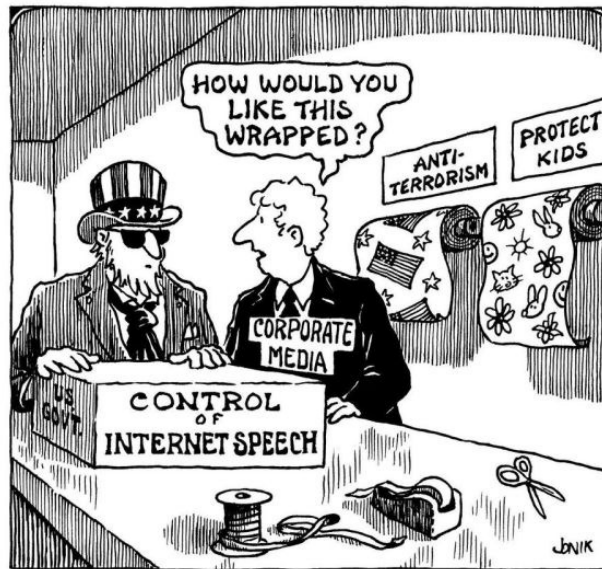
## ***The real reason the government is pushing for Metadata surveillance***

For a long time<sup>148</sup> powerful people in Australia have been able to silence criticism using media spin and influence, defamation threats, court suppression orders and the AFP.

Social media completely changes the game.<sup>649</sup> People will find out what the government is up to anyway. The major parties can no longer dictate the news agenda to a servile media.<sup>650</sup> Citizens can bypass corrupt complaint channels and publish anonymously. Victims of government abuse can unite so public servants cannot isolate and bully them into silence.<sup>651</sup> As an Australian I am forbidden from talking about the contents of the super injunction, but I think you would agree it has backfired spectacularly.<sup>153</sup> Even the mainstream media has read the writing on the wall, and have been running stories that once would have buried; People are going to find out anyway.<sup>652</sup>

Far from terrorism and fighting crime, I believe the real reason for metadata surveillance is a desperate attempt by the government to silence dissent on social media, allowing the public service and two party duopoly to maintain their grip on power, with benefits.<sup>653</sup>





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### A note to the public

At the very least, stop voting for the Labor and Liberal parties:

- These parties abuse whistleblowers – endangering you and your family.<sup>572</sup>
- They are endemically corrupt:<sup>54</sup> <http://victimsofdsto.com/royal-cosgrove-2/#cases>
- They ride a golden gravy train you pay for: <http://victimsofdsto.com/memo/fatcats.html>
- Although you may not be a target of the public service, be warned that if you (or one day, your children) build something worthwhile – a house like Gary Kurzer,<sup>655</sup> or a computer program like myself<sup>619</sup> – you can become targets. I once thought you could avoid crime by being careful. Now I realise if you have something worth stealing, crime will find you.

Having learned this, any Australian who continues to support either party is a fool.<sup>656</sup>

### A note to journalists

As for journalists (including citizen journalists), don't fight the way your enemy fights best:

Circumvent the lawyers picnic which was the HRC's Free Speech Symposium.

Bypass their lucrative defamation industry entirely.

Tell the people what is really going on.

The US SPEECH Act<sup>657</sup> protects Americans who write on affairs overseas. Originally introduced to stop British from suing Americans exercising their constitutional right to free speech,<sup>658</sup> seek out Americans – citizens and journalists – who can through the web safely tell the Australian people about this government's corruption, abuse and lawlessness.

People have a right to know.

George Washington: *"If freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter."*

Reporting of public affairs is too important to be blindly trusted to the media. They are for-profit businesses; It isn't financially viable for them to run every story brought to them. To cover the 95% of worthwhile stories they aren't reporting, citizen journalism is the only way forward.

170 185 186

As for those professional journalists who have built their careers by being government lickspittles, you know who you are, and you have my utter contempt.

## Conclusion

US Supreme Court Justice Benjamin Cardozo says '*Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom,*' yet you argue against it.

I would tell you the people of Australia need to be protected by a Bill of Rights, but I can see such a plea is wasted on you; In my opinion you have already failed to defend my rights,<sup>113</sup> yet here you are arguing that the right to free speech should be restricted.<sup>659</sup>

Political philosopher John Locke, the founder of the theory for liberal democratic government, said a government which does not protect the rights of its citizens loses its legitimacy. Having exhausted all the avenues available, including the courts and the Governor-General,<sup>54</sup> I no longer recognise your government; It is a lawless gang.

As Attorney-General you had the power to stop these crimes and Rights abuses,<sup>660</sup> but you failed to act. So too did your Prime Minister, Julia Gillard,<sup>508</sup> who despite losing her job and her party being kicked out of office at the ripe age of 51 went on a \$200,000 per year pension with a private driver, an office, staff, a car and free travel for life.<sup>506</sup>

Looking at these grotesque perks, Rights abuses, and endemic federal government corruption which the Labor and Liberal Parties have both failed to stop, I can see no hope for Australia until both your parties are ejected from power.

But how are the people to do that, when the benefits of incumbency are so strong?<sup>661</sup> The overwhelming majority of the population will blindly vote Labor or Liberal anyway.<sup>569</sup> Democracy is 8 out of 10 people voting to stay on a couch in a burning house.<sup>569</sup>

This invites the corruption, abuse and arrogance of your government to grow unchecked. And to top it off, you want to give these same public servants a surveillance system which will allow them to watch our every move? John F. Kennedy warned "*Those who make peaceful revolution impossible will make violent revolution inevitable.*"

My decision to emigrate is due to your draconian *Defence Trade Controls Act*<sup>571</sup> and my lack of faith in your government.

I see no hope for this country. It has a dark future ahead of it. I fear this will end badly.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Brendan Jones', with a stylized, cursive script.

Brendan Jones.

## **Appendix: US Supreme Court Justice Louis Brandeis on Freedom of Speech**

*“Those who won our independence believed that the final end of the State was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. **They believed liberty to be the secret of happiness and courage to be the secret of liberty.**”*

***They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth;** that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government.*

***They recognized the risks to which all human institutions are subject.** But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope, and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones.*

***Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law the argument of force in its worst form.** Recognizing the occasional tyrannies of governing majorities, **they amended the Constitution so that free speech and assembly should be guaranteed.***

***Fear of serious injury cannot alone justify suppression of free speech and assembly.** Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. **To justify suppression of free speech there must be reasonable ground to fear that the serious evil will result if free speech is practiced.***

***There must be reasonable ground to believe that the danger apprehended is imminent.**  
**There must be reasonable ground to believe that the evil to be prevented is a serious one.***

***Those who won our independence by revolution were not cowards.** They did not fear political change. **They did not exalt order at the cost of liberty.** To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, **no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion.***

***If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.** Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. **It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing that there was no emergency justifying it.***

***Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy, unless the evil apprehended is relatively serious.** Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society. A police measure may be unconstitutional merely because the remedy, although effective as means of protection, is unduly harsh or oppressive. Thus, a State might, in the exercise of its police power, make any trespass upon the land of another a crime,*

regardless of the results or of the intent or purpose of the trespasser. It might, also, punish an attempt, a conspiracy, or an incitement to commit the trespass.

*But it is hardly conceivable that this Court would hold constitutional a statute which punished as a felony the mere voluntary assembly with a society formed to teach that pedestrians had the moral right to cross uninclosed, unposted, waste lands and to advocate their doing so, even if there was imminent danger that advocacy would lead to a trespass.*

***The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State. Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly.***

*The extent to which Congress may, under the Constitution, interfere with free speech, was declared by a unanimous Court to be this: “**The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.**”*

*This is a rule of reason. Correctly applied, it will preserve the right of free speech both from suppression by tyrannous, well-meaning majorities, and from abuse by irresponsible, fanatical minorities.*

***Like many other rules for human conduct, it can be applied correctly only by the exercise of good judgment; and to the exercise of good judgment calmness is, in times of deep feeling and on subjects which excite passion, as essential as fearlessness and honesty.***

*The question whether in a particular instance the words spoken or written fall within the permissible curtailment of free speech is, under the rule enunciated by this Court, one of degree; and because it is a question of degree the field in which the jury may exercise its judgment is necessarily a wide one. But its field is not unlimited. The trial provided for is one by judge and jury, and the judge may not abdicate his function.*

*If the words were of such a nature and were used under such circumstances that men, judging in calmness, could not reasonably say that they created a clear and present danger, that they would bring about the evil which Congress sought and had a right to prevent, then it is the duty of the trial judge to withdraw the case from the consideration of the jury; and, if he fails to do so, it is the duty of the appellate court to correct the error. ...*

*The nature and possible effect of a writing cannot be properly determined by culling here and there a sentence and presenting it separated from the context. . . . Sometimes it is necessary to consider, in connection with it, other evidence which may enlarge or otherwise control its meaning, or which may show that it was circulated under circumstances which gave it a peculiar significance or effect.*

*The jury which found men guilty for publishing news items or editorials like those here in question must have supposed it to be within their province to condemn men, not merely for disloyal acts, but for a disloyal heart; provided only that the disloyal heart was evidenced by some utterance. **To prosecute men for such publications reminds of the days when men were hanged for constructive treason.***

*And, indeed, the jury may well have believed from the charge that the Espionage Act had in effect restored the crime of constructive treason. **To hold that such harmless additions to or omissions from news items, and such impotent expressions of editorial opinion, as were here shown, can afford the basis even of a prosecution, will doubtless discourage criticism of the policies of the Government.***

*To hold that such publications can be suppressed as false reports, subjects to new perils the constitutional liberty of the press, already seriously curtailed in practice under powers assumed to have been conferred upon the postal authorities. Nor will this grave danger end with the passing of the war.*

***The constitutional right of free speech has been declared to be the same in peace and in war.***

*In peace, too, men may differ widely as to what loyalty to our country demands; and an intolerant majority, swayed by passion or by fear, may be prone in the future, as it has often been in the past, to stamp as disloyal opinions with which it disagrees. Convictions such as these, besides abridging freedom of speech, threaten freedom of thought and of belief.*

*Full and free exercise of this right [to teach the truth as he sees it] by the citizen is ordinarily also his duty; for its exercise is more important to the Nation than it is to himself. Like the course of the heavenly bodies, harmony in national life is a resultant of the struggle between contending forces. In frank expression of conflicting opinion lies the greatest promise of wisdom in governmental action; and in suppression lies ordinarily the greatest peril.*

***The right to speak freely concerning functions of the Federal Government is a privilege of immunity of every citizen of the United States which, even before the adoption of the Fourteenth Amendment, a State was powerless to curtail.”***

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Australia and America are two countries formed at similar times on continents of similar sizes and with similar natural resources. Yet America's growth and economic success has put Australia to shame.

What makes America unique is that it is a country born of rebellion, where instead of seizing power for themselves, the rebels set out to create a republic where all citizens would be forever free from tyrants.

Today America has many problems, and abuse of government power at home and abroad is one of those. But the US Bill of Rights offers the citizens a remedy. Australians on the other hand are entirely reliant on the good will of government officials; a good will that has not been forthcoming.

I believe the reason for America's success is they are, unlike Australians, a free people whose respect for liberty gives them the motive for business and self-improvement; whom are not afraid to speak their mind; whom are protected from the corrupt by a free press and a judiciary whom genuinely protects individual rights; and whom (unlike Australia)<sup>662</sup> after experimentation with government business enterprises,<sup>663</sup> recognised public servants are lousy business people and that government must be kept out of private enterprise, and as much as possible, out of people's lives.

#### **Links:**

<http://victimsofdsto.com/hrc/#mycorruptcountry>

<http://victimsofdsto.com/dsubcom/>

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#### **Change History:**

2014-09-11 Typos, Minor Edits for clarity, Update regarding the failure to act of the *Senate Committee for Legal and Constitutional Affairs* on other matters of criminality raised with it, Added Merion Surveillance Abuse.

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<sup>1</sup> In my opinion.

<sup>2</sup> 2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received)

**Cover Letter:**

From: Brendan Jones  
To: [mark.dreyfus.mp@aph.gov.au](mailto:mark.dreyfus.mp@aph.gov.au)  
Cc: Attorney-General <[attorney@ag.gov.au](mailto:attorney@ag.gov.au)>, Sen G. Humphries  
Date: Thu, Apr 4, 2013 at 2:55 PM  
Subject: Public Interest Disclosure Bill + OLSC Misconduct Complaint

Hi,

Please find attached a letter for Mark Dreyfus QC regarding:

1. His proposed Public Interest Disclosure (Whistleblower) Bill.
2. Misconduct by [REDACTED]:

I am sending a copy of this letter to Mr. Dreyfus' electoral office because employees in his office were already aware of the allegations of misconduct and had failed to act on them, and so I am concerned they will withhold information from Mr. Dreyfus.

As I believe his office already has all of the attachments, I have only included those relating to (a) Misconduct by Ms. Richards and (b) an Updated Summary of the Complaint.

thanks

**Attachments:**

2013-04-04 Letter to ALP A-G Mark Dreyfus QC  
2013-04-04 Updated summary of complaint  
2012-05-14 Discrepancies in Answer given by Ludwig for Nicola Roxon in Hansard (Question 1439 on 2012-02-09)  
2012-10-05 Letter from OLSC  
2012-12-04 Response to OLSC

**Body of Letter:**

<https://tinyurl.com/kymge9z>

(No Response ever received from Mark Dreyfus)

<sup>3</sup> **The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians"*, Brendan Jones,  
<http://victimsofdsto.com/dsubcom/#rights>

<sup>4</sup> 2014-07-23 Royal Petition concerning Federal Government Corruption. <http://victimsofdsto.com/royal-cosgrove-2/>

<sup>5</sup> 2014-02-06 Royal Petition concerning Crime and Corruption within the Australian Public Service  
<http://victimsofdsto.com/royal/>

<sup>6</sup> **Over half the speakers were lawyers; more than any other group:**

Why do lawyers, a group with a conflict of interest, get to dictate whether or not we have free speech?

**Activists (2 speakers)**

Aunty Norma Ingram - Metropolitan Local Aboriginal Land Council  
Andrew Greste – brother of jailed journalist, Peter Greste

**Think-tanks (4 speakers)**

Chris Berg - Director of Policy, Institute of Public Affairs  
Dr Gary Johns - Director, Australian Institute for Progress  
Dr Roger Clarke - Xamax Consultancy  
Tim Wilson - Australian Human Rights Commissioner (ex IPA; AFAICT not a lawyer)

**Politicians (2 speakers)**

Senator David Leyonhjelm - Senator for New South Wales  
The Hon Mark Dreyfus QC MP - Shadow Attorney-General



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## Business (4 speakers)

Megan Brownlow – PricewaterhouseCoopers  
Trish Hepworth - Australian Digital Alliance  
Dr Kesten Green - University of South Australia Business School  
Dr Monika Bickert - Head of Global Content Policy, Facebook

## Lawyers (13 speakers)

Professor Gillian Triggs - President, Australian Human Rights Commission  
Professor Rosalind Croucher - President, Australian Law Reform Commission  
Dr Roy Baker - Macquarie School of Law  
Dr Augusto Zimmermann - School of Law, Murdoch University  
Professor Julian Thomas - Swinburne Institute for Social Research  
Professor Suri Ratnapala - TC Beirne School of Law, University of Queensland  
Professor George Williams AO - UNSW School of Law  
Professor Spencer Zifcak - Liberty Victoria  
Michael Sexton SC - Solicitor-General for New South Wales  
The Hon Mark Dreyfus QC MP - Shadow Attorney-General  
Professor Anne Twomey - School of Law, University of Sydney  
Bret Walker SC - St James' Hall Chambers  
Dr Monika Bickert - Head of Global Content Policy, Facebook (Assistant U.S. Attorney at U.S. Department of Justice, Harvard Law School, Rice University) <http://www.linkedin.com/pub/monika-bickert/50/612/109>

Note: Bickert and Dreyfus appear in two categories.

<sup>7</sup> Personal Communication: Chris Masters. Used with permission.

### <sup>8</sup> **Obeid v Fairfax: Fairfax had to pay Obeid “more than \$1M”, but on \$162K of that went to Obeid:**

“Fairfax to pay \$1m for Obeid defamation,” David King, The Australian, 2006-10-13.

*“A deliberately inaccurate newspaper article that was part of a Gold Walkley-winning series has cost publisher John Fairfax more than \$1million in damages and legal costs. Former NSW fisheries minister Eddie Obeid was awarded \$162,173 in damages yesterday after he was found to have been defamed in The Sydney Morning Herald's report.”*  
<http://www.theaustralian.com.au/news/nation/fairfax-to-pay-1m-for-obeid-defamation/story-e6frg6nf-1111112353307>

Calculation: “more than \$1”, so \$1M (at least) - \$162K (damages) = \$838K (at least).

### <sup>9</sup> **Channel 9 won, proving 67 out of 70 of the corruption allegations against Thiess were true. But for the three allegations that weren't proven, they had to pay him damages anyway, but only awarded \$55,050:**

“Trial by Voodoo: Why the Law defeats Justice & Democracy,” Evan Whitton, *“The damages they awarded Thiess were also perhaps largely academic, to a degree, one suspects, a function of the way the 69 questions were structured: \$50,000 in respect of one ACA programme, \$5000 for another Channel 9 programme, \$50 for a second ACA programme. They originally awarded him 'nil' for the last, but Williams advised them that, if they believed the untrue allegation had 'little or any effect on his reputation', they could award Thiess nominal damages of 'a few dollars or a few cents'. They went away for five minutes and decided to give him \$50. The damages were nothing; by then, as the Full Court later observed, the lawyers' costs had 'become the litigants' prize'.”* <http://netk.net.au/Whitton/TBV23.asp>

“Queensland bribe claims confirmed,” Bill Mason, Green Weekly, 1991-05-01 *“Allegations that multimillionaire Sir Leslie Thiess bribed the Bjelke-Petersen government were substantially true, the jury has ruled in Australia's longest and most expensive defamation trial. // The jury confirmed Channel 9's claims that Thiess got huge government contracts through large-scale and frequent bribery. // It also concluded that Thiess had defrauded fellow Thiess Watkins (Constructions) shareholder Kumagai Gumi by diverting company funds and materials to his own use and had cheated and defrauded shareholders of other companies he controlled. // However, the jury awarded Thiess damages totalling \$55,050 on three out of some 70 allegations, which it deemed not proven. //*

*“The jury's findings are absolutely tremendous. We are delighted”, said Jana Wendt, presenter of A Current Affair, the program that made the allegations. “It does say something about the cultures that prevailed in Queensland during that period and the relationship with big business.”*” <https://www.greenleft.org.au/node/1468>

### <sup>10</sup> **The legal fees for Thiess v Channel 9 were enormous; In excess of \$3M:**

“Trial by Voodoo: Why the Law defeats Justice & Democracy,” Evan Whitton, *“[Judge Williamms] ordered Channel 9 to pay its own costs and two-thirds of Thiess's. At the time, I calculated that the trial might have cost Packer \$1.5 million and Thiess \$300,000 but that now seems a serious underestimate. ... Given that the appeal took six days against the trial's sixty, suppose we speculate that the appeal and its preparation cost each side \$90,000. This would mean that Thiess would have to pay \$135,000 and Packer \$45,000 of the total costs of the appeal. On the previous estimate, this would mean that Thiess's costs had risen from \$300,000 to \$1.2 million and Packer's had diminished from \$1.5 million to \$600,000, but as noted, it appears that he did not get out of it for under \$3 million. What it cost Thiess beggars belief.”* <http://netk.net.au/Whitton/TBV23.asp>

### <sup>11</sup> **Lawyers love litigation:**

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“Lawsuit Flood Averted in Health Care Reform Debate—For Now,”  
Pejman Yousefzadeh, Attorney in Chicago, Illinois, 2010-06-10.

***“Lawyers love litigation. The more litigation there is, the more secure our jobs, the greater our ability to make lots of money with which to pay off our onerous law school loans, buy nice cars, buy nice houses, and occasionally take breaks from the office to enjoy them. And we dislike anything that would lessen the litigation docket.***

*For Lawyers, Litigation is a Good Thing*

*Massive amounts of litigation benefit plaintiffs’ and defense attorneys alike.*

*Plaintiffs’ attorneys take risks in accepting cases on contingency, but since most cases settle, most such attorneys still end up getting paid a princely amount at the end of the day. Defense attorneys get to bill by the hour, and they encourage—sometimes vehemently—their clients to settle so no one actually has to go to court.*

*In this way, both plaintiffs’ attorneys and defense attorneys make piles of money off of litigation, rinsing and repeating the process as necessary in order to be profitable.”* <http://news.heartland.org/newspaper-article/2010/01/06/lawsuit-flood-averted-health-care-reform-debate%E2%80%9494-now>

<sup>12</sup> **US SPEECH Act to stop libel tourists:**

In the US, the burden of proof is on the plaintiff to prove their allegations are true.

In the UK [and Australia] the burden of proof is on the defendant, to prove the allegations are false.

“Obama approves US ‘libel tourist’ laws,” BBC, 2010-08-11. ***“In the UK defendants must prove statements are true, whereas in the US claimants have to prove they are false.”*** <http://www.bbc.co.uk/news/uk-10940211>

<sup>13</sup> **The vast gap between the law as written and the law as executed:**

Thomas Jefferson warned *“The execution of the laws is more important than the making of them”*

Yet the biggest shortcoming I find in academics (particularly legal academics) is they do not recognise the vast gap between the law as written down and the law as it is executed.

Take the *Criminal Code* for example. These are very well written laws, with an elegant clarity not found in legislative trainwrecks such as the DTCA or PID. If the *Criminal Code* was enforced, the public service would be in good shape. But even the most fundamental breaches – *Section 137.1* – are not enforced. Reporting a breach results in stonewalling and then threats from the AFP.

It’s pointless legal academics debating at conferences what the law should be, when even the simplest of laws are not enforced anyway.

It’s a badly kept secret that this is what government lawyers do; The *Model Litigant Policy* (Legal Services Directions) is piece of law which looks great on paper, but government lawyers have flaunted it openly and without consequence for years.

Unenforced laws are dangerous because they lull people into a false sense of security that the law will protect them; Whistleblower laws are a classic case of this. Dr. Kim Sawyer calls them ‘*Good Citizen Elimination Acts.*’

By failing to engage people with practical experience, legal academics end up proposing laws which look good on paper, but which don’t work in practice.

<sup>14</sup> **In practice, we find legal academics are reluctant to engage people with practical experience:**

For example, whistleblowers were frozen out of the *Senate Committee for Legal and Constitutional Affairs* consultations on the new whistleblowing laws in favour of government-funded academics. Myself and other whistleblowers approached these academics, but they would not engage us.

Whistleblower Serene Teffaha: *“The only experts here are actual whistleblowers. Academics funded through Government, hiding behind aging desks, are not authority on qualitative experience.”*

Whistleblower Dr. Kim Sawyer: *“Real whistleblowers, that is, people who have blown the whistle and paid the price, are very disappointed with the legislation. We were not listened to.”*

This was evident in the new whistleblowing laws, whose architects naïvely believed that going to the media is a safety valve, and failed to recognise the absurdity of expecting a whistleblower to litigate the Commonwealth. [http://victimsofdsto.com/psc/#fail\\_consult](http://victimsofdsto.com/psc/#fail_consult)

If legal academics believe they can rely on court decisions for their research instead, they miss the point that much of the law takes place far from a courtroom. Perhaps legal academics think people approach law firms to find out what the law permits them to do. In practice, people decide what they want to do and lawyers tell them how to skirt the law.

If legal academics believe they can rely on the media, then they miss the whole point of this open letter: That very few stories about corruption are ever reported by the media.



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Approaching legal academics we find some will speak to us, but the vast majority want nothing to do with us, particularly concerning matters of corruption. It strikes me as strange that academics who write books and are heralded to be experts in their field refuse to have contact with the very people they write about.

At Free Speech 2014 UNSW Professor of Law George Williams was one of the speakers.

I have written to Professor Williams seven times and he has never responded nor acknowledged me.

In this open letter I raise many issues. I put to Professor Williams that unless everything here is old hat to him, then perhaps he should have spoken to me (us).

I'm not picking on Professor Williams; The same is true of nearly every legal academic in the country.

<sup>15</sup> **Professor Rosalind Croucher prediction we are likely to end up with a charter**

What whistleblowers and victims of government abuse come to learn is that government doesn't work the way people think it works. For example, this seems naïve: [Note: Professor Gillian Triggs *didn't* say she thought a charter would soon become a reality. She said "*if we're serious*"]

Professor Rosalind Croucher: "*We are likely to end up with a charter of some kind.*"

Adam Brereton: "*So now both the head of the AHRC, and the head of the ALRC commission are anticipating a charter of rights will soon become a reality.*"

Whistleblowers and victims of government abuse learn through practical experience that the public service is powerful and abusive, and politicians from neither major party have any interest in reigning them in. Take a look some of the postings on <http://ozloop.org/>. A *Bill of Rights* would offer people a remedy to those abuses, but only if it's accompanied with an affordable, fair court system (which the Productivity Commission has just rejected). There is much endemic corruption within the federal government; both major parties and the public service is affected. + <http://victimsofdsto.com/royal-cosgrove-1/> + <http://victimsofdsto.com/royal-cosgrove-2/> A *Bill of Rights*, with free speech protection, would allow the media to expose that. Many powerful people would be looking at serious jail time. There is no way either the major party nor the public service would allow that.

And here's a case study: The new whistleblowing laws. We waited nearly 20 years for those laws, only to have the government and the public service do everything they could to white ant them. [http://victimsofdsto.com/psc/#fail\\_consult](http://victimsofdsto.com/psc/#fail_consult)

Professor Rosalind Croucher's prediction is naïve. But 5 years ago, I would have said the same thing.

This is what whistleblowers and victims of government abuse learn through practical experience. Yet when approached legal academics refuse to engage us, and most – when they learn there is corruption – run a mile. [Note: I have never approached Professor Rosalind Croucher]

<sup>16</sup> **'Sub judice' prevents the media reporting matters before the courts, leaving the story too stale to report, ever:**

Sub judice is a rule which makes it difficult for the media to report matters before the courts. [https://en.wikipedia.org/wiki/Sub\\_judice](https://en.wikipedia.org/wiki/Sub_judice)

It's so difficult that journalists usually completely avoid stories before the courts: [http://victimsofdsto.com/guide/whistleblowers\\_guide\\_to\\_journalists.html#\\_edn14](http://victimsofdsto.com/guide/whistleblowers_guide_to_journalists.html#_edn14)

**In practice this can tie up a story for a long, long time:**

"Battered Plaintiffs - injuries from hired guns and compliant courts," Jean Lennane, *"I have yet to hear of a judge taking any action - or even saying anything - about these blatant delaying and other tactics. They seem quite happy to preside over an abusive process that also, most conveniently, keeps matters of great public interest 'sub-judice' and safe from public scrutiny until they are no longer news."* [https://www.uow.edu.au/~bmartin/dissent/documents/Lennane\\_battered.html](https://www.uow.edu.au/~bmartin/dissent/documents/Lennane_battered.html)

**The latter is an important point. The media is only interested in "fresh" stories:**

*"Stories are best told fresh, so ideally the whistleblower should approach the journalist right after the incident has taken place. However whistleblowers inevitably first try internal complaints units that stonewall complaints and can sit on them for years. Commonwealth whistleblowing laws force public servants to use these. By that time the story has lost its appeal, and is history, not news."* [http://victimsofdsto.com/guide/whistleblowers\\_guide\\_to\\_journalists.html](http://victimsofdsto.com/guide/whistleblowers_guide_to_journalists.html)

**If a two year old story isn't "fresh," a 13 year old one certainly isn't:**

For example, a particular whistleblower reported an incident in 1998. If he had reported it to the media, he could have been charged under *Section 70* of the *Crimes Act*, punishable by 2 years imprisonment. Instead he went through the proper channels, and was only allowed to go public when a sympathetic ALP Senator closed the door **13 years later**.

**But by then the story the story was too old. The press wasn't interested:**

Brendan Jones: "*Q: Did you ever (try and) take your story to the press?*"

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Whistleblower: "A: Yeah, but being [a public servant], I had an obligation to do it by the numbers .... by that stage it had lost currency with the [press]. It was not until the 20th January 2011 when [an ALP Senator] closed the door by saying '[Name Removed], I have read your file, you have been to everyone, there is nothing that I can do!'"

**Australian Justice Finkelstein claims this is necessary 'to ensure a fair trial.'**

Australian Government: "Report Of The Independent Inquiry Into The Media And Media Regulation By The Hon R Finkelstein QC Assisted By Prof M Ricketson - Report To The Minister For Broadband, Communications And The Digital Economy." 28 February 2012: *"In the United States, free speech is given primacy among rights, and therefore the potential harm caused by restrictions on speech is thought to outweigh the potential harm caused by speech that is not restricted. In Australia free speech does not necessarily have the same primacy. For example, in Australia great weight is given to preventing prejudice to a fair trial, so restrictions are placed on what the media can publish about matters that are sub judice. The United States strikes this balance differently."*

[http://www.dbcde.gov.au/data/assets/pdf\\_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf](http://www.dbcde.gov.au/data/assets/pdf_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf)

**Yet America has the same court system but manages without the same restrictions.**

**Delaying tactics are also a flaw with the new whistleblowing laws:**

Whistleblowers can go to the media if their complaint is rejected, but the public service can simply delay the complaint indefinitely:

*"You better be careful blowing the whistle — new laws have holes",* Brendan Jones, 2013-07-30.

*"[Under the Public Interest Disclosure act, complaints] can be extended indefinitely, in 90 day lots.*

*Common sense says at some point the Ombudsman should put their foot down, but e.g. on 2011-03-24 the Ombudsman told me they thought the [two year] delay was reasonable. (I asked them "Do you really think not taking even rudimentary steps to secure evidence for two years is appropriate? Particularly when it was still in the hands of the perpetrators? And particularly when the head of the department concerned had been tipped off and had a Conflict of Interest?" They had also failed to interview other witnesses in that time, and ultimately refused to even speak to them.)*

*On 2011-06-07 the Inspector General of Defence wrote: "I acknowledge that it took my office around 10 months to finalise our inquiries and this is longer than I would have liked. However, when one takes into account the inherent complexity of the matters raised, ... it was simply beyond our capacity to finalise the matter more quickly." In fact for most of that time they were doing nothing, and this makes the point they can offer any reason (e.g. claiming they are under resourced or still in "assessment phase") and the Ombudsman won't challenge it.*

<http://www.crikey.com.au/2013/07/30/you-better-be-careful-blowing-the-whistle-new-laws-have-holes/>

(Note: Rebuttal to Attorney-General's response appears in the Comments)

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**<sup>18</sup> What are Court injunctions, super-injunctions and hyper-injections?**

*"A [court] injunction is a court order requiring a person to do or cease doing a specific action."* For example, preventing the media from reporting a story. <http://www.law.cornell.edu/wex/injunction>

*"A super-injunction prevents newspapers from even reporting that a court order has been obtained."*

<http://blogs.telegraph.co.uk/news/brendanoneil12/100083484/court-injunctions-that-prevent-the-little-people-from-gossiping-about-celebs-are-a-flashback-to-feudalism/>

*"A "hyper-injunction", which, in a shocking affront to the democratic process, prevents people from discussing a story or rumours even with their MPs."* <http://blogs.telegraph.co.uk/news/brendanoneil12/100083484/court-injunctions-that-prevent-the-little-people-from-gossiping-about-celebs-are-a-flashback-to-feudalism/>

**<sup>19</sup> How court orders, FOI obstruction suppresses speech:**

*"The rising culture of suppression,"* Michael Stutchbury, Editor of The Australian via Crikey, 2002-06-09.

*"- Increasingly, the judiciary is preventing the people from being told what goes on in supposedly open courts. Judges and magistrates in South Australia's courts issued 328 suppression orders in 2000-2001, 87 per cent more than the previous year.*

*- Freedom of Information is becoming a sick joke as governments and bureaucrats jack up its price. One Victorian newspaper sought Freedom of Information details on the travel costs of federal MPs and was advised it would have to pay more than \$1 million for the information. Government departments are now charging for "decision-making time".*

<http://www.crikey.com.au/2002/06/09/the-rising-culture-of-suppression/>

**<sup>20</sup> Here the Victorian Director of Public Prosecutions complained a book violated five year old court suppression orders on reporting police corruption. It begs the question, why hasn't anyone been charged, in five years?**

*"Victoria withdraws police corruption book,"* Hamish Fitzsimmons, Tony Jones, ABC Lateline, 2010-06-10. *"A book making allegations about police corruption in Victoria will no longer be available for sale in that state. A book making*

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a series of allegations about police corruption in Victoria has been pulled from the bookshops this afternoon. The book, written by former criminal lawyer Andrew Fraser, claims the police and the state Government have had details about corruption for years but failed to act on it." <http://www.abc.net.au/lateline/content/2010/s3031455.htm>

"Police corruption book pulled from shelves," Hamish Fitzsimmons, ABC, 2010-10-06. "A book that claims police corruption in Victoria has been ignored for years is being withdrawn from sale in that state. The publisher of Snouts In The Trough says the Victorian Office of Public Prosecutions is demanding the book be withdrawn because it breaches suppression orders, some of which are up to five years old." <http://www.abc.net.au/news/2010-10-06/police-corruption-book-pulled-from-shelves/2287918>

<sup>21</sup> **How journalists (and editors) pick stories:**

"The Whistleblower's Guide to Journalists," Brendan Jones, 2013.  
<http://www.bmartin.cc/dissent/documents/Jones13.html>

Even if there were no defamation laws they would turn away most stories. Any possibility of defamation, even remote, is a strong incentive to turn away a story they are already reluctant to do.

<sup>22</sup> **Ordinary people affected by defamation:**

Brian Martin: "I continue to hear from distressed individuals who are being threatened with legal action (commonly as a means of censorship and/or intimidation) or who have been defamed and mistakenly believe that defamation law provides a potential remedy."

<sup>23</sup> **Public servants speaking out of matters of public interest and concern:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: "**Public servants speaking out of matters of public interest and concern.** Yet In the US the free speech rights of public servants are protected because :  
"The general legal theory is that the public's interest in how public dollars are spent and public safety decisions are made is very strong, and public employees are in a very good position to address those public interests.""  
<http://victimsofdsto.com/hrc/#publicinterest>

<sup>24</sup> **Academic Suppression:**

"Suppression Stories," Brian Martin, University of Wollongong, 1997, ISBN 0 646 30349 X.  
<http://www.bmartin.cc/dissent/documents/ss/ssall.html>

<sup>25</sup> **LNP Education Minister Christopher Pyne encouraged universities to silence academics with controversial views:**

"**Freedom is not just another word**," Jeannie Rea, NTEU, 2014-03-20.

"At the same time the Minister for Education, Christopher Pyne, has been providing gratuitous advice to the University of Sydney Vice-Chancellor that he needs to 'satisfy himself that the academic standing of the university and it's international reputation is not harmed' by the publicly expressed views of academics. Other Coalition MPs have apparently called upon the University to discipline controversial academics.

Quoted in The Australian, Mr Pyne has recognised that 'each university is responsible for its own governance, but universities should avoid needless controversies that damage their reputation [and] also make Australia look less respectable to our potential student market.' He also stated that: 'Obviously, many members of parliament are concerned to ensure that the reputation for high quality that Australian universities have earned over decades is not threatened in any way.'

Fortunately, University of Sydney Acting Vice-Chancellor and Provost Professor Stephen Garton quickly jumped in to look after the international reputation and standing of Australian universities through an opinion piece in The Australian on 10 January, challenging those urging the disciplining of academics.

'Such criticisms fail to understand the nature of universities or the fact that the recommended punishment would do far more damage to Australia's reputation as a robust and open democracy than anything uttered by Lynch or Anderson,' wrote Garton.

Professor Garton concluded that if Australian universities do not defend the rights of academics to controversial views, then 'students and staff in Australia and around the world would rightly shun our university because it would clearly not be committed to the cardinal principle of free and open enquiry.'

<http://www.nteu.org.au/article/Freedom-is-not-just-another-word-16018>

<sup>26</sup> **Academic Freedom.**

"**Ridiculed Discoverers, Vindicated Mavericks**", Bill Beaty, Amasci, "Below is a list of scientists who were reviled for their crackpottery, only to be later proven correct. Today's science texts are dishonest to the extent that they hide these huge mistakes made by the scientific community. They rarely discuss the embarrassing acts of intellectual suppression which were directed at the following researchers by their colleagues. And... after wide reading, I've never encountered any similar list. This is very telling:



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Arrhenius (ion chemistry)  
 Alfven, Hans (galaxy-scale plasma dynamics)  
 Baird, John L. (television camera)  
 Bakker, Robert (fast, warm-blooded dinosaurs)  
 Bardeen & Brattain (transistor)  
 Bretz J Harlen (ice age geology)  
 Chandrasekhar, Subrahmanyan (black holes in 1930)  
 Chladni, Ernst (meteorites in 1800)  
 Crick & Watson (DNA)  
 Doppler (optical Doppler effect)  
 Folk, Robert L. (existence and importance of nanobacteria)  
 Galvani (bioelectricity)  
 Harvey, William (circulation of blood, 1628)  
 Krebs (ATP energy, Krebs cycle)  
 Galileo (supported the Copernican viewpoint)  
 Gauss, Karl F. (nonEuclidean geometry)  
 Binning/Rohrer/Gimzewski (scanning-tunneling microscope)  
 Goddard, Robert (rocket-powered space ships)  
 Goethe (Land color theory)  
 Gold, Thomas (deep non-biological petroleum deposits)  
 Gold, Thomas (deep mine bacteria)  
 Lister, J (sterilizing)  
 Lovelock, James (Gaia theory)  
 Maiman, T (Laser)  
 Margulis, Lynn (endosymbiotic organelles)  
 Mayer, Julius R. (The Law of Conservation of Energy)  
 Marshall, B (ulcers caused by bacteria, helicobacter pylori)  
 McClintock, Barbara (mobile genetic elements, "jumping genes", transposons)  
 Newlands, J. (pre-Mendeleev periodic table)  
 Nott, J. C. (mosquitos xmit Yellow Fever)  
 Nottebohm, F. (neurogenesis: brains can grow neurons)  
 Ohm, George S. (Ohm's Law)  
 Ovshinsky, Stanford R. (amorphous semiconductor devices)  
 Pasteur, Louis (germ theory of disease)  
 Prusiner, Stanley (existence of prions, 1982)  
 Rous, Peyton (viruses cause cancer)  
 Shechtman, Dan (quasicrystals)  
 Semmelweis, I. (*surgeons wash hands, puerperal fever*)  
 Steen-McIntyre, Virginia (southwest US indians villiage , 300,000BC)  
 Tesla, Nikola (Earth electrical resonance, "Schumann" resonance)  
 Tesla, Nikola (brushless AC motor)  
 J H van't Hoff (molecules are 3D)  
 Warren, Warren S (flaw in MRI theory)  
 Wegener, Alfred (*continental drift*)  
 Wright, Wilbur & Orville (flying machines)  
 Zwicky, Fritz (existence of dark matter, 1933)  
 Zweig, George (quark theory)"

<http://amasci.com/weird/vindac.html>

## <sup>27</sup> Academic Freedom.

Throughout history now accepted ideas were initially unpopular; academics proposing them bullied and ridiculed:

### **The academic who first proposed Continental Drift was ridiculed:**

***"When Continental Drift Was Considered Pseudoscience,"*** Richard Conniff, Smithsonian Magazine, *"One hundred years ago, a German scientist was ridiculed for advancing the shocking idea that the continents were adrift."*

<http://www.smithsonianmag.com/science-nature/when-continental-drift-was-considered-pseudoscience-90353214/>

### **Ignaz Semmelweis, the father of infection control, ridiculed by surgeons for suggesting they wash their hands:**

*"Semmelweis demonstrated that puerperal fever (also known as childbed fever) was contagious and that this incidence could drastically be reduced by appropriate hand washing by medical care-givers" "Semmelweis's observations conflicted with the established scientific and medical opinions of the time. The theory of diseases was highly influenced by ideas of an imbalance of the basic "four humours" in the body, a theory known as dyscrasia, for which the main treatment was bloodlettings." ... "Semmelweis's hypothesis, that there was only one cause, that all that mattered was cleanliness, was extreme at the time, and was largely ignored, rejected, or ridiculed. He was dismissed from the*

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hospital for political reasons and harassed by the medical community in Vienna, being eventually forced to move to Budapest.” [https://en.wikipedia.org/wiki/Ignaz\\_Semmelweis](https://en.wikipedia.org/wiki/Ignaz_Semmelweis)

<sup>28</sup> **OP on DTCA:**

**“Tighter Defence ties will bind academics and stifle innovation,”** Jill Trehwella , Deputy Vice Chancellor of Research, University of Sydney via SMH, 2012-10-10,

*“New controls on intangible transfers mean research activities that could result in the communication of information regarding the development, use or production of a broad range of technologies used in ordinary research would require review by, and permission from, the Department of Defence. The bill could even criminalise publication of data or information relating to these technologies.*

***This is likely to restrict researchers from communicating critical information to scientists abroad to prevent pandemic flu outbreaks. It would impede top scientists in developing technologies for tomorrow's high-tech manufacturing industries, new vaccines and potential cures for cancer. The Australian government worries about a brain drain in advanced technology, but is poised to pass legislation that could force our best and brightest offshore.***

*US researchers in accredited higher education institutions enjoy broad exclusions from export control relating to intangible transfers of dual-use technology for basic or applied research.*

*However, [Australian Department of] Defence will impose far more restrictive controls on researchers, disadvantaging them compared with their US peers, especially given the relative importance of international collaboration to Australia.*

***The legislation gives unprecedented authority to one department to decide what research can be communicated and to whom and given the bill covers technologies with military and civilian applications, Defence is alarmingly unqualified for the task.”***, <http://www.smh.com.au/federal-politics/political-opinion/tighter-defence-ties-will-bind-academics-and-stifle-innovation-20121009-27b4n.html>

<sup>29</sup> **Parliamentary Submission on the Defence Trade Controls Act, sent to the Human Rights Commissioners on July 22, 2014 ...**

*“The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians”,* Brendan Jones, <http://victimsofdsto.com/dsubcom/>

**... and previously raised in an Open Letter to the Human Rights Commissioner**

***“In his speech of March 3, 2014 Tim Soutphommasane gave a complicated explanation of Liberty.***

*I offer a simpler one. To me, Liberty is being left alone. I want nothing to do with this government or its bureaucrats. I don't want them to tell me what I can say, do or whom I can talk to. I don't appreciate being forced to deal with or buy services from them, when private enterprise in genuine competition works harder and treats its customers so much better.*

*In their Declaration of Independence, the Americans wrote “[The King] has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.” This could describe the APS.*

*In 2012 I had walked away from all this, deciding although I would continue to live in this country I would have as little do with the government as possible. And so I began work on a new high-tech business developing civilian technology. But later that year the government passed the Defence Trade Controls Act forcing researchers to reveal even their "dual use" civilian technology (nearly everything is "dual use"; e.g. electronics, communications, IT security, medicine) to the public servants, to seek permits from them just to talk about it with others, and with no protection against them stealing it, and the threat of 10 years jail hanging over their head – guilty until proven innocent – if they ever break the law, even accidentally, when making a phone call or sending an e-mail. <http://victimsofdsto.com/dtca/>*

*In my opinion, the public servants currently promoting the DTCA act like tin gods; They are arrogant and ignorant. When I complained to one that my technology could be stolen, again, he responded that wasn't his problem. When the universities warned it would drive their research off shore, another told them they could 'keep boxing at shadows if it makes them happy.' In their briefings it became apparent they didn't even understand their own legislation. These people make the worst kind of rulers. I have no opportunity to vote for them, and politicians and their public service peers refuse to hold them to account. I have no respect for them, and yet I must submit to their rule.*

*The experiences of the last four years have broadened my outlook. As I have talked to other victims, academics, journalists, lawyers, corruption and whistleblowing experts, I have come to appreciate how pervasively corrupt this government is. I hope and believe most rank-and-file public servants are not corrupt, and I have occasionally worked alongside some very intelligent and dedicated ones. But where it most matters, in its senior ranks and amongst its oversight agencies, I have found them to be pervasively corrupt; Usually systemically; Sometimes worse.*

*Frank Serpico told the Knapp Commission: ‘Police corruption cannot exist unless it is at least tolerated ... at higher levels in the department.’ So long as these senior public servants and politicians ignore corruption, those public servants who wish to abuse their power over us are free to do so.*

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*It's not a matter of removing a few bad apples; The system is itself inherently corrupt. The American founding fathers gave the people rights to protect themselves from government abuse, but we as Australians have no such protection. Restoration of individual rights, notably freedom of speech, would go a long way towards fixing that; The US Constitution is a fine document, but even it can be improved upon. But short of that, the very least the Australian government can do is get out and stay out of our lives. I do not feel the need to be 'led' or 'ruled' by anyone.*

*To those well-intentioned public officials who believe they are pure of heart and wish to rule me anyway, US Supreme Court Justice Louis Brandeis warned: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."*

[http://victimsofdsto.com/hrc/#\\_edn130](http://victimsofdsto.com/hrc/#_edn130)

### <sup>30</sup> **The DTCA generates more work for lawyers:**

Their advice is nevertheless spot-in. Any high-tech business staying in Australia (and of course academic institutions) must have a compliance program in place, or it will face severe penalties:

**Minter Ellison:** *"The two year delay on commencement of the key offence provisions in the Act effectively establishes a 'transition period' during which businesses must adapt to the new regime and implement necessary compliance programs. **Businesses dealing in proscribed goods and services should seek legal advice in developing and implementing a compliance program that will keep them aware of obligations under the export control laws, allow them to recognise potential situations in which risks can arise, and therefore seek timely advice on whether any particular activities may be prohibited under the export control laws before those activities are undertaken.**"*

<http://www.minterellison.com/publications/defence-trade-controls-act-passed-tlf201212/>

**FAL Lawyers:** *"Now is the time to act. If the best defence is a good offence, then research institutions and high-technology companies should be auditing their activities and implementing compliance measures now to ensure they don't run into difficulties with the new export control regime under the Defence Trade Controls Act 2012 (Cth) (Act). ...However, once the penalties kick in, they are severe. Non-compliers face prison terms up to 10 years and fines in the \$100s-of-thousands. **Therefore, the grace period should be used as an opportunity to prepare, not to procrastinate.**"*

<http://fal-lawyers.com.au/blogs/2013/5/7/going-on-the-offensive-to-prepare-for-new-defence-export-controls>

**Baker McKenzie:** *"The Defence Trade Controls Act 2012 commenced on 13 November 2012. Our lawyers detail the broad reach of the Act and how Baker & McKenzie can assist global and local clients on export control issues and the proposed reforms."* <http://www.bakermckenzie.com/ALAustraliaTradeControlsLawNov12/>

**Deloitte:** *"Entities that can expect to be affected by the strengthened export control provisions include Australian businesses or individuals supplying DSGL technology, or brokering the supply of DSGL technology and/or goods listed on the DSGL, to someone outside of Australia. Academic institutions could also be affected. This could occur, for example, in instances where an institution engages with an overseas counterpart institution or business relating to items listed in the DSGL (e.g. research partnerships, consulting, training, etc.). The intangible transfer of DSGL technology might also occur through other channels – such as presentations at overseas conferences, or through post-graduate courses taught at an overseas campus of the institution. **To discuss the potential impact of the Act on your organisation's operations, please contact either of the following Deloitte Customs and Global Trade specialists:**"* [http://www.deloitte.com/view/en\\_AU/au/services/tax/indirecttax1/customsglobaltrade/a746a16c4a46b310VgnVCM200003356f70aRCRD.htm](http://www.deloitte.com/view/en_AU/au/services/tax/indirecttax1/customsglobaltrade/a746a16c4a46b310VgnVCM200003356f70aRCRD.htm)

**Madderns:** *"As stated above the implementation date for the application of this Act is 17 May 2015, so now is the time to create procedures for you your working environment so that you, your staff or colleagues are not going to fall foul of this Act. DECO is relying on education as the main instrument of encouragement to Australians and punitive measures will not be taken. However, DECO has indicated that repeat and intentional export of such information will be met with the full force of this very important law."* <http://madderns.com.au/news/category/important-updates/>

### <sup>31</sup> **High-tech start-ups moving areas:**

*"**'Too expensive' – tech start-ups move overseas,**" James Hutchinson and Agnes King, SMH, 2014-01-08.*

*"Australia risks missing out on the digital investment boom as local technology companies increasingly move their operations overseas in search of better regulatory incentives, the Australian Financial Review writes."*

<http://www.smh.com.au/business/too-expensive--tech-startups-move-overseas-20140108-30g4u.html>

### **Interview with Entrepreneur:**

Entrepreneur: *'I knew at the outset it would be a waste of energy to try and persuade the government to change course over the DTCA. I don't trust government or lawyers. It's bleeding obvious no entrepreneur would voluntarily reduce their income, or wade through a paperwork nightmare. I'll do my R&D overseas. I've already started it. It's cheaper anyway.'*

### **As Australian Manufacturing fails, government shows no concern at High-tech exodus:**

*"2014-02-13 Letter to Minister for Industry Ian Macfarlane,*

*To Ian Macfarlane MP - Minister for Industry, Bob Baldwin MP - Parliamentary Secretary to the Minister for Industry, cc: Senator David Johnston - Defence Minister, Stuart Robert MP - Assistant Defence Minister, Senator Sue Boyce -*

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QLD, Senator George Brandis - QLD, Senator Ronald Boswell – QLD, Senator Brett Mason – QLD, Senator Ian Macdonald – QLD, Prime Minister Tony Abbott, Bruce Billson MP - Small Business, Teresa Gambaro MP

Dear Mr Macfarlane and Mr Baldwin,

*I support the Abbott government's sensible decision not to prop up failed business models with taxpayer money, but I am concerned that as the Australian Manufacturing industry fails the government shows no interest in the high-tech sector.*

*The government has not expressed any concern over the departure of high-tech companies for better opportunities overseas:* <http://www.smh.com.au/business/too-expensive--tech-startups-move-overseas-20140108-30g4u.html>

*And despite Senator Johnston describing Labor's Defence Trade Controls Act as "disgrace", the Abbott government has left it in place burdening high-tech businesses and the universities as they prepare for these 'disgraceful' laws to come into effect:* <http://victimsofdsto.com/dtca> + [http://victimsofdsto.com/royal/#fail\\_dtca](http://victimsofdsto.com/royal/#fail_dtca)

*You have inherited Labor's Innovation portfolio. It's unfortunate that I must inform you my contacts in the entrepreneurial community considered the Department of Innovation to be a waste of oxygen. I am told that*  
(i) *The amount of paperwork that is required to get a relatively small grant isn't worth the time and effort;*  
(ii) *That the department was sitting on funds they were supposed to disburse, and* (iii) *there was a mates network that influenced who got grants and who didn't.*

*Unlike the manufacturing industry I don't expect a hand-out from the government, but it's quite another thing for the government (more accurately the APS) to be working against us:* <http://www.crikey.com.au/2013/12/02/revealed-the-government-agency-stealing-ideas-from-businesses> *The arrogance of Commonwealth Chief Scientist Professor Chubb towards the universities blew my mind:* <http://victimsofdsto.com/dtca/#badlaw>

***I am in the process of starting my second high-tech business, but I've formed the I think entirely logical conclusion that it would be foolish to do it here in Australia. I wrote to you on January 8 (E-mail: "Australian High-Tech Startups Moving Overseas") regarding my conclusions, but no one in the Abbott government has expressed any concern whatsoever.***

*Yesterday the Sydney Morning Herald published an editorial on the decline of Australian manufacturing and the lack of government leadership on high-tech: "Science, technology, innovation and venture capital are the frontiers that replaced the rust belt in the United States and returned America to global leadership after much of its heavy manufacturing sector was gutted by foreign competition and high costs. Australia is just as much in need of such a shift."* <http://www.smh.com.au/comment/smh-editorial/compromise-not-combat-will-help-sunrise-not-sunset-industries-20140211-32ftm.html> + <http://www.smh.com.au/comment/smh-letters/renewable-energy-great-solution-to-void-in-industry-20140212-32i8t.html> *(My letter is 3rd from the top)*

*I hope you heed the Herald's words and that you respond positively to this e-mail.*

*Yours sincerely,  
Brendan Jones."*

#### **Response from Industry Minister ignores DTCA:**

2014-03-05 Letter from Industry Minister Ian MacFarlane:

*"The Australian Government recognises the contribution that startups are able to make to productivity and competitiveness and is working to ensure an environment which encourages and supports Australian entrepreneurs in their endeavours.*

*There are a number of programmes that are designed to assist innovative startups to develop and grow. For example, the Government facilitates access to venture capital and management expertise through the Innovation Investment Fund. Assistance to startups is also provided through Commercialisation Australia, where technology startups are often been the major beneficiaries with two thirds of grants going to technology based enterprises. Further details on these programmes can be found on the AusIndustry website.*

*Some companies do make the decision to move overseas and this may be for a variety of reasons including access to markets and to levels of growth capital which they may not be able to attract in Australia. It must also be acknowledged that, in the technology arena, small and mid-sized companies are acquired by major global technology companies, owing to their success. This is consequence to exposure and participation in an open, global economy.*

*Thank you for your interest and bringing your concerns to the attention of the Government."*

Note: Given my letter regarded the DTCA, the comments about "exposure and participation in an open, global economy" are ironic.

#### <sup>32</sup> **Academics moving overseas:**

University of Sydney Deputy Vice Chancellor of Research Jill Trewhella: *'they're definitely telling me that they're going to have to assess the impact of this regulatory regime on their ability to be competitive and to do their work in*



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Australia. They're definitely worried that it is going to have a big impact and they're concerned that they may have to go elsewhere to do their research.' <http://www.abc.net.au/lateline/content/2012/s3623059.htm>

#### **Interview with Academic:**

*"Q: Do you feel that this will lead to many academics leaving Australia ... and if so why does the government not change the legislation?"*

*"A: Yes. It will first, however, result in promising researchers and students not coming to Australia in the first place and high-quality young Australian researchers refusing to return from overseas studies and post-docs. The effects will be cumulative and disastrous.*

*As it stands, DTCA doesn't just criminalize publishing basic research, it criminalizes PhDs, so overseas students in high tech will go elsewhere. Since most good researchers have good reason to work with and supervise quality PhDs, they will go elsewhere as well."*

<sup>33</sup> *"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians"*, Brendan Jones, <http://victimsofdsto.com/dsubcom/>

#### <sup>34</sup> **The right to protest:**

Human Rights Commissioner Tim Wilson has never clarified if his Tweet about protestors was a bad joke or his earnestly held view:

Tim Wilson: *"Walked past Occupy Melbourne protest, all people who think freedom of speech = freedom 2 b heard, time wasters ... send in the water cannons."* <https://twitter.com/timwilsoncomau/status/127208106517213184>

Water canons may not be lethal, but they are brutal: [http://www.cracked.com/article\\_20937\\_6-insane-things-you-learn-overthrowing-your-own-government.html](http://www.cracked.com/article_20937_6-insane-things-you-learn-overthrowing-your-own-government.html) + <http://www.independentaustralia.net/article-display/water-cannon-wilson,6008>

Also see the case of Anti-war protesters Will Saunders and Dave Burgess:

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: *"Cases in Australia where political speech was denied a free speech defence"* [http://victimsofdsto.com/hrc/#\\_edn29](http://victimsofdsto.com/hrc/#_edn29)

#### **And the "right to be heard" is a fundamental tenet of free speech:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians"*, Brendan Jones, *"US Supreme Court Justice Louis Brandeis said America's founders believed the freedom to think as you will, and to speak as you think, are means indispensable to the discovery and spread of the truth; and that without free speech and assembly, discussion would be futile.*

*The founders recognised the truth will emerge from the competition of ideas in free, transparent public discourse in what later became known as the "Marketplace of Ideas." [30]*

*They recognised the more voices contributing, the more ideas to choose from.*

*They recognised the more voices contributing, the more minds to debunk bad ideas."*

[http://victimsofdsto.com/dsubcom/#\\_edn169](http://victimsofdsto.com/dsubcom/#_edn169)

**Minorities denied the "right to be heard" are easily abused, because they are dehumanised, and no one hears them:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: *"The ACLU's Aryeh Neier argues that intolerance develops only when a minority is not able to respond to hate speech. Had then-Prime Minister John Howard allowed TV cameras onto the decks of the Tampa and lead by example, perhaps more Australians would show compassion towards refugees today."* <http://victimsofdsto.com/hrc/>

#### <sup>35</sup> **When people gather to exercise their right to free speech police by reflex assume it is their role to suppress it:**

*"Police flex muscle ahead of G20 Summit," Marissa Calligeros, Brisbane Times, 2014-06-22. "With a volley of loud gunfire Queensland police have flexed their muscle in a demonstration of force ahead of Brisbane's G20 Summit. The demonstration, at the Queensland police academy in Brisbane's southwest, showed would-be troublemakers what awaits them at the gathering of world leaders in November. There was only a dozen protesters on hand on Thursday, but Assistant Commissioner Katarina Carroll said the demonstration nevertheless showed the extraordinary capabilities of police."* <http://www.brisbanetimes.com.au/queensland/police-flex-muscle-ahead-of-g20-summit-20140522-zrkxn.html>

Take a look at the photos on Marissa Calligeros' article and tell me: would you turn up and protest at G20?

Are you willing to bet your life on it?

**Londoners resisted formation a police force, fearing it would abuse them as standing armies had:**

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“Rise of the Warrior Cop: The Militarization of America's Police Forces”, Radley Balko, 2013-07-09, “*The first modern police force as we know it today was created in 1829 in London by Sir Robert Peel. He and his father had been pushing the idea for decades, but **British concerns over the nation's civil liberties tradition had repeatedly killed the idea.** Concerned about the worsening conditions in the city, Parliament finally gave its approval in 1829, but only after Peel put in place assurances and checks to retain some local control over the force and ensure that police officers' responsibilities were limited to fighting crime and protecting individual rights—his task was to convince the city that a police force would not be an army enforcing the will of a centralized power.*”

<https://booko.com.au/9781610392112/Rise-of-the-Warrior-Cop>

#### Police as the government's gang:

“What do I know about corrupt cops? My Family owned a few.” J.D. Tuccille, Reason, 2014-02-18. Comment: “**People ought to understand that the police is just the government's gang.**” [#comment](http://reason.com/archives/2014/02/18/what-do-i-know-about-corrupt-cops-my-fam)

#### <sup>36</sup> Satire is not protected under Australian law:

“If Hanson-Young can sue Zoo, what about those Daily Tele shockers?”, Matthew Knott, Crikey, 2013-09-12.

“**Sarah Hanson-Young has a good case against Zoo for a photoshopped bikini photo.** And defamation lawyers tell Crikey the case could give other editors some pause for thought.” <http://www.crikey.com.au/2013/09/12/if-hanson-young-can-sue-zoo-what-about-those-daily-tele-shockers/>

“Advice to Mick Molloy: fake your apology better next time,” Andrew Dodd, Crikey, 2011-07-06, “**Mick Molloy and Network Ten have lost their defamation battle against Adelaide identity Nicole Cornes in a ruling that could have far ranging implications for free speech, namely for the revelation that the law does not possess a sense of humour.** ... Cornes' case centred on a 2008 broadcast of Ten's *Before the Game* where Molloy joked that Cornes had slept with footballer Stuart Dew after Cornes said several flattering things about him in a newspaper article. **It was a classic Molloy moment. Disrespectful and stupid, but also reasonably funny. Well, sort of funny. It was certainly not meant to be taken seriously.** But Cornes, an unsuccessful ALP candidate in the 2007 federal election, was deeply offended by it. She claimed Molloy's comment was humiliating as it questioned her fidelity. Her barrister, Stuart Littlemore, argued the comment impugned her self-respect and dignity. Cornes was awarded \$85,000 in damages, plus interest and costs.” <http://www.crikey.com.au/2011/07/06/advice-to-mick-molloy-fake-your-apology-better-next-time/>

#### In practice, parody is not protected under Australian law either:

“Government orders spoof site shut,” Louisa Hearn, 2006-03-17, “A spoof John Howard website that featured a soul searching “apology” speech for the Iraq war has been shut down under orders from the Australian Government.” <http://www.smh.com.au/news/breaking/government-shuts-howard-spoof-site/2006/03/17/1142098638843.html>

(Some might argue because this incident never went to court the law was not tested. But most people can't afford to take the Commonwealth to court. So if the AFP calls up e.g. an ISP and tells them to shut a web site down, the ISP won't stand their ground against the AFP. They'll close it down; Might makes right.)

#### But Parody and Satire is protected under US law:

“Parody & satire,” Kyonzte Hughes, Contributing Writer, First Amendment Center, 2002-09-13.

“Satire is a centuries-old type of literature that uses humor and imitation to attack and ridicule individuals' moral and character flaws, such as vice, unfairness, stupidity or vanity.

A parody is also an attack on folly, but it takes the form of a contemptuous imitation of an existing artistic production — usually a serious work of literature, music, artwork or film — for satirical or humorous purposes.

Satire and parody have served for generations as a means of criticizing public figures, exposing political injustice, communicating social ideologies, and pursuing such artistic ends as literary criticism. Satirists usually find themselves subjected in turn to criticism, contempt and, sometimes, lawsuits.

The First Amendment protects satire and parody as a form of free speech and expression.” <http://www.firstamendmentcenter.org/parody-satire>

#### <sup>37</sup> Australian Satirist Max Gillies has been the target of several defamation suits:

“Satire or Sedition?” Jonathan Biggins, New Matilda, 2006-11-08. “**Over the course of a long career Max Gillies has been the target of several defamation suits**, notably from the late Kerry Packer, who objected to a sketch on *The Gillies Report* that linked him to allegations made in a Federal inquiry. Gillies sees defamation as a problem because it is in the nature of the satirist's job to be derogatory about public figures; comic effect demands distortion, and characterisation is often driven by inference or implication that is, shall we say, unflattering.”

<https://newmatilda.com/2006/11/08/satire-or-sedition>

#### <sup>38</sup> Newscorp journalist Chris Kenny Dog sues ABC for Defamation over a skit that he had sex with a dog:

In isolation, this skit is offensive. But *The Chaser* used as an example of the sort of (ridiculous) thing Chris Kenny would accuse the ABC of running, and so they ran it. That is, it was a joke.

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***“Chris Kenny: ‘I’ll be remembered as the journalist called a dog f\*\*ker who stood up for his rights’.”***

David Marr, The Guardian, 2014-06-07, *“The extraordinary tale of a News Limited writer who sued the ABC over a silly joke – and how the case raises serious questions about free speech in Australia*

*The Hamster Decides Episode 5, broadcast a few days after Abbott’s election victory, was all mockery. The Chaser team mocked the new prime minister, the defeated Kevin Rudd, Cory Bernardi, Kerry O’Brien, Peter Hartcher of the Fairfax press, the ABC, Nine and Seven. ...*

*Ten minutes into that melee Chas Licciardello gave the “boring pundit” Chris Kenny a serve: “I enjoyed the way he took almost an hour after Tony Abbott’s victory speech before he started demanding cuts to the ABC.” And there was Kenny on the screen with urgent advice for the new government: “They need to actually start to question the \$1.1 billion they throw to the ABC for instance...”*

*Andrew Hansen agreed: “They’ve just got to cut ABC funding. This is a network that broadcasts images of Chris Kenny strangling a dog while having sex with it.” There were better jokes and better laughs that night but the studio audience let out a happy roar when Kenny’s head appeared crudely pasted on a man with his pants down mounting a Labradoodle. A sign said: “Chris ‘Dog Fucker’ Kenny”. ...*

*The ABC lawyers had cleared the skit. The show was watched by 1,323,000 people. The ABC received only one complaint. It wasn’t from Kenny. Licciardello had assured the team there would be no trouble from him. He knew Kenny as a thick-skinned pro with a robust sense of humour.*

***The dog joke has form.*** After an Indonesian paper depicted Howard and the foreign minister Alexander Downer in 2006 as humping dingoes – their crime was to give 42 West Papuan independence campaigners temporary protection visas – ***the Australian retaliated with a cartoon of President Yudhoyono as a dog having sex with an unhappy Papuan.***

*John Howard was unfazed by the Indonesian effort: “I’ve been in this game a long time. If I got offended by cartoons – golly heavens above, give us a break.”*

*But [The Judge] dealt Kenny’s case a perhaps fatal blow. The picture of the reporter and the Labradoodle could not, he decided, be taken literally. “The reasonable viewer, in my view, could not possibly have considered that such a lightweight show as this would be the forum for exposing actual instances of bestiality.”*

***That left Kenny only able to claim the Chaser boys had shown him to be, in the words of the judge, “a contemptible person”. The right jury and a powerful barrister could bring that home for Kenny. But the verdict would depend largely on how he withstood a wide-ranging – and inevitably hostile – cross-examination about the ins and outs of his long career.”*** <http://www.theguardian.com/media/2014/jun/07/chris-kenny-ill-be-remembered-as-the-journalist-called-a-dog-fker-who-stood-up-for-his-rights>

*“Chris Kenny v The Chaser: an Update,” Mediawatch, 2014-03-10. “In fact, the judge has merely ruled that the case can proceed to a jury. And he threw out the most serious imputation that the skit suggested Kenny actually had sex with dogs. But Justice Beech-Jones did call the Chaser’s attack ‘grossly disproportionate’ and he suggested it could cause people to conclude Kenny was a ‘low, contemptible and disgusting person’.”*  
<http://www.abc.net.au/mediawatch/transcripts/s3960474.htm>

Personally having dismissed the skit as ridiculous, I drew no implication from it.

**The ABC caved in, understandably, because (as David Marr notes) the right judge and jury might draw an implication anyway; This is the danger of subjective tests of offensive speech.**

*“ABC close to settling Chris Kenny dog sketch defamation case after apology,” Matthew Knott, SMH, 2014-04-14, “The ABC is expected to settle a defamation case with News Corp columnist Chris Kenny within days after the broadcaster formally apologised for a controversial sketch depicting him having sex with a dog. Lawyers for Mr Kenny, the ABC and the Chaser team corresponded on Monday with the view to reaching a settlement after ABC Managing Director Mark Scott issued a formal apology to the former Liberal Party staffer. The only sticking point may be whether the broadcaster pays Mr Kenny’s legal costs. “I have come to the view with the director of television that the ABC should not have put the skit to air,” Mr Scott said in a statement. “Having reviewed the issue, in my opinion it falls short of the quality demanded by our audience and normally delivered by our programming.””*  
<http://www.smh.com.au/federal-politics/political-news/abc-close-to-settling-chris-kenny-dog-sketch-defamation-case-after-apology-20140414-zquo3.html>

**But even Chris Kenny’s son defended The Chaser skit:**

*“Dog act? Son defends Chaser skit mocking his father,” Josephine Tovey, SMH, 2013-09-18. “The Chaser team have received support from an unlikely source in the public row over a skit where they photoshopped an image of a prominent Australian columnist having sex with a dog, with the columnist’s son writing a piece defending the broadcast.”* <http://www.smh.com.au/entertainment/tv-and-radio/dog-act-son-defends-chaser-skit-mocking-his-father-20130918-2tz8y.html>

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But the upshot of this will be, given the time, cost and distraction of Chris Kenny's Defamation suit, the **next time** *The Chaser* wants to run a skit which *might* lead to a defamation action, the ABC's lawyers will be less likely to approve it, and *The Chaser* might self-censor accordingly.

<sup>39</sup> **Defamation does not protect reputations:**

**Chris Kenny isn't a winner either**, declaring: *'I'll be remembered as the journalist called a dog f\*\*ker who stood up for his rights'*. Arguably by suing he made the situation worse. Those who watched the show when it aired would have understood the joke within the context it was told, laughed, and forgot it. But now the case has received wide publicity and many people (who never watched it) have only caught the 'Chris Kenny dog f\*\*ker' headline.

**John Marsden sued Channel 7 for defamation, and won, but destroyed his own reputation in the process:**

*"Got the Money, Lost the Name,"* Kate McClymont, SMH, 2001-06-28. **"How John Marsden won a court case and destroyed his own reputation ... That 'sting of the matter' became a thousand other stings along the way. Like no other defamation trial before it, Marsden's life, in particular his sex life, was laid bare in the most public forum. Nothing was left untouched from his visits to railway toilets for anonymous sexual encounters to his use of amyl nitrite to heighten sexual pleasure."** <http://www.civilcomplaint.com.au/civil-complaint-articles/2001/6/28/got-the-money-lost-the-name-how-john-marsden-won-a-court-case-and-destroyed-his-own-reputation/> + <http://www.bmartin.cc/pubs/06dlr/note31-McClymont.pdf>

Lawyer [on litigation]: *"The only ones that win out of these things are the lawyers"* (Personal Communication)

**Or more accurately, lawyers and rich people who can afford lawyers:**

Investigative Journalist Gerry Georgatos on Defamation: *"Defamation actions are often the tools of those who are prepared to lie, cheat and to deceive for their quid, and who with their ill-gotten gains of significant wealth can therefore afford to spend some of it to hide the rest from scrutiny."* "A Fair Media – let no threat get in the way," Gerry Georgatos, The Stringer, 2013-05-26, <http://thestringer.com.au/a-fair-media-let-no-threat-get-in-the-way>

**Ordinary people can't afford to pursue defamation:**

There were two cases where people were allegedly defamed by journalists. In both cases

One was a whistleblower who took a corruption story to a journalist. Another case was a victim of government abuse with evidence of corruption. One former was given editorial space to respond. The second just had to wear it.

This is one reason whistleblowers and victim's of government abuse are reluctant to even speak to journalists.

Advice to whistleblowers is to choose the journalist and the media organisation very carefully: *"The Whistleblower's Guide to Journalists,"* Brendan Jones, 2013. <http://www.bmartin.cc/dissent/documents/Jones13.html>

<sup>40</sup> **The subjectiveness of Humour:**

Humour is subjective. Other people find things to be uproariously funny which you may not.

Laughter is an evolutionary response to danger; a person assesses a situation and in an instant rejects it as ridiculous. That is, they get the joke. But some people don't.

I recall an Australian who proclaimed they were an expert on free speech declaring that people should be to sue for offensive jokes that aren't funny.

Do we really want the courts deciding what is and isn't funny?

*The Chaser* audience thought the Chris Kenny skit was funny. The *Before the Game* audience thought Molloy's joke was funny too. But what if a judge and jury, 11 people picked out of the community (which lawyers profile to ensure they have jurors sympathetic to their law suit) decide otherwise?

**"Advice to Mick Molloy: fake your apology better next time,"** Andrew Dodd, 2011-07-06.

*"Having seen the offending broadcast, which Ten replayed yesterday, it is hard to see how a reasonable person could believe that Molloy was serious. Consequently no reasonable viewer would have believed that Cornes had slept with Dew. Therefore you'd think there'd be no case."*

*But Cornes' case was assisted by her husband, former Adelaide Crows coach Graham Cornes, who told the court that the comment made him momentarily question his wife. He said "when somebody says something, even when you know it's not true, there's a shadow of doubt that crosses over your mind." He also said that despite having the "utmost confidence" in his wife, "that doesn't mean it can't be undermined by negative comments."*

*Does this constitute proof that a reasonable person believed that Molloy's joke was true? If the laughter in the Before the Game studio is any guide, the public clearly understood that Molloy's joke had no basis in truth whatsoever. However, Littlemore told the court that "not every viewer is a man with a beer in one hand, a meat pie in the other" and that some of the audience don't agree that "witty repartee passes as shouting 'show us your t-ts' at a woman."*



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*The South Australian Supreme Court's Justice David Peek agreed with Littlemore, ruling that she had been defamed and that Ten and Molloy had no defence.*" <http://www.crikey.com.au/2011/07/06/advice-to-mick-molloy-fake-your-apology-better-next-time/>

<sup>41</sup> **"Apologies" as a defence to Defamation:**

Andrew Dodd's piece observes Molloy should *'fake his apology better next time.'*

In Australia you can reduce the sting in a Defamation law suit by apologising. But this requires comedians to agree they should not have made their joke. The two examples above show in practice they are loathe to do that, perhaps because it makes it impossible to perform their profession. If *The Chaser* avoided subjectively offensive material, there would be nothing to put on air or what they did wouldn't be satire.

More ominously, a person making an allegation against another person (which may be true), can be forced to apologise to avoid a law suit. Arguably this leaves the person who threatened Defamation in an even better position: They can claim the person who accused them recanted, and so is a flake who should never be taken seriously again, (thus unfairly harming the accuser's reputation) and has started clearly the allegations are not true (thus taking the heat off them if they are true).

<sup>42</sup> **Politicians ban the use of photos taken in Parliament for satire:**

"The rising culture of suppression," Michael Stutchbury, Editor of The Australian via Crikey, 2002-06-09.

*"The Federal Parliament imposes Kafkaesque rules against the sort of photographs that can be published of our elected representatives at work in the chambers. The rules include a prohibition on photographs that might leave our politicians open to ridicule."* <http://www.crikey.com.au/2002/06/09/the-rising-culture-of-suppression/>

<sup>43</sup> **The use of intimidatory letters by public servants to chill public criticism:**

*"Threatening letters from officialdom chill free expression,"* Mark Pearson with research assistance from RSF (Reporters San Frontiers) interns Toni Mackey and Eve Soliman, Journlaw Blog, 2014-03-14, "Intimidating letters sent by two of Australia's most senior public servants in recent weeks sound alarm bells for free expression and a free media." <http://journlaw.com/2014/03/21/threatening-letters-from-officialdom-chill-free-expression-journlaw-blog-mlgriff/>

<sup>44</sup> **Military censorship:**

It did not discuss the Commander of Defence Force warning<sup>45</sup> Senator Lambie not to criticise the military in the media, despite that department's abundant corruption,<sup>46 47 48</sup> waste<sup>49</sup> and abuse.<sup>50</sup> It did not discuss Lt General Campbell failing to stop a journalist from being harassed at Manus,<sup>51</sup> nor his outburst when asked by an elected representative if there was a cover up in Defence.<sup>52</sup>

I don't have personal knowledge of Lt General Campbell's case, but I can assure you there most certainly is a culture of cover up within his department, and Operation Sovereign Borders is patterned after Operation Relex, from which the Children Overboard cover up emerged.

<sup>45</sup> **General cautions Senator not to criticise the military in the media:**

CDF General David Hurley warning Senator-elect Jacqui Lambie against using the media to criticise the military. LNP Defence Minister David Johnston refused to criticise General Hurley over this.

*"General David Hurley warns Tasmanian Senator-elect Jacqui Lambie against using the media without consulting him first",* News Limited, 2014-03-14, "Australia's top ranking officer, Defence Chief General David Hurley, has warned Tasmanian Senator-elect and former soldier Jacqui Lambie against using the media to criticise the military." <http://www.news.com.au/national/general-david-hurley-warns-tasmanian-senatorelect-jacqui-lambie-against-using-the-media-without-consulting-him-first/story-fncynjr2-1226854046648>

Letter to Senator-elect Jacqui Lambie cc: General Hurley "I was deeply concerned to learn that General Hurley warned you against using the media to criticise the military, and expects you to consult with him before reporting allegations in the media in the future." <http://victimsofdsto.com/pup/>

Twitter: "Wendy Bacon @Wendy\_Bacon: Just became aware of this. New levels of military censorship are frightening. Senator Elect Jackie Lambie speak out <http://www.news.com.au/national/general-david-hurley-warns-tasmanian-senatorelect-jacqui-lambie-against-using-the-media-without-consulting-him-first/story-fncynjr2-1226854046648>" [https://twitter.com/Wendy\\_Bacon/status/448309486042619905](https://twitter.com/Wendy_Bacon/status/448309486042619905)

"General David Hurley warns Tasmanian Senator-elect Jacqui Lambie against using the media without consulting him first", News Limited, 2014-03-14, *"Defence Minister David Johnston's office said the minister had no knowledge of General Hurley's letter and would not comment on its contents."* <http://www.news.com.au/national/general-david-hurley-warns-tasmanian-senatorelect-jacqui-lambie-against-using-the-media-without-consulting-him-first/story-fncynjr2-1226854046648>

[http://victimsofdsto.com/dsubcom/#\\_edn294](http://victimsofdsto.com/dsubcom/#_edn294)

<sup>46</sup> **Corruption in the Department of Defence: I:**

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2014-07-23 **Royal Petition concerning Federal Government Corruption.**

To: His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)

*"13. A reserve military policeman reported a \$20M travel fraud which Defence has failed to act on in 16 years. ...*

*26. The Adagold Aviation scandal where Defence procurement staff allegedly leaked tender insider information to a company who offered them jobs. ...*

*27. The MU-90 torpedo acquisition where Department of Defence public servants allegedly lied so that their consortium would win the bid. ...*

*28. Public officials in the Department of Defence conspired with suppliers to empty coffers before budget: paying out \$1B/year, forgoing interest payments of \$260M. ...*

*29. Defence forgery of security clearances. ...*

<http://victimsofdsto.com/royal-cosgrove-2/>

<sup>47</sup> **Corruption and Cover-up in the Department of Defence: II:**

*"Aussie minister on warpath after navy corruption report," AFP, 1997-10-10, "*

*"The Defence Ministry moved Thursday to limit the damage after a leaked secret internal report detailed systematic corruption in the Royal Australian Navy, including drugs smuggling and arms running.*

*Defence Minister Bronwyn Bishop demanded a full explanation from her most senior Admiral, Don Chalmers, and demanded to know why she was not informed. ...*

*The report was compiled by Sydney barrister and naval reserve officer Lieutenant Commander Joe Busuttil on the orders of the chief of staff of naval support command Commodore Kim Pitt ....*

*It found navy personnel smuggled guns into Australia and stole weapons and explosives from navy stores for a bikers gang called the Gypsy Jokers while sailors bringing drugs*

*into the country were tipped off about planned searches by customs and naval intelligence. It also found that naval police in Sydney were paid kickbacks to help union members steal millions of dollars worth of tools, petrol and building materials. Investigations into corruption were sabotaged and computer files stolen and sent to people under investigation, the report said."*

<sup>48</sup> **Corruption and Cover-up in the Department of Defence: III:**

*"Defence's 'bad apples' getting away with it: Senator," Noel Towell, Canberra Times, 2014-08- 26. "Nick Xenophon says Defence's military and public service chiefs must put systems in place to cope with a rising tide of reports of misuse of public funds. Fairfax has uncovered yet more reports and allegations of roting of Commonwealth credit cards, regimental funds and other entitlements both in the military and civilian defence operations. In one case, Defence is investigating the disappearance of files from a secure military archiving facility in Sydney, with the documents allegedly stolen to cover up the roting of money from the regimental funds of an elite commando unit. A group of DSTO technicians were "counselled" last month after they paid for a dinner in Adelaide - washed down with 29 bottles of wine - with a Commonwealth cards and then tried to claim meal allowances for the evening of the spread.*

*...*

*The defence department has launched an internal inquiry into suspected misappropriation of tax payer funds involving one or more members of the army's elite 2nd commando regiment. The suspected financial malfeasance was discovered after a confidential file detailing the use of regiment funds was removed- without approval - from defence department archives at Sydney's Randwick Barracks. Subsequent searches for the missing file have proved fruitless, sparking internal complaints that it has been stolen to cover up the misconduct. The missing file contains details about the expenditure of thousands of dollars in regimental funds allegedly spent on inappropriate items. One former Defence Ministerial staffer confirmed that cultural issues in Defence were on the radar screens of senior politicians."*

<http://m.canberratimes.com.au/federal-politics/political-news/defences-bad-apples-getting-away-with-it-senator-20140826-108q7i.html>

<sup>49</sup> **Numerous examples of waste in the Australian Department of Defence:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones,*

<http://victimsofdsto.com/dsubcom/#waste>

<sup>50</sup> **Numerous examples of abuse in Defence:**

*"Dr Gary Rumble wants sexual abuse in Defence's senior ranks exposed", Ian McPhedran, News Limited, 2013-11-06.*

*"The lawyer who led a high-level review into sexual abuse in the Defence Force has called for a Royal Commission to expose rapists and abusers in the military's senior ranks." [http://www.adelaidenow.com.au/news/national/dr-gary-rumble-wants-sexual-abuse-in-defences-senior-ranks-exposed/story-fni6ulvf-1226754492904?from=public\\_rss](http://www.adelaidenow.com.au/news/national/dr-gary-rumble-wants-sexual-abuse-in-defences-senior-ranks-exposed/story-fni6ulvf-1226754492904?from=public_rss)*

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“Rape suspects may hold senior ranks in ADF”, Brendan Nicholson, Defence Editor, The Australian, 2012-07-11.  
<http://www.theaustralian.com.au/national-affairs/policy/rape-suspects-may-hold-senior-ranks-in-adf/story-e6frg8yo-1226422932957>

“Culture of abuse 20 years' old”, The Australian, April 9, 2011. *“No one was charged and nothing was done about it. One of the perpetrators said openly that “she was a drunk slut, she had it coming”. That person is now a senior officer in the ADF.”* <http://www.theaustralian.com.au/national-affairs/policy/culture-of-abuse-20-years-old/story-e6frg8yo-1226036257416>

“Navy gang rape victim breaks silence in search for treatment,” ABC, 2014, *““It didn't sink in, you know, that they just got rid of evidence. It also didn't sink in that they didn't call the civilian police.””*  
<http://www.abc.net.au/7.30/content/2014/s3953975.htm>

etc.

<sup>51</sup> **Lt Gen Campbell stood by and watched when a journalist was harassed at Manus:**

Personal Communication with Investigative Journalist Rory Callinan.

Brendan Jones: *“Was Lt Gen Campbell physically present when the officials confiscated your equipment and/or prevented you from writing, or did he learn about it later?”*

Rory Callinan: *“Yes he was present”*

**“Manus Island: How information is kept 'under control”**”, Rory Callinan, Canberra Times, 2014-02-25. Journalist: *“The police commander seized my camera and phone. Later, as I waited for their return, he physically prevented me from writing in my laptop. (It should be noted that Lt Gen Campbell approached me and said he had nothing to do with the seizure of the equipment but nor did he arrange its return).”* <http://www.canberratimes.com.au/comment/manus-island-how-information-is-kept-under-control-20140225-33eob.html>

<sup>52</sup> 2014-03-25 Letter to Senator-elect Jacqui Lambie (PUP) cc: General David Hurley, Chief of the ADF.

*“The same is true of Lieutenant General Campbell, so quick to anger when asked if he was involved in a cover up. Given Children Overboard was a cover up by the previous Liberal government and the ADF, it's quite possible that Operation Sovereign Borders is too. General Campbell is a soldier who accepted a divisive political role. Soon to be in charge of the Army, he must be able to calmly respond to questions and criticism by his elected representatives. Malcolm Fraser said “Being in the military does not put a person above criticism.” Likewise I was concerned to learn that at Manus, General Campbell was physically present when an official obstructed then harassed a journalist, but did nothing to stop it.”* <http://victimsofdsto.com/pup/>

<sup>53</sup> **Australia's sedition laws:**

The government, and particularly the public service, is accused of conflating itself with the Commonwealth, but these laws really take the cake.

The Australian government is corrupt, abusive and arrogant. It's public officials pay themselves enormous salaries and perks out of the public purse. Most of the public aren't aware that the government scoops budget surpluses and directs them into the public service's own pension fund. It abuses its citizens. It lies to get elected. It denies them justice through the courts. It is lawless at every level. It gives its citizens no where else to turn. <http://victimsofdsto.com/royal/> + <http://victimsofdsto.com/royal-cosgrove-1/> + <http://victimsofdsto.com/royal-cosgrove-2/>

Yet if citizens *“urge disaffection against the Constitution, Government of the Commonwealth or either House of Parliament,”* even while it abuses them, they face jail.

The Australian government allows its public officials to wantonly break criminal and administrative law. Yet any citizen, denied all legitimate avenues of redress, who contemplates the same can be jailed.  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/ca191482/s24f.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s24f.html)

If a person were to say *‘Although I would defend this country and its people, I would not defend the government itself because they do not defend me’* that person could be charged with sedition. In 1949 the General-Secretary of the Communist Party was charged with saying something similar.

*“Australian Sedition Law,”* Wikipedia, [https://en.wikipedia.org/wiki/Australian\\_sedition\\_law](https://en.wikipedia.org/wiki/Australian_sedition_law)

Sedition laws are long and complicated. One needs to hire a lawyer to interpret them, and runs the risk they will be interpreted differently by the courts who decide the *‘Good faith’* defences do not apply. (Recall judges are lawyers appointed by politicians)

*“In Good Faith : Sedition Law in Australia,”* Roy Jordan, Law and Bills Digest Section, APH, 2006-04 (2010-08-23)  
[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/Publications\\_Archive/archive/sedition](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/sedition)

Bret Walker SC & Peter Roney, Barristers-at-Law for ABC, *“Re: The Anti-Terrorism Bill 2005, & the proposed amendments to the laws of sedition”* pp. 5 <http://www.abc.net.au/mediawatch/img/2005/ep34/advice.pdf>

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Once again, it is safer to say nothing. That is not free speech.

<sup>54</sup> **Royal Petitions into Federal Government Corruption (and letters rejecting them):**

2014-07-23 *Royal Petition concerning Federal Government Corruption.*

To: His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)

<http://victimsofdsto.com/royal-cosgrove-2/>

2014-07-21 *Royal Petition concerning Crime and Corruption by the Australian Public Service.*

To: His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)

<http://victimsofdsto.com/royal-cosgrove-1/>

2014-08-18 **Notice of rejection by Chandy Paul, Acting Deputy Official Secretary to the Governor-General:**

<http://victimsofdsto.com/lib/e-mail/2014-08-18-Office-of-GG-refuses-to-act-on-endemic-federal-government-corruption.html>

2014-02-06 *Royal Petition concerning Crime and Corruption by the Australian Public Service.*

To: Her Excellency the Honourable Quentin Bryce AC CVO

<http://victimsofdsto.com/royal/>

2014-02-21 **Notice of rejection by Mark Fraser, Deputy Official Secretary to the Governor-General:**

2014-02-21 E-mail from Office of the Official Secretary to the Governor-General <gg.donotreply@gg.gov.au>:

*"Dear Mr Jones*

*I refer to your email to the Governor-General. Her Excellency has asked me to reply to you on her behalf.*

*I regret to advise that the Governor-General cannot become involved in the matter you have raised.*

*Yours sincerely*

*Mark Fraser LVO OAM*

*Deputy Official Secretary to the Governor-General"*

<sup>55</sup> **Roy Baker is a defamation lawyer:**

*"Free Speech 2014: Dreyfus calls Brandis 'walking disaster' as attorney general – the day's events," Adam Brereton, Guardian, 2014-08-07. "Roy Baker, a leading defamation lawyer and academic, said Australia should reintroduce a limited right for corporations to sue for defamation, with a strict cap on damages."*

<http://www.theguardian.com/world/live/2014/aug/07/free-speech-2014-george-brandis-tim-wilson-to-speak-at-conference-live-updates>

<sup>56</sup> **Professor Roy Baker called for corporations to get back their right to sue for defamation:**

*"Free Speech 2014: Dreyfus calls Brandis 'walking disaster' as attorney general – the day's events," Adam Brereton, Guardian, 2014-08-07.*

*"Roy Baker, speaking on defamation law reform, says Australia should reintroduce a right for corporations to sue.*

*Removing it in Australia was an egalitarian measure, but heavy handed, Baker says. We should reintroduce the right for corporations to sue for defamation, but for reputational "dignity rights", rather than property rights, only. "I would hugely curb the damages corporations should recover," he said.*

*We should vastly simplify defamation law, he also said. A good place to start would be by "scrapping the single meaning [or publication] rule". Baker has written on some of these issues here.*

*Essentially, Baker says a defendant should be able to say "That's not what I meant", where the clarification is reasonable based on the words of the publication.*

*There should also be a "right to correction", a clarification of the "right to honest opinion" – what are statements of fact, what are statements of opinion. There must also be a public interest defence, and recommends the UK defamation act"*

<http://www.theguardian.com/world/live/2014/aug/07/free-speech-2014-george-brandis-tim-wilson-to-speak-at-conference-live-updates>

<sup>57</sup> **Lawyers and Legal Academics need to understand; Ordinary people don't want to/can't afford to go to court:**

A persistent theme is that lawyers and legal academics like the courts, but don't appreciate that most people don't want to / can't afford to step foot into them.

One of the flaws of the *Public Interest Disclosure Act* (new whistleblowing laws) is they assume the whistleblower is happy to litigate. The law's architects expect the whistleblower ( who doesn't get a cent out of making a whistleblower complaint) to be prepared to take the Commonwealth to court. They have to put up the money for legal action themselves, on the hope they would be reimbursed, and with the risk the court might rule against them and they will be facing jail (under Section 70) or bankruptcy (if costs are denied, or they lose.) Any practising lawyer will tell you court action is very stressful; it can break up families, and the Commonwealth makes it worse by playing very dirty.



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The job of a practising lawyer is to make their client's opponent's life a misery until they are emotionally or financially exhausted.

The Gunns defamation was a nightmare for the people on the receiving end. Why on earth would anyone put want to live through those experiences? <https://www.google.com/search?q=gunns>

**On of the flaws of the *Public Interest Disclosure Act*:**

2013-08-29 An Open Letter to the Public Service Commissioner concerning Systemic Corruption in the Australian Public Service "***Failure to consult whistleblowers***" [http://victimsofdsto.com/psc/#fail\\_consult](http://victimsofdsto.com/psc/#fail_consult)

Mark Dreyfus QC: "A whistleblower who seeks redress through the courts will not be liable for the costs of the agency or department unless the proceedings are vexatious, without reasonable cause or unreasonably cause the other party to incur costs. However, a court can still order that the agency or department pay the costs of the whistleblower, if it is unsuccessful in defending its claim."

Brendan Jones: "There has been a vigorous debate in Queensland where the CMC whistleblowers face criminal charges for making "vexatious" complaints. Fitzgerald Inquiry whistleblower Nigel Powell said of the CMC changes: "You will have an official body saying, 'you better be pretty sure of what you got, because if we find you are vexatious and you don't have a firm basis for what you are saying, then you could be prosecuted'," ... "Now, what was I saying then – had I actually seen corruption take place? No. "Had I had actual evidence of money crossing hands? No. I had my suspicions, which no longer sounds like it would be enough to make a complaint."

*Under the PID the whistleblower won't face criminal charges, but they will still face a costs order that could bankrupt them. Whistleblowers get nothing out of making a complaint. In return they could lose the family home. Why should they take that risk?*

*The government's lawyers claimed my complaint was vexatious, and other whistleblowers said they were accused of the same thing. It appears to be standard operating procedure for government lawyers."*

"You better be careful blowing the whistle — new laws have holes", Brendan Jones, 2013-07-30.

<http://www.crikey.com.au/2013/07/30/you-better-be-careful-blowing-the-whistle-new-laws-have-holes/>

(Note: Rebuttal to Attorney-General's response appears in the Comments)

<sup>58</sup> **The Gunns 20 Case:**

"The Gunns 20 Case: A Brief History," Adam Beeson, National Environmental Law Review 2010: 01, "On the 13 December 2004 Gunns Ltd, Australia's largest export wood-chipper, sued 17 individuals and three groups in the Victorian Supreme Court. Gunns was seeking financial compensation of \$6.3 million for "ongoing damaging campaigns and activities" by environmental activists against the company's operations. The activities in question included media statements, so-called unlawful lobbying of shareholders and customers and disruption of Gunns' logging operations. The writ was issued two days before Gunns referred its controversial Pulp Mill to the Federal Government for assessment." <http://www.austlii.edu.au/au/journals/NatEnvLawRw/2010/18.pdf>

<sup>59</sup> **"Public interest" test:**

Defamation lawyer Roy Baker says 'There must also be a public interest defence, and recommends the UK defamation act.' <http://www.theguardian.com/world/live/2014/aug/07/free-speech-2014-george-brandis-tim-wilson-to-speak-at-conference-live-updates>

The problem with that kind of public interest tests, is that a person can still sue for defamation, at great time and expense to the speaker, and claim the revelation was not 'in the public interest.'

For example, Joe Hockey could still sue Fairfax for that article 'Treasurer for sale' and argue that disclosure wasn't in the public interest.

If that seems incredible, consider the case of Allan Kessing:

"Similarly Judge James Bennett did not allow Customs whistleblower Allan Kessing to present a public interest defence in his case. ("Directing the jury, Judge Bennett had described the evidence as circumstantial but told them not to take into account the public interest argument." <http://www.theaustralian.com.au/archive/news/airport-whistleblower-guilty/story-e6frg6o6-1111113236937> ) Senator Nick Xenophon later said "The scandal here is that this man, who deserves a medal for the work that he did 10 years ago, was actually persecuted through the courts, had his life effectively ruined by virtue of being charged under Section 70 of the Crimes Act." and "How many Australians have overdosed on narcotics as a result of corrupt customs officials allowing those drugs to be brought into the country. How many Australians have been injured or killed as a result of weapons being brought into the country as a result of corrupt Customs officials?" <http://victimsofdsto.com/psc/#kessing> [http://victimsofdsto.com/hrc/#\\_edn33](http://victimsofdsto.com/hrc/#_edn33)

The US Public Figure Doctrine provides a far clearer test because we know exactly who is covered and who isn't.

"Public Figure," Wikipedia, "In United States law, public figure is a term applied in the context of defamation actions (libel and slander) as well as invasion of privacy. A public figure (such as a politician, celebrity, or business leader) cannot base a lawsuit on incorrect harmful statements unless there is proof that the writer or publisher acted with

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actual malice (knowledge of falsity or reckless disregard for the truth). The burden of proof in defamation actions is higher in the case of a public figure.

The controlling precedent in the United States was set in 1964 by the United States Supreme Court in *New York Times Co. v. Sullivan*. It is considered a key decision in supporting the First Amendment and freedom of the press.

A fairly high threshold of public activity is necessary to elevate people to public figure status. Typically, they must either be:

a public figure, either a public official or any other person pervasively involved in public affairs, or

a limited purpose public figure, meaning those who have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." A "particularized determination" is required to decide whether a person is a limited purpose public figure, which can be variously interpreted:

A person can become an "involuntary public figure" as the result of publicity, even though that person did not want or invite the public attention. For example, people accused of high profile crimes may be unable to pursue actions for defamation even after their innocence is established...

A person can also become a "limited public figure" by engaging in actions which generate publicity within a narrow area of interest. For example, [jokes about]... Terry Rakolta [an activist who spearheaded a boycott of the show *Married With Children*] were fair comments... within the confines of her public conduct [and] protected by Ms. Rakolta's status as a "limited public figure". [https://en.wikipedia.org/wiki/Public\\_figure](https://en.wikipedia.org/wiki/Public_figure)

#### **"Public Figure Doctrine Law & Legal Definition.**

According to the public figure doctrine, prominent public persons must prove actual malice on the part of the news media in order to prevail in a libel lawsuit. Actual malice is the knowledge of falsity or reckless disregard of whether a statement is true or false. The public figure doctrine makes it possible for publishers to provide information on public issues to the debating public, undeterred by the threat of liability.

The public figure doctrine as it relates to defamation actions had its origin in *New York Times Co. v. Sullivan*, 376 U.S. 254 (U.S. 1964). "... First Amendment requires that a public official must prove that he was libeled with malicious intent in order to recover. A finding of malicious intent requires a showing that the defendant published the defamatory article with actual knowledge of its falsity or with reckless disregard for its truth. The public figure doctrine is an attempt to strike a balance between the First Amendment interest in a press free from the self-censorship considerations arising from the existence of libel laws and the state interest in providing civil remedies for defamatory falsehood. The public figure doctrine recognizes that the state interest in protecting certain persons classed as public figures is less than in the case of purely private individuals." [Schultz v. Reader's Digest Ass'n, 468 F. Supp. 551, 555 (D. Mich. 1979)] <http://definitions.uslegal.com/p/public-figure-doctrine/>

#### <sup>60</sup> **Hypocrisy by Australia on the jailing of journalist Peter Greste:**

"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones, "Australians hypocritically pointing the finger at Egypt over the jailing of journalist Peter Greste need to be reminded that in Australia we jail our journalists too." [http://victimsofdsto.com/dsubcom/#\\_edn169](http://victimsofdsto.com/dsubcom/#_edn169)

#### <sup>61</sup> **Jailed Aussie Journalist Tony Barrass:**

"**"Bend over, lift your balls!": Tony Barrass on journos in jail,**" Tony Barrass, Crikey, 2013-04-09. <http://www.crikey.com.au/2013/04/09/bend-over-lift-your-balls-tony-barrass-on-journos-in-jail/>

#### <sup>62</sup> **Jailed Aussie Journalist Joe Budd:**

"**Journalist jailed for protecting source,**" Bill Mason, Green Left Weekly, 1992-01-01, "Former Courier-Mail journalist Joe Budd was released from Boggo Road Prison on March 26. He had served a week of a 14-day sentence for "contempt of court" after refusing to reveal a confidential source during a libel trial in the Supreme Court here. ... Investigative journalist Bob Bottom told the rally that Joe Budd had proved that journalists could be trusted to protect their informants. "If people didn't feel they could divulge information about corruption to journalists without being protected, then we wouldn't have things such as the Fitzgerald inquiry", Bottom said." <https://www.greenleft.org.au/node/4111>

#### <sup>63</sup> **The case of whistleblower Allan Kessing:**

2013-08-29: An Open Letter to the Public Service Commissioner concerning Systemic Corruption in the Australian Public Service. "**Allan Kessing**" <http://victimsofdsto.com/psc/#kessing>

#### <sup>64</sup> **The case of whistleblower Mick Skrijel:**

Richard Ackland – "Policing a citizen's right to expression" – Australian Financial Review – 9 February 1996  
"**Should Duncan Kerr's concern about a pamphleteer in his electorate allow him to involve the Australian Federal Police,** asks Richard Ackland." "Last Sunday and Monday he had Mr Mick Skrijel stamping over his borough spreading leaflets that said some beastly things about poor Dunky. // Skrijel will be familiar to readers of this column as the former South Australian fisherman who made allegations of drug trafficking and official protection. The NCA

subsequently brought a drug cultivation charge against him. **An inquiry into the NCA's conduct in this case found there was substantial evidence that the NCA fabricated the case against Skrijel in order to secure his conviction.** // Kerr rejected the recommendation that a royal commission be held and has sent the matter to the Victorian Deputy Ombudsman for further investigation [Ed: who later dismissed it]. Skrijel claims this is a totally inadequate response. // **The material that Skrijel was distributing in Denison contained all those details, plus some flourishes that Kerr was trying to silence him.** // The Minister for Justice was on notice that Skrijel was going to publish this pamphlet because he had sent him a copy on January 30 and asked him to read it carefully and tell him where he was wrong. // The minister did not take up Mr Skrijel's generous offer. Instead on February 2 he wrote to Skrijel's lawyer in Melbourne, John Howie, of Howie and Maher, and said that the pamphlet was "wildly defamatory" and urged that the legal implications of distributing such material be made clear to Mr Howie's client. // **He also sent a letter to members of the media in Hobart, dated February 5, warning that he "would be obliged to take legal action if any of the false and defamatory material were to be repeated in the media".** // That letter went to the Hobart branch manager of ABC radio, among others, on the same day that the ABC metropolitan radio host, Annie Warburton, was planning to interview Skrijel on her afternoon radio show. Before going to air she talked to a friend, Mr George Haddad, who is working with Kerr's campaign team in Denison. Haddad cautioned her about interviewing Skrijel because he was likely to say something defamatory about Kerr on air. **Warburton then pulled the plug on the interview.** // **Kerr says he was concerned about his own safety and his office requested the AFP conduct an "assessment" of Skrijel.** This is quaint since in the time Kerr has been a minister there has been no apprehension about Skrijel. **It is only when he turns up in the electorate wanting a debate that the flatfoots are called in.** // On Tuesday, Warburton was visited by the Australian Federal Police, Kerr being minister responsible for the AFP. She was asked about her impressions of Mr Skrijel and his reaction to being told the interview had been cancelled. The police officer also wanted to know about Skrijel's whereabouts in Hobart, which she did not have. She was asked by the AFP officer to get in touch with the whistleblower's organisation, ask them to contact Skrijel and invite him back to the studio on the pretence that another interview would be scheduled. It was suggested that she string Skrijel along and find out his address in Hobart, so that the copper could go and interview him about his pamphlet // Naturally, like all good journalists, and also having been a lawyer herself, Annie Warburton declined to participate in this proposal. **In fact, the AFP did interview Skrijel, on Wednesday and yesterday in Melbourne. He was asked about the wicked pamphlet: how many had been distributed, were there any others, why was he "mentally harassing" the minister? // But why should a minister be so sensitive as to involve the federal police in the free expression of issues by a concerned citizen participating in the democratic process of an election campaign? This is an even more interesting question."**

<sup>65</sup> My understanding is that Mick Skrijel has since disappeared.

#### <sup>66</sup> **The case of political activist Albert Langer:**

Albert Langer was a political activist who told Australians how they could fill in their electoral ballots so they could vote for the parties they wanted without having to preference the major parties. The method described was legal, but Langer was jailed for telling people how to do it. The major parties have since changed the law to stop people from using it.

"Albert Langer", Wikipedia, "Albert Langer (also known as Arthur Dent) is an Australian political activist, best known for his 1996 conviction and gaoling on contempt charges after breaching an injunction forbidding his advocacy of marking electoral ballot papers in a way discouraged by the Australian Electoral Commission. As a result of his imprisonment, Amnesty International declared him the first Australian prisoner of conscience for over 20 years." [https://en.wikipedia.org/wiki/Albert\\_Langer](https://en.wikipedia.org/wiki/Albert_Langer)

#### <sup>67</sup> **The case of Shane Dowling:**

For legal reasons I am unable to describe Shane Dowling's case here.

#### <sup>68</sup> **The Gunns 20:**

"The Gunns 20," Greg Ogle, Activists Rights.

"In December 2004, Tasmanian timber and forestry giant, Gunns Ltd launched legal proceedings in the Victorian Supreme Court against 3 environmental organisations and 17 individuals arising out of the campaign to protect Tasmania's old growth forests. The 216 page writ claimed \$6.3m damages for a "corporate campaign" of alleged unlawful lobbying of Gunns' banks, Japanese customers and others, and also from a series of forest protests and a general conspiracy against the company. ...

However, while ultimately victorious, the Gunns 20 case was not without cost for the defendants. The Wilderness Society spent over \$1m in legal costs and used a lot of staff and activist energy which could have gone to other environmental campaigns. The Huon Valley Environment Centre continued to campaign and be a hub for organising protests in the forests in the south of Tasmania. The individual defendants got on with their lives: some left Tasmania or retired from environmental activism – either burnt by the case, or just because other things came up – while others became more hard-nosed activists. Most tragically, the 13th defendant, Ben Morrow died of cancer just weeks after the case against him was dropped.

The legal legacy of the case is hard to tell, but it did spawn a campaign for so-called "anti-SLAPP" (Strategic Litigation Against Public Participation) legislation to protect the right of public participation and protest.

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*Some of the edge was taken off the campaign by the passing of new defamation laws in all states in 2005, and by the then moves towards a national bill of rights. ... [Ed: How did that go?]*

*The Gunns 20 were: Alex Marr, Geoff Law, Russell Hanson, Leanne Minshull, Heidi Douglas, The Wilderness Society Inc, Adam Burling, Louise Morris, Simon Brown, Senator Bob Brown, Peg Putt MP, Helen Gee, Ben Morrow, Louise Geraghty, Neil Funnell, Brian Dimmick, The Huon Valley Environment Centre, Peter Pullinger, Dr Frank Nicklason, Doctors for Native Forests Inc”* <http://www.activistrights.org.au/handbook/ch04s01.php>

<sup>69</sup> “@piecritic: I can’t shake the feeling that this talk is just a big Facebook ad.”  
<https://twitter.com/piecritic/statuses/497203754576277505>

<sup>70</sup> **Facebook isn’t cool any more:**

“Facebook ‘dead and buried’ as teens switch to Snapchat and Whatsapp,” Tomas Jivanda, The Independent, 2014-12-28.  
<http://www.independent.co.uk/life-style/gadgets-and-tech/news/facebook-dead-and-buried-as-teens-switch-to-snapchat-and-whatsapp-9028208.html>

“When did Facebook become so uncool?,” John D. Sutter, CNN,  
<http://www.cnn.com/2012/04/10/tech/social-media/facebook-uncool-instagram/>

“Mark Zuckerberg Admits: ‘Coolness Is Done For Us’,” Jim Edwards, Business Insider, 2014-09-19.  
<http://www.businessinsider.com.au/mark-zuckerberg-admits-coolness-is-done-for-us-2013-9>

“Even President Obama Thinks That Facebook Isn’t Cool Anymore,” Jordan Crook, 2014-01-15.  
<http://techcrunch.com/2014/01/15/even-president-obama-thinks-that-facebook-isnt-cool-anymore/>

<sup>71</sup> **Criticism of Twitter as a green-Left echo chamber and sewer:**

“Twitter trolls have a right to offend – but we don’t have to listen,” Tim Wilson, The Guardian, 2014-05-20.  
“Of course they have a right to speak. The oddity is why anyone listens to them, instead of doing what we’ve always done – ignored them. The Australian’s Chris Kenny calls it a “green-Left echo chamber”. The News Limited columnist Andrew Bolt refers to it as a “sewer”. Either way, of all social media platforms, Twitter provides the most immediate and spontaneous satisfaction for people to vent.” <http://www.theguardian.com/artanddesign/australia-culture-blog/2014/may/20/twitter-trolls-have-right-offend-but-dont-have-to-listen>

<sup>72</sup> **American Civil Liberties Union:**

“ACLU,” Wikipedia, “*The American Civil Liberties Union (ACLU) is a nonpartisan non-profit organization whose stated mission is “to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States.”[5] It works through litigation, lobbying, and community education. Founded in 1920 by Roger Baldwin, Crystal Eastman, George Kessler, Helen Keller and Walter Nelles, the ACLU has over 500,000 members and has an annual budget over \$100 million. Local affiliates of the ACLU are active in all 50 states and Puerto Rico. The ACLU provides legal assistance in cases when it considers civil liberties to be at risk. Legal support from the ACLU can take the form of direct legal representation, or preparation of amicus curiae briefs expressing legal arguments (when another law firm is already providing representation).*”  
[https://en.wikipedia.org/wiki/American\\_Civil\\_Liberties\\_Union](https://en.wikipedia.org/wiki/American_Civil_Liberties_Union)

<sup>73</sup> **Free Speech is an American concept:**

“Free Speech and Offensive Expression,” Judith Wagner DeCew, Freedom of Speech: Volume 21, Part 2, Ellen Frankel Paul et al, 2004. “*Free speech has historically been viewed as a special and preferred democratic value in the United States, by the public as well as the legislatures and courts. In 1937, Justice Benjamin Cardozo wrote in Palko v. Connecticut that protection of speech is a “fundamental” liberty due to America’s history, political and legal, and he recognised its importance saying, “[F]reedom of thought and speech” is “the matrix, the indispensable condition, of nearly every other form of freedom.*””

<sup>74</sup> **Free Speech articles, mostly by Americans:**

“Conservatives, Democrats and the convenience of denouncing free speech,” Glenn Greenwald, The Guardian, 2012-09-16. “*Westerners love to decry censorship aimed at them by Muslims while ignoring the extreme censorship they impose on them*” <http://www.theguardian.com/commentisfree/2012/sep/16/conservatives-democrats-free-speech-muslims>

“The DOJ’s escalating criminalization of speech,” Glenn Greenwald, Salon, 2011-09-04.  
“*Muslims continue to be targeted for prosecution for expressing political views the government dislikes.*”  
[http://www.salon.com/2011/09/04/speech\\_23/](http://www.salon.com/2011/09/04/speech_23/)

“France’s censorship demands to Twitter are more dangerous than ‘hate speech’,” Glenn Greenwald, The Guardian, 2013-01-03. “*Few ideas have done as much damage throughout history as empowering the government to criminalize opinions it dislikes.*” <http://www.theguardian.com/commentisfree/2013/jan/02/free-speech-twitter-france>

“Criminalizing free speech,” Glenn Greenwald, Salon, 2011-06-01. “*The administration now justifies punishing or even killing citizens, like Anwar al-Awlaki, because of their ideas.*” [http://www.salon.com/2011/06/01/free\\_speech\\_4/](http://www.salon.com/2011/06/01/free_speech_4/)



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“Rahm Emanuel’s dangerous free speech attack,” Glenn Greenwald, Salon, 2012-07-27.

“Chicago blocks a business from expanding because its president opposes same-sex marriage.”  
[http://www.salon.com/2012/07/26/rahm\\_emanuels\\_free\\_speech\\_attack/](http://www.salon.com/2012/07/26/rahm_emanuels_free_speech_attack/)

“The Noxious Fruits of Hate Speech laws,” Glenn Greenwald, Salon, 2008-01-13. “A Canadian government investigation into a newspaper publisher reveals how tyrannical and dangerous such laws are.”  
[http://www.salon.com/2008/01/13/hate\\_speech\\_laws/](http://www.salon.com/2008/01/13/hate_speech_laws/)

“The creepy tyranny of Canada’s hate speech laws,” Glenn Greenwald, Salon, 2010-03-23. “[American] Ann Coulter is threatened with criminal prosecution in advance of a speech [in Canada].”  
[http://www.salon.com/2010/03/22/canada\\_5/](http://www.salon.com/2010/03/22/canada_5/)

“The fruits of hate speech laws,” Glenn Greenwald, Unclaimed Territory (Blog), 2006-11-02.  
<http://glenngreenwald.blogspot.com.au/2006/11/fruits-of-hate-speech-laws.html>

“‘Free speech’ is more than a slogan,” Dolan Cummings, Spiked, 2006-10-18, “Those who suggest limits on free speech are in effect opposing rational debate - and painting a dim picture of humanity.” <http://www.spiked-online.com/newsite/article/1906/>

“On the freedom to shout fire in a crowded theatre,” Free Speech Now, Spiked, 2014-05-22. “Justice Oliver Wendell Holmes [via a historical pseudonym] on the use and abuse of that [mis]quote.” [http://www.spiked-online.com/freespeechnow/fsn\\_article/on-the-freedom-to-shout-fire-in-a-crowded-theatre/](http://www.spiked-online.com/freespeechnow/fsn_article/on-the-freedom-to-shout-fire-in-a-crowded-theatre/)

“Why we need free speech online,” Sandy Starr, Spiled, 2005-05-26. “In their crusade against ‘hate speech’, regulators want to subject all internet users to a system of parental controls.” <http://www.spiked-online.com/newsite/article/1031/>

“There ain’t no harm in hate speech,” Josie Appleton, Spiked, 2012-10-28. “The demand to criminalise hate speech is essentially a demand to criminalise people who haven’t actually done anything wrong.” [http://www.spiked-online.com/review\\_of\\_books/article/13028/](http://www.spiked-online.com/review_of_books/article/13028/)

“We must tolerate assaults on the truths we hold dear,” Wendy Kaminer, Spiked, 2014-05-02. “True freedom of speech means acknowledging that we ourselves might just be wrong.” [http://www.spiked-online.com/freespeechnow/fsn\\_article/we-must-tolerate-assaults-on-the-truths-we-hold-dear/](http://www.spiked-online.com/freespeechnow/fsn_article/we-must-tolerate-assaults-on-the-truths-we-hold-dear/)

“Twitter, hate speech, and the costs of keeping quiet,” Greg Lukianoff, CNET, 2013-04-17. “Purging mass media of hurtful opinions would deny everyone important knowledge. Simply put, says author Greg Lukianoff, it’s far better to know that there are bigots among us than to pretend all is well.” <http://www.cnet.com/news/twitter-hate-speech-and-the-costs-of-keeping-quiet/>

“‘There should be no restrictions on dangerous ideas.’” Brendan O’Neill, Spiked, 2013-11-15. [http://www.spiked-online.com/freespeechnow/fsn\\_article/there\\_should\\_be\\_no\\_restrictions\\_on\\_dangerous\\_ideas/](http://www.spiked-online.com/freespeechnow/fsn_article/there_should_be_no_restrictions_on_dangerous_ideas/)

“Why Hate Speech Laws Have More In Common With Fascism Than Democracy,” Joshua Goldberg, Thought Catalog, 2014-08-11. <http://thoughtcatalog.com/joshua-goldberg/2014/08/why-hate-speech-laws-have-more-in-common-with-fascism-than-democracy/>

“Censorship Is Perfectly Unnatural,” Joshua Goldberg, Thought Catalog, 2014-08-20. <http://thoughtcatalog.com/joshua-goldberg/2014/08/censorship-is-perfectly-unnatural/>

“Should free speech trump hate laws? Yes,” Margaret Wentz, The Globe and Mail, 2011-10-13.  
<http://www.theglobeandmail.com/globe-debate/should-free-speech-trump-hate-laws-yes/article4351020/>

“These elitist hate-speech laws erode democracy,” James Allan, Professor of Law, University of Queensland via SMH, 2014-03-03 “First a few facts. In the US there are no hate speech laws of any kind. In France there are plenty. Where do you think Jews or Muslims are better integrated into society as equal citizens?”  
<http://www.smh.com.au/comment/these-elitist-hatespeech-laws-erode-democracy-20140302-33ttw.html>

“If You Want To Combat Hate, Don’t Outlaw Hate Speech—Counter It With Better Ideas,” James Kirckick, Tablet Mag, 2014-02-12. “Europe’s approach to banning expression lets people feel good but does nothing to eradicate racism.” <http://www.tabletmag.com/jewish-news-and-politics/162657/free-hate-speech>

“Play ball, not Bolt, in free speech debate,” Julian Assange and Jennifer Robinson, SMH, 2011-10-28. “However much you disagree with Bolt, the ‘hate speech’ law under which he was prosecuted is more offensive than he is.”  
<http://www.smh.com.au/federal-politics/political-opinion/play-ball-not-bolt-in-free-speech-debate-20111027-1mm4h.html>

<sup>75</sup> **Free Speech is not an Australian concept:**

The first Chief Justice of the Supreme Court of New South Wales Sir Francis Forbes: ‘A free press is not quite fitted to a servile population.’ Australia’s first newspaper editors were hounded by the authorities, then jailed.

**Recommended reading:**

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*“Freedom Of The Press And Freedom Of Speech In Australia,”* Robin Speed, Rule of Law Institute, 2012.  
<http://www.ruleoflaw.org.au/wp-content/uploads/2012/08/Media-1-9-11-Freedom-of-the-Press-and-Freedom-of-Speech-in-Australia-Robin-Speed.pdf>

<sup>76</sup> As evidenced, in my opinion, by these examples:

For example:

HumanRightsLawCentre @rightsagenda Aug 5: “Laws that protect Australians from racist hate speech are a great asset for our community. Good decision from PM to leave #18c alone.”

@VictimsofDSTO Aug 5 “@rightsagenda You\*do\*realise laws that restrict one type of free speech can be used to suppress other types of free speech, don't you? #18c”

HumanRightsLawCentre @rightsagenda Aug 5 “@VictimsofDSTO these restrictions relate to racial discrimination only. Free speech not absolute right under international human rights law”

**But if the HRLC is referring to the ICCPR, The UN Special Rapporteur on freedom of religion or belief, Heiner Bielefeld said Article 19 can never be circumvented by invoking Article 20:**

US Supreme Court Justice Benjamin Cardozo says ‘Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom’, **yet in this next article we have two Australian “Human Rights” lawyers arguing for restrictions on free speech, apparently unaware on the UN position, the value of free speech (even offensive free speech), nor of the dangers of subjective tests on offensive speech:**

*“How Do We Draw The Line On Free Speech?”*, Rachel Ball and Anna Brown, New Matilda, 2014-04-14.

**“Noble defences of unlimited free speech make for good debate, but a poor society** *“The issue is at the core of the current debate around our racial vilification laws. Attorney-General George Brandis’ insistence that people have a right to express bigotry ignores the tangible harm that can flow from racial vilification. The proposed amendments to the Racial Discrimination Act that Brandis has released for community consultation water-down the laws that provide protection against harmful racial hate speech. The most concerning aspect of the proposals is an extraordinarily expanded exemption granted to almost all forms of public discourse. This means that anyone with access to a megaphone, blog or twitter account can incite racial hatred, rendering the prohibition meaningless.”*

<https://newmatilda.com/2014/04/14/how-do-we-draw-line-free-speech>

**These Australian “Human Rights” argue against free speech. They fail to acknowledge it has benefits.**

Joshua Goldberg said: **“Personally, I find it nothing less than absolutely disgusting and depressing how people who claim to campaign for “human rights” are so opposed to the most basic human right of all: freedom of speech.”**

<http://thoughtcatalog.com/joshua-goldberg/2014/08/why-hate-speech-laws-have-more-in-common-with-fascism-than-democracy/>

Himself a gay Jew, Jonathan Rauch writes: **“Above all, the idea that hate speech always harms minorities is false. To the contrary: painful though hate speech may be for individual members of minorities or other targeted groups, its toleration is to their great collective benefit, because in a climate of free intellectual exchange hateful and bigoted ideas are refuted and discredited, not merely suppressed. The genius of the open society is that it harnesses the whole range of public criticism, including offensive and hurtful speech, in a decentralized knowledge-making process that has no rival at the job minorities most care about: finding truth and debunking bigotry. That is how we gay folks achieved the stunning gains we’ve made in America: by arguing toward truth.”** <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/02/04/a-new-argument-for-hate-speech-laws-um-no/>

**“Funerals, Fire, and Brimstone : Freedom of Speech and the Intentional Infliction of Emotional Distress Tort”, Eugene Volokh, 2010. “The defendants’ speech in Snyder v. Phelps is uncommonly contemptible But many more ideas than just the Phelpsians’ would be endangered if the Court allowed the intentional infliction of emotional distress tort to cover the expression of offensive ideas. [Many examples ...]”**

[http://www.cardozolawreview.com/content/denovo/VOLOKH\\_2010\\_300.pdf](http://www.cardozolawreview.com/content/denovo/VOLOKH_2010_300.pdf)

<sup>77</sup> A 1991 survey showed in that year there were more defamation law suits in Sydney alone than there were in the entire USA.

<sup>78</sup> **RACIAL DISCRIMINATION ACT 1975 - SECT 18c**

Offensive behaviour because of race, colour or national or ethnic origin

(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

Note: Subsection (1) makes certain acts unlawful. Section 46P of the Australian Human Rights Commission Act 1986 allows people to make complaints to the Australian Human Rights Commission about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.

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- (2) For the purposes of subsection (1), an act is taken not to be done in private if it:
- (a) causes words, sounds, images or writing to be communicated to the public; or
  - (b) is done in a public place; or
  - (c) is done in the sight or hearing of people who are in a public place.
- (3) In this section:

"public place" includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/rda1975202/s18c.html](http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/s18c.html)

#### **RACIAL DISCRIMINATION ACT 1975 - SECT 18D**

##### **Exemptions**

Section 18c does not render unlawful anything said or done reasonably and in good faith:

- (a) in the performance, exhibition or distribution of an artistic work; or
- (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- (c) in making or publishing:
  - (i) a fair and accurate report of any event or matter of public interest; or
  - (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/rda1975202/s18d.html](http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/s18d.html)

##### <sup>79</sup> **Flaws with 18c were pointed out: I:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: <http://victimsofdsto.com/hrc/>

Tim Wilson acknowledged that letter, but he did not respond to it.

The only argument I saw him later use (which he might have found elsewhere) was a quote by Stephen Fry: "In 2005 Stephen Fry said: *"It's now very common to hear people say, 'I'm rather offended by that',"* he said, *"as if that gives them certain rights. It's actually nothing more than a whine. 'I find that offensive.' It has no meaning; it has no purpose; it has no reason to be respected as a phrase. 'I am offended by that.' Well, so f---ing what?"*"

[http://victimsofdsto.com/hrc/#\\_edn29](http://victimsofdsto.com/hrc/#_edn29)

But in his OP in *The Guardian* Tim Wilson did not argue the benefits of offensive speech, only that they had the right to offend and we had the right not to listen to them:

"Twitter trolls have a right to offend – but we don't have to listen," Tim Wilson, *The Guardian*, 2014-05-20, <http://www.theguardian.com/artanddesign/australia-culture-blog/2014/may/20/twitter-trolls-have-right-offend-but-dont-have-to-listen>

##### <sup>80</sup> **The dangers of subjective tests:**

The IPA had raised these concerns in 2012, but for whatever reason, it never made it into the public debate. Given this was a Parliamentary Submission on the law it seems highly likely the HRC knew about it and so was aware of the dangers of subjective tests, but chose to ignore it. That's a pretty incredible omission for a commission entrusted to defend all of our rights, including Freedom of Speech.

*"Submission to Senate Legal and Constitutional Affairs Legislation Committee Exposure Draft of Human Rights and Anti-Discrimination Bill 2012,"* Chris Berg and Simon Breheny, IPA, 2012:

*"The draft Bill substantially reverses the burden of proof onto the defendant. It introduces a large amount of uncertainty and ambiguity into anti-discrimination law. ... The draft Bill introduces a subjective test for decisions about whether the law has been breached. Subjective tests are impossible to comply with and should never be used by the courts."* [https://www.ipa.org.au/library/publication/1356055327\\_document\\_211212\\_submission\\_-\\_anti-discrimination.pdf](https://www.ipa.org.au/library/publication/1356055327_document_211212_submission_-_anti-discrimination.pdf)

<sup>81</sup> **This article by Joshua Goldberg describes the poor quality of the debate over 18c, giving examples of people who began with naïve emotional positions and became victims of their own confirmation bias, and thanks to the poor quality of the debate were never offered alternate views to consider:**

*"Why Hate Speech Laws Have More In Common With Fascism Than Democracy,"* Joshua Goldberg, Thought Catalog, 2014-08-11. <http://thoughtcatalog.com/joshua-goldberg/2014/08/why-hate-speech-laws-have-more-in-common-with-fascism-than-democracy/>

<sup>82</sup> **Mike Carlton is a supporter of 18c; calls its critics the "the usual nutters":**

Mike Carlton @MikeCarlton01: *"Honestly now. Does anyone out there - apart from the usual nutters - believe their freedom of speech is curtailed by #18c ?"* <https://twitter.com/MikeCarlton01/status/450421404828053506>

<sup>83</sup> **Mike Carlton accused of being an anti-Zionist:**

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“I hit back and told people to get f\*cked”: Mike Carlton explains why he quit,” Myriam Robin, Crikey, 2014-08-06.  
“**Carlton says after he wrote a column two weeks ago criticising Israel’s actions in Gaza, he’s received endless abuse from offended readers. “I’ve been called a bag of Nazi slime, a Jew-hating racist ... endlessly,”** he told Crikey this morning. “Much of it has been obscene. I suppose, half-a-dozen times, I hit back and told people to get fucked”.”  
<https://tinyurl.com/lnotl7d>

<sup>84</sup> **Mike Carlton is now being sued under 18c:**

“**18c used to sue Mike Carlton for racial vilification**,” Sharri Markson, The Australian, 2014-08-14.  
“The controversial 18c provisions of the Racial Discrimination Act will be used in a complaint against The Sydney Morning Herald over its anti-Semitic cartoon and the accompanying article by former columnist, Mike Carlton.”  
<http://www.theaustralian.com.au/media/print/c-used-to-sue-mike-carlton-for-racial-vilification/story-fn9ymmvo-1227023569915?nk=59609ff6e260c6ddb29b76cecb9b9bdf#>

<sup>85</sup> **George Brandis’ proposal to alter the Racial Discrimination Act so apply “community standards”:**

FREEDOM OF SPEECH (REPEAL OF S. 18c) BILL 2014

“The Racial Discrimination Act 1975 is amended as follows:

1. Section 18c is repealed.

2. Sections 18B, 18D and 18E are also repealed.

3. The following section is inserted:

“(1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely:

(i) to vilify another person or a group of persons; or

(ii) to intimidate another person or a group of persons,

and

(b) the act is done because of the race, colour or national or ethnic origin of that person or that group of persons.

(2) For the purposes of this section:

(a) vilify means to incite hatred against a person or a group of persons;

(b) intimidate means to cause fear of physical harm:

(i) to a person; or

(ii) to the property of a person; or

(iii) to the members of a group of persons.

(3) Whether an act is reasonably likely to have the effect specified in sub-section (1)

**(a) is to be determined by the standards of an ordinary reasonable member of the Australian community, not by the standards of any particular group within the Australian community.**

(4) This section does not apply to words, sounds, images or writing spoken, broadcast, published or otherwise communicated in the course of participating in the public discussion of any political, social, cultural, religious, artistic, academic or scientific matter.”

<http://www.ag.gov.au/Consultations/Documents/Attachment%20A.pdf>

<sup>86</sup> **Former LNP A-G Neil Brown QC proposes letting community views be enforced by a jury to determine what is acceptable speech:**

“Putting balance back into the racial discrimination debate,” Neil Brown, Online Opinion, 2014-03-17.

*The present Section 18c makes it unlawful for a person to do an act, otherwise than in private that is reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or a group of people, and the act is done because of their race, colour or national or ethnic origin. This test is essentially a subjective one, based on how the individual or group feel or would feel about the act as determined not by them but by a Judge.*

*The test is flawed because it tells us little about the community's view of the conduct in question, when the community's view should at least be a factor and it tells us little about whether the community thinks that conduct should be punished.*

*Rather, it imposes a test where the judge has to put him or herself in the position of the complainant and ask whether an act would have offended, insulted, humiliated or intimidated a person or group in light of their own particular sensitivities. Clearly there must be cases where the complainant may well have been offended by what was said about him, but where the community would itself not regard the conduct as justifying the feeling of outrage held by the complainant or any punishment of the respondent (the originator of the conduct) for engaging in the conduct. As the Section stands at the present the originator would be guilty in such cases, even if the community view on any fact situation were that the conduct should not be illegal.*

*It is true, of course, that the Judge did not use an unrestricted subjective test, as he invoked the notion of whether the "target " would be "reasonably likely in all the circumstances" to be offended, although this is still a subjective test.*

*In any event, there are also the twin questions of whether a judge, sitting alone, would have any idea of whether the complainant "should" have been so incensed and whether judges should be passing judgment on such questions, which are essentially questions of personal conduct and reaction.*



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*The present subjective test also gives scope for false or even honest outrage, but outrage based on events about which a mature, responsible adult in a society that is committed to freedom of expression should not complain. In other words, the present test enables complainants to bring proceedings and to say, yes, they certainly were offended, insulted, humiliated or intimidated or perhaps all of them and for the Judge to say that they were or should have been so offended, insulted, humiliated or intimidated, whether the community as a whole believes they were not offended or should not have been offended.*

***There is then a clear danger under the present test that what traditionally would have been thought of as no more than a demonstration of robust freedom of expression becomes illegal, no matter what the community as a whole thinks of it.***

<http://www.onlineopinion.com.au/view.asp?article=16120&page=0>

On that last sentence, Mr. Brown misses the point. I can rewrite it thus: *"There is then a clear danger under the present test that what traditionally would have been thought of as no more than a demonstration of robust freedom of expression becomes illegal, BECAUSE THE COMMUNITY DISAGREES WITH IT."*

<sup>87</sup> **The purpose of rights is to protect individuals from the tyranny of the majority:**

A good discussion of minority rights under majority rule:

***"Majority Rule/Minority Rights: Essential Principles,"*** Democracy Web, *"American Parliamentary Law is built upon the principle that rights must be respected: the rights of the majority, of the minority, of individuals, of absentees, and rights of all of these together."* <http://www.democracyweb.org/majority/principles.php>

<sup>88</sup> **The government must remain neutral in the marketplace of ideas:**

US Supreme Court Justice Stevens: *"For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas."* [FCC v. Pacifica Foundation]

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=438&invol=726>

<sup>89</sup> **New ideas are often ridiculed, even by the scientific community:**

The Celestial Society: A Life in Medicine, Vivian Burch Martin. pp. 681-682.

*"As he wrote the Salk Institute's Roger Guillemin, who shared the N"obel with Schally [for neurohormones], "I understand that your paper that ultimately resulted in the Nobel Prize was rejected by some journal. The reviewers apparently did not believe what you were saying was correct, which turned out to be wrong... It seems to me that in several instances outstanding papers have been rejected only to learn later that they were extremely important contributions."*

*My father compiled a list of such instances. He recalled that the Rockefeller's Peyton Rouse who found that infection could cause certain cancers, was ridiculed so stridently by the experts of the day that he abandoned that line of research, only to have it earn him a Nobel Prize fifty-six years later.*

*He knew, too, that Oliver Wendell Holmes Sr [Yes, \*that\* US Supreme court justice's dad] wrote a largely ignored 1834 paper saying that mothers were dying in hospital because their physicians were not washing their hands. It was a problem that Ignaz Semmelweis in Germany, working separately at the same time, warned against all his life, earning himself nothing but professional ostracism.*

*When later that simple caution was adopted, it ended one of the most fearsome dangers of childbirth.*

*Edward Jenner's paper on smallpox vaccine, certainly a tremendous breakthrough in public health, was rejected by the Royal Society with the declaration that "a Fellow of the Society ought not to risk his reputation by presenting to the learned body anything which appears so much at variance with established knowledge, and withal so incredible."*

<https://booko.com.au/9781450087995/The-Celestial-Society>

<sup>90</sup> **'Nearly all great scientists start out as heretics':**

***'Nearly all great scientists start out as heretics,'*** Matt Ridley, Wired, 2009-11-22.

*"Nearly all great scientists start out as heretics nailing their theories to the door of conventional scientific wisdom. Galileo, Darwin and Einstein were all at some point in a minority of one; Alfred Wegener was dead before continental drift was taken seriously.*

*So somewhere today there is a scientific heretic being ridiculed by the orthodox scientific clerisy, but who will later be recognised as a visionary. Trouble is, the fact that all great scientists were heretics does not mean that all heretics are right. Science is plagued by self-proclaimed geniuses furious at the establishment's refusal to recognise their disproof of relativity.*

*It is easy to judge heretics in retrospect. Ignaz Semmelweis was the Viennese physician who noticed in 1847 that doctors were killing women by not washing their hands in between dissecting corpses and delivering their babies. The*

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death rate from childbed fever was twice as high for doctor-assisted births as it was for midwife-assisted births. But Semmelweis's reward for pointing this out was vilification, ostracism and eventually the insane asylum, where he died.

All over the world, doctors resisted the idea of antiseptic hygiene. Take the surgeon who treated US president James Garfield after he was shot in 1881 - he invited colleagues to probe the wound with their fingers. Garfield died two months later from infection, not injury.

That could never happen now, could it? Well, consider the case of Barry Marshall, the Australian medical researcher who in the 1980s suggested that stomach ulcers are caused by bacteria, not stress and spicy food. Antacid drugs were among the pharmaceutical industry's biggest cash cows at the time, and Marshall's theory was dismissed. So he infected himself by drinking a brew of *Helicobacter pylori*, then cured himself with antibiotics. The bacterial theory was still not accepted for many years, but it won him the Nobel prize in 2005.

Or take dietary fat. As recounted in Gary Taubes's book *The Diet Delusion*, the hypothesis that fatty food was responsible for heart disease became an article of faith with the medical establishment despite studies failing to verify the link. But by citing only the relatively few studies that did find a correlation, and ignoring the ones that did not, a powerful body of evidence was assembled. Heretics who said that dietary carbohydrate mattered more were brushed aside until very recently.

Yet I could cite just as many heretics who were ignored and were wrong. Peter Duesberg, who believes that HIV does not cause Aids, and Andrew Wakefield, who thought the MMR vaccine caused autism, have their tales of ranks closing against them, as do various kinds of intelligent designers.

Right on the cusp of plausibility, in my view, lies the heresy championed by Edward Hooper in his book *The River*, that the Aids epidemic may have been started by trials of experimental polio vaccines in Congo and Burundi in the late 1950s. I hope it is not true, yet I have always thought the circumstantial evidence Hooper exhaustively gathered was strong enough to merit serious discussion. Early, live polio vaccines were indeed contaminated with animal viruses such as SV40; huge vaccine trials were done in the year before the oldest surviving HIV-positive blood sample was taken and in areas where Aids epidemics later broke out among the young adults likely to have been vaccinated as children; and a large chimpanzee colony was maintained for polio research by the very team developing the vaccine in the Congo (HIV is a chimp virus). But there are some good arguments against the theory: the family tree of the virus seems to show earlier infection of human beings, and no sample of chimp tissue used for locally amplifying the vaccine has ever come to light.

Scientists are human. They allow their prejudices, their interests and their loyalties to get in the way of reason. Sometimes, ideas in science cannot prevail until their diehard opponents have died hard. Theory, it is said, advances "funeral by funeral".

And as for the financial heretics? Yes, I also wish I had listened more to them."

<http://www.wired.co.uk/magazine/archive/2009/10/start/nearly-all-great-scientists-start-out-as-heretics>

"Scientific heresy," Matt Ridley, 2011-11-04. "My topic today is scientific heresy. When are scientific heretics right and when are they mad? How do you tell the difference between science and pseudoscience?"

<http://www.onlineopinion.com.au/view.asp?article=12844&page=0>

<sup>91</sup> **Best summary I have seen of the new British defamation laws (Defamation Act 2013):**

"Six things all journalists need to know about the Defamation Act 2013 (which is now in force)," Dominic Ponsford, Press Gazette UK, 2014-01-02, "*But here are six key points from it that all journalists should bear in mind, summarised from Cleland Thom's e-book - Using the Defamation Act 2013.*

1 - The serious harm test. Someone bringing a libel action will now have to prove that the statement caused, or was likely to cause, serious harm to their reputation. This will probably have limited effect. Most people who start libel actions do so because a statement did cause them serious harm. [Ed: I'd question this in Australia] It is difficult to find a recent libel case that would have failed if the new law had been in force. However: There should be fewer trivial, time-consuming complaints that usually go nowhere, Fewer cases will go to court, Libel actions against web-only publications are likely to fail if the page did not attract many clicks.

2 - Taking care of business. Businesses can now sue only if a statement caused, or was likely to cause, serious financial loss. They will probably have to provide documentary evidence, but not to the extent of producing profit and loss accounts.

3 - The public interest. The Reynolds public interest journalism defence has been abolished and replaced by the public interest defence. Editors can use the defence if they can prove: The statement complained of was, or formed part of, a statement on a matter of public interest, and they reasonably believed that publishing the statement complained of was in the public interest. Judges will probably produce a slightly less rigid version of the Ten Steps of Responsible Journalism used in Reynolds. So, little will change. Editors wanting to use the defence will still have to establish that copy is balanced and neutral and that thorough steps were taken to verify the facts.

4 - More Privilege. Privileged material which is protected from defamation actions is now extended to cover: peer-reviewed statements in scientific and academic journals subject to the usual five conditions set out in the Defamation

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Act 1996, reports of scientific and academic conferences and related documents, articles based on information provided by public companies and at press conferences, reports of proceedings of government from anywhere in the world, international conferences and international court proceedings.

5 - Single publication rule. The one-year time limit for starting web libel actions now starts when an article is first published online. It does not re-start every time an article is viewed, or downloaded, as has been the case up to now.

6 - Website operators no longer have to pre-moderate reader comments ...”

<http://www.pressgazette.co.uk/content/six-things-all-journalists-need-know-about-defamation-act-2013-which-now-force>

There are some good changes in the new law for the UK, but Australia has a meeker press culture; any possibility of getting sued is a strong incentive for the press to pass on a story, and lack of competition (A British journalist who passes up a scoop is a mug; They’ve let their paper down. But in Australia there are only two large media organisations; Either you read Fairfax or you read NewsCorp. There’s no real pressure to get scoops. Australian journalists pass up scoops all the time.)

Thus I suspect if these UK laws if they were passed in Australia we would see little change. It would help media organisations fight off defamation suits at the moment, but wouldn’t lead to them doing any more stories.

Which is to say I suspect the Australian media needs stronger protection, such as the US public interest test (See *New York Times v Sullivan* discussed elsewhere in this open letter).

<sup>92</sup> **British Deputy PM said British defamation laws made Britain “an international laughing stock”:**

“‘Laughing stock’ libel laws to be reformed, says Nick Clegg,” Patrick Wintour, *The Guardian*, 2011-01-07.

“Nick Clegg will tomorrow set out the most ambitious plans yet to relax Britain's libel laws, saying he will back a raft of reforms including a statutory public interest defence. He will promise that a bill this spring, likely to reach the statute book in 2013 following hard-fought lobbying, will turn **“English libel laws from an international laughing stock to an international blueprint”**.” <http://www.theguardian.com/law/2011/jan/06/libel-laws-nick-clegg>

“Nick Clegg,” Wikipedia, “Nicholas William Peter “Nick” Clegg is a British politician who since 2010 has been **Deputy Prime Minister of the United Kingdom** and Lord President of the Council, as part of the coalition government headed by Prime Minister David Cameron.” [http://en.wikipedia.org/wiki/Nick\\_Clegg](http://en.wikipedia.org/wiki/Nick_Clegg)

<sup>93</sup> **The benefits of free speech:**

“Exploring Constitutional Conflicts. Introduction to the Free Speech Clause,”

University of Missouri – Kansas City School of Law, “**What values does the Free Speech Clause serve?**”

<http://law2.umkc.edu/faculty/projects/ftrials/zenger/freespeech.htm>

<sup>94</sup> **2014-08-07 Speech by ALP Shadow A-G Mark Dreyfus MP to Free Speech Symposium 2014.**

“MARK DREYFUS QC MP // SHADOW ATTORNEY-GENERAL // SHADOW MINISTER FOR THE ARTS // MEMBER FOR ISAACS // SPEECH // FREE SPEECH SYMPOSIUM // SYDNEY // THURSDAY, 7 AUGUST 2014”

[http://www.justinian.com.au/storage/pdf/Dreyfus\\_Free\\_Speech.pdf](http://www.justinian.com.au/storage/pdf/Dreyfus_Free_Speech.pdf)

<sup>95</sup> **Lawyer speech pattern I: Rejecting something without explaining why.**

For example, you say: “I firmly reject the false argument put by some that practically any regulation or restriction on what we say infringes our right to free speech. I reject the simplistic notion that our only legitimate recourse against harmful or hateful speech is to be found in an imagined ‘marketplace of ideas’.”

I’ve noticed this speech pattern is common amongst lawyers. I noticed it because any scientist or engineer saying they reject something is expected to explain why; immediately and clearly. If they don’t, then their logic proposition is not clear. If their logical position is not clear, it cannot be rebutted.

In logical terms, “A → ~B.” (“Because of A, B is not true”). But when you say only “~B” (“B is not true”) without saying why “A →” (“Because of A”), then you have not made your argument. Your audience might expect you to return and add “A →” to your proposition later on, but you might never do it. If you talk for a while about other things, a naïve audience might assume you made your point, when in fact you didn’t.

<sup>96</sup> **Lawyer speech pattern II: Giving examples to prove a proposition, without explaining why they are relevant.**

See “Your claim existing restrictions on free speech are a justification for even more restrictions”

<sup>97</sup> When I set out to respond to your speech, I took your transcript and set out to debunk each paragraph in turn.

But I found I could not do that, because many of your paragraphs (in my opinion) didn’t say appear to say anything, or simply repeated points you’d tried to make earlier. This is perhaps itself another lawyer’s speech pattern: keep repeating a point until they audience believe it is true.

<sup>98</sup> **Media praise for Mark Dreyfus as a strong advocate of free speech:**

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(i) **“Labor’s Mark Dreyfus QC takes stand on #freespeech: Abbott and Brandis honour Voltaire only in the breach.”** NoFibs.com, 2014-08-11. *“I’m a strong free speech advocate, and I want No Fibs to be active in this area and to help journalists understand the Howard Government’s shocking history on free speech and how the Abbott Government is furthering its legacy of systematic attacks on free speech it does not agree with. So I’m thrilled that shadow Attorney General Mark Dreyfus QC has taken a stand and wish him success in the long hard climb ahead.”* <http://nofibs.com.au/2014/08/11/labors-mark-dreyfus-qc-takes-a-stand-on-freespeech-abbott-and-brandis-honour-voltaire-only-in-the-breach/>

Note to NoFibs: Mr. Dreyfus is no advocate for free speech, but the fact that he has convinced you he is – and in just one short speech – has persuaded me he’s a first class barrister.

(ii) **“Hashtag Free Speech 2014: The Love-In That Wasn't,”** Analysis, Martin Hirst, New Matilda, 2014-08-08. *“Despite the Brandis no-show, it was an interesting day. My disappointment at not being able to heckle Brandis – via the symposium Twitter stream #freespeech2014 – was assuaged later in the day by the speech of shadow Attorney General Mark Dreyfus. I normally don’t have a lot of time for ALP politicians and knew little of Dreyfus before I heard him speak. But, I must say I was mildly impressed.*

*Grumpy IPA types complained bitterly that Dreyfus had given an off-piste political speech, but I loved that he rubbed their pretty little noses in it. He made the point strongly that the so-called “marketplace of ideas” is a conservative myth that bears little relation to reality.”* <https://newmatilda.com/2014/08/08/hashtag-free-speech-2014-love-wasnt>

Note to Martin Hirst: All Dreyfus did was say he rejected it. He never explained why. Google "Sophistry"

As for the marketplace of ideas being a conservative construct, it was formed by US Supreme Court Justice Oliver Wendell Holmes Jr (a conservative) and US Supreme Court Justice Louis Brandeis (a liberal) in the same decision. Brandeis was a great advocate for social justice:

Justice William O. Douglas: *“Brandeis was a militant crusader for social justice whoever his opponent might be. He was dangerous not only because of his brilliance, his arithmetic, his courage. He was dangerous because he was incorruptible. . . [and] the fears of the Establishment were greater because Brandeis was the first Jew to be named to the Court.”* [https://en.wikipedia.org/wiki/Louis\\_Brandeis](https://en.wikipedia.org/wiki/Louis_Brandeis)

USPS: *Brandeis a progressive and champion of reform, [and] Brandeis devoted his life to social justice. He defended the right of every citizen to speak freely, and his groundbreaking conception of the right to privacy continues to impact legal thought today.”*

US Supreme Court Justice Louis Brandeis: *“Strong, responsible unions are essential to industrial fair play. Without them the labor bargain is wholly one-sided. The parties to the labor contract must be nearly equal in strength if justice is to be worked out, and this means that the workers must be organized and that their organizations must be recognized by employers as a condition precedent to industrial peace.”*

US Supreme Court Justice Louis Brandeis: *“Through size, corporations, once merely an efficient tool employed by individuals in the conduct of private business have become an institution-an institution which has brought such concentration of economic power that so-called private corporations are sometimes able to dominate the state. The typical business corporation of the last century, owned by a small group of individuals, managed by their owners, and limited in size by their private wealth, is being supplanted by huge concerns in which the lives of tens or hundreds of thousands of employees and the property of tens of hundreds of thousands of investors are subjected, through the corporate mechanism, to the control of a few men. Ownership has been separated from control; and this separation has removed many of the checks which formerly operated to curb the misuse of wealth and power. And, as ownership of the shares is becoming continually more dispersed, the power which formerly accompanied ownership is becoming increasingly concentrated in the hands of a few... [and] coincident with the growth of these giant corporations, there has occurred a marked concentration of individual wealth; and that the resulting disparity in incomes is a major cause of the existing depression.”*

(iii) **The Guardian posted this unchallenged on their live blog, making Mark Dreyfus sound like staunch defender of free speech. In their retweets they withheld my tweets pointing out Dreyfus’ hypocrisy, e.g. that he’d passed laws to jail journalists too.**

**Adam Brereton, Guardian Live Blog:** “3.37pm AEST

*Dreyfus: the Abbott government's commitment to free speech is a facade*

*Shadow attorney-general Mark Dreyfus has described the Abbott government’s commitment to free speech as a “facade”, and their grasp of political philosophy and human rights as “undergraduate”, in his keynote address to Free Speech 2014.*

*In a stinging attack on attorney-general George Brandis, Dreyfus said the repeal of section 18c of the Racial Discrimination Act, Brandis’ “defining policy priority” as attorney-general, “failed because he did not care to understand the breadth and nuance required of an authentic human rights agenda”.*



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Dreyfus also criticised proposed national security provisions, in particular proposed plans to introduce 10 year jail terms, without exemptions, for anyone leaking information about ASIO “special intelligence operations”, which he termed an active attack on a free press.

While pledging to work constructively with the Abbott government on national security matters, Dreyfus said Brandis had spent “more than two years now fulminating over a civil prohibition on race hatred, and now his own legislation would criminalise an activity of journalists”.

Brandis has “clearly lost the confidence of his Cabinet colleagues, not to say the Liberal backbench and a very large part of the Australian community,” he said.

The Abbott government’s restrictions on community legal centre advocacy, changes to competition law to prohibit protest, criticisms of the ABC and lack of urgency on journalist shield laws also came under criticism.”

<http://www.theguardian.com/world/live/2014/aug/07/free-speech-2014-george-brandis-tim-wilson-to-speak-at-conference-live-updates>

<sup>99</sup> **Guardian Live Blog of Free Speech 2014:**

“Free Speech 2014: Dreyfus calls Brandis ‘walking disaster’ as attorney general – the day’s events,” Adam Brereton, Guardian, 2014-08-07. <http://www.theguardian.com/world/live/2014/aug/07/free-speech-2014-george-brandis-tim-wilson-to-speak-at-conference-live-updates>

Although I was probably the most prolific tweeter of the day and debunked Dreyfus’ speech in real-time, in their live blog *The Guardian* repeated everything Dreyfus said – unchallenged – (e.g. Post at 3:37pm) and avoided mentioning anything I said, choosing only other Tweets instead:

Brendan Molloy (@piecritic) ; Brigid Delaney (@BrigidWD) ; Carolyn Dalton (@daltoncarolyn) ; cyberdann ol an (@dannolan) ; Damon Young (@damonayoung) ; Harry Saddler (@MondayStory) ; j.r. hennessy (@jrhennessy) ; Jansant (@Jansant) ; john (@John\_Hanna) ; Liam Hogan (@liamvhogan) ; Mason McCann (@AhMcCann) ; Max Chalmers (@MaxChalmers90) ; Natalie Allegro (@AllegroAgenda) ; Rohan Harris (@expectproblems) ; Tamara Wearne (@Tamarawearne)

**One example:**

Adam Brereton, Guardian Live Blog:

“2.14pm AEST

*Hey Twitter: tell me what you think is the most important thing about free speech and I’ll put the best ones on the blogue #FreeSpeech2014*

— adam brereton (@adambrereton) August 7, 2014

...

*Here’s a selection of the replies I received:*

...

*And obviously some less serious ones:*

...”

[Glad he had space for some less serious ones. How about the ‘Right to be Heard’ during a Free Speech debate?]

**Another example:**

In response to Dreyfus proclaiming [via the blog]: “We will not tolerate legislation which exposes journalists to criminal sanction for doing their important work. Work that is vital to upholding the public’s right to know.”

Yet *The Guardian* ignored: “@VictimsofDSTO Yet in govt Dreyfus passed this law jailing journos reporting whistleblowers stories: [http://www.austlii.edu.au/au/legis/cth/num\\_act/pida2013295/s20.html](http://www.austlii.edu.au/au/legis/cth/num_act/pida2013295/s20.html) ... #FreeSpeech2014

“@VictimsofDSTO Dreyfus ex A-G passed laws jailing journos promises not to support laws jailing journos [http://www.austlii.edu.au/au/legis/cth/num\\_act/pida2013295/s20.html](http://www.austlii.edu.au/au/legis/cth/num_act/pida2013295/s20.html) ... #FreeSpeech2014”

etc.

The ABC had raised criminal penalties for journalists under this law in their Parliamentary submission:

“Australian Broadcasting Corporation submission to the House Standing Committee on Social Policy and Legal Affairs and to the Senate Legal and Constitutional Affairs Committee on their respective inquiries into the Public Interest Disclosure Bill 2013,” 2013-04, (ABC. e.g. “*The media should not be presumed criminally liable for using or disclosing confidential source information during the course of responsible news gathering where that use or disclosure does not adversely affect a person’s safety or create a risk of their being victimised*” pp. 6) <http://about.abc.net.au/wp-content/uploads/2013/04/ABC-Submission-Public-Interest-Disclosure-Bill-2013.pdf>

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Thus by not challenging Dreyfus statement “We will not tolerate legislation which exposes journalists to criminal sanction for doing their important work. Work that is vital to upholding the public’s right to know,” the media allows him to paint himself (in my opinion, disingenuously) as a defender of the free press and “the public’s right to know.”

**Another example:**

When Mark Dreyfus condemned the marketplace of ideas, I explained that the doctrine came from the US Supreme Court, and why:

@VictimsofDSTO: “@adambreton SCOTUS: ‘The government must be neutral in the marketplace of ideas.’ #FreeSpeech2014 #auspol”

@VictimsofDSTO: “@adambreton Let free speech thru rational debate find answers rather than our rich white oligarchs deciding for us #FreeSpeech2014 #auspol”

@VictimsofDSTO: “@adambreton This is why ALP+LNP loathes free speech; It lets the people find their own answers instead of gov dictating #FreeSpeech2014”

The Guardian completely ignored that in their live blog as well.

etc.

<sup>100</sup> **Mark Dreyfus on Voltaire:**

“The Attorney-General likes to invoke Voltaire’s (perhaps apocryphal) declaration that he would defend to the death the right to say things with which he completely disagrees.”

“This is heady stuff in the Australian political arena, which is usually more given to pragmatism than philosophy. I am sad to say that I can see no evidence of the sort of political bravery that would have impressed the great French thinker.”

“Au contraire. Voltaire’s principle is honoured only in the breach. Senator Brandis and his colleagues are more than happy to attack free speech, and when they do, it is invariably the type of speech and the type of speaker with whom they disagree.”

To the untrained ear this sounds like Mark Dreyfus has just said he believes in Voltaire’s principle.

In fact, he only said George Brandis doesn’t live up to it.

He infers that George Brandis’ declarations “he would defend to the death the right to say things with which he completely disagrees” is not pragmatic.

From this we can in turn infer that Mark Dreyfus believes Voltaire’s principle is unpragmatic.

<sup>101</sup> **Mark Dreyfus argued overwhelmingly against free speech:**

In his speech, Mark Dreyfus only advocated for free speech on three matters;

- (i) “freedom of community groups and activists to participate in important debates is threatened”
- (ii) “freedom of community legal services [NGOs and CLCs] to advocate for law reform”
- (iii) “We will not tolerate legislation which exposes journalists to criminal sanction for doing their important work. Work that is vital to upholding the public’s right to know.”

In all other cases, Mark Dreyfus argued overwhelmingly against free speech. In my opinion, your advocacy of (ii) and (iii) are hypocritical for reasons explained elsewhere in this letter.

<sup>102</sup> I cannot find any statement by any politician, Labor or Liberal, in support of Michaela Banerji.

<sup>103</sup> **Journalist Phil Dorling reported that Australian government was conducting metadata surveillance of Australians the year before the Snowden revelations broke:**

“Be careful, She might hear you.” Philip Dorling, 2012-09-25, The Age. “Australian law enforcement and government agencies are also accessing vast troves of phone and internet data without warrant. Indeed, they did so more than 250,000 times during criminal and revenue investigations in 2010-11. Comparative statistics suggest this is a far greater level of telecommunications data access than that undertaken in the US, Britain or Canada.

Data accessed includes phone and internet account information, outwards and inwards call details, internet access, and details of websites visited, though not the actual content of communications.

Federal government agencies gaining access to such data include ASIO, AFP, the Australian Crime Commission, the Tax Office, the departments of Defence, Immigration and Citizenship and Health and Ageing, and Medicare. Data is also accessed by state police and anti-corruption bodies, state government agencies, local government bodies and even the RSPCA.

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Telecommunications data now accessible without warrant also includes location data, which can be accessed both historically and in real time. Few Australians would have agreed two decades ago to carry a government-accessible tracking device, but that is precisely what they do when carrying a modern mobile phone or tablet.”, <http://www.theage.com.au/technology/technology-news/be-careful-she-might-hear-you-20120924-26h6r.html>

Aussies apathetically ignored the story.

**Nine months later** Edward Snowden blew the whistle that the American government was doing the same thing to Americans, suddenly that's news in Australia:

**“Edward Snowden: the whistleblower behind the NSA surveillance revelations,”** Glenn Greenwald, Ewen MacAskill and Laura Poitras in Hong Kong, The Guardian, **2013-06-10**. “The 29-year-old source behind the biggest intelligence leak in the NSA's history explains his motives, his uncertain future and why he never intended on hiding in the shadows.” <http://www.theguardian.com/world/2013/jun/09/edward-snowden-nsa-whistleblower-surveillance>

<sup>104</sup> **One of America's great free speech experts, Eugene Volokh, was in fact a computer programmer before he became a lawyer:**

“Eugene Volokh,” Wikipedia, “Volokh was born in to a Jewish family residing in Kiev, Ukraine, then part of the Soviet Union. He emigrated with his family to the United States at the age of seven. At the age of 12, he began working as a computer programmer. Three years later, he received a Bachelor of Science degree in Math and Computer Science from UCLA. As a junior at UCLA, he earned \$480 a week as a programmer for 20th Century Fox. ... In 1992, Volokh received a Juris Doctor degree from the UCLA School of Law. He was a law clerk for Judge Alex Kozinski of the Ninth Circuit Court of Appeals and later for Justice Sandra Day O'Connor of the U.S. Supreme Court. Since finishing his clerkships, he has been on the faculty for the UCLA School of Law where he is the Gary T. Schwartz Professor of Law. ... Volokh is noted for his scholarship on the First and Second Amendments to the United States Constitution, as well as on copyright law.” [https://en.wikipedia.org/wiki/Eugene\\_Volokh](https://en.wikipedia.org/wiki/Eugene_Volokh)

<sup>105</sup> **Sophistry:**

“Our Corrupt Legal System,” Evan Whitton, pp. 14, “**Sophistry.** The art of lying is to make others believe things the liar knows are false. The motive is gain. Sophists, described by Socrates as morally bankrupt and by Plato as charlatans, taught Athenian lawyers how ‘to make the weaker argument appear the stronger’ 2500 years ago. Nothing changes. A US lawyer, Charles Curtis, said a lawyer’s function ‘is to lie for his client ... He is required to make statements as well as arguments which he does not believe in.” <http://netk.net.au/Whitton/OCLS.pdf>

<sup>106</sup> Ibid.

<sup>107</sup> **Sophistry (Google):**

sophistry. /'sɒfɪstri/ noun: sophistry. “the use of clever but false arguments, especially with the intention of deceiving. “trying to argue that I had benefited in any way from the disaster was pure sophistry” a fallacious argument; plural noun: sophistries; synonyms: specious reasoning, the use of fallacious arguments, sophism, casuistry, quibbling, equivocation, fallaciousness”

<sup>108</sup> **Politicians are sophists too:**

“Facts are futile in an era of post-truth politics,” Gay Alcorn, The Age, 2014-02-28. <http://www.theage.com.au/comment/facts-are-futile-in-an-era-of-posttruth-politics-20140227-33m70.html>

<sup>109</sup> **Australians do not trust politicians, lawyers or journalists:**

“Australia’s Most Trusted Professions 2013,” Reader’s Digest, 2013. “

1. Firefighters
2. Paramedics
3. Rescue volunteers
4. Nurses
5. Pilots
6. Doctors
7. Pharmacists
8. Veterinarians
9. Air traffic controllers
10. Farmers
11. Scientists
12. Armed Forces personnel
13. Police
14. Dentists
15. Teachers
16. Childcare workers

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17. Flight attendants
  18. Bus/Train/Tram drivers
  19. Locksmiths
  20. Hairdressers
  21. Postal workers
  22. Waiters
  23. Computer technicians
  24. Security guards
  25. Cleaners
  26. Builders
  27. Alternative health practitioners
  28. Plumbers
  29. Mechanics
  30. Accountants
  31. Shop assistants
  32. Truck drivers
  33. Charity collectors
  34. Professional sportspeople
  35. Bankers
  36. Financial planners
  37. Airport baggage handlers
  38. Clergy (all religions)
  - 39. Lawyers**
  40. Tow-truck drivers
  41. CEOs
  42. Taxi drivers
  - 43. Journalists**
  44. Talkback radio hosts
  45. Real estate agents
  46. Sex workers
  47. Call centre staff
  48. Insurance salespeople
  - 49. Politicians**
  50. Door-to-door salespeople"

<http://www.readersdigest.com.au/most-trusted-professions-2013>

<sup>110</sup> **Why scientists and engineers must use rational argument, not sophistry:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedom of Australians,"* Brendan Jones, *"Unlike sophists within government and law, we don't care about winning an argument. We only care about what is right. If a bridge is going to collapse, we want to know about it. By restricting the people we can discuss our work with, the DTCA restricts our ability to discover the truth. Truth is what Science and Engineering is all about."*

[http://victimsofdsto.com/dsubcom/#\\_ednref33](http://victimsofdsto.com/dsubcom/#_ednref33)

<sup>111</sup> **The legal system serves best those who have the most power and money:**

*"Suppression Stories,"* Brian Martin, University of Wollongong, 1997, ISBN 0 646 30349 X.

*"Many people think of the law as a great protector, as a place where justice is dispensed. If only it were true! Actually, the legal system serves best those who have the most power and money."*

<http://www.bmartin.cc/dissent/documents/ss/ssall.html>

*"Battered Plaintiffs - injuries from hired guns and compliant courts,"* Jean Lennane,

*"**Plaintiffs then have to cope with the tactics of large organisations with money**, who can and do use the legal processes to exhaust the plaintiffs' emotional and financial resources, until they are forced to give up and go away, or to settle, usually badly, just before a definitive hearing that could have set a precedent for other victims."*

[https://www.uow.edu.au/~bmartin/dissent/documents/Lennane\\_battered.html](https://www.uow.edu.au/~bmartin/dissent/documents/Lennane_battered.html)

<sup>112</sup> **Deep flaws in the Commonwealth's new whistleblowing laws:**

*"You better be careful blowing the whistle — new laws have holes,"* Brendan Jones, 2013-07-30.

<http://www.crikey.com.au/2013/07/30/you-better-be-careful-blowing-the-whistle-new-laws-have-holes/>

(Note: Rebuttal to Attorney-General's response appears in the Comments)

<sup>113</sup> 2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received) <https://tinyurl.com/kymge9z>

<sup>114</sup> Ibid.

<sup>115</sup> **Australians have very few rights:**



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*"The Defence Trade Controls Act is an Attack on the Rights and Freedom of Australians,"* Brendan Jones, ***"Unfortunately Australia has a weak constitution which does little to protect the rights and freedoms of Australians. Most Australians don't realise our right to freedom of speech is "implied," and so weak it cannot reliably used. Our constitution does grant us freedom of association, but without freedom of speech that's pretty useless. We don't have a right to silence. We don't have a right against unreasonable search and seizure. Nor do we have a right to privacy.***

*Australia's founding fathers did not grant us these rights. When William Charles Wentworth sent his draft constitution to London he said: 'I want a constitution that will be a lasting one - a conservative one - a British, not a Yankee constitution. ... I see no reason why the city of Sydney has any right or claim to be represented at all, except that there is a large mass of people congregated together in it. There is really nothing to represent here except a large mass of labour.'*

*Under Australia's weak constitution our government certainly has the power to take these common law rights from us."*  
<http://victimsofdsto.com/dsubcom/#rights>

<sup>116</sup> 2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received) <https://tinyurl.com/kymge9z>

<sup>117</sup> **How Australia's wealthy and powerful use legal threats to stop journalist's inquiries:**

*"A Fair Media – let no threat get in the way,"* Gerry Georgatos, The Stringer, 2013-05-26, [Kate McClymont:] ***"The nation's wealthy and powerful have often used legal threats to stop journalists' inquiries or at least to put the frighteners on them. With the media industry in such dire financial straits this legal threat can prove too much for all but the largest of media organisations. For smaller companies, freelancers and bloggers, freedom of the press is a wonderful concept but the prospect of personally funding a court action against the coffers of a business tycoon is not realistic. There is a reason that some of the wealthiest litigate again and again, and this is because of the effect it will have on all media organisations. They became wary of taking someone who habitually litigates. Unfortunately, the bottom dollar matters."*** <http://thestringer.com.au/a-fair-media-let-no-threat-get-in-the-way>

<sup>118</sup> **NY Times v Sullivan is a key US Supreme Court decision supporting freedom of the press:**

*"New York Times v. Sullivan."* Wikipedia. *"New York Times Co. v. Sullivan, 376 U.S. 254 (1964), was a United States Supreme Court case which established the actual malice standard which has to be met before press reports about public officials or public figures can be considered to be defamation and libel; and hence allowed free reporting of the civil rights campaigns in the southern United States. It is one of the key decisions supporting the freedom of the press."*  
[https://en.wikiquote.org/wiki/New\\_York\\_Times\\_Co.\\_v.\\_Sullivan](https://en.wikiquote.org/wiki/New_York_Times_Co._v._Sullivan)

<sup>119</sup> US Supreme Court Justice Hugo Black: ***"In my opinion, the Federal Constitution has dealt with this deadly danger to the press in the only way possible without leaving the free press open to destruction – by granting the press an absolute immunity for criticism of the way public officials do their public duty."*** New York Times Co. V. Sullivan, <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=376&page=254>

<sup>120</sup> **The term "Defamation industry":**

e.g. One-time head of the ABC's own legal department Bruce McDonald: *"It has taken the defamation industry a bit by surprise."*

<sup>121</sup> **A 1991 survey showed more defamation law suits in Sydney alone than there were in the entire USA:**

*"Our Corrupt Legal System,"* Evan Whitton, *"John Wicklein, reported in the Columbia Journalism Review (November/December 1991): "By a recent count, 142 defamation actions against newspapers, most of them filed by politicians and businessmen, were pending in Sydney, which has been called the libel capital of the world. This is nearly twice the libel suits filed in the entire United States in any one year."*

<http://netk.net.au/Whitton/OCLS.pdf>

<sup>122</sup> **Straw Man:**

*"Straw Man,"* Wikipedia, *"A straw man is a common type of argument and is an informal fallacy based on the misrepresentation of an opponent's argument. To be successful, a straw man argument requires that the audience be ignorant or uninformed of the original argument."* [https://en.wikipedia.org/wiki/Straw\\_man](https://en.wikipedia.org/wiki/Straw_man)

<sup>123</sup> **Incitement:**

Incitement is the *'act of urging on or spurring on or rousing to action or instigating.'*  
<http://www.findlaw.com.au/articles/4516/what-is-incitement-and-how-is-it-a-criminal-offence.aspx>

**Incitement is not a crime, unless what was incited is a criminal offence.**

If a man tells a crowd, *'Let's burn down John Smith's house now!'* that is incitement.

But if the man says, *'John Smith is a terrible man who has cheated and stolen from many of us'* that could make him a figure of hatred, but it is not incitement because it hasn't asked anyone to do anything. At this stage we don't even know what the speaker is thinking. He might be about to suggest we all go to the police station and make complaints, or that we petition the mayor.

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Or he might be about to propose the crowd commits a criminal act, but unless he actually does so, we have no idea what his intent is.

But if the man says, *'John Smith is a terrible man who has cheated and stolen from many of us so let's burn down his house now!'* then that is incitement, because what was proposed was a criminal offence.

Even if the man said *'John Smith is a terrible man who has cheated and stolen from many of us'* while pointing at drums of kerosene and winking, that is may well be incitement (but a lawyer may get him off; perhaps he was waving away a bug which flew into his eye.)

At the point the man makes the inciting statement, the offence has been committed. The listeners don't need to go through with it, or even agree to it.

However if after a pause he adds, *'only joking,'* then it wasn't incitement. But he better not wait too long...

*"Two men who posted messages on Facebook inciting other people to riot in their home towns have both been sentenced to four years in prison by a judge at Chester crown court. ... Perry Sutcliffe-Keenan, 22, of Latchford, Warrington, used his Facebook account in the early hours of 9 August to design a web page entitled The Warrington Riots. The court was told it caused a wave of panic in the town. When he woke up the following morning with a hangover, he removed the page and apologised, saying it had been a joke. His message was distributed to 400 Facebook contacts, but no rioting broke out as a result. ... Sutcliffe-Keenan, the judge said, "caused a very real panic" and "put a very considerable strain on police resources in Warrington"."*

<http://www.theguardian.com/uk/2011/aug/16/facebook-riot-calls-men-jailed>

**"What is incitement? And how is it a criminal offence?" Findlaw.**

*"incitement(n): an act of urging on or spurring on or rousing to action or instigating..."*

*The obvious question would be; is how incitement is legally defined? Starting off with the common law definition of incitement, which is derived from R v Eade, Smart AJ said the following in regards to the offence:*

*"In Young v Cassells... Stout CJ, in an oft quoted passage said: "The word 'incite' means to rouse; to stimulate; to urge or spur on; to stir up; to animate." In R v Massie... Brooking J A, with whom Winneke P and Batt JA agreed said of "incite", common forms of behaviour covered by the word are 'command', 'request', 'propose', 'advise', 'encourage' or 'authorise'. Whether in a particular case what was said amounts to incitement depends upon the context in which the words were used, and the circumstances."*

*Essentially, the common law definition of incitement aligns quite neatly with the general dictionary definition, however, we should probably add that incitement can also include a person who incites "... another to do an act by threatening or by pressure, as well as by persuasion..." as stated by Lord Denning in Race Relations Board v Applin.*

*However, it should be emphasised that under the common law – incitement is not in itself a crime, unless what was incited was a criminal offence.*

*A person does not have to act on the incitement*

...

*How is the offence proven?*

*In order for incitement to be proven, the onus is on the prosecution to show that there was incitement to commit an offence as stated by Isaacs J in Walsh v Sainsbury:*

*"The mere fact that A "incites to" or "urges" the commission of an offence or offences against a Commonwealth law is enough to constitute A an offender. He may "incite" or "urge" a particular person or generally, but, the "incitement" or the "urging" once proved, the offence is complete. Withdrawal does not obliterate it, though no doubt it may affect the measure of punishment. But to be itself an offence the "incitement" or the "urging" must be to the commission of some 'offence'."*

<http://www.findlaw.com.au/articles/4516/what-is-incitement-and-how-is-it-a-criminal-offence.aspx>

<sup>124</sup> **Perjury:**

*"Perjury," Findlaw, "To "perjure" yourself is to knowingly make false or misleading statements under oath or to sign a legal document you know to be false or misleading. ... Perjury is considered a crime against justice, since lying under oath compromises the authority of courts, grand juries, governing bodies, and public officials. Other crimes against justice include Criminal Contempt of Court, Probation Violation, and tampering with evidence. - See more at: <http://criminal.findlaw.com/criminal-charges/perjury.html>*

*I once asked a solicitor why the courts hadn't acted on a particular perjury. He replied 'because there's so much of it.'*

<sup>125</sup> **Even absolute Free Speech doesn't mean a freedom to do any act spoken of:**

*"Yes, freedom of speech should be absolute," Tim Black, Spiked, 2014-07-30. "Of course, if you defend freedom of speech absolutely, this does not mean defending the freedom to commit perjury, for instance. That's an act which*

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undermines the principles of a justice system and makes it unworkable – there is no freedom to lie under oath. Likewise, telling someone to kill someone, while pressing a gun into the palm of their hand, is not an act of free speech; it's incitement to murder. **Incredible as it might seem, it is possible to defend free speech absolutely without defending perjury or incitement to murder (clue: these are not issues of free speech).**" [http://www.spiked-online.com/freespeechnow/fsn\\_article/yes-freedom-of-speech-should-be-absolute](http://www.spiked-online.com/freespeechnow/fsn_article/yes-freedom-of-speech-should-be-absolute)

<sup>126</sup> **The Primacy of Free Speech:**

"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones, <http://victimsofdsto.com/dsubcom/#freespeech>

<sup>127</sup> **Clear and Present Dangers vs. Imminent Lawless Action:**

"Clear and Present Danger" is a phrase bandied around a lot even today by politicians. But it's a subjective test, later replaced with the more precise "imminent lawless action" test.

"Clear and Present Danger," Wikipedia, "*In the 1919 case Schenck v. United States the Supreme Court held that an anti-war activist did not have a First Amendment right to speak out against the draft. In his majority opinion, Justice Holmes introduced the clear and present danger test, which would become an important concept in First Amendment law; but the Schenck decision did not formally adopt the test. Holmes later wrote that he intended the clear and present danger test to refine, not replace, the bad tendency test. Although sometimes mentioned in subsequent rulings, the clear and present danger test was never endorsed by the Supreme Court as a test to be used by lower courts when evaluating the constitutionality of legislation that regulated speech. ... Brandeis and Holmes again promoted the clear and present danger test, this time in a concurring opinion in 1927's Whitney v. California decision. The majority did not adopt or use the clear and present danger test, but the concurring opinion encouraged the Court to support greater protections for speech, and it suggested that "imminent danger" – a more restrictive wording than "present danger" – should be required before speech can be outlawed*" [https://en.wikipedia.org/wiki/Clear\\_and\\_present\\_danger](https://en.wikipedia.org/wiki/Clear_and_present_danger)

"Abrams v United States," Wikipedia, "*In the Abrams case, however, Holmes dissented, rejecting the argument that the defendants' leaflets posed the "clear and present danger" that was true of the defendants in Schenck. In a powerful dissenting opinion joined by Justice Louis Brandeis, he said that the Abrams defendants lacked the specific intent to interfere with the war against Germany, and that they posed no actual risk. He went on to say that even if their acts could be shown to pose a danger of a damaging war production, the draconian sentences imposed showed that they were being prosecuted, not for their speech, but for their beliefs. The majority opinion is no longer cited as a precedent. Holmes's dissent is often quoted and is taken to be authoritative.*" [https://en.wikipedia.org/wiki/Abrams\\_v.\\_United\\_States](https://en.wikipedia.org/wiki/Abrams_v._United_States)

<sup>128</sup> As evidenced by their opinions.

<sup>129</sup> But – as discussed later in this letter – if I criticise those judgements I can be charged with contempt of court or sued for defamation by the judges.

<sup>130</sup> **Citizens United: Does wealth buy too loud a voice in the marketplace of ideas?**

This recent US Supreme Court decision is controversial because it removed restrictions on corporate spending which, due to their wealth, allows them to buy a disproportionately loud voices. Arguably its unfettered free speech. Arguably too it doesn't recognise the distorting effect of wealth on access to the marketplace, and makes it work.

**"10 Ways Citizens United Endangers Democracy,"** Liz Kennedy, Demos, 2012-01-19.

"Two years ago the Supreme Court got it supremely wrong when it held that corporations had the same rights as people to spend money in elections. Campaign finance laws protect our democracy from corruption and preserve the integrity of our elections. These rules governing the use of money in politics were in a sorry state before Citizens United v. FEC. Here are ten ways in which the Citizens United decision has made a bad situation much worse. ... concentrated wealth has a distorting effect on democracy, therefore, winners in the economic marketplace should not be allowed to dominate the political marketplace. Before Citizens United, the Supreme Court recognized in *Austin v Michigan Chamber of Commerce* that the government had a compelling interest in protecting our democracy from "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." The Court that decided *Austin* was rightly worried that corporate wealth can dominate the political process and "unfairly influence elections." Citizens United disavowed this understanding. The public supports the prior consensus of the Court. Shortly after the Citizens United decision, 78% of poll respondents agreed that the amount that corporations are allowed to spend in order to influence campaigns should be limited, and 70% believed that corporations have too much control over elections already. It's hard to escape the conclusion that Government of and by big money supporters can only be for big money supporters. ... Citizens United concluded, without evidence, that independent spending doesn't corrupt, ignoring that ingratiation, loyalty, access, and influence are the coin of the realm in politics. Justice Kennedy blinked when he wrote that "[t]he fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." <http://www.demos.org/publication/10-ways-citizens-united-endangers-democracy>

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***“How Much Has Citizens United Changed the Political Game?”*** Matt Bai, New York Times, 2012-07-17.  
[http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?pagewanted=all&_r=0)

<sup>131</sup> **Cutting through the Sophistry: What is Mark Dreyfus really saying?**

A (very tedious) detailed analysis of Dreyfus’ argument supposedly against the marketplace of ideas.

The bottom line is, his argument is incoherent; It’s nonsensical.

2014-08-07 Speech by ALP Shadow A-G Mark Dreyfus MP to Free Speech Symposium 2014.

*“I firmly reject the false argument put by some that practically any regulation or restriction on what we say infringes our right to free speech. I reject the simplistic notion that our only legitimate recourse against harmful or hateful speech is to be found in an imagined ‘marketplace of ideas’. This reductionist understanding of what free speech entails is mistaken on several counts. First, what I will call the ‘absolutist’ position on free speech ignores the fact that government restraint is not the only threat to freedom of speech. ... My second criticism of the absolutist position on free speech is that it ignores the relationship between free speech and other human rights. Very few human rights, other than the rights to be free of criminal abuses such as torture and slavery, are unqualified.”*

[http://www.justinian.com.au/storage/pdf/Dreyfus\\_Free\\_Speech.pdf](http://www.justinian.com.au/storage/pdf/Dreyfus_Free_Speech.pdf)

Dreyfus calls the marketplace of ideas ‘imagined’; not real. He thus rejects it.

Let’s pick the rest of this apart.

*“I firmly reject the false argument put by some that practically any regulation or restriction on what we say infringes our right to free speech.”*

Let’s strip away the sophistry. *“I firmly reject the false argument...”* just means *“I disagree with.”* Slipping in *“false argument”* is disingenuous, because it would be self-evident. You wouldn’t need to call it out.

‘*put by some*’ is factually meaningless, but it sounds a lot like ‘Some say’ which foreshadows a straw man.

So he’s disagreeing with the phrase *‘practically any regulation or restriction on what we say infringes our right to free speech..’*

And there’s your straw man. It would mean no restrictions on child pornography, incitement to commit a crime, perjury, nor information that would endanger national security. I don’t know anyone pushing for that.

But even if it were true, how does that undermine the marketplace of ideas? i.e. rational discussion. It doesn’t.

*“I reject the simplistic notion that our only legitimate recourse against harmful or hateful speech is to be found in an imagined ‘marketplace of ideas’”*

More sophistry; *“I reject the simplistic notion.”* He hasn’t shown it to be simplistic, and even if it was, so what?

In engineering we pursue elegant solutions, defined as a beautiful simplicity. Just because an idea is simple, doesn’t mean it’s wrong. Albert Einstein: “Make things as simple as possible, but not simpler.”

Further sophistry. *“imagined ‘marketplace of ideas.’”* Trying to bag his target by surrounding it with negative words he hasn’t actually justified.

So he’s disagreeing with the phrase *“our only legitimate recourse against harmful or hateful speech is to be found in a marketplace of ideas.”*

‘*Harmful*’ is a strawman. See ‘child pornography, incitement to commit a crime, perjury, nor information that would endanger national security’ above.

‘*Hateful*’ we’ll get to below.

*“This reductionist understanding of what free speech entails is mistaken on several counts.”*

More sophistry. *“This reductionist understanding”*; Trying to make it sound like it’s *“oversimplified,”* but he says nothing to support that the concept has been justified too far.

So he’s really just saying *‘I disagree for several reasons.’* That’s a redundant statement. But a technique of sophistry is to just keep repeating something until your audience assumes it’s true.

*“First, what I will call the ‘absolutist’ position on free speech ignores the fact that government restraint is not the only threat to freedom of speech”*

I tackle this on the following pages in the document, but basically he peddles the ‘absolutist’ strawman, and then as a ‘threat to freedom of speech.’ he starts talking about ‘*regulation.*’

*““First, what I will call the ‘absolutist’ position on free speech ignores the fact that government restraint is not the only threat to freedom of speech. As the Race Discrimination Commissioner noted in his excellent Alice Tay Lecture in Human Rights and Law at the ANU in March this year, freedom is not merely the absence of external restraint. We*

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*rightly speak of 'freedom to' as well as 'freedom from'. Regulation can secure the freedom to speak and to engage meaningfully in civic life. Our most important and long-standing democratic institutions reflect this insight. They always have. Courts, for example, ..."*

That's kind of bizarre. I wouldn't call 'regulation' a 'threat to freedom of speech.' But let's assume it's just sloppy wording, and he really means '*government restraint is not the only enforceable restriction on free speech*;'

He then lists examples of regulation:

- The press work within defamation laws and journalists' code of ethics.
- Parliamentary standing orders limit what politicians can say, even outside of Parliament.
- The courts have strict rules and procedures to keep proceedings "fair."

But these are all government laws, except for (i) the journalists' code of ethics (which doesn't count for reasons described later), and (ii) standing orders which are government regulations rather than laws, but they give the speaker quite strong powers of punishment (e.g. ejection from the chambers), so really, we for practical purposes we can consider these laws too.

So let's go back to his distilled proposition: '*government restraint is not the only enforceable restriction on free speech*;'

But all the examples he's given *are* government restraints.

So his proposition is false.

It does nothing to undermine the marketplace of ideas.

Now let's be generous and take the only non-government restraint in the code; the journalists code of ethics.

Rework his proposition to: '*government restraint is not the only restriction on free speech; there is also the journalists' code of ethics*.'

Well, that's a voluntary agreement by a journalist to write "fairly." But that's a voluntary code. Only union members are subject to it. It's rarely applied and has never resulted in an expulsion. Many journalists' aren't members of the union anyway, and so not subject to the code. It's also frequently broken, but for the most part, no one really cares.

Which is to say it's a voluntary set of guidelines which it would be nice for journalists to abide by, but don't have to.

Which is to say, it's no a restriction on free speech.

But (Dreyfus doesn't explain himself properly, so I have to try and guess what he means here), perhaps he's talking about defamation cases which use the journalists code of ethics as a standard? But then we're talking about the law, which is a government restraint.

In conclusion, if a restriction is voluntary, you can opt out of it, so it's no an enforceable restriction on free speech.

Again, this does nothing to undermine the marketplace of ideas either.

Dreyfus' first proposition is false.

*"My second criticism of the absolutist position on free speech is that it ignores the relationship between free speech and other human rights. Very few human rights, other than the rights to be free of criminal abuses such as torture and slavery, are unqualified."*

Again, strawman. I have not heard anyone arguing for "*absolutist*" free speech.

But lets press on.

Distilled, Dreyfus' second proposition becomes '*Free speech is not unqualified, because very few other rights are not unqualified*.'

The right to life is (almost) unqualified. The state can't take them from us except by the police in very limited circumstances (e.g. taking the life of a suspected criminal to remove an imminent threat to the life of an innocent bystander).

But even if *all* the other rights were unqualified, why does it follow that free speech must be unqualified too?

Dreyfus's logical fallacy equate to '*All frogs are green. A tree is green. Therefore a tree must be a frog*.'

The counterargument to that is 'But what if the tree is not a frog?'

And likewise the counterargument to Dreyfus' second proposition is 'But what if free speech is an unqualified right?'

Dreyfus hasn't made his case.

Dreyfus second proposition isn't false, because it wasn't even properly formed.



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But it is unproven; Dreyfus' argument fails.

### Summary

Dreyfus offers two propositions to debunk the marketplace of ideas.

The first proposition is false.

The second proposition is unproven, because it wasn't even properly formed.

### On Sophistry

<sup>132</sup> I credit Dreyfus for some brilliant sophistry. To an untrained ear it sounds like he's debunking the marketplace of ideas:

*"I firmly reject the false argument put by some that practically any regulation or restriction on what we say infringes our right to free speech. I reject the simplistic notion that our only legitimate recourse against harmful or hateful speech is to be found in an imagined 'marketplace of ideas'. This reductionist understanding of what free speech entails is mistaken on several counts. First, what I will call the 'absolutist' position on free speech ignores the fact that government restraint is not the only threat to freedom of speech. ... My second criticism of the absolutist position on free speech is that it ignores the relationship between free speech and other human rights. Very few human rights, other than the rights to be free of criminal abuses such as torture and slavery, are unqualified."*

But all that sophistry hides a weak argument. Nevertheless, it appeared to fool many.

Engineers abhor unnecessary complication. We are expected to communicate our ideas clearly and succinctly, so the logic is clear to all parties and can be properly debated. We admire people who can convey a complicated topic to a layperson in terms they can understand. People who can't are considered poor communicators.

As was the case here, all sophistry does is serve to dress up a bad idea as one that can fool the listener.

<sup>133</sup> **The origin of the marketplace of ideas:**

"Institutions In The Marketplace Of Ideas," Joseph Blocher, Duke Law Journal , 2008-02 V57N04. *"In a single passage of his dissenting opinion in Abrams v. United States, Justice Holmes—joined by Justice Brandeis—conceptualized the purpose of free speech so powerfully that he revolutionized not just First Amendment doctrine, but popular and academic understandings of free speech. The metaphor he employed was the "marketplace of ideas."* <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1346&context=dlj>

**Holmes was conservative, but Brandeis was definitely not:**

"Whitney v. California," Wikipedia,

*"The Whitney case is most noted for Justice Louis Brandeis's concurrence, which many scholars have lauded as perhaps the greatest defense of freedom of speech ever written by a member of the high court. Justice Brandeis and Justice Holmes concurred in the result because of the Fourteenth Amendment questions, but there is no question that the sentiments are a distinct dissent from the views of the prevailing majority and supported the First Amendment.*

*Holmes in Abrams had been willing to defend speech on abstract grounds, believing that unpopular ideas should have their opportunity to compete in the "marketplace of ideas." But Brandeis had a much more specific reason for defending speech, and the power of his opinion derives from the connection he made between free speech and the democratic process. Citizens have an obligation to take part in the governing process, and they can only fulfill this obligation if they can discuss and criticize governmental policy fully and without fear. If the government can punish unpopular views, then it cramps freedom, and in the long run, will strangle democratic processes. Thus, free speech is not only an abstract virtue, but a key element that lies at the heart of a democratic society.*

*Implicitly, Brandeis here moves far beyond the clear and present danger test, and he insists on what some have called a "time to answer" test: no danger flowing from speech can be considered clear and present if there is full opportunity for discussion. While upholding full and free speech, Brandeis tells legislatures that while they have a right to curb truly dangerous expression, they must define clearly the nature of that danger. Mere fear of unpopular ideas will not do."* [https://en.wikipedia.org/wiki/Whitney\\_v.\\_California](https://en.wikipedia.org/wiki/Whitney_v._California)

<sup>134</sup> **Marketplace of ideas: How free, transparent public discourse tends towards truth:**

"Marketplace of ideas," Wikipedia, *"The "marketplace of ideas" is a rationale for freedom of expression based on an analogy to the economic concept of a free market. The "marketplace of ideas" belief holds that the truth will emerge from the competition of ideas in free, transparent public discourse. This concept is often applied to discussions of patent law as well as freedom of the press and the responsibilities of the media in a liberal democracy. ... The general idea that free speech should be tolerated because it will lead toward the truth has a long history. The English poet John Milton suggested that restricting speech was not necessary because "in a free and open encounter," truth would prevail. U.S. President Thomas Jefferson argued that it is safe to tolerate "error of opinion ... where reason is left free to combat it." Fredrick Siebert echoed the idea that free expression is self-correcting in Four Theories of the Press: "Let all with something to say be free to express themselves. The true and sound will survive. The false and unsound will be*

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vanquished. Government should keep out of the battle and not weigh the odds in favor of one side or the other.””  
[https://en.wikipedia.org/wiki/Marketplace\\_of\\_ideas](https://en.wikipedia.org/wiki/Marketplace_of_ideas)

<sup>135</sup> **ICAC declares Eddie Obeid to be corrupt:**

“ICAC finds Eddie Obeid and Joe Tripodi corrupt over retail leases at Sydney's Circular Quay,” Jamelle Wells and staff, ABC, 2014-06-06. “*The Independent Commission Against Corruption (ICAC) has found former NSW Labor ministers Eddie Obeid and Joe Tripodi acted corruptly over retail leases at Sydney's Circular Quay.*”  
<http://www.abc.net.au/news/2014-06-05/icac-finds-eddie-obeid-and-joe-tripodi-corrupt/5502106>

<sup>136</sup> **How politicians use defamation to discourage journalists from pursuing stories:**

“Where angels fear to tread,” Kate McClymont, SMH, 2014-05-04. “*On one occasion I rang Eddie Obeid to put a question to him. This was his response: "I tell you what, you put one word out of place and I will take you on again. You are a lowlife. I will go for you, for the jugular."*” <http://www.smh.com.au/comment/where-angels-fear-to-tread-20130503-2iy8a.html>

<sup>137</sup> **Evan Whitton's Biography:**

“Our Corrupt Legal System,” Evan Whitton. “*Evan Whitton was Editor of The National Times, Chief Reporter at The Sydney Morning Herald, and Reader in Journalism at Queensland University. He received the Walkley Award for National Journalism five times, and was Journalist of the Year 1983 for 'courage and innovation' in reporting an inquiry into judicial corruption. He began researching the West's two legal systems in 1991 after observing how each system dealt with the same criminal, police chief Sir Terence Lewis. He is now a columnist on a legal journal, Justinian.*” <http://netk.net.au/Whitton/OCLS.pdf>

<sup>138</sup> **Evan Whitton on Libel / Defamation:**

“Our Corrupt Legal System,” Evan Whitton. “*Libel. Criminal law has a presumption of innocence for defendants and judges conceal the truth about them. Libel law has a presumption of guilt for defendants and judges conceal the truth about plaintiffs. Witnesses for defendants can say they believe the plaintiff's reputation is not good, but they can't say why.*” p. 129. <http://netk.net.au/Whitton/OCLS.pdf>

<sup>139</sup> **Evan Whitton on courts concealing evidence from juries:**

“Our Corrupt Legal System,” Evan Whitton. <http://netk.net.au/Whitton/OCLS.pdf>

<sup>140</sup> **US law does not distinguish between journalists and bloggers:**

This allows a story to be reported even if media organisations refuse, either due to political pressure or simply lack of interest.

“*U.S. Court: Bloggers Are Journalists: Even when they're libeling you,*” Robinson Meyer, The Atlantic, 2014-01-21. “*One of the great questions of our time came closer to resolution last week, when a federal court ruled that bloggers are journalists—at least when it comes to their First Amendment rights.*”

<http://www.theatlantic.com/technology/archive/2014/01/us-court-bloggers-are-journalists/283225/>

“*First Amendment Doesn't Distinguish Between Bloggers and Press, Court Says,*” Joe Palazzolo, Law Blog, The Wall Street Journal, 2014-01-17. <http://blogs.wsj.com/law/2014/01/17/first-amendment-doesnt-distinguish-between-bloggers-and-press-court-says/>

Unfortunately in Australia there is no public interest protection anyway.

**How (rejected) Australian Privacy laws tried to distinguish between journalists and bloggers:**

When the Gillard Labor government considered Privacy Laws (which could prevent reporting), they proposed exemptions for journalists, but not for bloggers. This if the media refused to run a story, a blogger could not do it. The proposal was rejected, but it remains another example of how governments will try and divide journalists (which they can to some extent control) from bloggers (who they have very little control over).

“Conroy proposes media reforms: the experts respond,” Sunanda Creagh, The Conversation, 2013-03-12.

“*Among the proposals is the creation of Public Interest Media Advocate, who would oversee mergers and acquisitions of news organisations, and a new Public Interest Test to ensure that diversity of voices is considered when mergers take place. Minister for Broadband, Communications, and the Digital Economy, Senator Stephen Conroy, said news organisations that join up to a press standards body will be rewarded with a special exemption from certain sections of the Privacy Act.*” <http://theconversation.com/conroy-proposes-media-reforms-the-experts-respond-12769>

<sup>141</sup> **Australia does not have the equivalent of the US “First Amendment.” We have a weak “implied” right:**

Findlaw: “Do we have the right to freedom of speech in Australia?” “*First, let's get the easy part out of the way: Australia does not have an explicit First Amendment equivalent enshrining the protection of freedom of speech in our Constitution.*” <http://www.findlaw.com.au/articles/4529/do-we-have-the-right-to-freedom-of-speech-in-austr.aspx>

<sup>142</sup> **Australia's weak “implied” right to free speech cannot be reliably used:**

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"The Defence Trade Controls Act is an Attack on the Rights and Freedom of Australians," Brendan Jones, [http://victimsofdsto.com/dsubcom/#\\_edn20](http://victimsofdsto.com/dsubcom/#_edn20)

<sup>143</sup> **The worst thing that can happen to a US Journalist is having to retract their story:**

"Big Banks, Business and Butter: Highlights From Our Q&A on Corporate Impunity," Blair Hickman, ProPublica, 2014-05-02, "Reporter Jesse Eisinger offers his thoughts on the lack of white-collar prosecutions, journalism and the Green Bay Packers. ... **Fortunately, I've never made the kind of huge factual error that meant the story required retraction. Thank God.** <https://www.propublica.org/article/big-banks-business-and-butter-highlights-from-our-qa-on-corporate-impunity>

<sup>144</sup> Ibid.

<sup>145</sup> **The worst thing that can happen to an Australian journalist is bankruptcy:**

"Mayne finds a million reasons to sell," Suzanne Carbone, 2005-02-03. "The Crikey bunker in Mayne's eastern suburbs home can be a lonely place and he discovered the perils of being a lone online crusader when radio host Steve Price sued for defamation, forcing Mayne to sell his house to pay legal bills and Price's \$50,000 settlement." <http://www.theage.com.au/news/National/Mayne-finds-a-million-reasons-to-sell/2005/02/02/1107228768929.html>

<sup>146</sup> **Defamation suits are costly to defend:**

2013-04-24 An Open Letter to the Australian High-Tech Community: "Restrictions on the Freedom of the Australian Press. ... Sir Leslie Thiess sued Channel 9 who alleged he was corrupt. Channel 9 won proving 67 out of 70 of the corruption allegations against him were true, but the trial cost them \$5M they didn't get back." <http://victimsofdsto.com/online/>

"Trial by Voodoo: Why the Law defeats Justice & Democracy," Evan Whitton,

**"Chapter 17 - Reducing Censorship by Libel law. ...**

*In a criminal case, the required standard of proof is beyond a reasonable doubt. Thiess v Channel 9 was a civil case; nominally, the jurors had to be persuaded on a lower standard, the balance of probabilities. However, they were required to make their findings on what is sometimes called the Briginshaw Test, i.e. the standard of proof must be varied upwards according to the gravity of the allegations. **In Thiess v Channel 9, the basic allegation was grave: that Thiess offered, and the chief executive of the State accepted, bribes worth upwards of \$1 million in order to procure lucrative Government contracts.** Such allegations of official corruption, if accepted by a jury at a criminal trial, would attract a maximum penalty of fourteen years. It thus seems possible to speculate that the jurors' findings in Thiess v Channel 9 were made on a standard of proof that was within reach of the criminal standard.*

*The jurors were out for a week. They rejected Nicholas's demand for exemplary damages and thus appeared to accept that Wilkinson did not break the journalistic code of ethics. They found that the basic allegation, that Thiess bribed Bjelke-Petersen 'on a large scale and on many occasions', was true. The rest was more or less academic. They found that he got the Winchester South coal concession and the Expo '88 contracts by bribing Bjelke-Petersen, and that he cheated and defrauded the shareholders of Thiess Watkins, but that it was not true that he bribed Bjelke-Petersen to get three prison contracts, and they had been told by Williams that there was insufficient evidence to find that he bribed Bjelke-Petersen to get the Gold Coast cultural centre contract.*

***The damages they awarded Thiess were also perhaps largely academic,** to a degree, one suspects, a function of the way the 69 questions were structured: \$50,000 in respect of one ACA programme, \$5000 for another Channel 9 programme, \$50 for a second ACA programme. **They originally awarded him 'nil' for the last,** but Williams advised them that, if they believed the untrue allegation had 'little or any effect on his reputation', they could award Thiess nominal damages of 'a few dollars or a few cents'. **They went away for five minutes and decided to give him \$50.** The damages were nothing; by then, as the Full Court later observed, **the lawyers' costs had 'become the litigants' prize'.** The Full Court noted that in 1918 Lord Finlay conducted an extensive review of decisions on costs in common law cases before and after the English Judicature Act of 1873. His Lordship found that 'they all decide that the words "the costs shall follow the event" mean that the costs are to be distributed according to the results of the several issues, while the party who is successful on the whole gets the general costs'.*

*Channel 9 was successful on the whole but judges have a discretion as to how they award costs, and Williams appears to have approached the matter of costs on the basis of the results of the four broadcasts rather than on the basis of the results of the 'issues' therein. He said there were 'four causes of action, one based on each publication. [Thiess] succeeded to some extent on three, and was wholly unsuccessful on the fourth, which was concerned with the publication of 12 April 1990'. **He ordered Channel 9 to pay its own costs and two-thirds of Thiess's.** At the time, I calculated that the trial might have cost Packer \$1.5 million and Thiess \$300,000 but that now seems a serious underestimate. Williams's logic was difficult to grasp." <http://netk.net.au/Whitton/TBV23.asp>*

<sup>147</sup> **The case of Toni Hoffman:**

Toni Hoffman's life was ruined as a result of her whistleblowing; Members of the public who did not actively support her should not complain if in the future other medical staff are confronted with a similar situation but choose to stay silent. [http://victimsofdsto.com/hrc/#\\_edn35](http://victimsofdsto.com/hrc/#_edn35)



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“Jayant Patel whistleblower ‘treated like a leper’ by Queensland Health”, Hedley Thomas, The Australian, December 16, 2011. *“The senior nurse who put her career on the line to expose killer surgeon Jayant Patel in one of Australia’s worst medical disasters revealed yesterday how Queensland Health and the Bligh government had treated her “like a leper” since she blew the whistle. Toni Hoffman told The Australian that her career, health and psychiatric wellbeing were now severely affected because bureaucrats and successive ministers caused her to be increasingly shunned and ostracised in the six years since the debacle was exposed. She said doctors who resented her for raising the alarm about a fellow clinician had undermined and ridiculed her.”* <http://www.theaustralian.com.au/news/investigations/patel-whistleblower-treated-like-a-leper-by-queensland-health/story-fn6tcs23-1226223423898>

<sup>148</sup> **A brief history of freedom of the speech (or lack thereof) in Australia:**

“Freedom Of The Press And Freedom Of Speech In Australia,” Robin Speed, Rule of Law Institute, 2012. <http://www.ruleoflaw.org.au/wp-content/uploads/2012/08/Media-1-9-11-Freedom-of-the-Press-and-Freedom-of-Speech-in-Australia-Robin-Speed.pdf>

<sup>149</sup> **NY Times v Sullivan is a key US Supreme Court decision supporting freedom of the press:**

“New York Times v. Sullivan.” Wikipedia. *“New York Times Co. v. Sullivan, 376 U.S. 254 (1964), was a United States Supreme Court case which established the actual malice standard which has to be met before press reports about public officials or public figures can be considered to be defamation and libel; and hence allowed free reporting of the civil rights campaigns in the southern United States. It is one of the key decisions supporting the freedom of the press.”* [https://en.wikiquote.org/wiki/New\\_York\\_Times\\_Co.\\_v.\\_Sullivan](https://en.wikiquote.org/wiki/New_York_Times_Co._v._Sullivan)

<sup>150</sup> **How court injunctions, super-injunctions and hyper-injunctions obstruct free speech and the press:**

“Court injunctions that prevent the little people from gossiping about celebs are a flashback to feudalism,” Brendan O’Neill, The Telegraph, 2011-04-12.

*“Is there any more outrageous form of censorship than the gagging order? Today it is revealed that an actor has secured a High Court injunction banning a woman and a third person from talking to a newspaper about him. It is now a criminal offence, punishable by imprisonment, for any newspaper in the land to publish the woman’s claims or comments about the actor. We are not even allowed to know who the actor is, far less what he is alleged to have gotten up to, and all we know about the woman is that she was referred to in court as “BDZ”.*

*So in a flashback to the feudal era, when badmouthing the upper classes was a risky endeavour for mere plebs and peasants, one judge has decreed that journalists can be banged up if they dare to whisper a word about this actor and his alleged dealings with “BDZ”. The judge has overnight put the publication of this story on the same level as physical assault or burglary – that is, something you can be arrested and jailed for. Thus are words put on a par with injury or theft as something that the authorities have the right and the power to police and punish.*

*I guess we should be grateful that the actor only took out an injunction rather than a “super-injunction”, which would have prevented newspapers even from revealing that a court order had been obtained, or a “hyper-injunction”, which, in a shocking affront to the democratic process, prevents people from discussing a story or rumours even with their MPs.”* <http://blogs.telegraph.co.uk/news/brendanoneill/100083484/court-injunctions-that-prevent-the-little-people-from-gossiping-about-celebs-are-a-flashback-to-feudalism/>

<sup>151</sup> **Australian court suppression orders and defamation threats discourage Australian journalists from offering the right of reply:**

US journalists can safely give a person the right of reply. Australian journalists cannot, because it invites a court suppression order which will prevent them from ever running the story. This denies Australian journalists the best opportunity they have to be fair, by ensuring that both sides of the story are told.

#### **Examples:**

The recent book by investigative journalists Kate McClymont and Linton Besser about corruption by ALP politician Eddie Obeid, allegedly confused Chris Brown, a former ALP minister, with a different Chris Brown.

Ideally they could have shown the book to everyone named in it before publication so they had the opportunity to offer corrections and give them the right of reply. I don’t know why publisher Random House didn’t do that, but it’s possible they feared a court injunction which would stop them publishing the book entirely.

Brian Martin has documented several cases where people were subjects of an article given the write of reply did not offer corrections but instead threatened to sue.

In the case of a journalist or whistleblower who wants to run an article, it’s possible the subject of the story would apply pressure to the publication not to run the article at all.

For example, ALP politician Duncan Kerr knew whistleblower Mick Skrijel was seeking publicity (because Skrijel wrote to him asking for corrections). Duncan Kerr then wrote to media organisations warning them they would be sued if they published Skrijel’s allegations. One of these letters found its way to the ABC, the only media organisation who was going to interview Skrijel then cancelled his only interview.

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**Conversely, if Skrijel hadn't given Kerr any notice, the ABC interview probably would have gone ahead.**

Thus the possibility of court suppression orders and defamation threats discourage Australian journalists from offering the subjects of their stories the rights of reply.

"He Who Must Be Obeid, book by Kate McClymont and Linton Besser, pulled from shelves over defamation allegations," Thomas Oriti. ANC. *"A best-selling book about disgraced former Labor politician Eddie Obeid has been pulled from sale and pulped because of defamation allegations. He Who Must Be Obeid has sold thousands of copies since its release in July, but now it is off the shelves and can no longer be bought online. In the book, the authors Kate McClymont and Linton Besser refer to a former spokesman of the Tourism Task Force (TTF), Chris Brown, who they alleged 'was in business' with the Obeid family. It also makes a specific reference to Mr Brown's father, John Brown, who was a minister in the Hawke government. According to Mr Brown, they have the wrong man and have mistaken him for someone with the same name, born years earlier."*

<http://www.abc.net.au/news/2014-08-21/obeid-book-pulled-from-shelves-over-defamation-allegations/5685608>

It seems a reasonable conclusion the book was thoroughly fact checked (Random House have been sued before), but this got through.

Brown: *"The great investigative journalists who wrote the book didn't bother to take the four minutes to check the ASIC website," he said.*

With the benefit of hindsight, if the journalists knew they could do that, they no doubt would have. Obviously they and their publisher didn't know it even needed to be checked.

Brian Martin writes **"Attaining truly in-depth knowledge of just a single case is a major task."**

[http://www.bmartin.cc/dissent/documents/Martin\\_def.html](http://www.bmartin.cc/dissent/documents/Martin_def.html)

I have found this myself: Take this open letter to Mark Dreyfus, who happens to be a defamation barrister; It has taken me three weeks to write and check this letter, but if I were to check every fact in this letter to the degree I wish I could it would take perhaps 12 months before I could publish it, by which time free speech reform may have fallen off everyone's agenda. Yet if I 'put one word out of place' I could be sued and bankrupted.

Brown's lawyer believes he is entitled to a large damages oversight:

"Eddie Obeid book by Kate McClymont to be pulped over defamation claims," Linda Morris, SMH, 2014-08-21.

*"Asked about the size of the damages he planned to seek, Mr Brown said he had been advised by his lawyer that a defamation such as this was a 'nuclear incident'."* <http://www.smh.com.au/entertainment/books/eddie-obeid-book-by-kate-mcclymont-to-be-pulped-over-defamation-claims-20140821-106j6n.html>

#### **Exercise for the reader:**

To see how ridiculous defamation law is: Is Brown's statement *"The great investigative journalists who wrote the book didn't bother to take the four minutes to check the ASIC website"* itself defamatory? Could McClymont and Besser sue him for damage to their professional reputations?

If you give a definite "yes" or "no," you're wrong. Only a court can answer that question. I'm told on at least one bar exam in the US there are no right or wrong answers. Rather, you're marked on how well you argue your case. Any Adversarial lawyers worth their salt should be able to come up with arguments for and against, and make a fortune arguing it before the courts.

Chris Masters: *"You watch your morale and assets erode all the while surrounded by lawyers who are having the time of their lives. Horrible."*

<sup>152</sup> **Even sharing a link to the Wikileaks super-injunction could land a member of the Australian public in jail:**

"Social media users could be charged for sharing Wikileaks story," Mex Cooper, The Age, 2014-07-30.

*"It is against the law for Australian media organisations to publish the contents of the suppression order. Media lawyer Peter Bartlett, from Minter Ellison, said anyone who tweets a link to the Wikileaks report, posts it on Facebook, or shares it in any way online could also face charges. Using a hashtag such as 'Wikileaks' is not in breach of the order but any mention on social media of the information detailed in it, such as people's names, is banned. ... [A]ny Victorian social media users, or the person who gave the documents to Wikileaks, may be easier to find and prosecute."*

<http://www.theage.com.au/national/social-media-users-could-be-charged-for-sharing-wikileaks-story-20140730-zye0b.html?rand=1406684304304>

<sup>153</sup> **How court super-injunctions obstruct free speech and the press:**

"WikiLeaks gag order: open justice is threatened by super-injunctions", Richard Ackland, Guardian, 2014-07-30.

*"Australian courts have increasingly been issuing suppression orders preventing the publication of legal proceedings – and an implicit dislike of the media is partly to blame."*

<http://www.theguardian.com/commentisfree/2014/jul/30/wikileaks-gag-order-open-justice-is-threatened-by-super-injunctions>

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“Redacted copy of supreme court of Victoria's gagging order,” The Guardian, 2014-07-30,  
“Court order issued by the Australian court on 19 June 2014. The version published by the Guardian blots out names of politicians who cannot be named under the order and the details of the allegations involving them.”  
<http://www.theguardian.com/world/interactive/2014/jul/30/redacted-supreme-court-victoria-gagging-order>

<sup>154</sup> **A Chilling Effect on free speech:**

“Chilling effect,” Wikipedia, “In a legal context, a chilling effect is the inhibition or discouragement of the legitimate exercise of natural and legal rights by the threat of legal sanction. The right that is most often described as being suppressed by a chilling effect is the US constitutional right to free speech. A chilling effect may be caused by legal actions such as the passing of a law, the decision of a court, or the threat of a lawsuit; any legal action that would cause people to hesitate to exercise a legitimate right (freedom of speech or otherwise) for fear of legal repercussions. When that fear is brought about by the threat of a libel lawsuit, it is called libel chill.”  
[https://en.wikipedia.org/wiki/Chilling\\_effect](https://en.wikipedia.org/wiki/Chilling_effect)

<sup>155</sup> **The mere threat of a defamation suit is usually sufficient to force the target to self-censor:**

“Satire or Sedition?” Jonathan Biggins, New Matilda, 2006-11-08. “Yet, for all the talk of sedition, the most pressing obstacle to freedom of satirical expression comes from defamation laws. The per-capita incidence of defamation is higher in Sydney than in London or New York. The mere receipt of a solicitor's letter threatening a defamation suit is usually sufficient to have the material in question censored because the cost of continuing the correspondence, let alone defending the action, is simply prohibitive.” <https://newmatilda.com/2006/11/08/satire-or-sedition>

<sup>156</sup> **How Australia's wealthy and powerful use legal threats to stop journalist's inquiries:**

“A Fair Media – let no threat get in the way,” Gerry Georgatos, The Stringer, 2013-05-26, [Kate McClymont:]  
“**The nation's wealthy and powerful have often used legal threats to stop journalists' inquiries or at least to put the frighteners on them.** With the media industry in such dire financial straits this legal threat can prove too much for all but the largest of media organisations. For smaller companies, freelancers and bloggers, freedom of the press is a wonderful concept but the prospect of personally funding a court action against the coffers of a business tycoon is not realistic. There is a reason that some of the wealthiest litigate again and again, and this is because of the effect it will have on all media organisations. **They became wary of taking someone who habitually litigates.** Unfortunately, the bottom dollar matters.” <http://thestringer.com.au/a-fair-media-let-no-threat-get-in-the-way>

<sup>157</sup> **The media could not tell the people of NSW that their Premier Robert Askin was corrupt until he was dead:**

“**Defamation law and free speech**”, Brian Martin, “Sir Robert Askin was Premier of the state of New South Wales for a decade beginning in 1965. It was widely rumoured that he was involved with corrupt police and organised crime, collecting vast amounts of money through bribes. **But this was never dealt with openly because media outlets knew he would sue for defamation.** Immediately after Askin died in 1981, the National Times ran a front-page story entitled “Askin: friend to organised crime.” **It was safe to publish the story because, in Australia, dead people cannot sue.** (In some countries families of the dead can sue.)” <http://www.bmartin.cc/dissent/documents/defamation.html>

<sup>158</sup> **In 2004 LNP A-G Phillip Ruddock tried (unsuccessfully) to change the law so even the estates of dead people could sue for defamation, which would make even a historians job very hard:**

“**Baffling bid to stop us speaking ill of the dead**,” Richard Ackland, 2004-08-27. “It's bleak enough having the courts filled with ne'er-do-wells reaping enormous sums of money because someone has slighted their precious, carefully cultivated “reputations”. Now the idea is to expand the legal possibilities and have dead people reaching from their graves to sue for rude things said about them after they have been gathered. This is the latest hot idea from the Attorney-General, Philip Ruddock, and is contained in his paper on defamation law reform.”  
<http://www.smh.com.au/articles/2004/08/27/1093518012698.html>

<sup>159</sup> **LNP Treasurer is suing Fairfax for defamation over their ‘Treasurer for Sale’ story:**

“Hockey's defamation suit shows need for wider free speech debate,” David Rolphe, The Conversation, 2014-05-29, “Treasurer Joe Hockey has commenced defamation proceedings against several Fairfax newspapers over the ‘Treasurer for sale’ story.” <http://www.independentaustralia.net/politics/politics-display/hockeys-defamation-suit-shows-need-for-wider-free-speech-debate,6525?cachebreak=1#comment-1409486790>

<sup>160</sup> **A Liberal Party fundraiser is suing Fairfax for defamation, asking for \$12.5M damages:**

“Nick Di Girolamo launches \$12.5m defamation suit against Fairfax Media,” Michael Safi, The Guardian, 2014-05-23. “Former head of AWH alleges his reputation was trashed by stories published in the Sydney Morning Herald.” <http://www.theguardian.com/world/2014/may/23/nick-di-girolamo-launches-125m-defamation-suit-against-fairfax-media>

<sup>161</sup> **Corrupt ALP politician Craig Thomson sued Fairfax for Defamation:**

“ALP MP drops Fairfax lawsuit,” Geesche Jacobsen, The Age, 2011-06-06. “Federal Labor MP Craig Thomson has dropped a defamation case against Fairfax over articles detailing alleged fraudulent use of his union credit card,

including paying for prostitutes.” <http://www.theage.com.au/national/alp-mp-drops-fairfax-lawsuit-20110605-1fnhc.html>

“ALP paid \$40,000 of MP Craig Thomson's legal bill,” Andrew Clennell and Geoff Chambers, The Daily Telegraph, 2011-08-16. “*The Labor Party spent more than \$40,000 in legal fees to bail controversial federal MP Craig Thomson out of strife after he sued over claims his former union credit card was used to hire prostitutes. Mr Thomson dropped his defamation action against Fairfax over the claims in June. Prime Minister Julia Gillard needs him to stay in parliament to keep her majority. NSW Labor paid most of his legal bill. Sussex St confirmed yesterday NSW Labor headquarters paid "some" of his legal bills, which included settling some of Fairfax's costs.*”

<http://www.dailytelegraph.com.au/news/nsw/alp-paid-40000-of-mp-craig-thomsons-legal-bill/story-e6freuzi-1226115510382?nk=59609ff6e260c6ddb29b76cecb9b9bdf>

<sup>162</sup> **Corrupt ALP politician Eddie Obeid sued investigative journalist Kate McClymont for defamation and won:**

“Where angels fear to tread,” Kate McClymont, SMH, 2014-05-04. “*In August 2006 The Daily Telegraph reported this: "An article in The Sydney Morning Herald, implying that former government minister Eddie Obeid was corrupt, was a 'scurrilous piece of tittle tattle', the Supreme Court heard yesterday.*

*"It was an 'absolutely disgraceful and dishonest piece of journalism, one of the worst of many in the Herald', Bruce McClintock, SC, acting for Mr Obeid, said."*

*What McClintock was referring to was a 2002 story that Anne Davies and I had written suggesting that Eddie Obeid had sought a \$1 million payment to the ALP in return for solving the Bulldogs' problems with their Oasis development.*

*Then Bulldogs Rugby League Club president Gary McIntyre had allegedly complained to various people, including one of Obeid's colleagues, that Obeid had sought the payment. We lost the case and Fairfax had to pay \$162,000 to Obeid plus his court costs.*

*I can't even begin to explain how devastating it was. You lose confidence in yourself and you swear you will never write a difficult story ever again."* <http://www.smh.com.au/comment/where-angels-fear-to-tread-20130503-2iy8a.html>

**Obeid won \$162K in damages plus legal costs from Fairfax; The total exceeded \$1M:**

“**Fairfax to pay \$1m for Obeid defamation,**” David King, The Australian, 2007-10-13. “*A deliberately inaccurate newspaper article that was part of a Gold Walkley-winning series has cost publisher John Fairfax more than \$1million in damages and legal costs.*

*Former NSW fisheries minister Eddie Obeid was awarded \$162,173 in damages yesterday after he was found to have been defamed in The Sydney Morning Herald's report.*

*NSW Supreme Court judge Clifton Hoebein said in a judgment yesterday that the newspaper had not acted reasonably when it alleged Mr Obeid had sought bribes on behalf of the Labor Party.*

*Justice Hoebein found the story, published under the headline "ALP push for Oasis cash: Obeid accused" had contributed to Mr Obeid losing his job as a NSW minister.*

*Fairfax, the publisher of the Herald, faces a legal bill of more than \$1 million if, as Justice Hoebein foreshadowed, costs are awarded to Mr Obeid."*

<http://www.theaustralian.com.au/news/nation/fairfax-to-pay-1m-for-obeid-defamation/story-e6frg6nf-111112353307>

<sup>163</sup> **LNP Aviation Minister Ian McPhee sued Dick Smith for defamation:**

**Australians who have sued for defamation,**” Stephen Mayne, The Mayne Report, 2011-07-05. “*Ian McPhee: used his own law firm Corrs Chambers Westgarth to sue former CASA chairman Dick Smith for bagging the McPhee approach to aviation safety.*” <http://www.maynereport.com/articles/2009/03/10-1024-2493.html>

<sup>164</sup> **How defamation law obstructs free speech and the press:**

“Defamation and the Australian media: a case study”, Brian Martin, October 1997. “*Australian defamation law is extremely harsh and hence a major obstacle to free speech. For example, a reviewer of a book about uranium stated "I object to the author's lack of moral concern." The author sued and won more than \$100,000. Exposure of corruption is very difficult. Sir Robert Askin was premier of New South Wales -- equivalent to the governor of a U.S. state -- for a decade and widely rumoured to be involved in organized crime. The threat of defamation suits kept the media muzzled until Askin died in 1981. // First, defamation law can have significant effects on what is published. Some stories are never written because they are too hot. Others, including mine, are written in a cautious fashion to avoid defamation. Finally, articles are checked by defamation specialists and either approved, modified or pulled. Few readers are aware of these complex processes that shape what they read or hear. // Second, if I had known far more about the cases I could have avoided some of the alterations. Of course it is always possible to know more, but there is a limit. Attaining truly in-depth knowledge of just a single case is a major task. // Third, a lot of work is required to prepare and check articles that are potentially defamatory. Knowing the hazards, I did lots of preparatory reading, wrote very carefully and checked some points with knowledgeable people. Some of this work is desirable if it substantially improves*



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accuracy. But another effect is to discourage writers and publishers from dealing with topics that are potentially defamatory.” [http://www.bmartin.cc/dissent/documents/Martin\\_def.htm](http://www.bmartin.cc/dissent/documents/Martin_def.htm)

<sup>165</sup> <http://www.crikey.com.au/2001/06/03/why-does-australia-promote-secrecy-by-restricting-free-speech/>

<sup>166</sup> **In practice, whistleblowers find journalists are reluctant to cover whistleblower’s stories: I:**

“The Whistleblower’s Guide to Journalists,” Brendan Jones, 2013. *“But the greatest shock to the whistleblower is the discovery that despite the popular image of reporters elbowing each other for scoops, no one will touch their story. It may be too complicated, too difficult to verify, too hot, not significant enough or too old. The biggest problems are lack of time, and that there are far easier stories out there.”* <http://www.bmartin.cc/dissent/documents/Jones13.html>

<sup>167</sup> Personal Communication.

<sup>168</sup> Most declined or didn’t respond.

<sup>169</sup> 2013-08-16..23 E-mail from MEAA (journalists union): “At present we do not intent to comment.”

<sup>170</sup> **Only a small percentage of stories (~5%) that are reported to media organisations are ever told:**

I based this calculation on figures given in Chris Masters’ book:

“Not for Publication”, Chris Masters, 2002. <http://booko.com.au/9780733310713/Not-for-Publication>

<sup>171</sup> **Much of what you read in the paper is public relations (“PR”) and “spin”:**

“Over half your news is spin”, Crikey, Mar 15, 2010. *“after analysing a five-day working week in the media, across 10 hard-copy papers, ACIJ and Crikey found that nearly 55% of stories analysed were driven by some form of public relations. The Daily Telegraph came out on top of the league ladder with 70% of stories analysed triggered by public relations. The Sydney Morning Herald gets the wooden spoon with (only) 42% PR-driven stories for that week.”* <http://www.crikey.com.au/2010/03/15/over-half-your-news-is-spin/>

“Can we trust the media?”, Kellie Tranter, July 28, 2013. *“In a survey conducted by Roy Morgan research in August 2004, 73 per cent of journalists surveyed said that media proprietors use their outlets to “push their own business and or political interests to influence the national debate”. // A 2006 Roy Morgan survey of journalists found that more than half claimed they were unable to be critical of the media organisation they worked for, 38 per cent reported they had been instructed to comply with the commercial position of the company for which they worked and 32 per cent said they felt obliged to take into account the political views of their proprietor.”* <http://kellietranter.com/2013/07/we-cant-trust-the-media/>

<sup>172</sup> **Public perception is the biggest problem facing whistleblowers is lack of a secure way to contact journalists, but in Australia a bigger problem is that for a variety of reasons (e.g. defamation, Section 70, commercial considerations) journalists do not pursue whistleblower’s stories anyway:**

“Media Direct: towards better security for whistleblowers,” Bernard Keane, Crikey, 2014-05-26, *“Whistleblowers are a critical resource for a watchdog press, which is why mass surveillance mechanisms like data retention pose such a fundamental threat not just to privacy, but to the quality of our civil society.”* <http://www.crikey.com.au/2014/05/26/media-direct-towards-better-security-for-whistleblowers>

**Note:** I can’t fault Crikey; they reported my own story, and have reported other stories of government corruption which the mainstream media has largely ignored.

<sup>173</sup> **In practice, whistleblowers find journalists are reluctant to cover whistleblower’s stories:**

2013-08-20 E-mail from Brian Martin, VP of Whistleblowers’ Australia: *“Over the years I’ve talked to quite a few whistleblowers who couldn’t interest the media in their stories.” ... “The legal risk to media is nearly always due to defamation.”*

<sup>174</sup> That is, the AFP do not need to prove a person supplied information to a journalist. Instead, they can convict them with only circumstantial evidence. e.g. ‘That person had the report, and it appeared in the paper. Therefore that person must have given it to the paper.’ (See <sup>284</sup>).

<sup>175</sup> “The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians”, Brendan Jones, *“The Media already knew about the IP thefts, but had not reported it”* [http://victimsofdsto.com/dsubcom/#\\_edn9](http://victimsofdsto.com/dsubcom/#_edn9)

<sup>176</sup> Ibid.

<sup>177</sup> I tried contacting them, but they just weren’t interested.

<sup>178</sup> **Media coverage of the Mark Dreyfus’ whistleblowing laws:**

“New whistleblower law ‘passes the Kessing test’,” Chris Merritt, The Australian, 2013-06-27.

*“After approving a series of changes drawn up by Attorney-General Mark Dreyfus, federal parliament yesterday approved a Public Interest Disclosure Act that would have prevented the criminal prosecution of whistleblower Allan Kessing. The new law protects commonwealth public servants who disclose wrongdoing to the media and others*

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outside the public service if their concerns have been subjected to investigations that are inadequate or delayed.”  
<http://www.theaustralian.com.au/business/legal-affairs/new-whistleblower-law-passes-the-kessing-test/story-e6frg97x-1226670450936#>

**“Greater protections for whistleblowers,”** Pubic Service News, 2013-07-02.

*“New laws which grant greater protections to public sector whistleblowers have been passed by Parliament.*

*Minister for the Public Service and Integrity, Mark Dreyfus said the **Public Interest Disclosure Bill and the Public Interest (Consequential Amendments) Bill** were a significant step in advancing integrity and accountability of the Commonwealth public sector.*

*“The Public Interest Disclosure Bill 2013 strikes the right balance to achieve a comprehensive and effective framework of protection for public interest disclosures in the Commonwealth public sector,” Mr Dreyfus said.*

***“It will help build and maintain a culture of disclosure across the public sector.***

*“It provides a clear set of rules for agencies to respond to allegations of wrongdoing made by current and former public officials, and strengthens protections against victimisation and discrimination for those speaking out.”*

*Commonwealth Ombudsman, Colin Neave welcomed the Bill's passage through both houses of Parliament.*

*“This legislation establishes the first stand-alone whistleblower protection scheme at a Federal level and confers a number of roles and powers on my office to **ensure the scheme provides robust protections to public officials who report wrongdoing in the public sector** while protecting national intelligence and security,” Mr Neave said.*

***“It will provide indirect benefits to all Australians and contribute to building further confidence in the Australian public sector.”***

*The Community and Public Sector Union (CPSU) also welcomed the new laws, with National Secretary, Nadine Flood saying the union had been campaigning for stronger laws to protect Public Service whistleblowers since the AWB oil-for-wheat scandal in 2005.*

***“These important anti-corruption measures are long overdue,” Ms Flood said. “Anyone working in government who is witness to, or has information about corruption or maladministration can now make a disclosure without fear of reprisals. “These new laws will protect them from payback.””***

<http://www.psnews.com.au/aps/archives/ArchivesJuly13.html>

**“Big step for whistleblowers,”** Georgia Wilkins, SMH, 2013-06-19,

*“Whistleblowers stand to receive more protection when reporting wrongdoing under new laws passed in Parliament today. The Public Interest Disclosure Bill, tabled by Attorney General Mark Dreyfus, gives public officials immunity from criminal, civil and administrative liability if they make a report to an authorised body. It also makes it an offence for a person or organisation to retaliate against an official as a result of them making a public disclosure.*

*While advocates welcomed the landmark bill, they said whistleblowers were still at risk of having their concerns ignored by organisations. “It is absolutely essential that whistleblowers are given immunity from prosecution for breach of confidence,” said Whistleblowers Australia national president Cynthia Kardell. “This is a huge step ... but the legislation is still failing because there are still ways that employers can stifle disclosure.””*

<http://www.smh.com.au/business/big-step-for-whistleblowers-20130619-2oiyg.html>

<sup>179</sup> **Debunking Mark Dreyfus’ claim that politicians are held accountable by Parliament:**

2013-06-21 Letter to the Editor (Sydney Morning Herald). Unpublished:

*“Labor's Public Interest Disclosure Bill is a start (“Big step' for whistleblowers”, June 19), but many holes remain such as MPs exempting themselves so public servants cannot report corrupt politicians. **The Attorney-General claims this is because politicians are already accountable through parliament, but that's untrue. In practice opposition MPs are reluctant to confront government MPs over corruption** because in the words of one whistleblower: “They all think they have something to hide or could be potentially caught up in the wash.”*

***It's telling that the opposition has not criticised the government over rampant federal public service corruption first reported nearly two years ago*** (“Public service keeps fraud cases private, September 24, 2011) and most recently in March (“Our costly complacency on corruption”, March 5), nor the ongoing mistreatment of the RBA and Sydney Airport whistleblowers.

*“Stop the boats” and “Blue Ties” are safer debate topics for both parties.*

*Brendan Jones”*

<sup>180</sup> **Misleading praise for Mark Dreyfus’ new whistleblowing laws:**

E-mail from promoter of new whistleblowing laws: *“Are WB still going to be treated badly? Yes. Are they still going to be mentally tortured and have their careers torched? Sadly, yes.”*

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But this person's public statements did not acknowledge that. Instead they praised the new laws they had helped pass, luring whistleblowers into a false sense of security they would be safe if they used them.

I thought that was exceptionally reckless. Whistleblowers need to know what they're getting into. Every whistleblower I've spoken to said if they realised what had happened to them, they would not have done it. Often it will cost them their job, their life savings and often their family. Their colleagues will turn on them. They will find it difficult to get another job; no one wants to work alongside a whistleblower. Some commit suicide.

The National Secretary of the Community and Public Sector Union (CPSU) also publicly praised the new laws, encouraging her members to use them: *"These important anti-corruption measures are long overdue. Anyone working in government who is witness to, or has information about corruption or maladministration can now make a disclosure without fear of reprisals. "These new laws will protect them from payback."*  
<http://www.psnews.com.au/aps/archives/ArchivesJuly13.html>

I e-mailed her twice warning her of the flaws in the new laws. On 2013-07-12 I wrote to her: *"I'm a whistleblower in contact with other whistleblowers. There's a very big disagreement between whistleblowing experts who negotiated the bill and whistleblowers such as myself who were kept out of the process. The media has publicised their opinions, but literally won't print so much as a Letter to the Editor about ours. I think it's very important for your members to know there will still be reprisals against your members who falsely believe it is now safe for them to make whistleblowing complaints."*

Ms. Flood ignored me, even after Crikey broke the story on 2013-07-30.

Recently a whistleblower who trusted the new laws was bullied as a result of his whistleblowing, suffered a nervous breakdown and had their wife leave them. Because the new laws threaten journalists with 6 months jail for identifying whistleblowers, the media could not report their story. Last I knew of this whistleblower, they dropped their whistleblowing complaint and sought help from a law firm, who is unlikely to work pro bono.

<sup>181</sup> **Deep flaws in the Commonwealth's new whistleblowing laws:**

*"You better be careful blowing the whistle — new laws have holes"*, Brendan Jones, 2013-07-30.  
<http://www.crikey.com.au/2013/07/30/you-better-be-careful-blowing-the-whistle-new-laws-have-holes/>  
(Note: Rebuttal to Attorney-General's response appears in the Comments)

<sup>182</sup> **The Public Service Minister used a Canberra Times editorial to discredit a Sydney Morning Herald investigation into corruption in federal public service:**

*"The Whistleblowers' guide to Journalists"*, Brendan Jones, 2013. *"It's worth noting that the story of endemic corruption within the Commonwealth Public Service was not broken by a Canberra journalist, but by an investigative journalist in Sydney. // Although the government publicly attacked the credibility of his reports, there was no follow-up nor support from Canberra-based journalists. Labor Minister for the Public Service Gary Gray appeared to drive a wedge when he said: "This week The Canberra Times referred to a number of allegations about fraud, corruption and misconduct in the public service, which were previously reported in the Sydney Morning Herald. The Canberra Times rightly pointed out that there is no evidence of endemic corruption, or a culture of complacency, in the APS [Australian Public Service]. Correctly, The Canberra Times argued that sufficient anti-corruption systems exist and acknowledged that there is no need for an independent corruption commission like those that exist in New South Wales and Western Australia." // Steve Davies of Ozloop says: "I am perplexed at the degree of passive reporting by The Canberra Times. In my opinion, much reporting is effectively a rehash of the APS 'party line'. The media needs to understand criticising the public service is not the same as criticising the government. Self-censorship damages all these institutions."*  
[http://victimsofdsto.com/guide/whistleblowers\\_guide\\_to\\_journalists.html](http://victimsofdsto.com/guide/whistleblowers_guide_to_journalists.html)

<sup>183</sup> **Canberra Press Gallery closing ranks to protect Tony Abbott from criticism:**

Margo Kingston @margokingston1: *"If Gallery hadn't closed ranks behind Abbott 2003 on slush fund secret donors he'd wouldn't be PM"* <http://www.independentaustralia.net/politics/politics-display/the-dishonest-politics-club,4843#icac#Ashbygate> <https://twitter.com/margokingston1/status/508820795594772481>

*"The Dishonest Politics Club,"* Margo Kingston, Independent Australia, 2013-01-03. *'But Abbott is something of a protected species in Australian politics. When push comes to shove, press gallery heavies circle the wagons around Tony and our supposed electoral watchdogs file him away in the bottom drawer. As recently as December 17 last year, The Monthly aptly described 'a scandalous lack of curiosity' in the media about the Ashby scandal — just the latest attempt by Liberal Party players to use the courts to destroy their political opponents.'*  
<http://www.independentaustralia.net/politics/politics-display/the-dishonest-politics-club,4843>

<sup>184</sup> **Federal Government Corruption:**

2014-07-23 Royal Petition concerning Federal Government Corruption. <http://victimsofdsto.com/royal-cosgrove-2/>

I cross-correlated the links used to support the above corruption petition against the media organisation they originated from. Based on that tally I found most corruption stories came from Fairfax:

Fairfax 46%, Independent 19%, Newscorp 16%, ABC 13%, Guardian 6%

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I was surprised at the relatively low showing of the ABC; Given their taxpayer funding and public interest charter you would think they would be in the best position to investigate federal corruption. They do report some, but it is surprising that (a for-profit company) Fairfax appears to report much more.

Apart from the ABC, electronic media (TV stations) seemed to hardly cover corruption at all.

**Disclaimer:** This would benefit from a rigorous, exhaustive survey since I generally used Google to find stories, which may be biasing some media organisations web sites over others, as well as my own inherent biases. That said, I used whatever sources Google offered me from major media outlets.

<sup>185</sup> **Only a small percentage of stories (~5%) that are reported to media organisations are ever told: I:**

“A Fair Media – let no threat get in the way,” Gerry Georgatos, The Stringer, 2013-05-26, [Kate McClymont:] *“Linton Besser’s story is one of many – one of many stories here in Australia, of the intimidation often surrounding journalists. For every story of corruption and criminality pursued and broken by the Linton Besser’s there are scores that go untold, unheard and are not pursued – and this is because of much more sophisticated contrivances by those who are prepared to cheat, lie and deceive.”* <http://thestringer.com.au/a-fair-media-let-no-threat-get-in-the-way>

<sup>186</sup> **Only a small percentage of stories (~5%) that are reported to media organisations are ever told: II:**

“Not for Publication”, Chris Masters, 2002. *“For every story that goes to air, there are dozens that never make the cut - perhaps because they cannot be fully checked, the source is unreliable, or because they are replaced by something more urgent. Yet these untold stories are often the most intriguing of all. Award-winning TV journalist Chris Masters draws on his assignments in Australia and overseas to tell some of the stories he couldn’t bring to Four Corners.”* <http://booko.com.au/9780733310713/Not-for-Publication>

<sup>187</sup> **The media is reviled by politicians, detested by the judiciary, silenced with Defamation:**

“Decline of court reporting”, Crispin Hull, 2008-04-05, *“In the nearly two decades or so that I had carriage of most of the defamation cases at The Canberra Times in several executive roles, I always dreaded the solicitor’s letter. The odds were stacked against media defendants – we were reviled by the politicians who made the law and detested by the judiciary who interpreted it. You knew the letter meant trouble – costly trouble.”* <http://www.crispinhull.com.au/2008/04/05/decline-of-court-reporting/>

“A Fair Media – let no threat get in the way,” Gerry Georgatos, The Stringer, 2013-05-26, [Kate McClymont:] *“The nation’s wealthy and powerful have often used legal threats to stop journalists’ inquiries or at least to put the frighteners on them. With the media industry in such dire financial straits this legal threat can prove too much for all but the largest of media organisations. For smaller companies, freelancers and bloggers, freedom of the press is a wonderful concept but the prospect of personally funding a court action against the coffers of a business tycoon is not realistic. There is a reason that some of the wealthiest litigate again and again, and this is because of the effect it will have on all media organisations. They became wary of taking someone who habitually litigates. Unfortunately, the bottom dollar matters.”* <http://thestringer.com.au/a-fair-media-let-no-threat-get-in-the-way>

<sup>188</sup> **The judiciary’s attitude towards the media:**

“Costs and Damages,” Lateline, ABC, 1998-03-11,

Richard Ackland, *Gazette of Law and Journalism*: “I think there is a judicial suspicion of the media, and its power, and its capacity to interfere with the judicial patch and tread all over the toes of a court in certain proceedings and so on. So, yes, judges have historically been quite hostile.”

<http://www.abc.net.au/lateline/stories/s14318.htm>

<sup>189</sup> **4 Corner’s “The Moonlight State”:**

“A Fair Media – let no threat get in the way,” Gerry Georgatos, The Stringer, 2013-05-26,

*“Ms McClymont spoke of her time as a fresh-faced researcher starting in 1987 on the ABC’s Four Corners. She came on board when journalist Chris Master’s story, ‘The Moonlight State’ was about to go to air.*

*“For weeks Chris, along with producer Shaun Hoyt and researcher Deb Whitmont had been working on this amazing expose of police corruption in Queensland. The office was full of talk of police turning a blind eye to illegal gambling and prostitution, and of money passing in brown paper bags.”*

*“Phil Dickie from the ‘The Courier-Mail’ had also uncovered a great deal about this high-level corruption. ‘The Moonlight State’ was investigative journalism at its finest.”*

*“The timing of the program was exquisite. Queensland Premier, Sir Joh Bjelke Petersen was away when ‘The Moonlight State’ aired and before Sir Joh could kill it dead, his Deputy had announced an inquiry. Within a fortnight the terms of reference for what became knowns as the Fitzgerald Inquiry had been drawn up.”*

*The Fitzgerald Inquiry went on for two years.*

*“Three former National Party Ministers went to jail, as did the Police Commissioner Terry Lewis,” said Ms McClymont.”*



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*"It also spelled the end of the road for Sir Joh."*

***"But behind the scenes Masters was paying a huge personal price for his work. For 12 years he battled defamation actions brought by Vince Bellino, whose family was mentioned in the program in connection with the drug trade."***

*"Over those long years, 14 judges dealt with Bellino's case and it went to the High Court twice. Bellino lost at every turn, except when the High Court ordered a re-trial, which once again Bellino lost. In 1999, 12 years after the program went to air, Bellino's second visit to the High Court was this time unsuccessful."*

***"It was a hollow victory. The experience left Masters not only shattered and disillusioned but convinced that good journalism was the real loser in this case. 'Journalists and broadcasters are just not going to do stories when defamation proceedings become as arduous and lengthy as this one was. It is what I call death by a thousand courts,' said Masters."***

*"The nation's wealthy and powerful have often used legal threats to stop journalists' inquiries or at least to put the frighteners on them."*

<http://thestringer.com.au/a-fair-media-let-no-threat-get-in-the-way>

<sup>190</sup> Personal communication with abused soldiers.

<sup>191</sup> **DART**

Defence Abuse Review Taskforce. After the DLA Piper review into Defence Abuses finished, instead of acting on its recommendations, the Labor Party (I am told, acting on the advice of certain public servants in the Department of Defence) commissioned *another* review to look at the result of the DLA Piper review. Many victims see the DART as a stalling tactic.

***"Smith condemned over response to Defence abuse,"*** David Wroe, SMH, 2014-03-15. *"[Gary Rumble,] The lawyer appointed by the Gillard government to lead an inquiry into abuse in the military has questioned Defence Minister Stephen Smith's commitment to bringing justice to victims. Gary Rumble, a former partner at DLA Piper - the law firm hired by the government to review hundreds of claims of abuse in the armed forces - told a Senate committee on Thursday he had lost confidence in Mr Smith because of delays and inaction."* <http://www.smh.com.au/federal-politics/political-news/smith-condemned-over-response-to-defence-abuse-20130314-2g3ma.html>

***"DART alone won't uncover all abuse in defence, Gary Rumble warns,"*** Mark Schliebs and Sarah Elks, The Australian, 2014-04-28. *"A Royal commission is needed to reveal the full number of cadets raped at the Australian Defence Force Academy, with a lawyer who uncovered abuse across the military warning current reviews were unlikely to reveal the extent of the assaults. Gary Rumble, who led the DLA Piper review into abuse in the defence force, said many -victims and witnesses to sexual assaults at the ADFA before 1998 were not interested in dealing with the ongoing Defence Abuse Response Taskforce."* <http://www.theaustralian.com.au/national-affairs/defence/dart-alone-wont-uncover-all-abuse-in-defence-gary-rumble-warns/story-e6frg8yo-1226897676383?nk=27a00b4aa1748f31e4bda3b50fe95d01>

<sup>192</sup> Disclosure: I have been assigned a DART reference number this appears to be an administrative error, and in any case, I am not an abused soldier.

<sup>193</sup> **Government using aggressive legal tactics against abused soldiers:**

***"Military abuse victims subjected to aggressive legal tactics, inquiry told,"*** Helen Davidson, The Guardian, 2014-08-13. ***"Legal tactics employed by the government in dealing with victims of abuse within the Australian military are worse than those employed by institutions facing the royal commission into child sexual abuse, a Senate committee has been told."***

*The Senate committee public hearing into the government's response to the Defence Abuse Response Taskforce (Dart) heard from two lawyers representing abuse victims, as well as the DLA Piper review chief, Gary Rumble, in Canberra on Wednesday morning.*

*The leader of the review into thousands of allegations of abuse within the Australian Defence Force (ADF) took the current and former governments to task over their inaction to adequately respond to his damning reports, and again called for a royal commission.*

*As well as the criticism from Rumble, the committee was also told by Shine Lawyers partner Adair Donaldson that, in his experience with hundreds of victims of abuse, the government employed aggressive legal tactics similar to those that the royal commission revealed were used by institutions such as the Catholic church, including technical defences like statutes of limitations and medical evidence, and gag orders or deeds of release on victims when negotiating redress.*

*"Not only do I believe that is happening but I also believe the tactics the government has employed are even worse than the institutions," said Donaldson.*

*Citing his submission to the royal commission, he said: "The Australian government is required to act as a model litigant. That's a higher ethical duty."*

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In his submission, Donaldson said: "It would be of interest to the commission as to whom within the Australian government was instructing the solicitor and in turn what legal advice they were relying on.

"The commonwealth should not put claimants to proof on matters it knows to be true, and not rely on technical defences. Put bluntly, the government and its legal advisers had a higher duty than religious or private organisations and accordingly should be held to higher account."

As an example he cited one claimant who was incorrectly told by the ADF's lawyers, DLA Phillips Fox, in 2010 that if he lost his litigation suit he would have to pay court costs. The self-representing man discontinued his claim as a result.

In his statement to the Senate committee, Rumble said assurances given by the former Labor defence minister Stephen Smith that the government would consider "significant aspects" have not or will not be carried out.

In his 55-page submission, Rumble said he has received no substantive response from Smith, the then attorney general Mark Dreyfus, the current attorney general, George Brandis, or the defence minister, David Johnston.

On Wednesday he told the committee: "It's now eight months since I received a written assurance from defence minister Johnston that the government would act." He added that it was only last Friday he received a departmental response, however "there is nothing in it ... to indicate the government has taken any action".

<http://www.theguardian.com/world/2014/aug/13/military-abuse-victims-subjected-to-aggressive-legal-tactics-inquiry-told>

<sup>194</sup> Personal Communication via Twitter.

<sup>195</sup> A number of times during the broadcast I spotted big whoppers which went unchallenged.

<sup>196</sup> **ABC and Defence's refusal to acknowledge the existence of the Victims Of Abuse In The Australian Defence Force Association Inc:**

Personal communication with Victims Of Abuse In The Australian Defence Force Association Inc: The ABC, including 4 Corners, has made no mention of the Association's existence. I am told that (now retired) DART head Len Roberts-Smith and (now retired) CDF General Hurley have also refused to acknowledge the Association's existence:

**2014-05-24 E-mail to Friends of Victims of ADF Association:**

*"As of the Committee Meeting Last night our membership now stands at 52 members.*

*We started out with 12 and in just over a year have increased 333%.*

*Given our extremely limited resources this is extremely impressive, primarily due to the great work of our committee.*

*Four of our victim members have received the full \$50,000 from the DART and one \$35,000.*

*We also have the only three known DVA Gold Card holders who received their gold cards for the abuse they suffered in the ADF.*

***So much for Major General Roberts-Smith claiming we are a bogus organisation and so much for General Hurley saying that there is no organisation for Victims.***

*We can only conclude that our successful advocacy worries both.*

*On behalf of the Committee I'd like to thank you all for your support so far.*

*We could not have done this without you the members, good guys and friends."*

**What possible reasons are there for refusing to acknowledge the existence of the Association?**

Obviously, if 4 Corners named the Association at the end of their report on Defence Abuses, then other victims would know to approach them.

**But Defence officials have been claiming the abuses are on a small scale:**

4 CORNERS: *"Have you done enough to reach out to those people?"*

LEN ROBERTS-SMITH: *"Well um I would have thought ah we've done quite a lot. Remember, as I said, this whole process started with DLA Piper in April 2011. Um they had quite a lot of publicity ah around that calling for people to come forward. Ah certainly the taskforce has had a lot of publicity since we started in November 2012. There have been numerous advertisements, newspaper articles, media reports and that kind of thing calling for people to come forward."* <http://www.abc.net.au/4corners/stories/2014/06/09/4019501.htm#transcript>

***"Defence boss David Hurley hoses down abuse inquiry call," AAP, 2014-04-28, "Chief of the Defence Force General David Hurley says there is no need for a royal commission because the number of people who've heeded his calls for information have been small."*** <http://www.theaustralian.com.au/national-affairs/defence/defence-boss-david-hurley-hoses-down-abuse-inquiry-call/story-e6frg8yo-1226898106551>

**If the ABC or Defence was to publicly acknowledge the existence of the Victims Association, and others were to come forward, then that would contradict that argument the abuses are on a small scale.**

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While there are law firms representing some victims, law firms do not seek to expose abuse; They seek to extract the maximum damages for individual clients. Settlements with the Commonwealth inevitably attract confidentiality clauses which prevent the public from knowing: [https://www.uow.edu.au/~bmartin/dissent/documents/Lennane\\_battered.html](https://www.uow.edu.au/~bmartin/dissent/documents/Lennane_battered.html)

However on August 13, 2014 the Association finally had the opportunity to testify before the Senate Inquiry into abuse in the Australian Defence Force and the Government's Response to it.

<sup>197</sup> **On 4 Corners General Hurley invited a victim (and by implication, other victims) to contact him or the DART, promising:**

“Chamber of Horrors,” 4 Corners, ABC. 2014-06-09.

4 CORNERS: *The Chief of the Defence Force General David Hurley told Four Corners he's willing to intervene directly in Jane's case.*

GENERAL DAVID HURLEY, CHIEF, DEFENCE FORCE: ***Look, I think that's totally unacceptable, and if that's occurring she should contact me directly or her head of service, or go straight to the DART, and we'll deal with it.***

DAVID HURLEY: *Michael, in 1998 I was a colonel, today I'm...*

4 CORNERS: *No, I understand that...*

DAVID HURLEY: *No, I'm telling. So 1998 I was a colonel. Today I'm the CDF. Today I can do something about it.*

<http://www.abc.net.au/4corners/stories/2014/06/09/4019501.htm>

<sup>198</sup> **Ongoing mental and physical abuse of abused soldiers: I:**

I was copied on this e-mail, which I am told was sent to every single member of Parliament. This e-mail was provided in-full to 4 Corners, but for whatever reason the show did not address it.

“Dear Senator,

*Last week as you know, one of our members was greatly distressed by the award of an Order Of Australia Medal to the person who organised his gang rape in Navy. As you would know, the gang rapist had been recommended by the Defence Abuse Response Task Force to General Hurley, Chief Of Defence, for prosecution.[But] Instead of prosecution he has been awarded an Order Of Australia Medal. As a direct result, [...] attempted suicide [...]*”

<sup>199</sup> **Ongoing mental and physical abuse of abused soldiers: II:**

I was copied on this e-mail, which I am told was sent to every single member of Parliament, is about an event that happened recently, after 4 Corners aired.

“Dear Senator,

#### 1.1 What The Victim Did

*One of our members, the Victim:-*

1. *Made complaint to the [DART] over:-*

a. *His mistreatment by the DART.*

b. *Being lied to and told that the DART was not subject to the FOI Act.*

c. *Giving evidence to the Senate Inquiry over this and the fact that the [DART] has now decided to restrict*

*Category 4 Payments to only those who have suffered multiple rapes yet there are others who have received Category 4 who were not raped.*

2. *He was found to be in scope, and received a reparation payment.*

#### 1.2 What [DART] Did To Him

*For his courage in coming forward he has been rewarded by the [DART] as follows:-*

1. *He was denied access to Restorative Justice and counselling.*

2. *He has been told that:-*

a. *“In accordance with the obligation of the Taskforce to use resources of the Taskforce efficiently and effectively, it is necessary to limit any further responses the Taskforce will make to you.” 2nd Last Paragraph” page 2. Victims who have been found to be in scope are the reasons for the existence of the Task Force, not an unnecessary interruption to their busy work!*

b. *“Your case Co-Ordinator, [Name Removed], will contact you if we have any specific questions in relation to the progression of your complaint.” 3rd Paragraph Page 2 – if they write to him he has to answer)*

c. *“.....Any further correspondence sent by you to the Taskforce will be received read and filed, but will not be acknowledged or responded to.” Paragraph 3, Page 2 (How can he access counselling or Restorative Engagement?)*

d. *You will also have noted on Page 1, Paragraph 5, still tries to deceive the Victim with regards Freedom Of Information by saying that “the TaskForce is not an “agency” under the Freedom of Information Act”, [DART] grudgingly admits that an FOI can be done through the Attorney General’s Department.*

#### 1.3 The Sicking Of SA Police Onto The Victim By [DART]

1. *This was just so far beyond the pale.*

2. *[DART] then sicked the South Australian Police onto him to detain him under the [...] Mental Health Act.*

...

3. *The irony of this is that as per ... response to Senate Questions on Notice, 3 victims have died whilst awaiting payment – [DART] did nothing to help them, but [would] [allegedly] sick the police onto the Victim in an [alleged] attempt to intimidate and shut him up.*

4. *The sicking of the SA Police onto the Victim was [allegedly]:-*

a. *Based upon intimate and confidential knowledge of the Victim's abuse at ADFA and*

b. *Designed to maximise the intimidation and hurt to the victim based on confidential information provided by the Victim to the DART.*"

<sup>200</sup> **General Hurley told a victim via 4 Corners to contact him because "Today I'm the CDF. Today I can do something about it":**

But when the show aired, General Hurley was about to retire:

Non-ABC Journalist [commenting on 4 Corners]: *"Did Hurley know he was leaving when he gave that interview - if so it was very duplicitous?"*

The show aired on June 9, 2014. *"Hurley retired from the Australian Army on 30 June 2014."*

[https://en.wikipedia.org/wiki/David\\_Hurley](https://en.wikipedia.org/wiki/David_Hurley)

<sup>201</sup> **The ADF Victims Association allegedly did not receive the right of reply to statements made by DART chairman Len Roberts Smith:**

The Mainstream media published this OP by DART chairman Len Roberts-Smith claiming he was shocked at the treatment of the abused soldiers:

*"Shock over accounts of abuse in armed forces gives way to change," Len Roberts-Smith, The Age, 2013-11-27.*

*"Nonetheless, it would be difficult not to be shocked by the extent of the abuse reported in the 2400 complaints received."*

<http://www.theage.com.au/comment/shock-over-accounts-of-abuse-in-armed-forces-gives-way-to-change-20131126-2y805.html>

Abused soldiers I spoke to were very angry, and indeed some of the e-mails between the DART and the abused soldiers I was copied on suggested a different relationship between them.

I am told the *Victims Of Abuse In The Australian Defence Force Association Inc* approached Fairfax, Radio National and other media organisations running this and sought the right of reply, but the media organisations all refused.

Meanwhile Len Roberts-Smith's OP appears have led to *The Australian* nominating him as "Australian of the Year":

*"Judge turns attention to the defence forces," The Australian, 2014-01-14. "After a long, distinguished legal career, former Supreme Court of Western Australia judge Len Roberts-Smith is now leading the charge to clean up the culture of the defence forces as head of the Defence Abuse Response Taskforce. ... "It's quite horrific, quite shocking," he said. "What we have seen in some instances is an allegation that is obviously rape downgraded to misconduct, and treated summarily in a minor disciplinary matter." ... Nominees for The Australian's Australian of the Year will be judged by panel of the paper's senior editors and the winner announced on January 25 in The Weekend Australian."* <http://www.theaustralian.com.au/news/nation/judge-turns-attention-to-the-defence-forces/story-fnboyn5s-1226801010470>

Abused soldiers were very angry and mounted a letter writing campaign. Here is one letter to *The Australian* which I was copied on:

*"Dear Mr Mitchell [Editor of the Australian]*

*I am writing to you because I believe that Len Roberts-Smith's nomination, let alone being a recipient of The Australian's Award, is undeserved at this time. The head of such a unique body in the history of Australian Defense matters strongly sets the tone, conduct and outcomes for it. However, heading up such a body of itself does not qualify anyone for an award when their performance has been ordinary at best.*

*My reasons are as follows and they are:*

1) *Overall, he has made decisions regarding the ADF's victims that have been hostile to their welfare. I am not referring to the amounts of reparation payments as these decisions are not his to make anyway. He has consistently denied various assistances to victims that were within his power to supply almost right from the beginning and only changing his reactive policies when pressured, his actions were uncovered and that he was acting without compassion. In short Mr. Roberts-Smith was acting in the cultural ways of the ADF - the adoption of the title "Major General" is just a final straw. I am not aware that Mr. Roberts-Smith is still on the active list. The adoption of and prominent use of a retired rank that flags offence and distrust to the people Mr. Roberts-Smith is apparently trying to assist. Then there are the actions of DART only moving on critical incident issues under duress and then slowly, quite ADF like. I have been given pause to think that perhaps the adoption of this rank is appropriate after all.*

2) *He labelled DART applicants "complainants" without considering the real effect of institutional semantics on much damaged people. He oversaw the denial of access to counselling for suicidal and deeply disturbed victims. Even when counselling was finally offered after months of delays, the firm he engaged to supply these services could not*



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service non-metropolitan areas. He allows processing procedures that produce unreasonably long times - weeks upon weeks upon weeks - to pass in his internal bureaucracy that process reparation payments after a determination has been made.

3) *The DART's own welfare officers he has disempowered to such an extent that when they contact the "complainants" they can say almost nothing, hedging their words and obfuscating and thus multiplying pain and suffering. This is felt both by the "complainants" and his own Officers. These Officers, whose distress is palpable though hidden by their professionalism, is in effect new life to the original ADF abuses that the victims suffered. A gift that keeps on giving, one might say. Mr. Roberts-Smith has these things occurring on his watch and he apparently does not or will not see them.*

4) *The deadlines for certain victim's application paperwork were altered to short and apparently arbitrarily decided dates. The paperwork itself is incredibly distressing. A wise or fragile victim would do well to engage one of the pre-approved law firms and when a reparation determination is made in their favour, just pay the money to that law firm. I can't think of anywhere when a claim has been accepted, that the successful claimant still has to pay out of their own pocket. I have not heard Mr. Roberts-Smith speak or comment publicly regarding these kinds of issues either. There are things Mr. Roberts-Smith could have, should have advocated for to excel in his role to make him a worthy recipient of any awards. Unfortunately, he has likely made as many errors of omission as commission his job to qualify him as an outstanding candidate for any of them.*

5) *The offer of written apologies to victims has not been withdrawn by DART, just made incredibly difficult to obtain. They have issued just one. I am told by DART that these apologies will be probably be crafted by Defense Legal in the own time. Perhaps Mr. Roberts-Smith could act to the fullest of DART's charter to bring a recalcitrant Defense to heel over their stained past? I hear no and see no actions like this anywhere except a small drop in Defenses budget by way of reparation payments. DART's favoured means of a Defense apology is face to face mediated meeting. These have not gone well. Mr. Roberts-Smith has overseen disastrous face to face apologies that have in the end left victims out of pocket and more distressed afterwards! Victims were paying all the costs for their support persons and the process has been rushed.*

*When these issues above that I have knowledge of are contrasted with his measured and stage managed performances in the media and Parliament that I have personally seen, I can only conclude that Mr. Len Roberts-Smith's nomination for any awards other than his remuneration for services is inappropriate and underserved as far as his leadership of DART and the vexing issues of abuses in the ADF.*

*Yours Most Sincerely*



<sup>202</sup> **The ADF Victims Association allegedly did not receive the right of reply on the ABC:**

2014-05-02 **E-mail from Victims of ADF Association to Lynette McDade and Bryan Parker in Defence:** This e-mail alleges that when General Hurley Appeared on Radio National he made statements which were "demonstrable deliberate lies" which, if proven true, would be an alleged breach of the *Prejudicial Conduct of the Defence Discipline Act 1982* and the *Queens Regulations and Instructions*.

I am told by the *Victims Of Abuse In The Australian Defence Force Association Inc* via personal communication that they approached Radio National and asked for the right of reply, but the Radio National refused.

<sup>203</sup> **On September 5 the ABC – though not 4 Corners – finally reported the story, but only after Len Roberts Smith's resigned following the Association's testimony to Parliament, and the revelation that three abused soldiers before committed suicide while waiting for the counselling:**

**"Defence Abuse Response Taskforce (DART) confirms three victims have taken their own lives before case resolution,"** Alex McDonald, ABC, 2014-09-05. "At least three victims of military abuse have taken their own lives while waiting for counselling and compensation from the government taskforce set up to deal with their cases." <http://www.abc.net.au/news/2014-09-05/at-least-three-victims-of-military-abuse-have-taken-own-lives/5722564>

The ABC story makes no mention of Len Roberts-Smith resignation, even though Defence put out a press release on September 3 (albeit the reference to his resignation is buried 2/3<sup>rd</sup>s of the way down it.)

2014-09-04 **From the Victims Association regarding Len Roberts-Smith resignation:**

*"Dear Senator,*

*Today Major General Roberts-Smith quietly announced his departure from the Defence Abuse Response Task Force in November. [...]*

*1.0 Major General Roberts-Smith Tried To Bury The Fact Of His Departure*

*You would expect that such a momentous fact would warrant its own press release?*

*Wrong!*

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*Major General Roberts-Smith buried his departure deep down in a Press Release on Restorative Engagement Process for Victims.*

*Although his departure is a form of Restorative Justice for the Victims he [alleged mistreatment] whilst Chair of the Defence Abuse Response Taskforce.*

### *1.1 Major General Responsible For Overseeing Victim Suicides*

*Unlike us, on his watch, the Defence Abuse Response Taskforce has been responsible for overseeing three Victim Suicides.*

### *1.2 Why Is He Going?*

*Thanks to:-*

*1 The recent rigorous scrutiny of [the DART's] conduct by the Senate Inquiry,*

*2 [The DART's alleged] cover up of Victim Suicides.*

*3 The initial claims that the Defence Abuse Response Taskforce was not subject to the Freedom Of Information Act*

*4. Recent outrageous behaviour [by the DART] such as trying to have victims who complain[ed ...] locked up under the Mental Health Act,*

*[In our opinion] It is clear that he has just become [...] to Victims and the Attorney General's Department.*

*[In our opinion] It would seem clear [in our opinion] that:-*

*1. It was a not a case of the Major General deciding not to renew his contract*

*2. But rather him being told that the Ministers would not be renewing it and the Major General is just trying to put spin on it.*

### *2.0 Thanks To Ministers Johnston And Brandis and Secretary Wilkins*

*On behalf of Victims who have [allegedly] suffered at the hands of Major General Roberts-Smith we say thank you to Ministers Johnston and Brandis and long suffering Secretary Wilkins of the Attorney General's Department. They deserve a medal for what they have gone through and for the courage [...].*

### *3.0 Who Should Replace Him?*

*What we need is a civilian completely divorced from Defence, who has a demonstrated track record of caring and compassion such as Dr Rumble or Former High Court Justice Kirby."*

***[Attached: Press Release]***

***UNCLASSIFIED***

***DEFENCE ABUSE RESPONSE TASKFORCE***

***MEDIA RELEASE***

***3 September 2014***

### ***SENIOR DEFENCE REPRESENTATIVES MEET WITH PEOPLE WHO SUFFERED ABUSE***

*More than 190 senior Defence representatives across Australia have taken part in preparation sessions to enable them to meet with people who suffered abuse in Defence in private conferences organised by the Defence Abuse Response Taskforce, according to a report tabled today in Parliament by the Minister for Defence, Senator the Hon David Johnston.*

*The Defence Abuse Response Taskforce's latest interim report provides an overview of the significant progress that has been made in providing outcomes to people who suffered abuse in Defence.*

*"Since its establishment, the Taskforce's focus has been developing programs to provide tailored, practical outcomes to individuals," said the Chair of the Taskforce, the Hon Len Roberts-Smith QC.*

*"The outcome in each case will depend on the personal circumstances of the complainant, but might be a Reparation Payment or the opportunity to meet with a senior Defence representative in a conference arranged under the world-first Defence Abuse Restorative Engagement Program."*

*As at 11 August 2014, the Taskforce had held 48 Restorative Engagement Conferences and made more than 870 Reparation Payments, totalling in excess of \$36 million. As at that date, the Taskforce had also arranged 917 counselling sessions under its national Counselling Program and referred 73 cases to State and Territory police for assessment.*

*Mr Roberts-Smith also confirmed that the Taskforce will continue to provide outcomes to complainants beyond 30 November 2014, when his term as Chair concludes.*

***"I have advised the Minister for Defence and Attorney-General that I am not able to accept a further extension of my appointment as Chair of the Taskforce," he said.***

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*"However, I am absolutely confident that the level of service provided to complainants by the highly skilled staff of the Taskforce will not be affected by a change in leadership."*

*Mr Roberts-Smith was originally appointed for a 12-month term from 26 November 2012 and has since accepted two extensions.*

*The Seventh Interim Report is available for download on the Taskforce website.*

*Media contact: email [georgia.flynn@ag.gov.au](mailto:georgia.flynn@ag.gov.au) or call 0477 763 825"*

*<http://www.defenceabusetaskforce.gov.au/newsroom/Documents/3September2014SeniorDefencerepresentativesmeetwithpeoplewhosufferedabuse.pdf>*

<sup>204</sup> **On September 5, 2014 ABC PM also reported the story:**

*"Suicides boost calls for royal commission into Defence abuse," Sarah Dingle, ABC, 2014-09-05. "A victims' group says the fact that three people have committed suicide while waiting for the Defence Abuse Taskforce to process their military abuse complaints proves there should be a royal commission into Defence abuse cases. The head of the taskforce has confirmed the three deaths, which were not revealed in its latest report, released just this week."*  
*<http://www.abc.net.au/pm/content/2014/s4082095.htm>*

<sup>205</sup> **The ABC Defence Correspondent does not follow-up leads on Defence corruption:**

*E-mails to the ABC Defence Correspondent (No responses. No returned phone calls):  
2013-04-12, 2013-05-13, 2014-03-25, 2014-06-20, 2014-06-09.*

<sup>206</sup> **ABC Defence Correspondent does not follow-up lead on Defence corruption:**

*e.g. 2013-04-12 E-mail to ABC Defence Correspondent. (No response nor returned phone call).*

*"Hi [REDACTED],*

*[REDACTED] has been following my complaint and suggested I should talk to you.*

*I'm the whistleblower whose complaint lead to this story: <http://www.crikey.com.au/2013/12/02/revealed-the-government-agency-stealing-ideas-from-businesses/>*

*Attached is a Crime Report I resubmitted yesterday.*

*I left a message for you a couple of days ago. Please give me a call on 07 32175563*

*cheers*

*Brendan Jones"*

<sup>207</sup> **Is the ABC Defence Correspondent self-censoring?**

*Because the ABC Defence Correspondent has not responded to my e-mails nor returned my phone calls I do not know his reasons are, but a veteran reporter said it would be because he is a "beat reporter" and would not want to alienate his sources within the Department by reporting corruption within it. This is valid practice for beat reporters. However since his appointment has appeared on 4 Corners doing investigative reporting, so that no longer holds. And while I could understand he might want to prioritise other stories, that is no reason for him not to speak to me. His refusal to speak to me, and consequent self-censoring inevitably raises questions.*

*Thus given the severity of the material I've provided him, and his complete refusal to speak me, and consistent with the other self-censorship evident within the ABC, it seems a reasonable conclusion to me to draw that the ABC Defence Correspondent is self-censoring.*

*If he worked in a commercial media organisation this would be understandable; The commercial media are independent businesses with no obligation to pursue public interest stories to their own commercial detriment. But not within the taxpayer-funded ABC operating on a public-interest charter.*

<sup>208</sup> *2014-07-26 E-mail from RAAF Air Commodore Ted Bushell (Rtd).*

<sup>209</sup> **4 Corners on Corruption:**

*"Democracy For Sale," Linton Besser and Ges D'Souza, 4 Corners, ABC, 2014-07-11.  
"" <http://www.abc.net.au/4corners/stories/2014/06/23/4028997.htm>*

<sup>210</sup> **Federal political corruption:**

*That 4 Corners interviewed several federal politicians condemning federal corruption, but did not raise any allegations of federal political corruption. But this makes it hypothetical: If, as Tony Abbot claims, 'Canberra has a pretty clean polity,' then why waste money on a federal corruption commission if there is no federal corruption?*

*"Corruption: the creeping cancer of the Coalition", Peter Wicks, Independent Australia, 2014-05-27. "So far, the revelations uncovered by the Independent Commission Against Corruption (ICAC) has seen nine Coalition MPs resign or say they won't stand again. ... ICAC has also seen two Federal members of parliament have their names dragged*

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through the mud. ... *Speaking of Tony Abbott*, we have also seen the man responsible for his personal campaign funding, John Caputo, dragged through ICAC and emerge not looking too flash. ... On top of that, we have seen the man in charge of the Federal Liberal Party's fundraising ... called before ICAC with disturbing allegations. ... It seems the proceeds of organised crime may have found their way into the Liberal Party coffers." <http://www.independentaustralia.net/politics/politics-display/corruption-the-creeping-cancer-of-the-coalition,6517>

Many other cases listed here: <http://victimsfoldsto.com/royal-cosgrove-2/#cases>

<sup>211</sup> **A possible reason the 4 Corners avoided public service corruption:**

One might argue because that 4 Corners story was called "*Democracy for Sale*" it only needed to tackle political corruption, and not corruption elsewhere in government. But in my opinion that doesn't wash; The proposed federal corruption commission would have jurisdiction over federal politicians *and federal public servants*. The fact that (Fairfax) has reported widespread corruption within the federal public service is surely relevant:

<sup>212</sup> **Federal public service corruption:**

**"Federal agencies lack firepower to deal with fraud"**, 2011-10-03, SMH, Linton Besser.

*"An unknown number of corruption cases lie undiscovered inside the vast Commonwealth bureaucracy"*, <http://www.smh.com.au/national/federal-agencies-lack-firepower-to-deal-with-fraud-20111003-115dt.html>

**"Public service keeps fraud cases private"**, 2011-09-24, SMH, Linton Besser, *"Confidential files obtained using freedom of information show thousands of allegations of graft and abuse of office are being levelled against government staff each year - but only a handful are properly investigated."* <http://www.smh.com.au/national/public-service-keeps-fraud-cases-private-20110923-1kpdr.html>

**"Our costly complacency on corruption"**, Stephen Bartos, 2013-03-05, SMH, *"It is possible - no matter how great the present level of denial might be - that a federal equivalent of the NSW commission would reveal a high level of corruption. In the short term, this would tarnish Australia's reputation. But consider how much better that would be than having hidden corruption grow until finally it erupts in a scandal so gross that nobody can sweep it aside."* <http://www.smh.com.au/federal-politics/our-costly-complacency-on-corruption-20130303-2fe2f.html>

**"New body needed to fill cracks of corruption"**, George Williams, Professor of Law at the University of NSW, 2012-05-22. *"The lack of a national anti-corruption body means that dishonesty and breaches of public trust by parliamentarians and Commonwealth agencies may never be detected, let alone addressed."* <http://www.smh.com.au/federal-politics/society-and-culture/new-body-needed-to-fill-cracks-of-corruption-20120521-1z17h.html>

Corruption expert Howard Whitton: **"Systemic corruption is real in Australia, and I think that ICAC has demonstrated that it is very widespread."** Official Committee Hansard - Joint Committee On The Australian Commission For Law Enforcement Integrity - Reference: Operation of the Law Enforcement Integrity Commissioner Act 2006 - 21 March 2011 – Canberra.

<sup>213</sup> **Comments on 4 Corners:**

Frances Jones @FrancieJones *"I learned nothing new from tonight's #4corners I expected something ground-breaking about former Howard cabinet as lobbyists for coal & csg"* <https://twitter.com/FrancieJones/status/481041991556276224>

Frances Jones @FrancieJones *"I had high expectations. Sadly not a Chris Masters style one. We could've done much better ;)"* <https://twitter.com/FrancieJones/status/481046847801147393>

<sup>214</sup> **Yet the ABC is willing to risk Defamation to run a comedy skit?**

**"'Arrogant' Chasers defy ABC on Chris Kenny apology,"** Sharri Markson, The Australian, 2014-06-05. *"The Chaser team has defied the ABC managing director Mark Scott by declaring they will never apologise to The Australian's columnist, Chris Kenny for their offensive skit, thus flouting the terms of the settlement. Nine months after the skit depicting Kenny as a dog f...ker first aired on the election night edition of Hamster Decides, Communications Minister Malcolm Turnbull said the ABC had "mishandled" the affair and former ABC chairman Maurice Newman said the Chaser team were defying management."* <http://www.theaustralian.com.au/media/broadcast/arrogant-chasers-defy-abc-on-chris-kenny-apology/story-fna045gd-1226943511303?nk=42925bd3167de4f6276002013692a903#>

<sup>215</sup> **4 Corners makes no mention of public service corruption; only saying 'The secretaries of Australia's Commonwealth public service have long argued there is no need for an ICAC-style body in Canberra':**

*"National anti-corruption plan prepared by Attorney-General's Department did not include independent watchdog,"* Linton Besser, Ges D'Souza and Mario Christodoulou, 4 Corners, ABC, 2014-06-23.

*"A national anti-corruption plan prepared by the Attorney-General's Department before the 2013 federal election fell dramatically short of calling for an independent graft watchdog."*

*Instead, the plan developed under the former Labor government recommended mandatory reporting and new departmental committees as a federal safeguard against the threat of bribery."*



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*Critically, the new federal regime envisaged no oversight of federal politicians.*

*A copy of the plan, obtained by ABC television's Four Corners, said Commonwealth agencies reported almost 2,000 cases of corruption between 2008 and 2011.*

*It also said 12 per cent of federal bureaucrats had witnessed serious breaches of protocol, including fraud and theft, according to a 2012 survey.*

*Yet at present, the only agency with the powers to investigate and root out corruption in the federal sphere – the Australian Commission for Law Enforcement Integrity – has no jurisdiction over the majority of the Commonwealth public service.*

*The revelations come as the recently retired head of the NSW Independent Commission Against Corruption (ICAC), David Ipp QC, called for the establishment of a federal anti-graft agency with the powers of a standing royal commission, lamenting a grave "breakdown of trust" in the political process.*

*The ICAC is currently investigating the Liberal Party's alleged laundering of illicit campaign finance and has heard evidence of the involvement of people and institutions outside its jurisdiction.*

*"It is so screamingly obvious that there is a breakdown in trust at the moment," Mr Ipp told Four Corners.*

*"The only way of maintaining trust or recovering the trust is to demonstrate that there are adequate means of discovering corruption so that the public can be confident that what the Government is doing is not tainted by dishonest behaviour."*

*Ex-ICAC chief says national watchdog unlikely*

*Australia is co-chair, with Italy, of the G20's Anti-Corruption Working Group whose reports will be considered by senior G20 officials today and tomorrow, but the Government has yet to announce any federal mechanism by which corruption might be investigated and exposed.*

*Emily Broadbent, a spokeswoman for Justice Minister Michael Keenan, said the national anti-corruption plan was never finished by the former government.*

*"The Government is developing new anti-corruption measures," she said, but did not elaborate on what they might constitute or when they might be announced.*

*David Ipp QC reflects on ICAC*

*The recently-retired NSW corruption commissioner David Ipp QC discusses the challenges of investigating the wealthiest and most powerful figures in the country.*

*The 2013 plan said: "Corrupt practices have the potential to undermine Australia's reputation for high standards of governance, robust law and justice institutions, equitable delivery of services, democratic and electoral accountability, and transparent and fair markets."*

*Mr Ipp said the establishment of a federal anti-graft commission was "very important".*

*"There is no reason to believe that the persons who occupy seats in the Federal Parliament are inherently better than those who occupy seats in the NSW Parliament," he said.*

*"Corruption is endemic to the human being. That is, when the opportunities are there, when there is no policing, there are some people who will get involved in that."*

*But Mr Ipp acknowledged the establishment of such an agency was unlikely.*

*"Most politicians ... do not like to be subject to a body such as ICAC, and you can see that in all the new similar bodies that have been created in South Australia, Victoria and Tasmania," he said.*

*"They really do not have the [same] powers of investigation as ICAC and that is because politicians don't want that."*

*Mr Ipp said these other anti-corruption agencies would never have been able to uncover the Eddie Obeid plot that delivered his family \$30 million from a rigged coal allocation tender in 2008.*

*"It would have been difficult for them, not because they don't have the ability but because the lengths to which the corrupt conduct in Jasper was concealed was so extreme, it really did take the kind of powers that ICAC has to realise and prove the kind of corruption," he said.*

*"ICAC is able to uncover corruption which other bodies with similar names in other parts of Australia cannot uncover. Now the fact that they can't uncover it doesn't allow a person honestly to say there's no corruption here.*

*"No-one has picked up the rock [elsewhere] to see what worms are crawling around underneath it."*

*Preselecting 'cleanskins' is the key, says Bill Heffernan*

*Liberal senator Bill Heffernan told Four Corners he believed the most important thing in politics was to ensure that "cleanskins" were preselected as candidates.*

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But asked about whether he would support a federal anti-corruption commission, he said: "In one way or the other I don't see the harm in it."

"If you're driving along the highway and there's a sign that says 'speed camera ahead', unless you're stupid, you at least think 'how fast am I going?' or look at the speedo. Well, that's the effect of a body like ICAC, whether it's federal or state."

Labor senator John Faulkner said both sides of politics needed to do more to restore public trust in government.

"Any suggestion that wrongdoing or malfeasance or corruption happens to stop at a state or territory border is a very courageous claim to make," he said.

Any suggestion that wrongdoing or malfeasance or [that] corruption happens to stop at a state or territory border is a very courageous claim to make.

"I think that a person who's done the right thing has nothing to fear from the work of a corruption commission."

Mr Ipp has also raised questions about the model used by ACLEI, which operates almost entirely in secret and which has stated that it sometimes works in partnership with the agencies over which it has purview.

"I don't agree with that at all," Mr Ipp said. "I do not think I would ever act in partnership with another agency who we're investigating. I think that compromises the independence of ICAC [or an equivalent agency]."

He also said public hearings were vital for both deterrence of graft and the restoration of public trust.

"Members of the public can see for themselves the strength or weakness of the evidence," he said.

"That's how corruption is exposed. The exposure is the deterrence because ... very often prosecutions either don't take place or don't succeed, so it's the publicity that is the sanction."

The 2013 national anti-corruption plan, which had been prepared for announcement by former attorney-general Mark Dreyfus, flagged the introduction of a new mandatory regime whereby civil servants would be required to report any suspected corruption.

The plan also included the creation of a new anti-corruption committee chaired by the secretary of the Attorney-General's Department, a fraud and anti-corruption centre within the AFP and an integrity education and training group.

But witnesses to corruption would still be reporting their evidence to heads of departments or the Commonwealth Ombudsman – none of whom have the powers of ICAC to gather evidence and expose corruption.

**The secretaries of Australia's Commonwealth public service have long argued there is no need for an ICAC-style body in Canberra.**

ACLEI's jurisdiction includes Customs, the AFP, the Australian Crime Commission, AUSTRAC and sections of the Department of Agriculture.

Watch the Four Corners report *Democracy For Sale* at 8:30 tonight on ABC1

<http://www.abc.net.au/news/2014-06-23/national-corruption-plan-didnt-include-independent-watchdog/5541908>

<sup>216</sup> **More than 100 public service whistleblowers come forward each month to report crime, corruption or serious incompetence:**

"More than 100 public service whistleblowers come forward each month," Noel Towell, The Canberra Times, 2014-07-29. **"More than 100 allegations are being made each month of crime, corruption or serious incompetence by Commonwealth government officials under new whistleblower protections laws.** More than 380 "disclosures" have been made in the first six months of the legislation and another 288 would-be whistleblowers have been told that their accusations did not fit the criteria to be investigated under the Public Interest Disclosure Act. The Commonwealth Ombudsman's office says it has taken another 250 calls on its "Public Interest Disclosure" hotline. ...

Howard Whitton, of the University of Canberra's National Institute for Governance and a member of the National Anti-Corruption Plan committee, said he was not surprised at the numbers of would-be whistleblowers who were coming forward. "The Commonwealth has had a problem for a very long time which it hasn't been addressing so it doesn't surprise me," Mr Whitton said." <http://www.smh.com.au/national/public-service/more-than-100-public-service-whistleblowers-come-forward-each-month-20140729-zxzxj.html>

<sup>217</sup> **Yet Even the Public Service Commission has admitted to astonishing figures:**

"Public servant leakers still face prosecution, despite new whistleblower laws", Noel Towell, Canberra Times, "According to Mr Sedgwick's official figures, **as many as 20,000 federal public servants had witnessed serious internal misconduct in the latest 12-month reporting period** but that less than half of them had made internal reports, usually because they distrusted the official process or they feared reprisal. Of those who reported, 55 per cent said they were left unhappy with the official reaction, but the commissioner said he still believed that internal reporting was the

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best way to deal with fraud, corruption or misconduct.” <http://www.canberratimes.com.au/national/public-service/public-servant-leakers-still-face-prosecution-despite-new-whistleblower-laws-20130809-2rlxa.html>

<sup>218</sup> **Tony Abbot claims ‘Canberra has a pretty clean polity’:**

“Coalition & Labor: donations not corrupting force in federal system,” Mark Colvin, PM, ABC, 2014-05-05.

“The Prime Minister Tony Abbott was asked on Channel 9 this morning if there should be a federal version of the New South Wales Independent Commission Against Corruption. **Mr Abbott said he thought that Canberra had a "pretty clean polity"**. The Coalition and Labor have been working hard today to assure voters that the explosive mix of money and politics exposed by the ICAC in New South Wales has not infected federal politics.”

<http://www.abc.net.au/pm/content/2014/s3998196.htm>

<sup>219</sup> **Analysis: Debunking Abbott's claim that Canberra is "pretty clean", doesn't need a Federal ICAC.**

“Analysis: Debunking Abbott's claim that Canberra is "pretty clean", doesn't need a Federal ICAC,” Brendan Jones, 2014, “Abbott claims Canberra is “pretty clean”. Does he not read the papers?” <http://victimsofdsto.com/abbott/>

<sup>220</sup> **Definition of a Victims’ advocate:**

In this document victims advocate refers to a layperson who has taken on an organiser role, helping and coordinating whistleblowers and victims of government abuse. Of all the victims’ advocates I know, only one is a practising solicitor (unaffiliated with and critical of NGOs), and another has law degree, but is not a practising lawyer.

<sup>221</sup> E-mail from Victims’ Advocate.

<sup>222</sup> **How whistleblower Mick Skrijel was silenced:**

“Policing a citizen's right to expression”, Richard Ackland, Australian Financial Review - 1996-02-19 “Should Duncan Kerr’s concern about a pamphleteer in his electorate allow him to involve the Australian Federal Police, asks Richard Ackland.” “Last Sunday and Monday he had Mr Mick Skrijel stamping over his borough spreading leaflets that said some beastly things about poor Dunky. // Skrijel will be familiar to readers of this column as the former South Australian fisherman who made allegations of drug trafficking and official protection. The NCA subsequently brought a drug cultivation charge against him. An inquiry into the NCA’s conduct in this case found there was substantial evidence that the NCA fabricated the case against Skrijel in order to secure his conviction. // Kerr rejected the recommendation that a royal commission be held and has sent the matter to the Victorian Deputy Ombudsman for further investigation. Skrijel claims this is a totally inadequate response. // The material that Skrijel was distributing in Denison contained all those details, plus some flourishes that Kerr was trying to silence him. // The Minister for Justice was on notice that Skrijel was going to publish this pamphlet because he had sent him a copy on January 30 and asked him to read it carefully and tell him where he was wrong. // The minister did not take up Mr Skrijel’s generous offer. Instead on February 2 he wrote to Skrijel’s lawyer in Melbourne, John Howie, of Howie and Maher, and said that the pamphlet was “wildly defamatory” and urged that the legal implications of distributing such material be made clear to Mr Howie’s client. // He also sent a letter to members of the media in Hobart, dated February 5, warning that he “would be obliged to take legal action if any of the false and defamatory material were to be repeated in the media”. // That letter went to the Hobart branch manager of ABC radio, among others, on the same day that the ABC metropolitan radio host, Annie Warburton, was planning to interview Skrijel on her afternoon radio show. Before going to air she talked to a friend, Mr George Haddad, who is working with Kerr’s campaign team in Denison. Haddad cautioned her about interviewing Skrijel because he was likely to say something defamatory about Kerr on air. Warburton then pulled the plug on the interview. // Kerr says he was concerned about his own safety and his office requested the AFP conduct an “assessment” of Skrijel. This is quaint since in the time Kerr has been a minister there has been no apprehension about Skrijel. It is only when he turns up in the electorate wanting a debate that the flatfoots are called in. // On Tuesday, Warburton was visited by the Australian Federal Police, Kerr being minister responsible for the AFP. // She was asked about her impressions of Mr Skrijel and his reaction to being told the interview had been cancelled. The police officer also wanted to know about Skrijel’s whereabouts in Hobart, which she did not have. She was asked by the AFP officer to get in touch with the whistleblower’s organisation, ask them to contact Skrijel and invite him back to the studio on the pretence that another interview would be scheduled. It was suggested that she string Skrijel along and find out his address in Hobart, so that the copper could go and interview him about his pamphlet // Naturally, like all good journalists, and also having been a lawyer herself, Annie Warburton declined to participate in this proposal. // In fact, the AFP did interview Skrijel, on Wednesday and yesterday in Melbourne. He was asked about the wicked pamphlet: how many had been distributed, were there any others, why was he “mentally harassing” the minister? // But why should a minister be so sensitive as to involve the federal police in the free expression of issues by a concerned citizen participating in the democratic process of an election campaign? This is an even more interesting question.”

<sup>223</sup> To their credit, at least the ABC considered interviewing Skrijel, where as the rest of the Tasmanian media conceded without any further prompting.

<sup>224</sup> **Apart from the ABC, other electronic media (TV stations) seemed to hardly cover corruption at all.**

I contacted commercial current affairs programs to see if they would contribute to the “Whistleblower’s Guide to Journalists” but none responded. Again perhaps they were simply busy, but it makes the point they’re hardly falling

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over themselves for whistleblower's stories. When I prepared the *'uninvestigated / whitewashed federal government corruption'* royal petition I found very little material on electronic media.

<sup>225</sup> **Praise for the ABC:**

I do note 4 Corners was one of the few news organisations which contributed to the *"Whistleblowers Guide to Journalists"* and I credit the ABC's non-investigative divisions (ABC TV's The Business and ABC radio's The World Today) for doing difficult stories about whistleblowing which the ABC's hard news division did not take up.

The ABC Science Correspondent contacted me and we had a lengthy phone conversation. He wanted to report the IP thefts and, later, the DCTA. But he appears to have since dropped it. I recently learned that the Crikey journalist who had offered to help him run the story had in nine months never heard from him. Given his initial eagerness, and his lack of action, and given a similar pattern I saw in another news organisation, it seems reasonable to conclude he wanted to run the story and asked his management for permission to pursue the story and it was denied.

As for why he hasn't said he dropped it, it's the experience of myself and others than journalists generally do not tell you they have dropped a story (perhaps for the same reason people interviewing for jobs don't like phoning unsuccessful applicants to tell them they didn't get it.)

<sup>226</sup> **Why might the ABC self-censor?**

**Defamation and Section 70:**

Section 70 and the *Public Interest Disclosure Act* are valid reasons to self-censor, because they risk landing the source and the journalist in jail. But media organisation have lawyers to help them minimise the risk of a defamation law suit, using techniques such as withholding the more serious allegations or not naming the public officials concerned. Wendy Bacon and Evan Whitton say you can usually get *something* into print. For example, *The Australian* recently ran a series of stories where rape allegations against a Senior ALP figure were raised and later dropped without ever naming them: <http://www.news.com.au/finance/money/leaked-document-shows-abc-stars-salaries/story-e6frfmd9-1226764149242> + <http://www.theaustralian.com.au/national-affairs/tanya-plibersek-pushes-for-rape-probe-into-unnamed-senior-labor-figure/story-fn59niix-1226759757328> + <http://www.theaustralian.com.au/national-affairs/labor-politician-cleared-in-rape-case/story-fn59niix-1227031295644>

**Cost considerations:**

Although ABC journalists like to think they are different from the commercial media, in practice myself and others find they are very similar. They look for stories that are safe, easy and cheap to produce.

**Systemic corruption:**

The ABC is also in effect an integrity agency, and Jean Lennane warns *'Corruption of the integrity agencies is inevitable.'*

**Lack of Independence:**

In theory the ABC is in theory an independent statutory body, but a senior public servant in the prime minister's department (who is currently a former Secretary of Defence) chooses the ABC's board members and the elected-government determines the ABC's budget. Some victims believe ABC management is worried if they alienate the government by giving them bad press their budget will be cut, and they'll have to let people go.

**Career incentives to tow the party line:**

Some ABC staff are also on enormous salaries: *"Lateline host Tony Jones is the public broadcaster's highest-paid presenter on \$355,789 a year. Juanita Phillips, weeknight presenter of ABC News in NSW and evening presenter for ABC News 24, earns \$316,454. 7.30 presenter Leigh Sales is paid \$280,400 a year."* <http://www.news.com.au/finance/money/leaked-document-shows-abc-stars-salaries/story-e6frfmd9-1226764149242>

This presents a potential conflict of interest. In other agencies, public servants on enormous salaries which they are unlikely to get anywhere else have a strong incentive not to rock the boat. In the ABC a telegenic journalist who increases their profile without making enemies in the government might one day find themselves on such an enormous salary. By comparison, a journalist who launches an investigation that brings down a government has made enemies for life.

<sup>227</sup> **Allegations of politicisation in the appointment of ABC Board Members:**

"Malcolm Turnbull distances himself from decision to appoint Janet Albrechtsen and Neil Brown to roles overseeing ABC and SBS board posts," Matthew Knott, Communications and education, SMH, 2014-07-04.

*"Communications Minister Malcolm Turnbull has acknowledged concerns about political influence in the appointment of conservative commentator Janet Albrechtsen and former Liberal Party politician Neil Brown to the panel overseeing the selection ABC and SBS board members. ...*

*Mr Brown, a former deputy Liberal leader under John Howard, has called for the ABC to be sold off because of an "endemic lack of objectivity and balance". Last year Dr Albrechtsen called for ABC managing director Mark Scott to*

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*resign over stories, based on documents provided by Edward Snowden, about Australian intelligence operations in Indonesia. ...*

*Labor frontbencher Anthony Albanese on Friday morning tweeted: "The idea that Dr Ian Watt decided to appoint Janet Albrechtsen and Neil Brown to ABC/SBS absent of politics is just absurd."*

*Meredith Edwards, who served as the deputy secretary of Department of Prime Minister and Cabinet from 1993 to 1997, agreed. "I can't believe PM&C would make this decision. It looks too political for the public service to put these names forward," she said.*

*A spokesman for the Department of Prime Minister and Cabinet said Mr Brown and Dr Albrechtsen were chosen by Dr Watt." <http://www.smh.com.au/federal-politics/political-news/malcolm-turnbull-distances-himself-from-decision-to-appoint-janet-albrechtsen-and-neil-brown-to-roles-overseeing-abc-and-sbs-board-posts-20140704-3bc1o.html>*

<sup>228</sup> **ABC The Business on Whistleblowing:**

*"Whistleblowers counting the cost," Anita Savage, The Business, ABC, 2014-06-30. "The recent Senate report into ASIC dropped a bombshell when it called for a Royal Commission into the Commonwealth Bank over fraud and cover ups in its financial planning arm. The inquiry also recommended better protection for whistleblowers such as those who raised the alarm at the Commonwealth. Often seen as dobbing in their mates, whistleblowers speak out at great personal cost." <http://www.abc.net.au/news/2014-06-30/whistleblowers-counting-the-cost/5561364>*

<sup>229</sup> **ABC The World Today on Whistleblowing:**

*"Whistleblowers left vulnerable," Rachael Brown, ABC, 2014-06-19.  
<http://www.abc.net.au/worldtoday/content/2014/s4028775.htm>*

**Note:** I strongly disagreed with comments by A. J. Brown interviewed in this piece for that "Australia comes out very well in terms of public sector whistleblower protection" and "Well we've certainly seen very strong movement in terms of public sector whistleblower protection and the former government at a federal level certainly moved to put in place a much better federal legislative regime with the support of the Coalition but that's on the public sector" for reasons explained here: [http://victimsofdsto.com/psc/#fail\\_consult](http://victimsofdsto.com/psc/#fail_consult)

<sup>230</sup> **The evils of the media giving wrongdoers a false veneer of integrity:**

US Supreme Court Justice Louis Brandeis said: "I have talked to you about the wickedness of people shielding wrongdoers & passing them off (or at least allowing them to pass themselves off) as honest men. ... If the broad light of day could be let in upon men's actions, it would purify them as the sun disinfects."

<sup>231</sup> **No mention of endemic federal public service corruption on the ABC web site:**

Tried many combinations of Google searches; got nothing. Individual stories are there; the RBA, AWB, Kessing, but nothing about the corruption being endemic.

Google search for "public service corruption" "canberra" site:abc.net.au; 0 results.

Google search for "public service" "corruption" "sedgwick" site:abc.net.au; 1 result (in comments; not actual article)

Google search for "public service commissioner" "corruption" site:abc.net.au; 8 results; About corruption in Queensland, Kessing, 2 x new whistleblowing laws (but without mentioning any actual corruption, let alone endemic corruption).

Google search for "public service corruption" site:abc.net.au; 13 results; All about corruption in the Northern Territory state government, Tasmanian state government and Indonesia.

<sup>232</sup> **ABC gives editorial space to holocaust and climate deniers, but not a peep about endemic public service corruption:**

"Lord Monckton" site:www.abc.net.au About 372 results (0.32 seconds)

"David Irving" site:www.abc.net.au About 295 results (0.30 seconds)

"Gerald Töben" site:www.abc.net.au 6 results (0.21 seconds)

Various searches for endemic public service corruption; no hits.

The closest they come is their summary of the ABC 4 Corners on corruption, but that doesn't contain a word about public service corruption. But that only contains a denial: "The secretaries of Australia's Commonwealth public service have long argued there is no need for an ICAC-style body in Canberra." <http://www.abc.net.au/news/2014-06-23/national-corruption-plan-didnt-include-independent-watchdog/5541908>

<sup>233</sup> **Pattern: Lawyers send antagonistic letters just before the close of business. The recipient gets a sleepless night before they can talk to anyone about them.**

These are the times I received e-mails from Clayton Utz. The polite letters arrive any time of the day, but perhaps unsurprisingly the antagonistic letters arrive just before the close of business.

Tue, Sep 27, 2011 at 11:34 AM (polite)

Thu, Sep 29, 2011 at 4:50 PM (polite)

Mon, Oct 3, 2011 at 8:59 AM (polite)



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Mon, Feb 27, 2012 at 5:11 PM (antagonistic)  
Mon, Apr 30, 2012 at 3:56 PM (antagonistic)  
Thu, Apr 26, 2012 at 4:36 PM (antagonistic)  
Tue, May 15, 2012 at 4:50 PM (antagonistic)

Litigation Dropped

Mon, May 28, 2012 at 10:15 AM (polite)  
Thu, Jul 26, 2012 at 9:14 AM (polite)  
Tue, Jul 24, 2012 at 2:40 PM (polite)  
Wed, Jul 25, 2012 at 11:54 AM (polite)  
Thu, Jul 26, 2012 at 8:49 AM (polite)  
Thu, Jul 26, 2012 at 9:09 AM (polite)  
Fri, Aug 3, 2012 at 9:12 AM (polite)  
Mon, Aug 6, 2012 at 10:30 AM (polite)  
Mon, Aug 6, 2012 at 2:21 PM (polite)  
Tue, Aug 7, 2012 at 9:39 AM (polite)

<sup>234</sup> **Defamation laws frighten ordinary people:**

“Defamation law fails the test,” Brian Martin, Illawarra Mercury, 2008-08-27, ***“I found out that many people - not just whistleblowers - are frightened by defamation issues. They search the web for information, find the leaflet and then contact me with their stories and their concerns. // Media organisations are quite familiar with the intricacies of defamation law. They have lawyers on tap to check contentious material as well as strategies to deal with legal actions. But the resources wielded by a large organisation are unavailable, indeed unknown, to most individuals. // Defamation law is supposed to protect reputations, but in practice it often serves to suppress free speech. Whatever the virtues and vices of the law for the media, it is an absolute disaster for ordinary individuals. It doesn’t protect reputations and it is regularly used to squelch open discussion.”*** <http://www.bmartin.cc/pubs/08mercury2.html>

<sup>235</sup> Personal Communication.

<sup>236</sup> **Cases where the plaintiff (allegedly) suffered little or no damage to their reputation, but awarded damages:**

Take cases where damages were awarded for damage to reputation, where the person (allegedly) damaged their own reputation by publicising the (alleged) slur or suing.

(i) Take the Gunns 20. I don’t think I’d ever even heard of Gunns until they launched that law suit. After they did, I thought they were bullying thugs. (c.f. BHP. In the early 1990’s I was told Greenpeace made false allegations against BHP in a TV news story about whales, but while BHP told their staff the details, their management decided it was better to turn the other cheek. The story fell off the news agenda in a couple of days. If BHP had sued, the public would have been reading about it for years.) Gunns did get damages of \$205,000 from the Wilderness Society (and nothing from anyone else), but surely Gunns had by then trashed their own reputation?

(ii) Take Thiess, who took Channel 9 to court for alleging he was corrupt. Channel 9 won, providing that 67 / 70 of the corruption allegations were true. I would think his reputation would have well and truly been trashed at that point, yet Thiess was still awarded \$55,050 for the 3 unproven allegations he was corrupt.

(iii) Take ALP former-politician Chris Brown, who in a book was allegedly mistaken for another Chris Brown who was corrupt. The publisher promptly apologised, acknowledged the error and the books is now being pulped:

*“The book’s publisher, Random House has issued a statement acknowledging there is an error in the book:*

*‘The book contained a misidentification that was included in error. We have acted quickly to ensure the small amount of text that required a rewrite has been rewritten to correct the error.’”*

<http://www.abc.net.au/news/2014-08-21/obeid-book-pulled-from-shelves-over-defamation-allegations/5685608>

Yet Chris Brown claims he has been defamed, and *“asked about the size of the damages he planned to seek, Mr Brown said he had been advised by his lawyer that a defamation such as this was a “nuclear incident”.*

<http://www.smh.com.au/entertainment/books/eddie-obeid-book-by-kate-mcclymont-to-be-pulped-over-defamation-claims-20140821-106j6n.html>

(iv) Take the allegations in Bob Ellis’ book *Goodbye Jerusalem*: *“More than 11 years ago in the ACT Supreme Court, Justice Terence Higgins found Goodbye Jerusalem, a book by the Labor political gadfly Bob Ellis, had falsely accused Tony Abbott and Peter Costello of changing their political alliances from Labor to the Young Liberals after sleeping with Tanya Coleman, daughter of the Liberal elder statesman Peter Coleman and eventual wife of Costello, the then Howard government treasurer. The judge thought the defamation was worth \$277,500.”*

<http://www.smh.com.au/national/the-diary/abbotts-new-double-act-20101017-16p6z.html>

Even if it were true, so what? When I was at university, there was lots of dating. It was normal. One of them was a man dated a vegetarian, and become a vegetarian. I didn’t think any less of him for it.

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Bob Ellis (Author, Goodbye Jerusalem): *"That university students in the 1970s occasionally had sex and talked of politics in bed, shock, horror, off with his head, a billion dollars, wouldn't you say?"*  
<http://www.abc.net.au/lateline/stories/s14318.htm>

But \$277,500?

Michael Stutchbury: *"I understand that someone who loses their reproductive organs in a workplace accident has their damages capped at less \$75,000."* <http://www.crikey.com.au/2002/06/09/the-rising-culture-of-suppression/>

**It's true that some allegations stick and can't be fully debunked with counterspeech.**

A false allegation that a person is a paedophile would be an example of this.

The new UK laws reasonably require *"Claimants will have to show they have suffered 'serious harm' before suing, under the Defamation Act 2013."* <http://www.bbc.com/news/uk-25551640>

US Supreme Court: *"False statements of fact are particularly valueless; they interfere with the truthseeking function of the marketplace of ideas, and they cause damage to an individual's reputation that cannot easily be repaired by counterspeech, however persuasive or effective."* <http://www.law.cornell.edu/supremecourt/text/485/46>

but... (and it's a big but...)

US Supreme Court (continued): *"But even though falsehoods have little value in and of themselves, they are 'nevertheless inevitable in free debate,' and a rule that would impose strict liability on a publisher for false factual assertions would have an undoubted 'chilling' effect on speech relating to public figures that does have constitutional value. 'Freedoms of expression require 'breathing space.' This breathing space is provided by a constitutional rule that allows public figures to recover for libel or defamation only when they can prove both that the statement was false and that the statement was made with the requisite level of culpability."*

<http://www.law.cornell.edu/supremecourt/text/485/46>

<sup>237</sup> I thought perhaps Mark Dreyfus might have meant that use of the journalists code of ethics as a baseline in defamation trials against the media, but then that still takes place within the a Defamation trial, so he can hardly claim it is 'Even More Important.'

<sup>238</sup> **The Age allegedly violated of The Journalists Code of Ethics. When raised with them, ignored it:**

2013-05-12 E-mail to the Editor of The Age:

***"Subject: Distorting Emphasis - The Age reports IP thefts from govt, but not by govt***

Dear Sir,

The Age is now running a story about the CSIRO being a victim of industrial espionage:

<http://www.theage.com.au/federal-politics/political-news/espionage-fears-at-csiro-20131203-2youq.html>

<http://www.theage.com.au/federal-politics/political-news/chinese-scientist-absence-exposed-alleged-spying-activities-at-csiro-20131204-2yr3e.html>

**A POLITICALLY MOTIVATED OFFICIAL LEAK**

*There was an immediate suspicion yesterday that the leaking of this story was politically motivated; [1] right after ASIO's spying for the commercial benefit of Woodside Petroleum became prominent in the news agenda.[2] Therefore this story many have been leaked to justify the government engaging in industrial espionage benefiting large Australian companies.*

*I put these concerns to your journalists yesterday, but they did not respond.[3]*

**A DISTORTING EMPHASIS**

*You heavily promoted this story where the government is a victim of industrial espionage, yet you have failed to give any coverage at all to the seven cases you know of where the government was the perpetrator.*

*A victims advocate tells me Fairfax was provided leads for two cases of intellectual property theft by the CSIRO; One a case of out-and-out scientific plagiarism, and another IP theft for commercial gain. I understand you were offered access to the sources, yet to my knowledge you never ran the story.*

*You are also aware of five cases where the CSIRO's defence counterpart – the DSTO – stole intellectual property from businesses. That story was reported by Crikey on Monday of this week: <http://www.crikey.com.au/2013/12/02/revealed-the-government-agency-stealing-ideas-from-businesses/>*

**SITTING ON CORRUPTION**

*But you've known about the DSTO IP thefts for years, and have never reported it.*

*When I first spoke to Fairfax about my own case, I was frustrated to learn that other victims had already approached you, but that you decided not to run the story. If you had reported it, then myself and more recent victims would have*

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known and could have stayed out of harm's way. By failing to report the story, you failed in your Fourth Estate function.

*By sitting on the story you did a public disservice; Victims risked retribution by contacting you, and they gave you their leads in good faith. But you never told their stories. Fairfax editors told me they couldn't run the story due to defamation, but I was later told by two veteran journalists that this was a B.S. excuse.*

*After you said you wouldn't run the story, I asked you to share your leads with ABC Lateline's John Stuart. But you refused. At the time he was investigating corruption within the Inspector General of Defence, which had covered up the IP thefts[4] and had allegedly threatened[5] the Defence security clearance whistleblowers.[6]*

*If the whistleblowers who approached you had instead approached another media outlet then this story could have been reported long ago. As it was, their leads were lost.*

#### COMPROMISING THE INDEPENDENCE OF YOUR JOURNALISTS

*The Journalists' Code of Ethics requires journalists to, wherever possible, attribute information to its source.[7] Dr. Rimmer noted that the source of your story was not attributed.[8] Since the story is an 'EXCLUSIVE,' it seems a reasonable conclusion it did not come from a press release. This causes suspicion that the source is an official leak – and thus government propaganda, rather than a whistleblower.*

*If that is indeed the case, why would you give an official leak to your most respected investigative journalists?*

*Research on whistleblower/journalist relationships show that beat reporters are unable to report corruption; They become dependent on their regular sources for material to run stories, and form relationships which makes them unable to report corruption by those sources.[9]*

*The independence of investigative journalists make them the only journalists capable of investigating corruption. Richard Baker and Nick Mackenzie are well respected investigative journalists; amongst the very best. So why would you risk their independence by having them report an official leak?*

*If it is a government agency that is feeding the journalists, then you do not need the services of investigative reporters.*

*You would be aware that by portraying the CSIRO as a victim (and not reporting cases where they were the perpetrator) you would elicit sympathy for them. Further the "bad guy" in the story is a Chinese national. Add to that the timing, and you have a story which the government would be supportive of. If the source is indeed an official leak, then you have the cooperation of the government agency concerned. Such a story could be done by a beat reporter.*

*Further by having Mackenzie and Baker run an official leak – government propaganda – you compromise their independence as investigative journalists on future stories.[10]*

#### LACK OF EDITORIAL INDEPENDENCE

*I am not the only person to notice your selective reporting:*

*The ANU's Dr. Matthew Rimmer, an Intellectual Property expert, noted: "The Age covered the story of CSIRO espionage but not the story of DSTO today"[11].*

*Melanie Hruska wrote: "Saw [The Crikey story] this morning was truly a jaw dropping moment, thought oi, the Aussie victims[12].... I read [The Age article] and was disgusted they did not mention your cases"[13]*

*The Age's banner proclaims "Independent. Always." But you cannot claim that if you are fast to run official leaks that benefit the government, while self-censoring stories of government corruption.*

#### CONCLUSION

*I respectfully request The Age lives up to its motto of "Independent. Always," and correct your distorting emphasis by acknowledging the IP thefts by the DSTO and CSIRO in which the government was the beneficiary, rather than the victim.*

*Yours respectfully,"*

<sup>239</sup> **The Journalists Code of Ethics is weakly enforced:**

*"The MEAA Code of Ethics: all spin and no stick," Mark Pearson, Journlaw, 2013-11-26. "The go-to document for journalists refusing to 'fess up their sources or taking the high ethical ground is the MEAA Journalists' Code of Ethics - but the irony is that the journalists' union uses notoriously ineffective and opaque processes to police this high profile code. Unlike the Australian Press Council, the ethics panel of the Media, Entertainment and Arts Alliance (MEAA) has actual disciplinary powers at its disposal for use against individual journalists who breach its Code of Ethics – but it has rarely used them. Its powers extend to any journalists who are members of the Alliance. However, these days large numbers of journalists throughout the industry are not members." <http://journlaw.com/2013/11/26/the-mea-code-of-ethics-all-spin-and-no-stick/>*

<sup>240</sup> **Ethical self-regulation by lawyers doesn't work:**



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*“Naughty lawyers slipped off the book,”* Richard Ackland, SMH, 2013-03-08.

<http://www.smh.com.au/comment/naughty-lawyers-slipped-off-the-book-20130307-2fo1r.html>

<sup>241</sup> 2012-12-17 From ACT Law Society explaining exoneration of [Department of Defence lawyer]

<sup>242</sup> 2014-01-15 From ACT Ombudsman Ann Martin exonerating ACT Law Society.

<sup>243</sup> Personal Communication.

<sup>244</sup> **Suicides and attempted suicide:**

*“Defence Abuse Response Taskforce (DART) confirms three victims have taken their own lives before case resolution,”* Alex McDonald, ABC, 2014-09-05. *“At least three victims of military abuse have taken their own lives while waiting for counselling and compensation from the government taskforce set up to deal with their cases.”*

<http://www.abc.net.au/news/2014-09-05/at-least-three-victims-of-military-abuse-have-taken-own-lives/5722564>

I was copied on this e-mail, which I am told was sent to every single member of Parliament.

*“Dear Senator,*

*Last week as you know, one of our members was greatly distressed by the award of an Order Of Australia Medal to the person who organised his gang rape in Navy. As you would know, the gang rapist had been recommended by the Defence Abuse Response Task Force to General Hurley, Chief Of Defence, for prosecution.[But] Instead of prosecution he has been awarded an Order Of Australia Medal. As a direct result, [...] attempted suicide [...]”*

*“Analysis: Debunking Abbott's claim that Canberra is "pretty clean", doesn't need a Federal ICAC,”* Brendan Jones, 2014, *“Royal Commission into Defence Abuse vs. Child Sexual Abuse: More recently, General Hurley said there should be no Royal Commission into Defence abuses because testifying 'could do the victims more harm than good.' Two weeks later, Senator Johnston agreed: "I don't believe in a royal commission, principally because the complainants I don't think should be put through what they might be put through in an adversarial system." Using Hurley and Johnston's logic, we shouldn't be having a Royal Commission into child sexual abuse either.*

*But Dr Gary Rumble who headed the government's defence abuse inquiry said there must be a Royal Commission to expose rapists and abusers in the military's senior ranks. Further, amongst the abused soldiers I know of one attempted suicide, besides which I am told there have been "numerous suicides and suicide attempts". That would challenge Johnston and Hurley's stated belief it is in victims' best interests \*not\* to have a Royal Commission.*

<http://victimsofdsto.com/pup/> *It becomes apparent speaking to victims of government abuse that denying victims justice does not bring them peace of mind.*

*In my opinion, Johnston and Hurley's logic there should be no Royal Commission, like Abbott's logic there should be no Federal ICAC, is at best deeply flawed.”* <http://victimsofdsto.com/abbott/>

<sup>245</sup> 2012-06-13 From Queensland LSC explaining exoneration of Clayton Utz.

<sup>246</sup> **AFP failed to act on crime report. Threatened by AFP when followed up. ACLEI, ALP and LNP Justice Ministers failed to act:**

2011-08-22 Submitted AFP Crime Report (Acknowledged, but no response).

2012-03-12 To Jason Clare Minister for Justice: *“On August 22, 2011 I made a Crime Report to the AFP regarding a number of breaches of the Criminal Code Act 1995 by employees of the Department of Defence. Could you please explain why the AFP has not responded or even acknowledged receipt of this Crime Report? In particular I am concerned that the AFP is deliberately ignoring this Crime Report. I base this on reports in Fairfax and on 4 Corners that the AFP are reluctant to investigate criminal activities in the public service.”* [http://victimsofdsto.com/doc/2012-03-12 From Brendan Jones to Jason Clare Minister for Justice - why no response from AFP%3Bv02 \(final print send\) \(NAMES BLACKED OUT\).pdf](http://victimsofdsto.com/doc/2012-03-12%20From%20Brendan%20Jones%20to%20Jason%20Clare%20Minister%20for%20Justice%20-%20why%20no%20response%20from%20AFP%3Bv02%20(final%20print%20send)%20(NAMES%20BLACKED%20OUT).pdf)

2012-04-20 No response from Jason Clare. Threatened by AFP Officer.

(Spoke to LNP Shadow Attorney-General's George Brandis' office and ABC 4 Corners following threat.)

2013-02-19, 2013-03-28, 2013-04-04, 2013-04-17, 2013-04-29, 2013-12-03, 2014-01-08, 2014-01-22, 2014-02-06: Called and wrote to LNP Shadow (later Government) Justice Minister Michael Keenan. (No response)

2013-12-03 Multijurisdictional State & Federal Crime Report, To: Australian Commission for Law Enforcement Integrity, VIC Office of Public Prosecutions, VIC Police Force, NSW Police Force, NSW Office of the Director of Public Prosecutions cc: Prime Minister Tony Abbott, Senator George Brandis QC, Joe Hockey MP - Treasurer, Senator David Johnston - Defence Minister, Stuart Robert MP - Assistant Defence Minister, Michael Keenan MP - Justice Minister. (No Response)

2013-12-03 Reported conduct of AFP officer to ACLEI who claim *“The AFP reports to the Australian Commission for Law Enforcement Integrity (ACLEI) in relation to corrupt activity of AFP employees. ACLEI is an independent and proactive oversight body established to detect and prevent serious or systemic corruption. You may also report a corruption issue directly to ACLEI.”* **(No response from ACLEI)**

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cc: Michael Keenan: "... *As the complaint alleges corruption within the AFP (to whom these crimes were first reported on August 22, 2011) on this occasion I have submitted this expanded crime report to the ACLEI and entrust they will ensure the complaint is properly handled by the AFP. ...*"

(No Response from ACLEI or Michael Keenan)

<sup>247</sup> **Labor voted out of power on September 7, 2013:**

"Tony Abbott claims victory for the Coalition in Federal Election 2013," Judith Ireland and Jonathan Swan, SMH, 2013-09-07. <http://www.smh.com.au/federal-politics/federal-election-2013/tony-abbott-claims-victory-for-the-coalition-in-federal-election-2013-20130907-2tbzf.html>

<sup>248</sup> **Asked Queensland Ombudsman to review complaint regarding Queensland Legal Services Commission:**

2013-09-17 To Queensland Ombudsman: *"I have concerns about the way the Queensland Legal Services Commission (██████████) handled the attached complaint. I rely on the attached documents which outline my concerns and show the LSC's response which I thought was unsatisfactory. In essence, the LSC permits a lawyer to abuse a member of the public so long as the victim can't afford to step foot into a courtroom. ..."*

<sup>249</sup> I had appealed within seventeen months. They are allowed to accept complaints older than the usual twelve month period if there is a good reason, yet refused:

<sup>250</sup> **Queensland Ombudsman refused to review complaint regarding Queensland Legal Services Commission:**

2013-01-24 E-mail to Saxon Rice MP, QLD:

*"Dear Saxon [Rice MP, QLD],*

*I copied you on my recent submission to the Queensland Ombudsman, seeking a review of a decision by the QLSC over the conduct of two Queensland lawyers acting on behalf of the Commonwealth.*

*I am a whistleblower. In my e-mail of September 20 I copied you on (attached) I described how I had been badly shaken after being threatened by an APF Officer, and how I feared for my and my family's safety.*

*That threat came after asking Labor Minister for Justice Jason Clare why the AFP had not acted on a federal crime report in 6 months, implicating a federal Labor minister for allegedly breaching Section 137 of the Criminal Code. I also described incidents how other Labor ministers had used the AFP to terrorise whistleblowers (e.g. Mick Skrijel, Allan Kessing), and how I concluded it would be unsafe to make a complaint while Labor were in power, and that I made my complaint to the Queensland Ombudsman within a week of the election. (I also spoke to a prominent Liberal Party lawyer after the incident who warned me to take precautions against being "verballed" by the AFP, consistent with Chris Merritt's report the AFP withheld evidence to get Kessing convicted, even though the leak was allegedly from a Labor Party politician.)*

*Yet today I received a letter from Jessica Wellard from the Queensland Ombudsman claiming no special circumstances exist for the delay (17 months instead of the usual 12 months), and so dismissing my complaint.*

*Surely fear for the physical safety of yourself and your family is a sufficient reason to delay making a complaint.*

*But Ms. Wellard doesn't even acknowledge that in her letter. She says a change of federal government has nothing to do with it. She claims there is nothing that could have prevented me from raising my concerns with the Queensland Ombudsman earlier. She completely omits any mention of be threatened by the AFP, or the fear for the physical safety of myself and my family. This is surely relevant and I believe Ms. Wellard is being duplicitous by omitting it as she knows it is relevant to her making a decision.*

*Dear Saxon: could you please tell me what you think of this? (I'd like to be clear I recognise Ms. Wellard is a public servant and her conduct in no way reflects on that of the Liberal Party. I also recognise the Premier's and Attorney-General's recent efforts in cleaning up law & order, and that Mr. Newman has criticised the 'Ivory Tower' lawyers who are getting criminals off. The QLSC is supposed to hold those lawyers to account, but my complaint demonstrates the QLSC bias protecting those lawyers and against the members of the public.)*

...

*I look forward to hearing from you.*

...

*Attached.*

*1. 2013-10-24 From Queensland Ombudsman Jessica Wellard rejecting review of QLSC - claims too late.pdf (at very end of e-mail)*

*2. E-mail of September 20, 2013 giving Ombudsman reasons for delay"*

**Queensland Attorney-General Jarrod Bleijie responded he could not intervene:**

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*"The QLD A-G Jarrod Bleijie said he could not intervene, and my only options were a judicial review (very expensive) or making a complaint with the CMC. But at the time under QLD law, if a complaint to the CMC was not upheld due to insufficient evidence, then it can be ruled as vexatious and the whistleblower jailed. Fitzgerald whistleblower Nigel Powell pointed out he couldn't have reported corruption under this regime. Suppose I'd alleged corruption in the lawyer's oversight body, greatly embarrassing some powerful people. Not wanting to embarrass those powerful people, the CMC could fob me off, then use that fob off as the basis to claim I had made a vexatious complaint, then use that to jail me. The QLD government has arrested whistleblowers before. (I know two of them.) The QLD government recently changed that law again so now you won't be jailed, but the CMC is now only authorised to investigate 'serious' corruption."* <http://victimsofdsto.com/dsubcom/>

<sup>251</sup> **ALP A-G Mark Dreyfus failed to act on systemic corruption within the lawyers' complaints bodies:**

2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received)

**"Government lawyers are not held to account by their professional bodies**

*When I first learned that the lawyers' professional code forbids them from misleading or intimidating, I laughed because it is so contrary to their public image. Later I realised how they are able to get away with it: Their professional bodies don't enforce the codes.*

*After I filed the civil suit [Department of Defence lawyer] approached me offering the independent investigation I had been seeking all along. I was very suspicious, but he gave a written assurance it was independent of my civil suit. I met with independent CSIRO investigator Dr. King, revealed confidential information about my case and answered "lawyer questions" which had clearly been put to him by a lawyer. After that meeting the independent investigation was abruptly terminated.*

*Yet the ACT Law Society accepted [Department of Defence lawyer]'s argument that although Dr. King and I had both told him I had filed a civil suit he didn't understand what we were telling him. (i.e. "... I have filed a civil suit"). Instead they accepted [Department of Defence lawyer]'s explanation that he misunderstood my use of the word "proceedings." It was a word I had never even used. That was pointed out to them, but they vindicated him regardless.*

*Some state governments have recognised that law societies have an obvious conflict of interest when it comes to investigating lawyer misconduct, and so have given those powers to a supposedly-independent Legal Services Commissions. ...*

*When I told [LSC official] that Clayton Utz were violating the Model Litigant Policy and unnecessarily running up costs he said that only their client could report them for that. But Defence wouldn't give damn: It was taxpayer money, and they would happily spend every last cent of it to avoid accountability. When Clayton Utz sent me a letter of offer they didn't, as they are required to do, recommend I seek legal advice before replying. Since I wasn't aware I was entitled to check with a lawyer first, was overseas and only had 14 days to respond, I replied as best I could but mistakenly misread they were threatening to hold me liable for costs even if I agreed to drop the case. I even told them this! Much later a SRLS lawyer pointed out my misunderstanding, but when I raised Solicitors Rules 28.1 and 28.2 with [LSC official] they said I wasn't protected because it "was only intended to apply to third-parties." But the rule doesn't say that!*

*As for the breaches of the Model Litigant Policy, Clayton Utz claimed they were only following their client's instructions. When I sought to verify that, they misled me as to who their client actually was. Clayton Utz then told me that they were going to use my WITHOUT PREJUDICE letters in court, making it practically impossible for me to communicate with them. [LSC official] said he would only take action if I got a court judgement saying they acted improperly, and that if I couldn't afford one he wouldn't do anything.*

*Thus the LSC gives a way for lawyers to breach the Solicitors Rules without ever being held to account. In practice, government lawyers are not held accountable by their professional bodies or the OLSC."*

<https://tinyurl.com/kymge9z>

<sup>252</sup> **The English Bill of Rights 1688 grants Freedom of speech, but only in Parliament:**

[http://www.austlii.edu.au/au/legis/act/consol\\_act/bor1688lwams2c2306/](http://www.austlii.edu.au/au/legis/act/consol_act/bor1688lwams2c2306/)

<sup>253</sup> **A spokesman for ALP A-G Mark Dreyfus said allegations against MPs should be dealt with by Parliament:**

*"Politicians exclude themselves from dob-in laws," Jessica Marszalek, Herald Sun, 2013-06-07, "Politicians have excluded themselves from new federal whistleblower laws expected to be passed this month in a move opponents believe will cover up scandal and corruption. ... Mr Wilkie's [alternate private member's] Bill allows allegations to be made about politicians. He called the omission in the government Bill a "serious flaw", and "cynical move to prevent these public officials from making public interest disclosures ... entirely at odds with the spirit of whistleblower protection". **But a spokeswoman for Attorney-General Mark Dreyfus said MPs and their staff had different roles from public servants and allegations should be dealt with by the Parliament.** // The parliamentary committee report notes criticisms of both Bills, but says the Government's is the best option for maintaining integrity in the Commonwealth public sector and should pass. // Senator Milne said the recommendation was disappointing and*

shielding MPs and staff was "dangerous for democracy". " <http://www.heraldsun.com.au/news/politicians-exclude-themselves-from-dob-in-laws/story-fni0fiyv-1226659581403>

<sup>254</sup> **I warned Mark Dreyfus, despite his spokesman's public statements, that politicians were most definitely not being held accountable by the Parliament:**

2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received)

"Dear Sir,

*I made a Defence whistleblower complaint over three-years ago. It has still not been investigated.*

*By far the greatest resistance has come from your ministerial colleagues [REDACTED] [REDACTED] [REDACTED] and ... [REDACTED].*

*An Opposition Senate advisor explained to me that [REDACTED] in particular has acted as he has because he knows his conduct "will have no effect on his career whatsoever."*

*So far, this has been absolutely true. [REDACTED] is, for all practical purposes, above the law.*

*Exempting politicians from your Public Interest Disclosure Bill cements their unaccountability.*

*I draw the following to your attention:*

- 1. Ministers know and are permitting the existing Whistleblower scheme to be breached.*
- 2. In practice, Ministers are not held accountable for breaches of Criminal Law.*
- 3. In practice, Ministers are not held accountable for breaches of Administrative Law.*
- 4. In practice, Ministers are not held accountable for breaches of Civil Law.*
- 5. In practice, Ministers are only seldom held accountable by the Media.*
- 6. In practice, Ministers are only seldom held accountable by the Opposition.*
- 7. In practice, Ministers are not held accountable by the Prime Minister.*
- 8. Ministers will be exempt under the Public Interest Disclosure Bill.*

...

***The AFP will not hold Ministers to account under Criminal Law***

*There is now evidence of criminality within [REDACTED]'s and [REDACTED]'s office, but they and the public servants responsible have avoided an investigation because the AFP sat on the crime report. Indeed when I wrote to [REDACTED] and asked him as ... why the AFP had not acted on my original crime report in six months, I was threatened by an AFP officer who told me he wasn't going to investigate the complaint, that he was going to close it on the spot, and threatening me if the media ran the story. This was no novice straight out of the academy: He claimed to be a liaison officer with 30 years experience. Besides my own experiences, the SBS, ABC and Fairfax have reported the AFP has become politicised, that its officers intimidate whistleblowers and fiercely resist investigating corruption in the public service. In theory, ministers are subject to criminal law like everyone else. In practice, they are not."*

<https://tinyurl.com/kymge9z>

<sup>255</sup> **Party politicians will not help victims of government abuse:**

*"gary kurzer @hyperhedonist Mar 24: 'if there is even one honest, decent politician on twitter prepared to represent citizens, please contact me. The silence is eerie.'" <https://twitter.com/hyperhedonist/status/448260008078102528>*

*This is usual. Party politicians will not help victims of government abuse. Occasionally they will write a letter, but usually they will not. If they do, they will not follow it up. In practice, the only politicians who help whistleblowers or victims of government abuse are Independent MPs.*

<sup>256</sup> **Legal and Constitutional Committee refused to accept PID submission from Jones:**

2013-05-02 E-mail from Legal and Constitutional, Committee (SEN) LegCon.Sen@aph.gov.au: *"Dear Mr Jones // Inquiry into Public Interest Disclosure Bill 2013 // I am writing to advise that the documents you provided to the committee in relation to the above inquiry have not been accepted. The terms of reference for this inquiry are the provisions of the Bill, and the committee is not considering or examining personal cases or grievances, and has no role in resolving such grievances. // The documents that you have provided do not address the provisions of the Bill, and clearly relate to your personal case and the alleged behaviour of other parties. Accordingly, the committee has determined that the documents are not relevant to the committee's inquiry and will not be accepted by the committee. // You are advised that you are not covered by parliamentary privilege in respect of the content of the documents you have provided. // Yours sincerely // Committee Secretary [No Name Supplied]"*

2013-05-02 E-mail from Legal and Constitutional, Committee (SEN) LegCon.Sen@aph.gov.au: *"Dear Mr Jones // It is for the committee – not those who provide material to it – to determine relevance and to make decisions about whether material will be accepted. As previously advised, the committee has considered your material and has determined that it is not relevant to its inquiry and will not be accepted. // Accordingly, I advise that no further*



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correspondence or discussion will be entered into regarding this matter. Yours sincerely Committee Secretary  
[No Name Supplied]"

<sup>257</sup> 2014-05-31 Personal communication from Military MP: "It was not until the 20th January 2011 when [ALP politician] closed the door by saying 'Mr [Name Removed], I have read your file, you have been to everyone, there is nothing that I can do!'"

<sup>258</sup> **Defence failed to act on a \$20M travel fraud for 16 years, and still has not investigated:**

"A former senior non-commissioned officer claimed that, when in 1995 he became aware of an apparent travel fraud [\$20M] – with Defence-wide accountability ramifications –there was no complaint avenue to report his concerns. His subsequent attempts over the next 16 years to investigate the likely scale of fraud were not supported by the chain of command, by the Service police or in 2010 by the then-Minister for Defence, who the senior non-commissioned officer claimed had been misled by the Department. The senior non-commissioned officer's attempts to have the matter looked into by the Inspector-General of Defence, by the Defence Force Ombudsman, and to obtain departmental documents on the issue of fraud using Freedom of Information processes had all met with failure."

<http://www.defence.gov.au/pathwaytochange/docs/incidentscomplaints/index.htm>

<sup>259</sup> "gary kurzer @hyperhedonist Mar 24: 'if there is even one honest, decent politician on twitter prepared to represent citizens, please contact me. The silence is eerie.'" <https://twitter.com/hyperhedonist/status/448260008078102528>

<sup>260</sup> Personal communication.

<sup>261</sup> **The LNP will not pursue allegations of wrongdoing by the ALP, nor vice versa:**

2014-07-23 Royal Petition concerning Federal Government Corruption. "By the many cases of corruption I have listed in this petition, Your Excellency can see that neither the Labor nor Liberal Parties will act to stop it. Public perception is that Tony Abbott is an unpopular Prime Minister and would lose another election should it be called. But between them the Labor and Liberal Parties still hold 76% of the vote. If Tony Abbott loses, Bill Shorten wins. Nothing will change. Much of the corruption I listed here has taken place under Labor. They will be just as reluctant to investigate it as the Liberal Party. Democracy has proven incapable of tackling this corruption."

<http://victimsofdo.com/royal-cosgrove-2/>

<sup>262</sup> Ibid.

<sup>263</sup> Ibid.

<sup>264</sup> Ibid.

<sup>265</sup> **The Fundamental flaw in the separation of powers:**

"David Hume believes we should assume all men are self-interested knaves when it comes to politics (1777)," Liberty Fund, "The Scottish philosopher and historian David Hume (1711-1776) believed that when thinking about politics we should assume that every man and every institution pursues their own self-interest often at the expense of the public good. ... David Hume was thinking similar thoughts about the self-interested behaviour of politicians in Parliament. In his quite realistic and sometimes cynical understanding of politics Hume argued that, when designing constitutional rules to govern the behaviour of politicians and bureaucrats, we must assume the "worst", namely that these people will act like "knaves" unless prevented from doing so. Hume's solution was that a division of powers might check one branch of government by putting it into competition with and oversight by the other branches. Perhaps his cynicism didn't go far enough as a tripartite division of government, instead of checking state power, might in fact create three bodies of knaves pursuing their own interest at the expense of taxpayers." <http://oll.libertyfund.org/quotes/427>

<sup>266</sup> **Public servants can use Parliamentary Privilege to attack members of the public, esp. journalists:**

**Customs chief Michael Pezzullo attacking journalist Noel Towell:**

"Public servants free to be impolite and unethical, but only in Parliament," Markus Mannheim, Canberra Times, 2014-08-04. "Federal bureaucrats, who are usually obliged to uphold a strict code of ethics, are free to be impolite, disrespectful and even unethical when giving evidence in Parliament.... The spat between Mr Pezzullo and Towell was sparked in May, when Immigration Minister Scott Morrison chose to use a newspaper to announce the creation of the Australian Border Force. ... An angry Pezzullo later told a Senate estimates hearing that the article was "not even remotely" accurate, and described Towell as a "bottom feeder" who should get "a real job". Under the Public Service Act's code of conduct, bureaucrats must "treat everyone with respect and courtesy" in relation to their work, while agency heads had an extra duty to promote these values and ethics. Public servants who breach the code can be reprimanded, fined, demoted or even sacked. However, [Public Service Commissioner] Mr Sedgwick said parliamentary privilege preventing him from investigating Mr Pezzullo's conduct."

<http://www.smh.com.au/national/public-service/public-servants-free-to-be-impolite-and-unethical-but-only-in-parliament-20140804-1006t0.html>

**ALP politician Eddie Obeid attacking journalist Kate McClymont:**

"Where angels fear to tread," Kate McClymont, SMH, 2014-05-04. "In NSW Parliament, Eddie Obeid said, "McClymont has been mixing with scum for so long that she no longer knows who is good and who is bad, what is

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real and what is made up. She has become the journalistic equivalent of a gun moll with glittering associations with the not so well-to-do.”” <http://www.smh.com.au/comment/where-angels-fear-to-tread-20130503-2iy8a.html>

<sup>267</sup> Yet public servants can sue members of the public who criticise them using Defamation laws:

“Whistleblowers And Secrecy – Ethical Emissaries from the Public Sect[or]”, Dr William De Maria, 1995.

*“On the 10 August a person affected by compulsory acquisitions for the Springfield Development wrote to the Premier complaining about the behaviour of a public official. She sent copies of her letter of complaint to Rob Borbidge the Leader of the Opposition, and Joan Sheldon, the Liberal leader. The person complained, among other things, that the public official was someone who "...bullies and uses standover tactics to humiliate and degrade..."*

*Be that as it may, 19 days after the letter of complaint was sent, a solicitors demand for apology and retraction arrived in the mail. The person sent an unconditional retraction and apology on 5 September. ... Not good enough! Three days later the solicitors write back again insinuating some darker motive to the fact that the copies were sent to them not to the parties nominated. They further advise that the person must fill out a statutory declaration, and that counsel has been briefed. Nothing more happens until 17 October when a **plaint claiming \$10,592.25 damages for defamation is taken out in the Magistrate Court.***

*The Courier Mail editorial for that day said: ‘Who would have imagined that complaining about the conduct of a public servant to an appropriate politician, like the Premier, could land one in a defamation case...And this at a time when the High Court has declared that...implied in the Commonwealth Constitution [is] a right of political free speech.’”*

[http://www.bmartin.cc/dissent/documents/DeMaria\\_wbs.html](http://www.bmartin.cc/dissent/documents/DeMaria_wbs.html)

<sup>268</sup> Ibid.

<sup>269</sup> “It’s time Bronwyn Bishop was removed,” Mungo MacCallum, The Monthly, 2014-03-31.

<http://www.themonthly.com.au/blog/mungo-maccallum/2014/31/2014/1396219537/its-time-bronwyn-bishop-was-removed>

<sup>270</sup> “Labor takes veiled swipe at Speaker Bronwyn Bishop, says Parliament run as ‘protection racket’ for Tony Abbott,” Latika Bourke, ABC, 2014-03-25. “Manager of Opposition Business Tony Burke says the climate in the chamber is “heating up”. “People are fast losing their patience with a House of Representatives and a Question Time that looks less like ministers being held to account and looks more like a protection racket to protect Tony Abbott from ever having to answer a question,” Mr Burke said.” <http://www.abc.net.au/news/2014-03-25/parliament-run-as-a-protection-racket-for-pm-burke/5343270>

<sup>271</sup> <http://www.oxforddictionaries.com/definition/english/fair>

<sup>272</sup> Personal Communication.

<sup>273</sup> A lawyer’s function is to ‘lie for his client’:

“Our Corrupt Legal System,” Evan Whitton, pp. 14, “A US lawyer, Charles Curtis, said a lawyer’s function ‘is to lie for his client ... He is required to make statements as well as arguments which he does not believe in.’” <http://netk.net.au/Whitton/OCLS.pdf>

<sup>274</sup> How lawyers mislead the courts:

“Our Corrupt Legal System,” Evan Whitton, pp. 157, “**24 anti-truth devices.** \*1. Concealing suspects’ evidence; 2. Prove it!; 3. Legal aid; 4. Improper use of presumption of innocence; 5. Precedent; 6. The theory of the case: fabricating a defence; 7. The abuse excuse; 8. The self-abuse excuse; 9. The lecture; 10. Delay; 11. Plea-bargaining; 12. Preliminary (committal) hearings; 13. Separate trials; 14. Only a bit mad: diminished responsibility; \*15. Concealing client-lawyer conspiracies; \*16. Concealing hearsay; \*17. Concealing a pattern; \*18. Concealing improperly gained evidence; \*19. Concealing any or all evidence (Christie); 20. Cross-examination; 21. Inscrutable jurors; 22. Reasonable doubt; 23. Double jeopardy; 24. Judges second-guessing jurors” <http://netk.net.au/Whitton/OCLS.pdf>

2013-04-24 An Open Letter to the Australian High-Tech Community:

**“The Failure of the Australian Justice System**

*The European Inquisitorial System of Justice engages in a search for the truth; Justice means fairness, and fairness requires a search for the truth otherwise the wrong side might win.*

*People are surprised to learn that the Australian Adversarial System of Justice does not engage in a search for the truth. Lawyers tell me scientists and engineers in particular are tripped up by this, because they mistakenly assume that court cases are won with reason and logic and by telling the truth. They are not.*

*The Adversarial system is about winning an argument before a jury by whatever means necessary; Lawyers call this ‘Sophistry’: ‘The use of fallacious arguments with the intention of deceiving.’*

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Lawyers aren't supposed to lie to a court, but they are allowed to mislead it. They can lie by omission. They can conceal evidence of guilt or innocence. They can trick a judge into taking a position they will be reluctant to reverse, trapping them in Confirmation Bias. They use emotional tricks to manipulate the jury, such as trick questions or repeating falsehoods until they sound true. They will mock and yell at witnesses who aren't allowed to yell back, and cloud facts with irrelevant emotional arguments. (Can you imagine a scientist trying to sell a paper on climate change by prefixing their data with an emotional argument?)"

<http://victimsofdsto.com/online/>

<sup>275</sup> **The Christie discretion allows judges to rule evidence as inadmissible, so the jury never see it.**

"Our Corrupt Legal System," Evan Whitton, pp. 197, "*Concealing any or all evidence (Christie)*. ... If there ever was such a thing as judicial corruption, it might well reside in the expanding and almost inscrutable discretions which can alter the whole course of a criminal inquiry." <http://netk.net.au/Whitton/OCLS.pdf>

<sup>276</sup> **How lawyers get the guilty off:**

"The Cartel: Lawyers and Their Nine Magic Tricks", Evan Whitton,

*"The Classic Defence. The common law makes it relatively easy to get the guilty off. A jury is only as good as the evidence put before it, and cross-examination is as great an engine for obscuring the truth as for exposing it. The elements of the classic defence of a guilty man are thus: his lawyer persuades the judge to conceal relevant evidence; the guilty man exercises his right to avoid cross-examination; his lawyer uses verbal thuggery to confuse prosecution witnesses sufficiently to create a reasonable doubt; his lawyer shifts the goalposts, e.g. from accused to victim.*

*The lawyer sets it up at the committal hearing, where he can ask all the questions he would not dare ask at the trial. The complainant, perhaps traumatised, and other witnesses have made statements to the police, and no one says the same thing in the same way twice or three times. Also, there is pressure on police (as well as lawyers) to get a result, and some believe that "the brief can only improve"; they improve the statement by adding phrases or actions. Either way, there is likely to be a conflict between the witnesses' written and oral evidence."*

<http://netk.net.au/Whitton/Cartel18.asp>

<sup>277</sup> **Evidence the court concealed from the Daniel Morcombe jury:**

"Daniel Morcombe trial: What the jury wasn't told about Brett Cowan," Kate Kyriacou, The Courier-Mail, 2014-03-13. "He twice went to jail for snatch and rape attacks on young boys, lost count of how many other children he'd abused and carried out violent and depraved sexual fantasies on the women he dated. This was the side of predator Brett Peter Cowan the jury deciding his fate could not be told." <http://www.couriermail.com.au/news/queensland/daniel-morcombe-trial-what-the-jury-wasnt-told-about-brett-cowan/story-fnihsrf2-1226853796688>

<sup>278</sup> **"Brett Cowan guilty of murder of Daniel Morcombe,"** Brooke Baskin, The Courier-Mail, 2014-03-13. <http://www.couriermail.com.au/news/queensland/brett-cowan-guilty-of-murder-of-daniel-morcombe/story-fnihsrf2-1226853756450>

<sup>279</sup> Personal Communication.

<sup>280</sup> **How judges conceal evidence from the jury:**

"The Cartel: Lawyers and Their Nine Magic Tricks," Evan Whitton,  
"Magic Trick 8 - The Christie Discretion: Now to Conceal Virtually All Evidence. ...

*Probative means tending to prove (the charge). The Christie discretion gives a judge power to conceal evidence if, in his opinion it is factually only slightly probative, but it may cause great prejudice against the accused in the minds of jurors of allegedly feeble intelligence and sense of fairness. ...*

*The Christie discretion is the last nail in the truth coffin. The judge's opinion concerns fact, not law, and so cannot be the subject of appeal. It thus effectively gives judges a non-appealable power to conceal almost any relevant and probative evidence at all. As Dr Forbes suggests, this gives extraordinary power to corrupt judges, if such exist."* <http://netk.net.au/Whitton/Cartel28.asp>

<sup>281</sup> **"n Guilty Men,"** Alexander Volokh, 146 University of Pennsylvania Law Review 173 (1997). <http://www2.law.ucla.edu/volokh/guilty.htm>

<sup>282</sup> **The Australian adversarial court system has a higher rate of false imprisonment than the European system:**

"Our Corrupt Legal System," Evan Whitton, pp. 60.

*"Lawyers like to quote Blackstone's assertion: 'Under our system of justice, it is better that 10 guilty men go free than that one innocent man be convicted.' That provided an excuse to help the new breed of criminal defence lawyer with a series of get-the-guilty-off devices. ...*

*The reality today is that in 100 cases up to five innocent men are convicted and more than 50 guilty men escape justice. Truth-seeking systems are much better at both."* <http://netk.net.au/Whitton/OCLS.pdf>



<sup>283</sup> **The Australian adversarial court system has a much higher failure rate than the European system:**

2013-04-24 An Open Letter to the Australian High-Tech Community. "A brief statistical analysis showed the Adversarial [Australian court] system with a 50% failure rate with a jury and a 72.5% failure rate with a judge; A 38% failure rate continuing with Fitzgerald defendants and a 69.8% failure rate continuing with ICAC defendants. The Inquisitorial [European truth-seeking court] system only has a 5% failure rate." "<http://victimsofdsto.com/online/>

<sup>284</sup> **Allan Kessing was convicted using circumstantial evidence, which Judge Virginia Bell called a "powerful circumstantial case." Evidence of his innocence withheld from his trial:**

"Allan Kessing in 'wrongful conviction'," Chris Merritt, The Australian, 2011-03-04. "Whistleblower Allan Kessing may have been wrongly convicted after critical information was withheld from his defence lawyers and never presented to the jury. ... After reviewing the information that was withheld from Mr Kessing's legal team, criminologist Paul Wilson said **the former Customs officer's criminal conviction "would clearly fall into the category of a wrongful conviction"**."

Mr Kessing was convicted in 2007 of breaching section 70 of the Commonwealth Crimes Act by leaking to The Australian long-ignored reports revealing criminality and flaws in security at Sydney Airport. Professor Wilson said **the information that was withheld during the trial meant the conviction "appears to be based on flawed and inaccurate circumstantial evidence and, at that stage, an ignorance of the Customs investigations" into the leak.** ... Barrister Peter Lowe, who represented Mr Kessing during his trial, said the information in the letter could have been used to support Mr Kessing's argument that somebody else leaked the reports to The Australian. The letter was written by Geoff Lanham, who managed the Customs internal affairs unit, and outlines his unit's investigation of the leak. He told the AFP that Customs believed "at least two" Customs officers with knowledge of the reports had unlawfully provided information to this newspaper. The letter outlines dates and circumstances in which reporters from The Australian and another organisation, who both had knowledge of the leaked reports, stated they had more than one source inside Customs. Mr Lowe said the letter should have been made available during Mr Kessing's trial. Had he known of its contents, he would have run Mr Kessing's defence very differently. "I would have gone in hard on the potential for a second source, that is, a source other than Allan, and that one or more people who gave evidence -- and didn't disclose it -- may have been lying," Mr Lowe said. He said the fact that Customs believed there was a second source had never been revealed. There is no suggestion that Mr Lanham, who is no longer employed by Customs, or agent Drennan were responsible for preventing the information in the letter being conveyed to Mr Kessing's lawyers. ... Despite his public disclosure in 2009 of the leak to Mr Albanese's staffer, Mr Kessing has never been questioned about the incident by the AFP. Details of the leak to Mr Albanese's office and the belief by Customs that there were two sources for The Australian's report was not available to the NSW Court of Criminal Appeal in December 2008, when it rejected Mr Kessing's appeal. **Judge Virginia Bell, now of the High Court, ruled that, while part of the trial judge's instructions to the jury had been wrong, this error was not enough to undermine the "powerful circumstantial case" against Mr Kessing.** Professor Wilson said the inaction by federal authorities over the leak to Mr Albanese's staffer "raises the question as to why not?" **"Is there a concern that any prosecution would inevitably involve a minister in the Gillard government?"** he said." <http://www.theaustralian.com.au/business/legal-affairs/allan-kessing-in-wrongful-conviction/story-e6frg97x-1226015602066?nk=9b24aa3ea049ff29f2d96ba0fb227441>

<sup>285</sup> **... but Labor refused to reopen his case:**

"Govt won't probe new Kessing claims," SMH, 2009-09-07. "The details involving Mr Albanese never emerged during the court case. ... "Attorney-General Robert McClelland indicated on Monday the government had no plans to hold an inquiry. "There's no plans to instigate an inquiry in respect to that matter," he said. "It's not the government's role to investigate allegations of offences, that's the role of the AFP (Australian Federal Police) ... they act on the advice of the director of public prosecutions.""" <http://news.smh.com.au/breaking-news-national/govt-wont-probe-new-kessing-claims-20090907-fd8p.html>

<sup>286</sup> **... and Labor denied him a pardon:**

"No ALP pardon for Kessing in whistleblower case," Chris Merritt, The Australian, 2012-11-09, "The federal government has rejected a pardon application from convicted whistleblower Allan Kessing – the man Labor praised while in opposition. Mr Kessing's chief supporter, independent senator Nick Xenophon, said the decision revealed Labor had double standards when it came to protecting whistleblowers in the public service." <http://www.theaustralian.com.au/business/legal-affairs/no-alp-pardon-for-kessing-in-whistleblower-case/story-e6frg97x-1226513265554#>

"No ALP pardon for Kessing in whistleblower case," Chris Merritt, The Australian, 2012-11-09, "Justice Minister Jason Clare informed Mr Kessing by letter that his pardon application had failed. **"Having regard to all the relevant information and based on the advice of the Attorney-General's Department, I have decided not to recommend that the Governor-General grant you a pardon,"** Mr Clare wrote." <http://www.theaustralian.com.au/business/legal-affairs/no-alp-pardon-for-kessing-in-whistleblower-case/story-e6frg97x-1226513265554>

<sup>287</sup> **Labor denied Allan Kessing a pardon:**

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"Customs whistleblower must be pardoned: Xenophon," 2012-12-21, ABC, Senator Xenophon: *"The scandal here is that this man, who deserves a medal for the work that he did 10 years ago, was actually persecuted through the courts, had his life effectively ruined by virtue of being charged under Section 70 of the Crimes Act."* "How many Australians have overdosed on narcotics as a result of corrupt customs officials allowing those drugs to be brought into the country. How many Australians have been injured or killed as a result of weapons being brought into the country as a result of corrupt Customs officials?" <http://www.abc.net.au/news/2012-12-21/whistleblower-xenophon/4439782>

<sup>288</sup> **Judges allow bullying in the court room:**

"Battered Plaintiffs - injuries from hired guns and compliant courts," Jean Lennane, **"Compliant courts."**

*Once in court, plaintiffs face major problems with bullying - an integral part of the adversarial system. Compliant judges make no attempt to see fair play, as vulnerable plaintiffs are bullied by opposing counsel, cross-examined for days on end, about anything at all, no matter how repetitive or irrelevant, regardless of their state of health - often until they collapse and have to give up the case. Whether the plaintiff has suffered a brain injury that is the subject of the case, or is intellectually disabled, psychiatrically or physically ill, or a child, seems to make no difference - judges still sit there and allow this to happen."*

[https://www.uow.edu.au/~bmartin/dissent/documents/Lennane\\_battered.html](https://www.uow.edu.au/~bmartin/dissent/documents/Lennane_battered.html)

<sup>289</sup> **How government lawyers treated a victim of the CSIRO:**

2014-06-10 Personal Communication: "[CSIRO] **Matter of Williams v Comcare AATA [2012]**. AATA Deputy President Constance criticised three senior employees for providing unreliable testimony, one of whom, Nigel Poole was forced to admit to the tribunal that there was no legitimate basis for some of the comments he made in relation to matters before the tribunal as he was effectively "no present". CSIRO took no further action against these officers after convening an internal investigation conducted by acting an General Counsel who had previously worked under and with two of the alleged. Other notable aspects of this case is that Comcare challenged Martin Williams compensation claim based upon the false and misleading testimony provided by these individuals. // In an overt breach of LSD, Comcare's legal representatives (I believe this to be Minter-Ellison) [allegedly] kept Mr Williams on the witness stand for 5 days and continued to throw dispersions at him even after he collapsed due to a medical condition. To put this in perspective Rudolf Hess was questioned for only 4 days at the Nuremberg trials following WWII."

<sup>290</sup> **Lawyers use the "sluts and nuts" defence to discredit rape victims:**

"24 truth-defeating devices (5): Why rape victims vomit on the witness box", Evan Whitton, The Tasmanian Times, 2013-11-18.

Tadros quoted Stephen Odgers, chairman of the NSW Bar Association criminal law committee, as saying:

*'I've had complainants who have vomited in the witness stand in response to questions I've asked them. My reaction as a person who may suspect that they are innocent victims - I can only feel sympathy for them. Then there's me as my job, performing my role, which I believe to be an important role in the system of justice, who believes that I acted ethically. I've cross-examined in what I regard as a perfectly legitimate manner, and it's regrettable, but I don't blame myself for that outcome.'*

The rates are low partly because brutal and pornographic cross-examination deters victims from testifying. Dr Caroline Taylor, author of Court-Licensed Abuse (Peter Lang, 2004), told The Sydney Morning Herald's Edmund Tadros on 9 December 2004:

*...the "sluts and nuts" defence - the complainant either asked for it or is lying - is common ... It is typically trial by attrition, where the courts exclude compelling evidence or evidence that is central to fact-finding. The gaps can then be filled in with the legal codswallop about the lying, conniving, slutty, nutty woman."*

<http://tasmaniantimes.com/index.php/article/24-truth-defeating-devices-51>

<sup>291</sup> **Judges allow bullying of abused children in the court room:**

"Double Jeopardy," 4 Corners, ABC, **"A recent hearing for a sexual abuse case allowed a seven-year-old boy to be subjected to hours of brutal cross-examination.** The incident raises the question of how children should be handled as witnesses in court. Why is Australia's legal system failing our children at a time when they are most in need?" <http://www.abc.net.au/4corners/stories/s39718.htm>

<sup>292</sup> **Paedophile magistrate escapes 5 year jail sentence; Judge impressed by "many powerful and illuminating references" from prominent figures within the legal fraternity:**

**"Former magistrate Simon Mitchell Cooper avoids jail for indecently assaulting boys,"** Emily Portelli, Herald Sun, 2013-11-20, *"Simon Mitchell Cooper, 56, received a wholly-suspended three-year jail term for his sexual assaults on two teenaged brothers yesterday and did not spend any time in custody since being charged in January. ... Cooper pleaded guilty in August to seven counts of indecent assault, which carries a maximum term of five years' jail per charge, dating back to the 1980s. ... Judge Stephen Norrish, a NSW District Court judge, said he was impressed by the "many powerful and illuminating references" from prominent figures within the legal fraternity - including a serving judge, a magistrate and the chief crown prosecutor - who supported Cooper at his plea hearing."*

<http://m.heraldsun.com.au/news/law-order/former-magistrate-simon-mitchell-cooper-avoids-jail-for-indecently-assaulting-boys/story-fni0fee2-1226763387301>

<sup>293</sup> **Prominent members of the legal fraternity back paedophile magistrate:**

**"Legal figures back character of disgraced former magistrate Simon Cooper,"** Emily Portelli, Herald Sun, 2013-11-15. "A Judge, a magistrate and a senior prosecutor went in to bat for a disgraced former magistrate whose lawyers argue he should be spared jail for sex crimes. Seventeen people, largely prominent figures from Melbourne's legal fraternity, including Chief Crown prosecutor Gavin Silbert, provided character references for Simon Mitchell Cooper." <http://www.theaustralian.com.au/news/legal-figures-back-character-of-disgraced-former-magistrate-simon-cooper/story-e6frg6n6-1226760983850>

<sup>294</sup> **ALP A-G McClelland committed to model litigant policy, ordered investigations into violations, but...**

"McClelland commits to model litigant rules," Chris Merritt, The Australian, 2011-08-12. **"Federal Attorney-General Robert McClelland has declared that it is unacceptable for federal government agencies to breach the model litigant rules."** "Without making any comments on specific cases, any breach of the model litigant obligation would be unacceptable as the Australian government is committed to achieving the highest professional standards in its handling of claims and litigation," Mr McClelland said. "The legal services directions are currently under review and I am committed to ensuring that commonwealth agencies act with complete propriety, fairness and to the highest professional standard." <http://www.theaustralian.com.au/business/legal-affairs/mcclelland-commits-to-model-litigant-rules/story-e6frg97x-1226113390895>

2013-04-04 Letter to ALP A-G Mark Dreyfus QC: "At the time I filed suit Mr. McClelland was the Attorney-General. He promised the government would abide by its obligations under the Model Litigant Policy (Legal Services Directions). When the Rule of Law Institute provided him with many judicial decisions showing it was in fact being routinely abused, Mr. McClelland **ordered the OLSC to conduct investigations**, including one into Defence. This was assigned to [REDACTED] in the OLSC who, **incredibly, told me point-blank she wasn't going to do it.**

**Unfortunately Mr. McClelland was then replaced by Ms. Roxon.** Last February apparently not recognising the weight that judicial findings carry, she rejected them and declared that only her OLSC could make such a finding. Many people warned her that the OLSC was unnecessarily delaying investigations, but she failed to exercise her lawful power to act and instead permitted the abuses to continue."

<https://tinyurl.com/kymge9z>

<sup>295</sup> **There abundant media reports of it being abused by government lawyers:**

**"Gillard Government lashed for 'ignoring' breaches of Model Litigant rules"**, Chris Merritt, The Australian, 2012-04-13. "The federal government has rejected criticism of the way its agencies conduct themselves in court and believes just one agency has breached the government's model litigant rules in the past two years. The government's assessment is at odds with court rulings assembled by the Rule of Law Institute, in which federal and state judges had accused several government agencies of not acting fairly. "The government ignores legitimate judicial comment on model litigant behaviour by the Crown at its own peril," said Richard Gilbert, chief executive of the Rule of Law Institute." <http://www.theaustralian.com.au/business/legal-affairs/gillard-government-lashed-for-ignoring-breaches-of-model-litigant-rules/story-e6frg97x-1226325228917>

**"Fed agencies accused of cover-up of breaches"**, Chris Merritt, The Australian, 2012-08-12. "The federal government has been accused of covering up breaches of its model litigant rules that have resulted in a series of government agencies being heavily criticised in court. Judgments collated by the Rule of Law Institute show courts have strongly criticised federal agencies over a series of incidents revealing apparent breaches of the model litigant rules." <http://www.theaustralian.com.au/business/legal-affairs/fed-agencies-accused-of-cover-up-of-breaches/story-e6frg97x-1226113387964>

<sup>296</sup> **To the best of my knowledge ALP A-G Mark Dreyfus failed to act on a misconduct complaint:**

2013-04-04 Letter to ALP A-G Mark Dreyfus QC. (No response)

**"Model Litigant Policy**

*I allege that the two public servants responsible for violations of the Model Litigant Policy are [REDACTED] and [REDACTED] of the OLSC who have breached the APS Code of Conduct and Section 142.2 of the Criminal Code Act 1995; Abuse of Public Office.*

*I believe this because when I put my allegations to Clayton Utz and Defence that they were deliberately violating the Model Litigant Policy, I was ultimately referred to [REDACTED] as the person responsible. I put these allegations to him but he and his boss wouldn't comment and referred it back to the OLSC.*

*But [REDACTED] sat on the OLSC investigation ordered by Mr. McClelland for over a year. They kept making excuses, and at one stage claimed it was for post-analysis only and would achieve nothing. I attach [REDACTED] correspondence as my evidence of her misfeasance. I also attach my response which I did not send at the time because by then I concluded Ms. Roxon was aware of and tacitly endorsed her conduct."*

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<https://tinyurl.com/kymge9z>

To the best of my knowledge Mark Dreyfus failed to act on this complaint, and no investigation took place, and it is my understanding that at least one of these public servants has since been promoted, and that the abuses have continued.

<sup>297</sup> **The A-G has the power to act on Model Litigant Policy breaches:**

“THE SENATE QUESTIONS ON NOTICE Attorney-General's (Question No. 1439) QUESTION 1439. Thursday, 9 February 2012” e.g. *“The types of sanctions that could be imposed by the Attorney in cases of a serious breach include: Issuing directives to require an agency to conduct litigation in a particular manner (including a directive as to which legal provider should represent the agency)”*

But in practice e.g. *“No sanctions were imposed in the 2010-2011 financial year.”*

2012-05-14 Discrepancies in Answer given by Ludwig for Roxon in Hansard (Question 1439 on 2012-02-09)

I was told by Senator Humphries office that George Brandis had asked a later question in Senate Estimates regarding *Model Litigant Policy* breaches in my own case, but despite following up (and asking for it) I have never seen a record of the question being asked let alone an answer.

<sup>298</sup> **To the best of my knowledge ALP A-G Nicola Roxon failed to act on Model Litigant Policy breaches:**

2012-05-13 Letter to ALP A-G Nicola Roxon: *“Dear Madam, I draw to your attention breaches of the Model Litigant Policy and professional ethics violations by Department of Defence staff and staff of the law firm of Clayton Utz. ...”*

(No response)

2012-05-14 Letter to ALP A-G Nicola Roxon and ALP Defence Science Minister Warren Snowdon:

*“Violations of the Model Litigant Policy by Clayton Utz ... Failure of the OLSC to act on breaches of the Model Litigant Policy ... Failure of the AFP to act on breaches of the Criminal Code Act 1995 ... The Attorney-General must uphold the rule of law ... Failure of the Department of Defence to uphold the Defence Whistleblower Policy ... Misrepresentations in Correspondence by Clayton Utz”*

(No response from Roxon or Snowdon. Instead Clayton Utz commenced court proceedings the next day. Called Roxon's office who said they couldn't do anything. Called Snowdon's office; his advisors refused to speak to me.)

<sup>299</sup> **Allegations that LNP A-G George Brandis has not acted on Model Litigant Policy Breaches:**

2014-07-06 @Convict: *“In my case, the actual complaint was sent with a cover letter from one of the AG's colleagues, my local member ... so it just goes to show how far the Cth is willing to stoop to retain power. But otherwise, I would not have received a response from the AG. I thought Brandis would be different, but it seems not, just another bully-boy looking out for his own interests.”*

[http://ozloop.org/profiles/blog/show?id=3812050%3ABlogPost%3A51596&commentId=3812050%3AComment%3A51524&xg\\_source=activity](http://ozloop.org/profiles/blog/show?id=3812050%3ABlogPost%3A51596&commentId=3812050%3AComment%3A51524&xg_source=activity)

0214-02-14 @Convict: *“Re Brandis: I found him to be a waste of time; never even got acknowledgement.”*

[http://ozloop.org/profiles/blog/show?id=3812050%3ABlogPost%3A50809&commentId=3812050%3AComment%3A50826&xg\\_source=activity](http://ozloop.org/profiles/blog/show?id=3812050%3ABlogPost%3A50809&commentId=3812050%3AComment%3A50826&xg_source=activity)

<sup>300</sup> **Model Litigant Policy breaches are continuing to this day:**

One Example:

***“ATO appalling in its treatment of public servant, says Fair Work Australia,”*** Noel Towell, Canberra Times, 2014-06-30. *“The Australian Taxation Office was shabby, appalling, disgraceful, unconscionable and dishonest in its treatment of one of its public servants who was recovering from a mental illness, according to Fair Work Australia. And the workplace umpire has accused the ATO of wasting thousands of dollars of taxpayers' money by flooding a commission hearing with highly paid lawyers to defend the illegal lock-out of the employee. ... The commissioner also let fly at the Taxation Office for bringing seven lawyers to a hearing, including a partner in global law firm Norton Rose Fulbright and Sydney barrister Bryce Cross. Mr Cross had been denied permission by Fair Work Australia's full bench to appear for the ATO but the barrister showed up anyway, took notes throughout the hearing and actively assisted the conduct of the government's case. “This can hardly be an appropriate expenditure of public money,” the commissioner wrote. “The policy of the Commonwealth in refusing to consider conciliation in this proceeding was disappointing.”* <http://www.canberratimes.com.au/national/public-service/ato-appalling-in-its-treatment-of-public-servant-says-fair-work-australia-20140630-zsr9z.html>

Other examples: <http://victimsofdsto.com/royal-cosgrove-2/#case15>

<sup>301</sup> **Unfairness in the legal system:**

*“Battered Plaintiffs - injuries from hired guns and compliant courts,”* Jean Lennane, [https://www.uow.edu.au/~bmartin/dissent/documents/Lennane\\_battered.html](https://www.uow.edu.au/~bmartin/dissent/documents/Lennane_battered.html)

<sup>302</sup> **Many Australians believe an army of pro bono civil rights lawyers and celebrity barristers will help them:**



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Personal observations: Having spoken to whistleblowers and victims of government abuse, many believe they can find a pro bono lawyer, a “No Win No Fee” or class action lawyer to take on their case. Karen Kline and Allan Kessing are the only people I know who have received pro bono support (and Kessing was ultimately sent broke with legal fees from his other barristers and solicitors anyway.)

But based on what they’ve seen on American TV shows and John Grisham movies, Aussies are convinced they’ll be flooded by offers from lawyers. It doesn’t happen.

<sup>303</sup> The analogy I use is that of a wealthy cardiac surgeon taking pity on you, spending an hour explaining how one does heart surgery, then driving off in his Rolls, leaving you to your fate but feeling he’s looking out for the less fortunate.

<sup>304</sup> **Allan Kessing got one pro bono barrister; had to pay for his lawyers and his three subsequent barristers:**

“Allan Kessing: my side of the story,” Crikey, 2009-09-14, “[Allan Kessing:] *Following this I was advised that a barrister had been found who would act pro bono for me and met with him in his chambers. He agreed to take on the case without charge and on the second meeting he introduced me to a solicitor whom he said he needed to assist. I would be required to pay his costs and I agreed. After four years, three barristers and over \$70,000 wasted I am a convicted felon. As I have no further means to pursue legal options I felt that at last let the true story be told.*”

<http://www.crikey.com.au/2009/09/14/allan-kessing-my-side-of-the-story/>

“Remember Allan Kessing? He’s off to the High Court.” Margaret Simons, 2009-01-27. “*“Instead he’s going broke, having spent almost all his superannuation on his defence.” ... “I have been advised that the Barrister requires payment of \$13,200 21 days in advance of conducting this matter. Please note that this is only to cover arguing the case for Special Leave to Appeal, not the cost of conducting the Appeal, should permission be granted to proceed. I intend to fund this cost but it is the end of my means. In total this case has cost me, apart from almost four years of retirement, nearly my entire Superannuation payment of \$72K.’ ... As an example of how the legal costs alone were a cruel & unusual punishment, consider the fact that the NSW Court took over ONE YEAR to supply the Court transcripts to allow me to lodge the appeal to the NSW High Court. This meant that every failed attempt by my solicitor to obtain them cost me money. It is of a piece with the initial behaviour in seeking 8 adjournments before even coming to committal.*” <http://blogs.crikey.com.au/contentmakers/2009/01/27/remember-allan-kessing-hes-off-to-the-high-court>

<sup>305</sup> Ibid.

<sup>306</sup> **Pro-bono is very hard to get in Australia, especially when you are litigating the government:**

“The Whistleblower’s Guide to Journalists,” Brendan Jones, 2013. “*Personal Observation: All up I approached ~16 laws firms, but all refused to help. The big law firms were all are on retainer to the government and so unable to help due to their “client alignment” policies. The medium-sized law firms said they couldn’t afford to take on the government, nor would they give me advice pro bono. A couple of them were sympathetic, but that didn’t extend to waiving their fees even to give advice; They explained they were businessmen and it’s not their job to save the world.*” <http://www.bmartin.cc/dissent/documents/Jones13.html>

The medium-sized firms will take on some pro bono cases, but not against the government. A partner at one of the law firms explained to me each case is a considerable liability on their books, so they only take on a couple of cases at the time. They said the problem with a litigating the Commonwealth is its expensive, lengthy and you know they will appeal all the way to the High Court. Law firms who win pro bono cases do so in the knowledge if they win they will recover costs and sometimes a share of the damages. Because they are businesses, they must easy win cases. If they don’t they can spend millions in litigation and not get a cent. Also being businesses they face the dilemma: Why work on contingency (with the chance you might be paid) when you have other clients willing to pay you up front?

<sup>307</sup> Meeting with medium-sized law firm.

<sup>308</sup> Personal Communication.

<sup>309</sup> **Ms. Banerji received no support from the HRC:**

Instead she was represented by a non-profit public interest legal PIAC organisation: “*The Public Interest Advocacy Centre is an independent, non-profit law and policy organisation, dedicated to providing legal help to the most vulnerable and disadvantaged people in our community.*” [i]

Ms. Banerji said PIAC advised her they had no confidence that her constitutional argument would win, and recommended she settle on the Fair Work jurisdiction.[ii] [iii] Ms. Banerji expected PIAC to work pro bono as their costs agreement did not specify an hourly rate.[iv] She was billed at \$500 per hour.[v] Ms. Banerji alleges PIAC had an undisclosed conflict of interest[vi] as they did not tell her PIAC receives partial funding from the Commonwealth Attorney-General’s Department[vii] and that if any case potentially raises a constitutional question, the litigators are to submit a s78B notice to the Attorney-General to notify, and to permit the Attorney-General to join the matter.[vi] PIAC has told Ms. Banerji their actions were proper and denies any wrongdoing.

[i] PIAC: “The Public Interest Advocacy Centre is an independent, non-profit law and policy organisation, dedicated to providing legal help to the most vulnerable and disadvantaged people in our community. Support social justice today.” <http://www.piac.asn.au/>

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[ii] 2014-04-16 E-mail from Michael Banerji: *"That explains why [PIAC] wanted to stay within the Fair Work jurisdiction, which I could never understand, although they argued that it would save me the risk of costs and that they had no confidence that my constitutional argument would win."*

[iii] "Bureaucracy's Twitter and Facebook policy is no Brave New World," Richard Mulgan, Canberra Times, 2014-05-06. Richard Mulgan: *"An opportunity was therefore missed for securing a legal interpretation of where the balance should be struck between the public servant's rights of free speech and the government's right to enforce its code of conduct, including the restrictions on public statements. A considered legal judgment would probably find that the Public Service Act and its associated code of conduct do allow public service employers to discipline their employees in relation to public utterances. In this respect, public servants who wish to continue in their employment do not enjoy the same rights of political speech as other citizens."* <http://www.canberratimes.com.au/national/public-service/bureaucracys-twitter-and-facebook-policy-is-no-brave-new-world-20140504-37q50.html>

[iv] 2014-04-16 E-mail from Michael Banerji: *"I have not sent you my correspondence to PIAC because I am essentially in litigation with them now. But I can let you know that they charged me \$500 per hour, when I, silly me, thought that they would act pro-bono, and if not, their hourly rate would be half that. The costs agreement did not specify the hourly rate. Even signing the costs agreement, I thought that the Counsel fee would be paid by PIAC as he agreement was between Counsel and PIAC."*

[v] 2014-04-16 E-mail from Michael Banerji: *"But I can let you know that they charged me \$500 per hour"*

[vi] 2014-04-16 E-mail from Michael Banerji: *"if any case potentially raises a constitutional question, the litigators are to submit a s78B notice to the Attorney-General to notify, and to permit the AG to join the matter."*

[vii] PIAC Funding:

*"Who funds PIAC?," PIAC, "Financial support for the Public Interest Advocacy Centre (PIAC) comes primarily from the NSW Public Purpose Fund and the Commonwealth/State Community Legal Services Program. Funding from the NSW Public Purpose Fund supports PIAC to undertake its core work and run the Homeless Persons' Legal Service. Legal Aid NSW administers both the Public Purpose Fund grant and the Community Legal Services Program grant. PIAC also receives income from project and case grants, training, seminars, consultancy fees, donations and recovery of costs in legal actions."* <http://www.piac.asn.au/about-us/who-funds-piac/who-funds-piac>

<sup>310</sup> **Gunns 20 Legal costs:**

*A number of barristers acted pro bono, though presumably not the solicitors (or they'd say it, amirite?)*

*"Gunns 20' litigation in which a number of barristers acted pro bono to defend the proceedings brought by Gunns in the Supreme Court of Victoria"* <http://www.vicbar.com.au/pro-bono-community-work/climate-change-environment>

**Except for the Wilderness society, Gunns had to pay the defendants legal fees:**

*"On December 13, 2004, 20 environmental activists, organisations and concerned citizens were sued by the Tasmanian logging company Gunns Ltd. The woodchipping giant claimed AU\$6.9 million for actions it claimed damaged their business and reputation.*

*Three days later Gunns announced plans for a controversial pulp mill in Northern Tasmania.*

*On 1 February 2010 after 5 years and 48 days the case collapsed. The end, just days before trial, followed Gunns agreeing to pay the remaining 4 defendants \$155,088.*

*The case was a disaster for Gunns. The company paid \$1.3 million in defendants' legal costs and stated in 2009 its own costs amount to \$2.8 million. **Gunns obtained just \$205,000 in settlements with the Wilderness Society** and limited undertakings about future protests from 5 defendants.*

<http://www.gunns20.org/>

*"The Gunns 20," Greg Ogle, Activists Rights. "However, while ultimately victorious, the Gunns 20 case was not without cost for the defendants. **The Wilderness Society spent over \$1m in legal costs** and used a lot of staff and activist energy which could have gone to other environmental campaigns."*

<http://www.activistrights.org.au/handbook/ch04s01.php>

Calculation: **Total legal costs:** (The Wilderness Society ) \$1M+ + (other defendants) \$1.3M + (Gunns) \$2.8M = **\$5.1M+.**

<sup>311</sup> **The case of Karen Kline:**

2013-07-24 Royal Petition concerning Federal Government Corruption: Lack of Transparency in the Honours System. [http://victimsofdsto.com/royal-cosgrove-2/#\\_edn79](http://victimsofdsto.com/royal-cosgrove-2/#_edn79)

<sup>312</sup> **Karen Kline, who took a public interest case to court, lost and had costs awarded against her:**

2014-06-12 Email from Karen Kline: *"All but one of the 5 HC judges who heard my case have an AO. Justice Gaegler does not and was the only one who did not award costs against me."*



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<sup>313</sup> Personal Communication: A partner at a medium-sized “No Win No Fee” law firm.

<sup>314</sup> **Productivity Commission asked to look at a ‘faster, simpler, fairer’ civil law system:**

“Making the law faster, simpler, fairer — and cheaper,” Evan Whitton, Independent Australia, 2013-12-19, “Economists at the Productivity Commission were given a reference from the previous Labor government to research and advise on how to make civil law ‘faster, simpler, fairer’. They have until September 2014 to complete their review” <http://www.independentaustralia.net/politics/politics-display/making-the-law-faster-simpler-fairer--and-cheaper.6009>

<sup>315</sup> 2014-05-22 E-mail from Evan Whitton: The productivity commission said it was “too hard.”

Has it occurred to the bean-counters in the productivity commission that the price of an unfair justice system is social instability?

<sup>316</sup> As evidenced by the approaches myself and others have made to such NGOs and CLCs, and their complete lack of interest.

<sup>317</sup> **Everytime someone asks the High Court what our “implied right to freedom of political communication” means, they change their mind. Such an ill-defined right cannot be used reliably:**

Findlaw: “Do we have the right to freedom of speech in Australia?” “First, let’s get the easy part out of the way: Australia does not have an explicit First Amendment equivalent enshrining the protection of freedom of speech in our Constitution.” <http://www.findlaw.com.au/articles/4529/do-we-have-the-right-to-freedom-of-speech-in-austr.aspx>

<sup>318</sup> **The shifting definitions on protected speech from the High Court:**

“Costs and Damages,” Lateline, ABC, 1998-03-11,

“Richard Ackland, publisher of the *Gazette of Law and Journalism*, was not impressed that a differently comprised High Court so quickly overturned the previous ruling that politicians were fair game for journalists.

Richard Ackland, *Gazette of Law and Journalism*: “I mean they must have had to have locked them in a room somewhere and not fed them for six weeks until they sort of changed their mind, because it was really, I think, one of the poorest and lowest moments for the High Court.”

Prof. Sally Walker, *Law, Melbourne University*: “What the High Court did in the Lange case was to say that this new form of qualified privilege will only apply if media organisations or other defendants in a defamation action has published in a manner that can be said to be reasonable. Has it checked the veracity of what it's published? Has it allowed people to have a right of reply in relation to what has been published?”

Richard Ackland, *Gazette of Law and Journalism*: “I think there is a judicial suspicion of the media, and its power, and its capacity to interfere with the judicial patch and tread all over the toes of a court in certain proceedings and so on. So, yes, judges have historically been quite hostile.”

<http://www.abc.net.au/lateline/stories/s14318.htm>

<sup>319</sup> **Our “implied right to freedom of political communication” cannot be used reliably:**

“High Court rules on free speech cases,” Simon Breheny, IPA, 2013-02-27, “Two significant free speech judgments were handed down by the High Court today ... *Decisions such as these demonstrate how weak the implied right to freedom of political communication is. It simply can’t be relied upon for protection against laws that restrict our right to freedom of speech.*” <http://freedomwatch.ipa.org.au/high-court-rules-on-free-speech-cases/>

<sup>320</sup> Federalist No. 62, 1788.

<sup>321</sup> **High Court rules to keep Australia Day Honours process secret:**

“Australia Day honours process questioned in court,” Jane Lee, The Age, 2013-08-16. “The High Court will decide whether the secrets of how Australia Day honours are selected should be made public. Queensland woman Karen Kline has been fighting the Governor-General’s office to access documents that outline how the Order of Australia Council decides the winners of their awards since 2007. That year, she tried to access documents about an anti-discrimination advocate whom she had suggested for an award, after the office decided against her nomination.

Ms Kline later applied under freedom of information laws for papers outlining how the Council decided who was worthy of the awards, including its “working manuals, policy guidelines and criteria”. The Governor-General’s office refused both requests, citing its special power under the federal FoI Act to suppress all documents other than those relating to “administrative” matters.” <http://www.theage.com.au/national/australia-day-honours-process-questioned-in-court-20130816-2s1w5.html>

2014-07-22 Royal Petition concerning Federal Government Corruption, “Karen Kline had recommended a discrimination lawyer whose landmark case is taught in all law schools, whose work led the wheelchair access on all public buildings, disability access to trains and on the Gold Coast buses. His referees included the current state Human Rights Commissioner who were gobsmacked his award was refused. **Karen Kline sued under FOI to learn why, but the High Court of Australia (a panel of 5 judges, 4 of whom had Orders of Australia) unanimously rejected her case, ruling to keep the Honours process secret.**” <http://victimsofdsto.com/royal-cosgrove-2/#case25>

<sup>322</sup> **In America, each side is responsible for their own costs. In Australia, the loser pays costs. This is a strong disincentive for a citizen to take the government to court, because losing could bankrupt them:**

“Court Costs,” Wikipedia, *“In the United Kingdom, Australia and Canada, the losing side is usually ordered to pay the winning side's costs. This acts as a significant disincentive to bringing forward court cases.”*  
[https://en.wikipedia.org/wiki/Court\\_costs](https://en.wikipedia.org/wiki/Court_costs)

“American rule (Attorney’s fees)”, Wikipedia, *“The American rule provides that each party is responsible for paying its own attorney's fees ... The rationale for the American rule is that people should not be discouraged from seeking redress for perceived wrongs in court or from trying to extend coverage of the law. The rationale continues that society would suffer if a person was unwilling to pursue a meritorious claim merely because that person would have to pay the defendant's expenses if they lost.”* [https://en.wikipedia.org/wiki/American\\_rule\\_%28attorney%27s\\_fees%29](https://en.wikipedia.org/wiki/American_rule_%28attorney%27s_fees%29)

<sup>323</sup> Meeting with medium-sized law firm.

<sup>324</sup> **The Commonwealth threatened to get a costs order against me at the first hearing, which would have bankrupted me:**

2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received)

*“Ministers breach of the Model Litigant Policy to avoid accountability under Civil Law ...*

*To my case the government appointed Clayton Utz who flagrantly breached the Model Litigant Policy. They refused their lawful obligation to Alternate Dispute Resolution. They unnecessarily ran up a huge legal bill, for which they threatened to get a costs order against me at the first hearing. This would have bankrupted me, and so given Ms. Roxon’s failure to fulfil her lawful duty to uphold the Model Litigant Policy I was forced to drop the suit. My letter of offer to drop the case (attached) makes this very clear.”*

<https://tinyurl.com/kymge9z>

<sup>325</sup> **Cases in Australia where political speech was denied a free speech defence:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: *“Cases in Australia where political speech was denied a free speech defence”* [http://victimsofdsto.com/hrc/#\\_edn29](http://victimsofdsto.com/hrc/#_edn29)

<sup>326</sup> **Costs and Damages in Defamation:**

“Costs and Damages,” Lateline, ABC, 1998-03-11, *“Maxine McKew speaks to Michael Sexton, barrister and author; David Marr, senior journalist at the Sydney Morning Herald and Christopher Pearson, publisher of the Adelaide Review about the state of defamation in this country.”* <http://www.abc.net.au/lateline/stories/s14318.htm>

<sup>327</sup> **The Right to Privacy:**

The Right to Privacy, Louis Brandeis and Samuel Warren, Harvard Law Review, 1890-12-15.

<http://faculty.uml.edu/sgallagher/Brandeisprivacy.htm>

Justice Louis Brandeis (dissenting): *Olmstead v. United States:*

*“The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone -- the most comprehensive of rights, and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment. And the use, as evidence in a criminal proceeding, of facts ascertained by such intrusion must be deemed a violation of the Fifth.”* <http://laws.findlaw.com/us/277/438.html>

<sup>328</sup> **How the US balances freedom of speech with the right to privacy and the right to be heard:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: *“Americans balance free speech with the 4th Amendment; the right to be left alone; Citizens have the right to free speech, and the right to be heard, but the listener also has the right to choose not to listen”* [http://victimsofdsto.com/hrc/#\\_edn29](http://victimsofdsto.com/hrc/#_edn29)

<sup>329</sup> **The ACLU defended the free speech rights of Nazis:**

“Remembering the Nazis in Skokie,” Geoffrey R. Stone Become a fan,” Edward H. Levi Distinguished Service Professor of Law, University of Chicago via The Huffington Post, *“It is useful to consider the three primary arguments set forth by Skokie in support of its effort to forbid the march. First, the village argued that the display of the swastika promoted “hatred against persons of Jewish faith or ancestry” and that speech that promotes racial or religious hatred is unprotected by the First Amendment. The courts rightly rejected this argument, not on the ground that the swastika doesn't promote religious hatred, but on the ground that that is not a reason for suppressing speech. After all, if the Nazis could be prohibited from marching in Skokie because the swastika incites religious hatred, then presumably they couldn't march anywhere for the same reason, and movies could not show the swastika, and even documentaries could not show the swastika. And if the swastika can be banned on this basis, then what other symbols or ideas can be*

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suppressed for similar reasons. What about movies showing members of the Ku Klux Klan? News accounts showing Palestinians committing suicide bombings in Israel or showing Israelis attacking civilians?

Second, the village argued that the purpose of the marches was to inflict emotional harm on the Jewish residents of Skokie and, especially, on the survivors. Certainly, some residents would be deeply offended, shocked and terrified to see Nazis marching through the streets of Skokie. But they might also be offended, shocked and terrified to know that Schindler's List was playing at a movie theatre in Skokie, or in Chicago, or in Illinois, and African-Americans might be offended, shocked and terrified to know that the movie Birth of a Nation was playing in a theatre in their town or nation. And so on. Moreover, it is doubtful that the actual intent of the Nazis was to inflict emotional harm on the residents of Skokie. Initially, the Nazis sought to march in a totally different community in Chicago, one with almost no Jewish population. But they were denied a permit. They then decided to march in Skokie in order to get publicity for their grievance. Indeed, the signs they planned to carry in Skokie did not say "Bring Back the Holocaust," but "White Free Speech" and "Free Speech for the White Man." Making First Amendment rights turn on judgments about a speaker's subjective intent is a dangerous business, because intent is very elusive and police, prosecutors and jurors are very prone to attribute evil intentions to those whose views they despise.

Third, the village argued that if the Nazis were permitted to march there would be uncontrollable violence. But is this a reason to suppress speech? Isn't the obligation of the government to protect the speaker and to control and punish the lawbreakers, rather than to invite those who would silence the speech to use threats of violence to achieve their ends? If the village of Skokie had won on this point, then southern communities who wanted to prosecute civil rights marchers in Selma, Montgomery and Birmingham could equally do so, on the plea that such demonstrations would trigger "uncontrollable violence." Moreover, once government gives in to such threats of violence it effectively invites a "heckler's veto," empowering any group of people who want to silence others to do so simply by threatening to violate the law.

The outcome of the Skokie controversy was one of the truly great victories for the First Amendment in American history. It proved that the rule of law must and can prevail. **Because of our profound commitment to the principle of free expression even in the excruciatingly painful circumstances of Skokie more than thirty years ago, we remain today the international symbol of free speech.** (Ultimately, a deal was worked out and the Nazis agreed to march in Chicago [Marquette Park] rather than in Skokie.). " <http://www.huffingtonpost.com/geoffrey-r-stone/remembering-the-nazis-in-b-188739.html>

<sup>330</sup> **The ACLU defended the free speech rights of Jews who counterprotested:**

"Nazi march: What's it all about?", Ed McManus, Illinois Issues, 1978-11, "Hamlin said the policing of both demonstrations was superb, but he was unhappy that a group of counterdemonstrators was kept away from the rally at Marquette Park. The ACLU has filed a damage suit against the Chicago Police Department on behalf of the counterdemonstrators (so the union is simultaneously defending the Nazis' right to demonstrate and their opponents' right to demonstrate against them)." <http://www.lib.niu.edu/1978/ii781111.html>

<sup>331</sup> **The ACLU defended the free speech rights of WBC:**

"Snyder v. Phelps is an American case where parishioners from Phelp's Westboro Baptist Church (WBC) protested at some distance during the funeral of Albert Snyder's son, Matthew Snyder, a US Marine who died in the Iraq War. Albert Snyder was distressed that they held signs such as "You're going to hell," "God hates you," "Fag troops" and "Thank God for Dead Soldiers!"

Albert Snyder sued Phelps under the tort of Intentional Infliction of Emotional Distress, but the US Supreme Court dismissed his law suit 8-1. They did so on the grounds neither WBC was not at, audible or (apart from the tops of their signs) visible to the funeral, and that Albert Snyder went out of his way to hear the speech which offended him (e.g. looking it up on the Internet), so the captive audience doctrine which might have allowed "fighting words" didn't apply. For this and other reasons, the US Supreme Court ruled that WBC's speech was protected political speech which Snyder was not entitled to receive damages because it distressed him." [http://victimsofdesto.com/hrc/#\\_edn14](http://victimsofdesto.com/hrc/#_edn14)

<sup>332</sup> **The Nazis spoke, but the public rejected their message:**

"Frank Collin," Wikipedia, [1977] "However, instead of marching through Skokie, Collin and a handful of NSPA members decided instead to march through Chicago, where they were outnumbered and jeered by thousands of counter-protestors." [https://en.wikipedia.org/wiki/Frank\\_Collin](https://en.wikipedia.org/wiki/Frank_Collin)

**and still are rejected:**

"Hundreds jeer neo-Nazis at rally in Wisconsin," Morry Gash, AP via MSN, 2006-08-26 Image: "Police estimated about 800 people showed up to counter the Minneapolis-based National Socialist Movement's speakers, but a brief rainstorm thinned the crowd. Police said 64 neo-Nazis lined the Capitol steps." [http://www.nbcnews.com/id/14534144/ns/us\\_news-life/t/hundreds-jeer-neo-nazis-rally-wisconsin](http://www.nbcnews.com/id/14534144/ns/us_news-life/t/hundreds-jeer-neo-nazis-rally-wisconsin)

<sup>333</sup> **The WBC spoke, but the public rejected their message:**

**"'Leaving in a hurry,' hundreds of residents chase Westboro protesters out of Oklahoma town,"**

Dallas Franklin and Sarah Stewart, KFOR-TV, 2014-04-06. "Police were able to hold back the Moore residents while

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the Westboro bunch rushed to pack their signs in their cars and leave. Dan Eccles said, “*They shagged tail, got in them cars and was leaving in a hurry. Oh yeah, they was gone!*” “*I thought it was hilarious. I mean I really did. We sat there and laughed the whole time,*” said Tina Johnson. “*They were running, yeah.*”” <http://kfor.com/2014/04/06/community-stands-up-against-protesters/>

<sup>334</sup> 2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson (Acknowledged, but not responded to) cc: Tim Soutphommasane, Gillian Triggs. (Neither acknowledged not responded too.) <http://victimsofdo.com/hrc/>

<sup>335</sup> **Confirmation bias:** The tendency to interpret new evidence as confirmation of one’s existing beliefs or theories. [http://en.wikipedia.org/wiki/Confirmation\\_bias](http://en.wikipedia.org/wiki/Confirmation_bias)

<sup>336</sup> **Tim Soutphommasane is a former ALP staffer:**

“Tim Soutphommasane,” Wikipedia, “**Political activity.** ... “*He later worked on the speechwriting staff of then New South Wales Premier Bob Carr, and in late 2007 he returned from Oxford to work as a research officer in the office of Kevin Rudd during that year’s federal election campaign.*” [https://en.wikipedia.org/wiki/Tim\\_Soutphommasane](https://en.wikipedia.org/wiki/Tim_Soutphommasane)

<sup>337</sup> **Why politicians should be allowed to change their mind:**

“Editorial: Politicians have a right to flip-flop,” Editorial, NZ Herald, 2013-07-15, “**Instant attacks on officials who change minds unfair.**

*As the American writer Lewis Eigen has noted, we take a different view when politicians are induced to change their minds. When politicians have a change of mind, they have good reason to fear the consequences. Inevitably, words such as “flip-flop” and “u-turn” will be levelled at them amid a barrage of criticism as their opponents seek to paint them as weak, indecisive, lacking conviction or driven by political expediency. In many instances, however, that portrayal is neither accurate nor warranted.*”

[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10898175](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10898175)

Political Satirist Stephen Colbert on President George W. Bush: “***The greatest thing about this man is he’s steady. You know where he stands. He believes the same thing Wednesday that he believed on Monday — no matter what happened Tuesday.***” [http://politicalhumor.about.com/od/stephencolbert/a/colbertbush\\_2.htm](http://politicalhumor.about.com/od/stephencolbert/a/colbertbush_2.htm)

<sup>338</sup> **Tim Wilson on the right to offend:**

“Twitter trolls have a right to offend – but we don’t have to listen,” Tim Wilson, The Guardian, 2014-05-20, <http://www.theguardian.com/artanddesign/australia-culture-blog/2014/may/20/twitter-trolls-have-right-offend-but-dont-have-to-listen>

<sup>339</sup> **George Brandis on the right to be a bigot:**

“Attorney-General George Brandis: ‘People do have a right to be bigots’,” Dan Harrison and Jonathan Swan, SMH, 2014-03-24. <http://www.smh.com.au/federal-politics/political-news/attorneygeneral-george-brandis-people-do-have-a-right-to-be-bigots-20140324-35dj3.html>

<sup>340</sup> **Tim Wilson’s claim that the “test should be based on the attitudes of an average Australian”:**

In some of his speeches he did refer to subjective speech as shifting depending on who is listening, but instead of taking it to the logical conclusion (the fundamental tenet that laws which restrict speech you disagree with can also be used to silence you), he made the bizarre leap that “*test should be based on the attitudes of an average Australian.*”:

[REF: Yadu Singh, “Views of Tim Wilson, Australian Human Rights Commissioner, on section 18c of Racial Discrimination Act!”, 2014-06-19, <https://yadusingh.wordpress.com/2014/06/19/views-of-tim-wilson-australian-human-rights-commissioner-on-section-18c-of-racial-discrimination-act/> ]:

Tim Wilson: “*The test to see whether speech offends, insults, humiliates or intimidates is highly subjective. It is not based on the standard of a reasonable Australian based on all of the circumstances.*

*The test is based on the attitudes of a person within the group mentioned. That means the test shifts depending on what is said. That is not fair.*

*That is why the Australian Human Rights Commission accepted the proposal of the Attorney-General in his exposure draft to amend the Racial Discrimination Act that the test should be based on the attitudes of an average Australian.”*

It’s a bizarre conclusion, because the purpose of rights is to protect individuals from the tyranny of the majority. By defining a test “*based on the attitudes of the average Australian,*” Tim Wilson sets the majority view should be the baseline.

<sup>341</sup> **Tim Wilson argued the ‘Right to Offend’ rather than the merits of free speech:**

“Twitter trolls have a right to offend – but we don’t have to listen,” Tim Wilson, The Guardian, 2014-05-20, <http://www.theguardian.com/artanddesign/australia-culture-blog/2014/may/20/twitter-trolls-have-right-offend-but-dont-have-to-listen>

<sup>342</sup> **Ironically, Andrew Bolt’s column debunked the stereotype against fair-skinned aborigines:**



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2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson:

*“Andrew Bolt expressed his view that Fair-skinned Aborigines raised as ‘White’ were unfairly passing themselves off as ‘Black’ to order to receive Indigenous entitlements. ...*

*Whatever the case, it is evident his view is shared by some in the community:*

*“Columnist sued for offensive blog,” James Hill, Intentionous, 2011-04-06 “Comment by Andrew Bitto: 2011-04-06*

*“Sometimes I hate what Andrew Bolt says, but I gotta say, the man has balls. Here he is merely voicing what thousands, perhaps millions, of Australians are thinking every year. Even I will admit that when I have been filling out my tax file / employer information and am presented with the “Are you an Aboriginal or Torres Strait Islander” I have thought in the past “If only!””* <http://intentionous.com/2011/04/06/columnist-sued-for-offensive-blog/>

*Over the years I've heard similar opinions expressed by others. Sometimes mean-spiritedly. Sometimes good-naturedly (For example, by a former boss who made a joke [about] learning of her own Aboriginal heritage.)*

***Q: Does suppressing Bolt's speech make that stereotype go away? A: Obviously not. If anything, giving Bolt a public platform to speak and then debating what he said has weakened this stereotype. Given that the nine Aborigines turned out to be counter-examples, seriously so. At that, 18c only applies to public statements. When I have heard the stereotype before it had always been in private situations, in social settings where it is even less likely to be challenged.”***

[http://victimsfordsto.com/hrc/#\\_edn2](http://victimsfordsto.com/hrc/#_edn2)

<sup>343</sup> **Speech as Conduct:**

***“Speech As Conduct: Generally Applicable Laws, Illegal Courses Of Conduct, “Situation-Altering Utterances,” And The Uncharted Zones,”*** Eugene Volokh, Cornell Law Review, V90:1277.

#### ***“CONCLUSION***

*It is often tempting to dismiss First Amendment problems by resorting to labels. “It's not speech,” the argument goes, “it's conduct/contempt/libel/sedition/aiding and abetting/professional speech.” Sometimes, the dismissal is sound. For instance, some behavior is indeed conduct that is punished because of its noncommunicative elements, not because of what it communicates.*

*Often the label does capture something important even as to speech, though only as a step in the First Amendment inquiry: Some speech that constitutes aiding and abetting or common-law libel is indeed unprotected, for reasons related to why criminal law or tort law seeks to punish it.*

*But sometimes the label is used as a substitute for serious First Amendment analysis, rather than as the starting point for it; hence the Court's repeated complaint about the government's attempting to “foreclose the exercise of constitutional rights by mere labels,” such as by labeling speech “solicitation,” “contempt,” or “breach of the peace.” Sometimes such attempts are made by people who want to justify restricting certain kinds of speech. Sometimes they are made by people who want to protect other kinds of speech, and who therefore articulate supposedly absolutist First Amendment rules—for instance, Justice Black's “no law means no law” —and dismiss inconvenient counterexamples by calling them mere “conduct.”*

*I have argued above that we should resist this temptation. When the law restricts speech because of what the speech communicates — because the speech causes harms by persuading, informing, or offending—we shouldn't deny that the law is a speech restriction, and requires some serious justification.*

*Such justifications may at times be available. The Court has so held as to incitement, false statements of fact, obscenity, threats, and other unprotected categories of speech. Courts should also develop similar rules for certain kinds of crime-facilitating speech, professional speech, treasonous speech, and so on. But courts and scholars ought to develop these rules with the recognition that the rules are indeed speech restrictions—not by asserting that the rules merely restrict “conduct.”*” <http://www2.law.ucla.edu/volokh/conduct.pdf>

<sup>344</sup> I found no mention of it in your speech.

<sup>345</sup> I found no mention of it in your speech.

<sup>346</sup> I found no mention of it in your speech.

<sup>347</sup> I found no mention of it in your speech.

<sup>348</sup> I found no mention of it in your speech.

<sup>349</sup> **Racists have become a more subtle at exercising racism:**

*“The Daily Show,” Jessica Williams, 2014-03-04.*

Jessica Williams: *“Why is racism moving into other arenas?”*

Columbia Associate Professor Carl Hart: ***“Because we are outlawing overt racism. Racism today is a lot more subtle.”***

<sup>350</sup> **Political Dog Whistling:**

*"The right's dog-whistle trick: How it exploits racism to rip apart the social safety net,"* Sean McElwee, Salon, 2014-01-20. **"Conservatives use coded racial appeals to win very specific policy goals, law professor Ian Haney Lopez explains"**

[http://www.salon.com/2014/01/20/the\\_rights\\_dog\\_whistle\\_trick\\_how\\_it\\_exploits\\_racism\\_to\\_rip\\_apart\\_the\\_social\\_safety\\_net/](http://www.salon.com/2014/01/20/the_rights_dog_whistle_trick_how_it_exploits_racism_to_rip_apart_the_social_safety_net/)

**"The refugee dog-whistle politics must stop,"** Matthew Donovan, Independent Australia, 2013-07-21.

<http://www.independentaustralia.net/politics/politics-display/the-refugee-dog-whistle-politics-must-stop,5543>

**"Dog whistle politics and winning the debate on asylum seekers,"** Kellie Tranter, Independent Australia, 2014-06-17.

<http://www.independentaustralia.net/australia/australia-display/winning-the-debate-on-asylum-seekers,6583>

<sup>351</sup> I found no mention of it in your speech.

<sup>352</sup> **Sydney gang rape by men of African appearance:**

*"Girl, 14, severely traumatised after gang rape attack, say police,"* 2014-02-10, *"A 14-year-old girl who was gang raped in a western Sydney park was so traumatised that police had to wait a day before they could speak to her. The girl was walking a short distance home from a friend's house through Bill Colbourne Reserve, Doonside, when she was approached by a man of African appearance at 11pm on Saturday, police said. He touched her inappropriately before he forced her to the ground and sexually assaulted her on one of the paths in the park, police said. The man's five friends then took turns sexually assaulting her in an attack that lasted about 30 minutes, police said. ... The men are all described as being of African appearance and aged in their late teens to early 20s and police say people in the community must know the men responsible. ... Superintendent Merryweather said ... "Her family are nice people, they're good people ... they're just completely devastated." ... "If people do not ring and contact the police they are condoning this horrendous behaviour.""* <http://www.smh.com.au/nsw/girl-14-severely-traumatised-after-gang-rape-attack-say-police-20140210-32b52.html>

<sup>353</sup> **Sydney gang rapes by Lebanese Australian men:**

*"Sydney gang rapes,"* Wikipedia, *"The Sydney gang rapes were a series of gang rape attacks committed by a group of up to fourteen Lebanese Australian youths led by Bilal Skaf against Australian women and teenage girls, as young as 14, in Sydney Australia in 2000. The crimes — described as ethnically motivated hate crimes by officials and commentators — were covered extensively by the news media, and prompted the passing of new laws."*

[https://en.wikipedia.org/wiki/Sydney\\_gang\\_rapes](https://en.wikipedia.org/wiki/Sydney_gang_rapes)

<sup>354</sup> Don't tell me they can take up their concerns with their MP in private, because the experiences of myself and many others are MPs and senators from the major parties are irresponsive.

<sup>355</sup> **Legitimate concerns need to be addressed. Illegitimate concerns need to be exposed and debunked through rational public debate:**

**"Why Australia hates asylum seekers,"** Christos Tsiolkas, The Saturday Paper, 2013-09. *"The rise of Pauline Hanson's One Nation Party from 1997 was ultimately evidence of the Australian public's resentment and fear of globalisation. The media focused on that party's incendiary rhetoric on race and immigration, but lost in the noise was that One Nation also articulated people's legitimate concerns about the pace of economic change."*

<http://www.themonthly.com.au/issue/2013/september/1377957600/christos-tsiolkas/why-australia-hates-asylum-seekers>

**"You're not welcome, town tells refugees,"** SMH, 2006-12-15. *"Cr Treloar told the Herald people were worried that allowing the families to move to Tamworth "could lead to a Cronulla riots-type situation. Ask the people at Cronulla if they want more refugees." ... He added that "of the 12 Sudanese people who live in Tamworth, eight have been before the courts for everything from dangerous driving to rape. These people don't respect authority ... they come from countries where there are outbreaks of TB [tuberculosis] and polio. How can we trust the department to screen those things?" ... The council lacked the health services to support the families, he said. ... [Ed: Doesn't have the health services to accept \*five\* new families into the town? LOLWOT?] At a meeting where the poll was conducted, several residents had said they **"Why Australia hates asylum seekers,"** Christos Tsiolkas, The Saturday Paper, 2013-09. *"The rise of Pauline Hanson's One Nation Party from 1997 was ultimately evidence of the Australian public's resentment and fear of globalisation. The media focused on that party's incendiary rhetoric on race and immigration, but lost in the noise was that One Nation also articulated people's legitimate concerns about the pace of economic change."**

<http://www.themonthly.com.au/issue/2013/september/1377957600/christos-tsiolkas/why-australia-hates-asylum-seekers>

**"You're not welcome, town tells refugees,"** SMH, 2006-12-15. *"Cr Treloar told the Herald people were worried that allowing the families to move to Tamworth "could lead to a Cronulla riots-type situation. Ask the people at Cronulla if they want more refugees." ... He added that "of the 12 Sudanese people who live in Tamworth, eight have been before the courts for everything from dangerous driving to rape. These people don't respect authority ... they come from countries where there are outbreaks of TB [tuberculosis] and polio. How can we trust the department to screen those things?" ... The council lacked the health services to support the families, he said. ... [Ed: Doesn't have the health*



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services to accept \*five\* new families into the town? LOLWOT?] At a meeting where the poll was conducted, several residents had said they did "not want the refugees coming and drinking our water supply, or taking our jobs, that sort of thing", Cr Woodley said. "I think you would have to say there was a racist element at play there."" <http://www.smh.com.au/news/national/youre-not-welcome-town-tells-refugees/2006/12/14/1165685828180.html>

<sup>356</sup> **Teenagers abused Jewish schoolgirls on a bus:**

"Australian Teenagers Arrested For Harassing Jewish Schoolgirls With Hitler Taunts," Mark Di Stefano, BuzzFeed, 2014-08-07. "Sydney Police have arrested five teenagers for allegedly threatening Jewish primary school students on a school bus in the beachside suburb of Bondi, Wednesday." <http://www.buzzfeed.com/markdistefano/jewish-schoolgirls-in-australian-anti-semitic-attack>

<sup>357</sup> **Captive Audience Doctrine:**

"The Captive Audience Doctrine: Protecting the Unwilling Listener's Right to Privacy from Unwanted Speech," Ola Malik and Theresa Yurkewich, 2013-12-10. A good discussion of the US captive audience doctrine, and whether it can be applied to Canadian law. [http://ablawg.ca/wp-content/uploads/2013/12/Blog\\_OM\\_TY\\_Captive-Audience-Docctrine\\_December-2013.pdf](http://ablawg.ca/wp-content/uploads/2013/12/Blog_OM_TY_Captive-Audience-Docctrine_December-2013.pdf)

<sup>358</sup> **Complaints of anti-Zionism by Mike Carlton and Fairfax:**

"Australian Jewish News calls for Fairfax boycott," Myriam Robin, 2014-08-01. "The Australian Jewish News has called on its readers to cancel their subscriptions to Fairfax Media after a column by Mike Carlton and its illustrating cartoon were slammed by the paper as antisemitic." <http://www.crikey.com.au/2014/08/01/australian-jewish-news-calls-for-fairfax-boycott/>

<sup>359</sup> **SMH cartoon portrayed an 'Ugly stereotype of a Hook-nosed Jew,' insulting and humiliating:**

"SMH slammed over 'anti-Semitic' cartoon," The Australian Jewish News, 2014-07-31. "The publication of the clearly anti-Semitic Le Lievre cartoon was completely unacceptable," The ECAJ said in a letter to the SMH. "The cartoon unambiguously portrays an ugly stereotype of a Jew. "He is identified with a hook nose, kippah and Magen David, sitting in an armchair and using a remote control device to blow up houses and people, presumably in Gaza, in the context of the current fighting." The letter said the cartoon portrays Jews as collectively guilty of "acting outside the norms of civilisation and the laws of war, intentionally causing civilian deaths in Gaza". "In our view this is racial vilification not only in the sense of offending, insulting, humiliating and intimidating Jews as a group but also in the sense of inciting third parties to hatred of Jews." <http://www.jewishnews.net.au/smh-slammed-over-anti-semitic-cartoon/36678>

<sup>360</sup> **SMH apologies for cartoon resembling stereotype portrayed by Nazis, but claims no racial vilification:**

"We apologise: publishing cartoon in original form was wrong," SMH, 2014-08-03. "A strong view was expressed that the cartoon, by Glen Le Lievre, closely resembled illustrations that had circulated in Nazi Germany. These are menacing cartoons that continue to haunt and traumatise generations of Jewish people. The Herald deeply regretted the upset the image had caused, **but felt – not least because the cartoonist lacked any intent and that actual photographs influenced the setting and physical depiction of the character in the cartoon – that no racial vilification had occurred.**" <http://www.smh.com.au/comment/smh-editorial/we-apologise-publishing-cartoon-in-original-form-was-wrong-20140803-zzxab.html>

Ah, but by 18c racial vilification did occur. The fact the cartoonist 'lacked any intent' is irrelevant; It was **subjectively offensive** to those who saw it:

**"RACIAL DISCRIMINATION ACT 1975 - SECT 18c**

**Offensive behaviour because of race, colour or national or ethnic origin**

(1) It is unlawful for a person to do an act, otherwise than in private, if:

- (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and
- (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

Note: Subsection (1) makes certain acts unlawful. Section 46P of the Australian Human Rights Commission Act 1986 allows people to make complaints to the Australian Human Rights Commission about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.

(2) For the purposes of subsection (1), an act is taken not to be done in private if it:

- (a) causes words, sounds, images or writing to be communicated to the public; or
- (b) is done in a public place; or
- (c) is done in the sight or hearing of people who are in a public place.

(3) In this section: "public place" includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/rda1975202/s18c.html](http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/s18c.html)

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## RACIAL DISCRIMINATION ACT 1975 - SECT 18D

### Exemptions

Section 18c does not render unlawful anything said or done reasonably and in good faith:

- (a) in the performance, exhibition or distribution of an artistic work; or
- (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- (c) in making or publishing:
  - (i) a fair and accurate report of any event or matter of public interest; or
  - (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

[http://www.austlii.edu.au/au/legis/cth/consol\\_act/rda1975202/s18d.html](http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/s18d.html)

### <sup>361</sup> Picking the Right Judge and Jury:

A fair legal system would allow us to run the same case against different judges and juries and get the same result. But the adversarial legal system is open to manipulation, by stacking the jury and ensuring the case goes before a sympathetic judge.

Evan Whitton: *"In We, the Jury (Basic Books 1994), Jeffrey Abramson, a lawyer and Professor of Politics at Brandeis University, Massachusetts, quoted Stephen Adler, of The Wall Street Journal, as reporting that jury consultants openly admit that: '... if a client needs prejudiced jurors, the firm will help find them ... they defend the ethics of their profession by pointing out that they obey the same imperatives lawyers do in our adversary system: they seek their clients' advantage within the rules of the game' ... Media accounts strongly reinforce the notion that jury selection is the only game in town and the game is crooked."* "Our Corrupt Legal System," Evan Whitton.

<http://netk.net.au/Whitton/OCLS.pdf>

"Scientific Jury Selection," Wikipedia, [https://en.wikipedia.org/wiki/Scientific\\_jury\\_selection](https://en.wikipedia.org/wiki/Scientific_jury_selection)

"Predicting human behaviour and the craft of jury stacking," Jarad Henry, International Crime Authors, 2013-04-25.

*"Ask any candid defence practitioner and they will identify that 'systematic jury selection' or 'jury stacking' is necessary to remain legally competitive in the adversarial system of justice. It is an inherent part of the defence advocate's job description to utilise scientific methodologies to predict and eliminate those deemed to make decisions. It is an art and a skilful craft based on a mix of stereotyping, experience and a clever understanding of the human psyche."* <http://www.internationalcrimeauthors.com/?p=3465>

"Unnatural Selection," Matthew Hutson, Psychology Today, 2007-03-01, *"There's a thriving industry built on the scientific selection of jurors, but the jury is out on just how accurate it is, or whether it gives legal adversaries an edge."* <http://www.psychologytoday.com/articles/200703/unnatural-selection>

Event: "We'd Like to Thank and Excuse Bias: How to Pick a Judge and Jury," San Diego Law School, *"It has often been said that by the time the jury has been sworn, even before evidence has been presented and opening statements made, you have either won or lost your case. This seminar focuses on how to select the right judge and jury to decide your client's fate."* <http://www.sandiego.edu/law/school/events/detail.php?focus=48007>

### <sup>362</sup> Fairfax says Mike Carlton sacked for offensive language directed at his critics, not his column which Jewish readers found offensive:

"SMH's Mike Carlton quits Fairfax after anti-Semitic abuse of readers," Sharri Markson, The Australian, 2014-08-06, *"Columnist Mike Carlton has parted ways with Fairfax after he sent abusive and anti-Semitic emails and tweets to readers. Fairfax's news and business publisher Sean Aylmer told Sydney radio 2UE today that after being confronted with extensive evidence of Carlton's abusive emails yesterday afternoon, Fairfax moved to suspend the columnist. Carlton then resigned on the spot. Aylmer said Carlton 'used language just not acceptable in the workplace ... You just can't do that.' 'As more emails emerged we figured we needed to suspend him. No one has the right to treat readers that way,' Aylmer added. Carlton was not disciplined for the content of his July 26 column on the Israel-Hamas conflict, Aylmer stressed, but for the disrespectful way he treated readers in his correspondence with them when they wrote to complain about the column and an accompanying cartoon. 'The column was fine. The issue wasn't the printing of the column,' Aylmer told 2UE. 'What sort of got him into trouble was the way he responded to those readers, and it was totally inappropriate, using very inappropriate language.' Aylmer said The Sydney Morning Herald's editor-in-chief Darren Goodsir rang Carlton yesterday and demanded he apologise for the comments, which included telling several critics to 'f\*\*\* off' and calling one a 'Jewish bigot'. After being told he would be suspended over the issue, Carlton immediately resigned. 'He was apologetic. He accepted he had gone too far,' Aylmer said."* <http://www.theaustralian.com.au/media/smhs-mike-carlton-quits-fairfax-after-antisemitic-abuse-of-readers/story-e6frg996-1227014913755?nk=bfb73fe7a7ac8f7904c69462c9124f8e>

### <sup>363</sup> HRC Racial Discrimination Commissioner Tim Soutphommasane says 18c needed to 'send a clear message about what is unacceptable in Australian society':

"Woman charged over racist tirade on Sydney train," ABC, 2014-07-04, *"The Federal Government wants to repeal Section 18c of the Racial Discrimination Act, which prohibits offensive behaviour based on racial hatred. But Mr*

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*Soutphommasane says the law sends a clear message about what is unacceptable in Australian society.*"  
<http://www.abc.net.au/news/2014-07-03/woman-facing-charges-over-racist-tirade-on-sydney-train/5569564>

<sup>364</sup> **The dangers on subjective tests on offensive speech:**

Andrew Bolt, himself sued under 18c, complains Tim Soutphommasane is being hypocritical:

"Race Commissioner protects Mike Carlton, fellow member of the Left, Andrew Bolt, Newscorp," 2014-08-07,  
*"Tim Soutphommasane is our Race Discrimination Commissioner. He's supposed to be red-hot in denouncing racism. But, then again, he's a former Labor staffer and Carlton is a darling of the far Left."*  
[http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/race\\_commissioner\\_protects\\_mike\\_carlton\\_fellow\\_member\\_of\\_the\\_left/](http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/race_commissioner_protects_mike_carlton_fellow_member_of_the_left/)

The Drum, ABC, 2014-08-08, Tim Soutphommasane: *'Commentators you would hope would be cantankerous or controversial... Obviously Fairfax decided to take some action against him. Look, I'm agnostic on this.'* (14:00)  
<http://www.abc.net.au/news/2014-08-06/the-drum-wednesday-august-6/565374>

The Right are obviously enjoying this, but it shows the dangers of subjective tests on offensive speech.

<sup>365</sup> **Racial Discrimination Commissioner Tim Soutphommasane accused of hypocrisy over anti-Zionism:**

"Mathias on message," The Spectator Australia, 2014-08-23.

*"'Look, I'm agnostic on this,' claimed Racial Discrimination Commissioner Tim Soutphommasane in response to a question as to whether Mike Carlton should have resigned from the Sydney Morning Herald after calling people 'looney Likudnik racists' and 'demented Likudniks'. 'Agnostic' was an oddly classical word to use in the context; Mr. Soutphommasane is paid a hefty sum by the Australian taxpayer to ensure racism is not tolerated in our multi-cultural society. The 'cantankerous' Mr. Carlton had also derided readers as 'Jewish bigots' and 'pissants' for objecting to his diatribe about Israelis wanting to 'kill Arabs'.*

*Others were not so agnostic. Now it appears Mr. Carlton may face the recently resuscitated Section 18c of the Racial Discrimination Act for his efforts.*

*Yet Mr. Soutphommasane will happily pontificate over a lengthy lunch on the great harm that derogatory racial name-calling can have on individuals: 'We're talking about something that causes serious harm to people and their families,' he told the Herald's Gay Alcorn over a \$37 de-boned duck leg at the hip Bistro Gitan. 'People might think that words have no effect... but we are talking about something that can impair people's ability to participate in the life of the nation... History shows us that racial violence... begins with words.'*

*Quite. Only days after Mr. Carlton's inflammatory words, we saw violent anti-semitism on a Bondi school bus. Nothing agnostic about that.*

*Perhaps Tim might care to familiarize himself with a more pertinent ancient Greek word: 'hypocrite'."*  
<http://www.spectator.co.uk/australia/australia-leading-article/9294812/mathias-on-message/>

<sup>366</sup> Consider that a Nazi rally held in private is legal under 18c, but a public rally (where the Nazis can be challenged and debunked) its not.

<sup>367</sup> **A very good article by a gay Jew on the dangers of hate-speech laws:**

*"A new argument for hate-speech laws? Um ... no,"* Jonathan Rauch, The Washington Post, 2014-02-04.  
<http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/02/04/a-new-argument-for-hate-speech-laws-um-no/>

<sup>368</sup> **How Israel resolved a dispute between ultra-Orthodox and Secular Jews without curbing free speech:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson:

*"Speech which is going to offend, insult, humiliate and intimidate regardless*

*When Israel was founded in 1948 there were 400 ultra-Orthodox seminary students who were granted state pensions and exemption from military service. Due to their high birth rate, they now account for about 10% of Israel's population. Israel's ultra-Orthodox Jews believe they are preserving Israel's cultural identity. Secular Jews believe they are free-loading.*

*It's really impossible for Israel to have had a debate on this without making statements – which a speakers on each side believe to be factual statements – which those on the other side are likely to find offensive, insulting, humiliating or intimidating. And this debate did indeed result in large protests (over 100,000 people) and some violence.*

*... But as disruptive and divisive as this debate has been to Israel, far better that they had it (even though it resulted in some violence) than if it had been suppressed, with resentment allowed to grow (perhaps resulting in far more violence, and the underlying dispute – which both sides felt threatened Israel – either culturally, or militarily and economically – going unaddressed)." [http://victimsofdsto.com/hrc/#\\_edn2](http://victimsofdsto.com/hrc/#_edn2)*

<sup>369</sup> <https://twitter.com/hughriminton/status/496570373840699392>

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<sup>370</sup> **The government must remain neutral in the marketplace of ideas:**

US Supreme Court Justice Stevens: “For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas.” [FCC v. Pacifica Foundation]

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=438&invol=726>

<sup>371</sup> **Government only listens to government:**

“Rethinking the Marketplace for Ideas,” Kim Hamilton, 2011-12-06. “Advances in development happen when ordinary people benefit from smart ideas backed by sound policy decisions. Good ideas and well-designed policies know no boundaries, but researchers and think tanks in rich countries still dominate the marketplace of ideas—despite new technologies that have globalized knowledge. ...

The International Development Research Center (IDRC) recently commissioned a survey of 985 active members of the policy communities in 23 developing countries to help inform the work of the Think Tank Initiative, an effort supported by IDRC, the development agencies in the UK and the Netherlands, the Hewlett Foundation, and the Bill & Melinda Gates Foundation.

**IDRC’s survey found that, for the most part, government officials tend to rely on information produced by governments themselves.**” <http://www.impatientoptimists.org/Posts/2011/12/Rethinking-the-Marketplace-for-Ideas>

<sup>372</sup> **Quashing political rivals through the courts:**

“The Dishonest Politics Club,” Margo Kingston, Independent Australia, 2013-01-03. “The Liberals have a long history of using the courts to destroy their political rivals, as Mike Secombe reported in his ‘Tricks of the trade’ article in the Sydney Morning Herald in 2003. They nearly wrecked the Western Australian Democrats, and Abbott’s backers funded the beginning of the case that would eventually see Hanson sent to jail — until her harsh conviction was quashed on appeal.” <http://www.independentaustralia.net/politics/politics-display/the-dishonest-politics-club.4843>

<sup>373</sup> “Clear and Present Danger,” Aryeh Neier, Index on Censorship, 1998. “**The dangers of one point of view ... It is the exclusive capacity to communicate that produces the link between incitement to violence and violence itself.**”

<sup>374</sup> **The Powerful are given a voice in the mainstream media:**

**Powerful people (and their kids):**

For example, everyone hears your (Mark Dreyufs’) voice. Tim Soutphommasane and Tim Wilson. by virtue of their positions, in effect have automatic publishing rights in *The Guardian*. Even Jessica Rudd has her own column in Fairfax.

**Powerful companies:**

“Goodbye to the mining tax, and good riddance,” Elizabeth Knight, SMH, 2014-09-02. “It became a key feature in the mutiny against Kevin Rudd and a salient reminder to Canberra that when large well-resourced companies are mobilised, they can cause a lot of damage.” <http://www.brisbanetimes.com.au/business/goodbye-to-the-mining-tax-and-good-riddance-20140902-10bd1c.html>

<sup>375</sup> **The marketplace of ideas is obstructed by entrenched power and ideology:**

“The Marketplace Of Ideas: A Legitimizing Myth,” Stanley Ingber, Volume 1984 February Number 1, “Theorists have often heralded the first amendment as creating a neutral marketplace of ideas. Proponents of this model view the market as essential to our society’s efforts to discover truth and foster effective popular participation in government. Professor Ingber asserts that the theoretical underpinnings of this model are based on assumptions of rational decision making that are implausible in modern society. He insists that, in reality, the market is severely skewed in favor of an entrenched power structure and ideology. Professor Ingber explores efforts to reform and correct this market defect and finds them equally flawed. He concludes that the marketplace may fulfil its alleged functions only if we explore a theory of freedom of conduct; the market as it exists today simply fine-tunes differences among elites, while diffusing pressure for change by preserving a myth of personal autonomy needed to legitimate a governing system strongly biased toward the status quo.” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2867&context=dlj>

<sup>376</sup> **Much like the Christie Discretion:**

“The Cartel: Lawyers and Their Nine Magic Tricks,” Evan Whitton,  
“Magic Trick 8 - The Christie Discretion: Now to Conceal Virtually All Evidence. ...

Probative means tending to prove (the charge). **The Christie discretion gives a judge power to conceal evidence if, in his opinion it is factually only slightly probative, but it may cause great prejudice against the accused in the minds of jurors of allegedly feeble intelligence and sense of fairness.** ...

<http://netk.net.au/Whitton/Cartel28.asp>

<sup>377</sup> 2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received) <https://tinyurl.com/kymge9z>

<sup>378</sup> **Whistleblowers were ignored in favour of the government’s own experts:**



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Whistleblower Dr. Kim Sawyer: *"Real whistleblowers, that is, people who have blown the whistle and paid the price, are very disappointed with the legislation. We were not listened to."*

Whistleblower Serene Teffaha: *"The only experts here are actual whistleblowers. Academics funded through Government, hiding behind aging desks, are not authority on qualitative experience."*

*"You better be careful blowing the whistle — new laws have holes"*, Brendan Jones, 2013-07-30.

<http://www.crikey.com.au/2013/07/30/you-better-be-careful-blowing-the-whistle-new-laws-have-holes/>

(Note: Rebuttal to Attorney-General's response appears in the Comments)

<sup>379</sup> **The experts were government funded:**

The report was government-funded: *'This research was made possible by the Australian Research Council and the project's partner organisations: Commonwealth - Commonwealth Ombudsman, Australian Public Service Commission, New South Wales - Independent Commission Against Corruption, NSW Ombudsman, Queensland Crime and Misconduct Commission, Queensland Ombudsman, Office of the Public Service Commissioner, Western Australia - Corruption and Crime Commission, Ombudsman Western Australia, Office of the Public Sector Standards Commissioner, Victoria - Ombudsman Victoria, Northern Territory - Commissioner for Public Employment, Australian Capital Territory - Chief Minister's Department, Non-government partner - Transparency International Australia'*

The leaders of that report were former employees of the Commonwealth Ombudsman and the Commonwealth Attorney-General's Department (and NCA) respectively; agencies which had a potential conflict of interest due to systemic corruption within those agencies.

<sup>380</sup> **The government failed to consult whistleblowers, relied on its own government-funded "whistleblowing experts":**

2013-08-29 An Open Letter to the Public Service Commissioner concerning Systemic Corruption in the Australian Public Service *"Whistleblowers were frozen out of these laws' consultation process. Instead a government-funded 'Whistling While They Work' project was commissioned to survey whistleblowing, but it was not credible research. Most ridiculously, it excluded whistleblowers who had been sacked or resigned. These would have been the worst cases of agency abuse of whistleblowers. The study was done in partnership with agencies who had a conflict of interest. This project cost the taxpayer ~\$1M, but failed to provide legislators with the comprehensive view of whistleblowing they needed. ...*

*Myself and other whistleblowers have also tried to engage the WWTW researchers; some during the study, and (since they purport to be experts in the field who advise the government) some since. We found them uninterested to the point they didn't even acknowledge us. A colleague of theirs explained they probably didn't respond because they were only interested in quantitative data. But really, what does this say if they don't check the reliability of their data? (Particularly when they are already aware the agencies might be feeding them biased data?) ...*

*I documented breaches by defence complaints unit staff which Defence, the Ombudsman and the AFP all failed to act on. Most recently on April 4, I provided this information to the WWTW researchers none of whom responded. Despite having access to this information my understanding is none of them raised this evidence of this systemic corruption at the Senate hearings (to which they knew I was not invited), nor did they use the evidence I provided them with as proof to support their own publicly-stated concerns that politicians must not be exempted from the bill."*

[http://victimsofdsto.com/psc/#fail\\_consult](http://victimsofdsto.com/psc/#fail_consult)

<sup>381</sup> **The "whistleblowing experts" advising the government were told of systemic corruption within the government which was endangering whistleblowers, but to the best of my knowledge did not reveal it at the hearings, following which the systemically-corrupt Commonwealth Ombudsman agency (who has itself abused whistleblowers) was put in charge of the whistleblowing program:**

From: Brendan Jones  
To: [9 "whistleblowing experts" advising government]  
Date: Thu, Apr 4, 2013 at 3:40 PM  
Subject: Proposed Whistleblower laws [e-mail corrected]

Hi,

I'm a Whistleblower who has spent the last three years trying to have my complaint heard. I have evidence that shows the government is going to great lengths to obstruct the existing Whistleblower scheme, and that every single oversight agency has been compromised.

I hope you find this information useful with respect to the newly proposed Whistleblower laws, and would appreciate any guidance you can offer.

regards

(No Response)

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From: Brendan Jones  
To: [9 "whistleblowing experts" advising government]  
Date: Fri, Apr 26, 2013 at 2:37 PM  
Subject: Federal Government Corruption: Australia too Dangerous for High-Tech Startups

Hi,

I e-mailed you recently:

The journos and whistleblower groups I've been speaking to have suggested the best thing to do at this stage is to go public. Realise there are risks to going public, but the DTCA is so bad we're making plans to leave anyway.

Please find attached a rewrite of the letter of two weeks ago. All the names have been removed so it can be distributed publicly. Please send it to anyone interested to encourage public debate. I am interested to hear their thoughts.

There's a printable PDF of the letter attached, but it can also be read online (suitable for smartphones, iPads, Android, etc) here: <http://victimsofdsto.com/online>

There's also a website with a short summary at: <http://victimsofdsto.com>

BTW nothing from Dreyfus. The two anti-corruption lawyers who checked the letter said they don't think he's genuine about the whistleblower legislation and they'll sit on it until after the election.

cheers

*(No Response)*

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From: Brendan Jones  
To: [Leader of 9 "whistleblowing experts" advising government]  
Date: Thu, May 2, 2013 at 3:07 PM  
Subject: Fwd: Public Interest Disclosure Bill 2013

Hi ...,

I thought you might be interested in this.

cheers

On Thu, May 2, 2013 at 2:41 PM, Legal and Constitutional, Committee (SEN) <LegCon.Sen@aph.gov.au> wrote:

Coat of Arms -- PMS 187.jpg THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

...

Dear Mr Jones

Inquiry into Public Interest Disclosure Bill 2013

I am writing to advise that the documents you provided to the committee in relation to the above inquiry have not been accepted. The terms of reference for this inquiry are the provisions of the Bill, and the committee is not considering or examining personal cases or grievances, and has no role in resolving such grievances.

The documents that you have provided do not address the provisions of the Bill, and clearly relate to your personal case and the alleged behaviour of other parties. Accordingly, the committee has determined that the documents are not relevant to the committee's inquiry and will not be accepted by the committee.

You are advised that you are not covered by parliamentary privilege in respect of the content of the documents you have provided.

Yours sincerely

Committee Secretary

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From: [Leader of 9 "whistleblowing experts" advising government]  
To: Brendan Jones  
Date: Thu, May 2, 2013 at 4:13 PM  
Subject: Re: Public Interest Disclosure Bill 2013

Thanks Brendan

....

<sup>382</sup> 2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received) <https://tinyurl.com/kymge9z>

<sup>383</sup> **The Gillard minority government was one vote away from losing power:**

“Labor's minority government explained,” Matthew Liddy, 2010-09-08.



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***“How will Labor's minority government function? Labor has secured government thanks to an alliance with two regional independents in New South Wales (Rob Oakeshott and Tony Windsor), a Greens MP in Melbourne (Adam Bandt) and a Hobart-based independent (Andrew Wilkie). The ALP holds 72 seats in the House of Representatives; its alliance gives it the barest possible majority in the House: 76 seats to the Coalition's 74 seats.***

***So Labor is just one vote from losing power? Yes. Former Liberal leader John Hewson has noted that a government failure, ministerial misdemeanour or by-election could cost the Government power.”***

<http://www.abc.net.au/news/2010-09-08/labors-minority-government-explained/2253236>

<sup>384</sup> **If Craig Thomson's bills had bankrupted him, forcing a by-election, the Gillard government may have failed:**

***“ALP paid \$350,000 for Thomson legal costs,” 2012-06-09. Phillip Coorey and Kate McClymont, SMH, “Party officials contend that, had the ALP not footed the bills, Mr Thomson could have gone bankrupt. This would have disqualified him from being an MP, caused a byelection and most likely caused the Gillard government to fall.”***

<http://www.smh.com.au/federal-politics/political-news/alp-paid-350000-for-thomson-legal-costs-20120608-201he.html>

<sup>385</sup> **The Criminality of the State:**

Memoirs of a Superfluous Man, Albert Jay Nock, 1943: *“The State's criminality is nothing new and nothing to be wondered at. It began when the first predatory group of men clustered together and formed the State, and it will continue as long as the State exists in the world, because the State is fundamentally an anti-social institution, fundamentally criminal. The idea that the State originated to serve any kind of social purpose is completely unhistorical. It originated in conquest and confiscation—that is to say, in crime.*

***Like all predatory or parasitic institutions, its first instinct is that of self-preservation. All its enterprises are directed first towards preserving its own life, and, second, towards increasing its own power and enlarging the scope of its own activity. For the sake of this it will, and regularly does, commit any crime which circumstances make expedient.”***

<http://blog.mises.org/5800/nocks-memoirs-of-a-superfluous-man/>

<sup>386</sup> **Glenn Greenwald [Journalist who broke Edward Snowden's story] on the dangers of the government banning “hateful” or dangerous ideas:**

***“The fruits of hate speech laws,” Glenn Greenwald, Unclaimed Territory (Blog), 2006-11-02.***

***“I've written previously about the dangers and evils of the type of “hate speech” laws prevalent (and growing) in Europe and Canada. ... People who advocate these laws somehow convince themselves that if they give the power to the government to prosecute people for expressing “hateful” or dangerous ideas, those laws will only be applied against ideas that they dislike. But that is never how laws work. And it is particularly mystifying to me that anyone who has watched our current administration and its followers in action, seizing every power they can get their hands on in order to control information and criminalize dissent, would think that it is a good idea ever to allow the government – any government – to punish people for their ideas and comments.”***

<http://glenngreenwald.blogspot.com.au/2006/11/fruits-of-hate-speech-laws.html>

<sup>387</sup> **The right to speak freely and to promote diversity of ideas and programs is one of the chief distinctions that sets us apart from totalitarian regimes:**

Terminiello v. Chicago

US Supreme Court Justice Douglas delivered the opinion of the Court:

***“The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in De Jonge v. Oregon, 299 U.S. 353, 365, it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.***

***Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky v. New Hampshire, supra, pp. 571-572, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. See Bridges v. California, 314 U.S. 252, 262; Craig v. Harney, 331 U.S. 367, 373. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.”***

[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/terminiello.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/terminiello.html)

<sup>388</sup> **Chris Merritt says a judge should not decide what is or isn't community standards:**

***“Abbott taps consensus on race act,” The Australian, Chris Merritt, 2012-08-10.***

“What, for example, should be done about a procedure that requires a judge to determine liability not according to community standards, but according to the feelings of those who claim they have been wronged. And is it appropriate for the law to impose duties on judges that, to many, look more like those of an editor?”

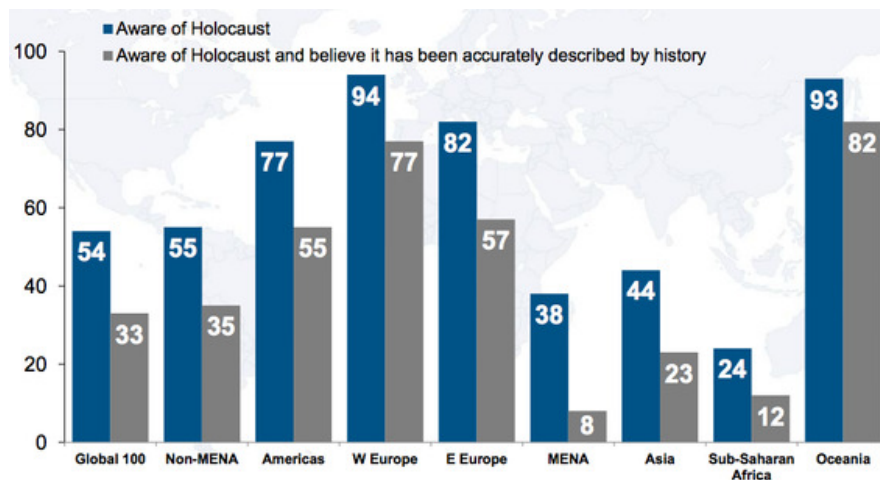
<http://www.theaustralian.com.au/business/opinion/abbott-taps-consensus-on-race-act/story-e6frg9uf-1226447073769>

<sup>389</sup> “France’s censorship demands to Twitter are more dangerous than ‘hate speech,’” Glenn Greenwald, *The Guardian*, 2013-01-03. “*Few ideas have done as much damage throughout history as empowering the government to criminalize opinions it dislikes.*” <http://www.theguardian.com/commentisfree/2013/jan/02/free-speech-twitter-france>

<sup>390</sup> “*Why Hate Speech Laws Have More In Common With Fascism Than Democracy*,” Joshua Goldberg, *Thought Catalog*, 2014-08-11. <http://thoughtcatalog.com/joshua-goldberg/2014/08/why-hate-speech-laws-have-more-in-common-with-fascism-than-democracy/>

<sup>391</sup> **Holocaust deniers by region:**

“The World Is Full of Holocaust Deniers,” Emma Green, 2014-05-14. “*A new survey suggests that many Asians, Africans, Middle Easterners, young people, Muslims, and Hindus believe that facts about the genocide have been distorted.*” <http://www.theatlantic.com/international/archive/2014/05/the-world-is-full-of-holocaust-deniers/370870/>



**To keep that in context**, consider the less people know about the Holocaust, the less likely you are to have an opinion about it one way or another. For example, what if I told you that after the Korean War the South Korean government (i.e. the ‘good guys’) massacred 100,000 people – including children as young as 12 years old – because they thought they might be communists? You’ve probably never heard of that before, and might think I made it up. Which has just made you a Korean Holocaust sceptic. In fact, it happened: [https://en.wikipedia.org/wiki/Bodo\\_League\\_massacre](https://en.wikipedia.org/wiki/Bodo_League_massacre) + [https://en.wikipedia.org/wiki/List\\_of\\_massacres\\_in\\_South\\_Korea](https://en.wikipedia.org/wiki/List_of_massacres_in_South_Korea)

<sup>392</sup> **Media: Hinch v Irving:**

“Freedom of Speech Threatened,” Derryn Hinch, 3AW Radio, 2011-03-28. “*When these sorts of issues come up I remember the case of that ghastly but clever Holocaust Denier, David Irving. He was banned from Australia. I was doing the HINCH program on TV at the time so did a satellite interview with him from London. And scoffed at him, and argued with him and tried to burst his far-fetched, hate-filled bubble. Surely, that’s better than bringing in repressive laws that hamper and curtail freedom of speech.*” <http://www.3aw.com.au/blogs/blog-with-derryn-hinch/freedom-of-speech-threatened/20110328-1cd70.html>

<sup>393</sup> **Here David Irving and his customers come across as douchebags:**

“Hitler was a great man and the Gestapo were fabulous police’: Holocaust denier David Irving on his Nazi death camp tour,” *Daily Mail*, 2010-09-28. “*Controversial British historian David Irving praised Adolf Hitler as ‘a great man’ and his Gestapo as ‘fabulous policeman’ on his shocking tour of former Nazi death camps in Poland. ... ‘Hitler could be very cruel but he was not immoral. He was just surrounded by “little” people,’ the paper said Irving told those on a £1,500-a-head tour he has been hosting. ... Irving led 11 people from Britain, America, Germany, and Australia around Hitler’s Polish Wolf’s Lair headquarters, where he described German officer Claus von Stauffenberg, who tried to assassinate the Fuhrer as a ‘traitor’. ... And the behaviour of Irving’s guests on the tour has raised eyebrows locally, reports the Italian undercover team. During one private dinner after a visit to the death camps one guest called out to cheers and laughter: ‘What a terrible smell. It’s like a gas chamber.’*” <http://www.dailymail.co.uk/news/article-1315591/David-Irving-claims-Hitler-great-man-leads-Nazi-death-camp-tours.html>

<sup>394</sup> **The Schilder’s List Project:**

“Spielberg Hailed, Wilson Chided at Oakland School, Donna Rosenthal, *LA Times*, 1994-04-12.

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*"This was the high school where emotions have run high in the three months since students on a Martin Luther King Jr. Day field trip were ejected from a showing of 'Schindler's List' after some of them laughed during atrocity scenes and ignored warnings to stop jeering.*

*In a 15-minute talk that elicited several standing ovations from the student body, Spielberg said the school got a bad rap in the national furor that ensued. The students had not understood what the movie was all about, Spielberg said, getting a laugh when he added: "I was thrown out of 'Ben-Hur' when I was a kid for talking."*

*Spielberg's visit was his first to a school since he won Academy Awards for "Schindler's List" and used his acceptance speeches to urge schools worldwide to teach students about the Holocaust. The Schindler's List Project offers free screenings to high school students."*

[http://articles.latimes.com/1994-04-12/news/mn-45168\\_1\\_high-school-students](http://articles.latimes.com/1994-04-12/news/mn-45168_1_high-school-students)

"Laughter at Film Brings Spielberg Visit," New York Times, 1994-04-13.

<http://www.nytimes.com/1994/04/13/us/laughter-at-film-brings-spielberg-visit.html>

<sup>395</sup> **The story of Barry Marshall and Robin Warren:**

Despite the pulp title, this is a very good article on the hurdles to having an idea accepted:

*"The Dr. Who Drank Infectious Broth, Gave Himself an Ulcer, and Solved a Medical Mystery,"* 2010-03.

*"The medical elite thought they knew what caused ulcers and stomach cancer. But they were wrong—and did not want to hear the answer that was right."* <http://discovermagazine.com/2010/mar/07-dr-drunk-broth-gave-ulcer-solved-medical-mystery/>

However the following article claims the researchers were not ostracised and the community's delays were reasonable:

*"Bacteria, Ulcers, and Ostracism? H. Pylori and the Making of a Myth,"* Kimball C. Atwood, 2004-11..12,

[http://www.csicop.org/si/show/bacteria\\_ulcers\\_and\\_ostracism\\_h\\_pylori\\_and\\_the\\_making\\_of\\_a\\_myth](http://www.csicop.org/si/show/bacteria_ulcers_and_ostracism_h_pylori_and_the_making_of_a_myth)

Whether ostracised or their idea ridiculed, the 10 year delay shows the scientific marketplace of ideas is inefficient. Yet, what's the alternative?

<sup>396</sup> Except for Proctor & Gamble, as described later.

<sup>397</sup> **Mark Dreyfus claims the marketplace of ideas is "imagined":**

Mark Dreyfus : *"I firmly reject the false argument put by some that practically any regulation or restriction on what we say infringes our right to free speech. I reject the simplistic notion that our only legitimate recourse against harmful or hateful speech is to be found in an imagined 'marketplace of ideas'."*

[http://www.justinian.com.au/storage/pdf/Dreyfus\\_Free\\_Speech.pdf](http://www.justinian.com.au/storage/pdf/Dreyfus_Free_Speech.pdf)

<sup>398</sup> **Some doctors found Ignaz Semmelweis' research that they should wash his hands to be offensive:**

*"Ignaz Semmelweis,"* Wikipedia, *"Despite various publications of results where hand-washing reduced mortality to below 1%, Semmelweis's observations conflicted with the established scientific and medical opinions of the time and his ideas were rejected by the medical community. **Some doctors were offended at the suggestion that they should wash their hands** and Semmelweis could offer no acceptable scientific explanation for his findings. Semmelweis's practice earned widespread acceptance only years after his death, when Louis Pasteur confirmed the germ theory and Joseph Lister, acting on the French microbiologist's research, practiced and operated, using hygienic methods, with great success. In 1865, Semmelweis was committed to an asylum, where he died at age 47 after being beaten by the guards, only 14 days after he was committed.."* [https://en.wikipedia.org/wiki/Ignaz\\_Semmelweis](https://en.wikipedia.org/wiki/Ignaz_Semmelweis)

<sup>399</sup> **Studies of race and intelligence:**

*"Should scientists study race and IQ? YES: The scientific truth must be pursued",* Stephen Ceci & Wendy M. Williams, Nature 2009-03, <http://www.nature.com/nature/journal/v457/n7231/full/457788a.html>

*"Should scientists study race and IQ? NO: Science and society do not benefit,"* Steven Rose, Nature, 2009-02. <http://www.nature.com/nature/journal/v457/n7231/full/457786a.html>

Alfred Binet's IQ Test was hijacked by racists and eugenisists, but it wasn't his test which was at fault. It was people who improperly used it:

*"6 Geniuses Who Saw Their Inventions Turn Evil,"* Cracked.com, 2014-08-22.

*"Alfred Binet's IQ Test Got Hijacked by Eugenics-Obsessed Racists. The whole concept of using a simple number to score somebody's brainpower goes back to French psychologist Alfred Binet, who developed the precursor to the IQ test in 1905. It's the sort of thing that doesn't seem to have the horror potential of your average mad science experiment; Binet had merely noticed that different children of the same age learn at different rates, so why not tailor the classroom to them by putting them through a series of cognitive tests to see what they can handle?"*

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After all, how could that information ever possibly be misused? Even if, say, children of certain races or backgrounds consistently scored lower, surely everyone would simply realize that was a sign that the system was failing them. Surely.

First, Binet himself knew his test wasn't all that scientific. It came with tons of disclaimers stressing that the test does not measure static intelligence and should not be used to label people in any way. And, for the single purpose of figuring out a kid's level of development, it worked pretty well. But then American eugenicists got hold of his work. The eugenicists loved the idea of intelligence tests because they wanted to use them to identify and weed out "the idiots" from the gene pool, which, by sheer coincidence, all happened to include anyone who wasn't a white American. Never mind that the score can absolutely be improved with education -- why burden the system with teaching children when we can just breed superior intelligence into them!

Thus, immigrants at Ellis Island were tested using the Binet scale (which was never meant for adults) so that eugenicists could rank races of people like they were Pokemon, but without acknowledging that they could level up with experience. The "results" naturally showed that intelligence was closely linked to how white your skin was, which was then used to propagate the idea that people from southern and eastern Europe were barely smarter than well-trained horses, and about as useful.

It went even further downhill after Binet's invention was used to mess with people's junk. After intelligence tests took off, 30 states used them as the basis of forced sterilization, which by the 1960s affected 60,000 Americans, all because an old-timey BuzzFeed quiz determined that their Simpsons character was Ralph Wiggum.

Binet died in 1911, thankfully missing the worst of this. But not long before his death, he complained about the "brutal pessimism" of "deplorable verdicts that affirm that the intelligence of an individual is a fixed quantity." And if he wasn't such a gentleman, he probably would have added "you unbelievable assholes" to it."

[http://www.cracked.com/article\\_21506\\_6-geniuses-who-saw-their-inventions-turn-evil.html](http://www.cracked.com/article_21506_6-geniuses-who-saw-their-inventions-turn-evil.html)

#### <sup>400</sup> Hereditary Intelligence:

"IQ is inherited, suggests twin study," Alison Motluk, New Scientist, 2001-11-05 "Genes have a very strong influence over how certain parts of our brains develop, scientists in the US and Finland have found. And the parts most influenced are those that govern our cognitive ability. In short, you inherit your IQ."

<http://www.newscientist.com/article/dn1520-iq-is-inherited-suggests-twin-study.html>

"Thank your parents if you're smart: Up to 40% of a child's intelligence is inherited, researchers claim," Damien Gayle, Daily Mail, 2013-03-16, "New estimate is lower than those given by previous studies. Researchers analysed DNA and IQ test results from 18,000 children. They suggest a range of genes may affect intelligence cumulatively"

<http://www.dailymail.co.uk/sciencetech/article-2293861/Thank-parents-youre-smart-Up-40-childs-intelligence-inherited-researchers-claim.html>

"Study gives more proof that intelligence is largely inherited," UCLA, 2009-03-17. "In a study published in the Journal of Neuroscience Feb. 18, UCLA neurology professor Paul Thompson and colleagues used a new type of brain-imaging scanner to show that intelligence is strongly influenced by the quality of the brain's axons, or wiring that sends signals throughout the brain. The faster the signalling, the faster the brain processes information. And since the integrity of the brain's wiring is influenced by genes, the genes we inherit play a far greater role in intelligence than was previously thought. Genes appear to influence intelligence by determining how well nerve axons are encased in myelin — the fatty sheath of "insulation" that coats our axons and allows for fast signaling bursts in our brains. The thicker the myelin, the faster the nerve impulses." <http://newsroom.ucla.edu/releases/more-proof-that-intelligence-is-85134>

#### <sup>401</sup> How political philosophy directed science with disastrous results in the Soviet Union:

"When the Soviet Union Chose the Wrong Side on Genetics and Evolution," Sarah Zielinski, Smithsonian, 2010-02-01. "Whenever I hear that some political figure has attempted to legislate science to suit the convenience of their political beliefs—and this happens fairly frequently, even here in the United States—I think back to biology class and the story of Trofim Lysenko in the early years of the Soviet Union." <http://www.smithsonianmag.com/science-nature/when-the-soviet-union-chose-the-wrong-side-on-genetics-and-evolution-23179035/>

#### <sup>402</sup> The Polio Vaccine theory in the Origin of AIDS:

'Nearly all great scientists start out as heretics,' Matt Ridley, Wired, 2009-11-22. "Right on the cusp of plausibility, in my view, lies the heresy championed by Edward Hooper in his book *The River*, that the Aids epidemic may have been started by trials of experimental polio vaccines in Congo and Burundi in the late 1950s. I hope it is not true, yet I have always thought the circumstantial evidence Hooper exhaustively gathered was strong enough to merit serious discussion. Early, live polio vaccines were indeed contaminated with animal viruses such as SV40; huge vaccine trials were done in the year before the oldest surviving HIV-positive blood sample was taken and in areas where Aids epidemics later broke out among the young adults likely to have been vaccinated as children; and a large chimpanzee colony was maintained for polio research by the very team developing the vaccine in the Congo (HIV is a chimp virus). But there are some good arguments against the theory: the family tree of the virus seems to show earlier infection of human beings, and no sample of chimp tissue used for locally amplifying the vaccine has ever come to light."

<http://www.wired.co.uk/magazine/archive/2009/10/start/nearly-all-great-scientists-start-out-as-heretics>



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“Polio vaccines and the origin of AIDS: some key writings,” Brian Martin, *“One theory of the origin of AIDS is that it developed from contaminated vaccines used in the world's first mass immunisation for polio. There are a number of reasons why this theory is plausible enough to be worthy of further investigation.”* [Links to Literature]  
<https://www.uow.edu.au/~bmartin/dissent/documents/AIDS/>

<sup>403</sup> Although the government’s mass surveillance programs are increasingly giving them that power.

<sup>404</sup> Defined as a blind faith their premises are divine or morally pure.

<sup>405</sup> Defined as a blind faith that people in positions of authority should be assumed experts with no conflict of interest.

<sup>406</sup> **Jessica Rudd (daughter of Kevin Rudd) is a columnist at the *Brisbane Times*:**

*“Jessica Rudd writes about political, social and lifestyle issues.”*

*“Love and lippy for a cure,” Jessica Rudd, Brisbane Times, 2014-05-05. “I arrived at Sunday school in 1992 in printed leggings with a matching scrunchie. Renée Coffey, nineteen months my senior, approached me sporting a purplish hypercolour t-shirt. It was the coolest thing I’d ever seen. She invited me to make a handprint on it and with that, a lifelong friendship was forged. At Morningside State School she took me under her wing. It wasn’t every day you saw a popular grade fiver hanging out with the dorky, shy, new girl in grade four, but she didn’t think twice about it. ...”*  
<http://www.brisbanetimes.com.au/queensland/blogs/jessica-rudd/love-and-lippy-for-a-cure-20140504-37qa2.html>

*“Why the federal government should have a fixed four-year term,” Jessica Rudd, Brisbane Times, 2014-05-19. “First, bad governments are worse when they don’t have time to find their feet. How many parents of three-year-olds do you hear saying, “wowsers, he’s only three? That felt like a decade”. None. Because even when you’ve spent 377 consecutive nights bouncing your bairns to sleep on a Swiss ball and every aeroplaned spoonful of Weet-Bix feels like a hostage negotiation, three years zoom by for the simple reason that you’re flat out.”*  
<http://www.brisbanetimes.com.au/queensland/blogs/jessica-rudd/why-the-federal-government-should-have-a-fixed-fouryear-term-20140519-38if6.html>

*“Who cares if Obama chewed gum?,” Jessica Rudd, Brisbane Times, 2014-06-09.*

<http://www.brisbanetimes.com.au/queensland/blogs/jessica-rudd/who-cares-if-obama-chewed-gum-20140608-39qxn.html>

*“Who enters scones in the Ekka? My mate, that’s who,” Jessica Rudd, Brisbane Times, 2014-08-11. “Have you ever pondered, while engulfing your second strawberry ice cream, what kind of person enters a pumpkin, a quilt or a goat in the Royal Queensland Show? Ponder no more.”* <http://www.brisbanetimes.com.au/queensland/blogs/jessica-rudd/who-enters-scones-in-the-ekka-my-mate-thats-who-20140810-3dgi2.html>

If Jessica *really* wants to do political, social and lifestyle issues, an exclusive with her Dad about this could go down wonders: <http://news.smh.com.au/breaking-news-national/govt-wont-probe-new-kessing-claims-20090907-fd8p.html>

<sup>407</sup> For example, when I asked LNP Justice Minister Michael Keenan why he wasn’t acting on federal corruption, his Twitter account was deleted.

<sup>408</sup> “Deductive Logic,” Terry Halpin and Roderic Girle, Logicpress, 1981, ISBN 9780959345100.

<sup>409</sup> I accept former LNP A-G Neil Brown QC’s opinions were genuine, but he based his arguments on unproven fundamentalist propositions.

<sup>410</sup> **How facts Backfire:**

*“How facts backfire,” Joe Keohane, 2010-07-11. “Researchers discover a surprising threat to democracy: our brains.”*

*“It’s one of the great assumptions underlying modern democracy that an informed citizenry is preferable to an uninformed one. “Whenever the people are well-informed, they can be trusted with their own government,” Thomas Jefferson wrote in 1789. This notion, carried down through the years, underlies everything from humble political pamphlets to presidential debates to the very notion of a free press.*

*Mankind may be crooked timber, as Kant put it, uniquely susceptible to ignorance and misinformation, but it’s an article of faith that knowledge is the best remedy. If people are furnished with the facts, they will be clearer thinkers and better citizens. If they are ignorant, facts will enlighten them. If they are mistaken, facts will set them straight.*

*In the end, truth will out. Won’t it?*

*Maybe not. Recently, a few political scientists have begun to discover a human tendency deeply discouraging to anyone with faith in the power of information. It’s this: Facts don’t necessarily have the power to change our minds. In fact, quite the opposite. In a series of studies in 2005 and 2006, researchers at the University of Michigan found that when misinformed people, particularly political partisans, were exposed to corrected facts in news stories, they rarely changed their minds. In fact, they often became even more strongly set in their beliefs. Facts, they found, were not curing misinformation. Like an underpowered antibiotic, facts could actually make misinformation even stronger.*

*This bodes ill for a democracy, because most voters — the people making decisions about how the country runs — aren’t blank slates. They already have beliefs, and a set of facts lodged in their minds. The problem is that sometimes*

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*the things they think they know are objectively, provably false. And in the presence of the correct information, such people react very, very differently than the merely uninformed. Instead of changing their minds to reflect the correct information, they can entrench themselves even deeper.*

*“The general idea is that it’s absolutely threatening to admit you’re wrong,” says political scientist Brendan Nyhan, the lead researcher on the Michigan study. The phenomenon — known as “backfire” — is “a natural defense mechanism to avoid that cognitive dissonance. ...”*

[http://www.boston.com/bostonglobe/ideas/articles/2010/07/11/how\\_facts\\_backfire/?page=full](http://www.boston.com/bostonglobe/ideas/articles/2010/07/11/how_facts_backfire/?page=full)

#### <sup>411</sup> **Solutions to our vulnerability to misinformation:**

“New study analyzes why people are resistant to correcting misinformation, offers solutions.,” Institute for Social Research, University of Michigan. 2012-09-20

*“Misinformation stays in memory and continues to influence our thinking, even if we correctly recall that it is mistaken,” said U-M’s Colleen Seifert, the Arthur F. Thurnau Professor of Psychology. “Managing misinformation requires extra cognitive effort from the individual.*

*“If the topic is not very important to you, or you have other things on your mind, you are more likely to make use of misinformation. Most importantly, if the information fits with your prior beliefs, and makes a coherent story, you are more likely to use it even though you are aware that it’s incorrect.”*

*Stephan Lewandowsky, a professor at the University of Western Australia and the study’s lead author, said “this persistence of misinformation has fairly alarming implications in a democracy because people may base decisions on information that, at some level, they know to be false.”*

*“At an individual level, misinformation about health issues—for example, unwarranted fears regarding vaccinations or unwarranted trust in alternative medicine—can do a lot of damage,” he said. “At a societal level, persistent misinformation about political issues (e.g., Obama’s health care reform) can create considerable harm. On a global scale, misinformation about climate change is currently delaying mitigative action.”*

*Ideology and personal world views can be major obstacles for changing false beliefs. Despite attempts to retract misinformation, the researchers say this effort can backfire and even amplify the erroneous belief.*

*In fact, attempts to correct misinformation often spread the false beliefs even further, they say. That’s because corrections may repeat the false information and then explain why it is wrong.*

*“As time passes, people forget the details. When they then hear the misinformation again, it feels all the more familiar and is even more likely to be accepted,” said Norbert Schwarz, the Charles Horton Cooley Collegiate Professor of Psychology and a research professor at the Institute for Social Research.*

*“To be effective, corrections need to tell people what’s true without repeating all the stuff that’s wrong,” said Schwarz, who is also a marketing professor at the Ross School of Business. “The more often people hear a false message, the more likely they are to believe it.” ...*

<http://home.isr.umich.edu/sampler/new-study-analyzes-resistance-to-correcting-misinformation/>

#### <sup>412</sup> **Self-Delusion: Are we too dumb for democracy?**

“Are We Too Dumb for Democracy? The Logic Behind Self-Delusion,” Alternet, 2010-12-19, “When faced with facts that do not fit seamlessly into our individual belief systems, our minds automatically reject (or backfire) the presented facts.” [http://www.alternet.org/story/149262/are\\_we\\_too\\_dumb\\_for\\_democracy\\_the\\_logic\\_behind\\_self-delusion](http://www.alternet.org/story/149262/are_we_too_dumb_for_democracy_the_logic_behind_self-delusion)

#### <sup>413</sup> **Vulnerability to Commitment and Consistency:**

“Influence: The Psychology of Persuasion,” Robert B. Cialdini, 1999. <https://booko.com.au/9780688128166/Influence>

*“**Commitment and Consistency** – If people commit, orally or in writing, to an idea or goal, they are more likely to honor that commitment because of establishing that idea or goal as being congruent with their self-image. Even if the original incentive or motivation is removed after they have already agreed, they will continue to honor the agreement. Cialdini notes Chinese brainwashing on American prisoners of war to rewrite their self-image and gain automatic unenforced compliance.”* [https://en.wikipedia.org/wiki/Robert\\_Cialdini](https://en.wikipedia.org/wiki/Robert_Cialdini)

Stephen Colbert on George W. Bush: “The greatest thing about this man is he’s steady. You know where he stands. He believes the same thing Wednesday that he believed on Monday — no matter what happened Tuesday.”

#### <sup>414</sup> **Vulnerability to Social Proof:**

“Influence: The Psychology of Persuasion,” Robert B. Cialdini, 1999. <https://booko.com.au/9780688128166/Influence>

#### <sup>415</sup> **Vulnerability to Risk Aversion:**



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“Risk aversion,” Wikipedia, “*Risk aversion is the reluctance of a person to accept a bargain with an uncertain payoff rather than another bargain with a more certain, but possibly lower, expected payoff.*”

[https://en.wikipedia.org/wiki/Risk\\_aversion](https://en.wikipedia.org/wiki/Risk_aversion)

<sup>416</sup> **FUD:**

“What is Fud?” Roger Irwin, 1998, “*FUD sands for Fear, Uncertainty, Doubt. It is a marketing technique used when a competitor launches a product that is both better than yours and costs less, i.e. your product is no longer competitive. Unable to respond with hard facts, scare-mongering is used via 'gossip channels' to cast a shadow of doubt over the competitors offerings and make people think twice before using it.*”

<http://www.cavcomp.demon.co.uk/halloween/fuddef.html>

<sup>417</sup> **Political FUD:**

“Stability,” Media Release, Liberal Party, 2013. “*Labor is just offering you more of the same. If Labor hangs on, they will only be offering more talk, more chaos, more division, more uncertainty and more unexpected new taxes. There will be more turmoil and you can be certain there will be another deal with the Greens. It will be the same Rudd-Gillard-Rudd Labor failure all over again. // The risk at this election is another Labor minority government just like the one we’ve had for the past three years. // Another hung parliament with the Greens and Labor sharing power just means more uncertainty, more debt, more taxes, less jobs and more unexpected hits on you and your family. // Only the Coalition can be trusted when we say there will be no deals with the Greens, no deals with flaky independents; no deals whatsoever.*” <http://www.liberal.org.au/latest-news/2013/08/04/choice-election-2013>

<sup>418</sup> **Vulnerability to Authority:**

“Influence: The Psychology of Persuasion,” Robert B. Cialdini, 1999. <https://booko.com.au/9780688128166/Influence>

“**Authority** – People will tend to obey authority figures, even if they are asked to perform objectionable acts. Cialdini cites incidents such as the Milgram experiments in the early 1960s and the My Lai massacre.”

[https://en.wikipedia.org/wiki/Robert\\_Cialdini](https://en.wikipedia.org/wiki/Robert_Cialdini)

Memoirs of a Superfluous Man, Albert Jay Nock, 1943: “**According to my observations, mankind are among the most easily tameable and domesticable of all creatures in the animal world. They are readily reducible to submission, so readily conditionable (to coin a word) as to exhibit an almost incredibly enduring patience under restraint and oppression of the most flagrant character. So far are they from displaying any overweening love of freedom that they show a singular contentment with a condition of servitorship, often showing a curious canine pride in it, and again often simply unaware that they are existing in that condition.**” <http://blog.mises.org/5800/nocks-memoirs-of-a-superfluous-m-an/>

<sup>419</sup> **Tim Wilson’s performance as Human Rights Commissioner:**

2014-07-22 Royal Petition concerning Federal Government Corruption, <http://victimsofdsto.com/royal-cosgrove-2/#hrc>

<sup>420</sup> **Dunning-Kruger effect: Incompetent people who believe they are geniuses:**

“**Dunning-Kruger effect**,” Wikipedia, “*The Dunning-Kruger effect is a cognitive bias manifesting in unskilled individuals suffering from illusory superiority, mistakenly rating their ability much higher than is accurate. This bias is attributed to a metacognitive inability of the unskilled to recognize their ineptitude. David Dunning and Justin Kruger of Cornell University conclude, "the miscalibration of the incompetent stems from an error about the self, whereas the miscalibration of the highly competent stems from an error about others".*”

[https://en.wikipedia.org/wiki/Dunning%E2%80%93Kruger\\_effect](https://en.wikipedia.org/wiki/Dunning%E2%80%93Kruger_effect)

<sup>421</sup> Letters to the Editor, SMH, 2014-09-08. <http://www.smh.com.au/comment/smh-letters/tony-abbott-hard-to-take-seriously-as-world-leader-20140907-10dizc.html>

<sup>422</sup> We’re even more blind when its ourselves:

Albert F. Schlieder: “*We tend to judge others by their behaviour and ourselves by our intentions.*”

<sup>423</sup> **Vulnerability to Trust and Liking:**

“Influence: The Psychology of Persuasion,” Robert B. Cialdini, 1999. <https://booko.com.au/9780688128166/Influence>

<sup>424</sup> **Conflicts of Interest:**

“Conflicts of Interest,” American Sociological Association, “*A conflict of interest arises when personal interest prevents an individual from performing his/her professional or public obligations in an unbiased manner. The consequences of these conflicts can be the loss of objectivity, the potential for decreased effectiveness as a professional, and the possibility of harm and/or exploitation of another party. Because objectivity is the essence of science, professional and scientific judgments that may be impaired by conflicts of interest are of concern.*”

<http://www.asanet.org/ethics/detail.cfm?id=23>

<sup>425</sup> Many people know this in principle. But in practice I’ve found it far stronger than expected; Very close to 100%. The few people who don’t follow it, often naïvely thinking they will be protected, are inevitably destroyed.

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Brian Martin's book "Suppression Stories" is very depressing reading. *"Suppression Stories,"* Brian Martin, University of Wollongong, 1997, ISBN 0 646 30349 X. <http://www.bmartin.cc/dissent/documents/ss/ssall.html>

<sup>426</sup> Party and donors come first. Public servants come next. Given a choice between a public servant and a constituent, the politician will side with the public servant.

<sup>427</sup> Their loyalty is to fellow public servants. Given a choice between a public servant and a member of the public, public servant will side with a public servant.

<sup>428</sup> Academics are dependent on research funding. A good relationship with the government makes research funding far easier to obtain. It's exceptionally rare for an academic to blow the whistle on a fellow academic. Of the few cases where it happened, the whistleblower inevitably suffers. Many examples: *"Suppression Stories,"* Brian Martin, University of Wollongong, 1997, ISBN 0 646 30349 X. <http://www.bmartin.cc/dissent/documents/ss/ssall.html>

<sup>429</sup> NGOs are dependent on funding from the government. A good relationship with the government makes funding far easier to obtain.

<sup>430</sup> A journalist's first loyalty is to their proprietor. A commercial proprietor's loyalty is to the shareholders. They will not do stories detrimental to the business (including pursuing stories likely to result in a defamation suit, or make enemies within the government.

A journalist's second loyalty is to their primary sources. These are people or institutions supply a steady stream of stories. They will not run stories that might embarrass those primary sources. *"Avoid 'beat' journalists too. They focus on a particular sector or institution, building a network of people to provide them with a steady flow of information so they can publish frequently. Favours such as tips or an exclusive interview can create a strong sense of mutual obligation in a journalist. Just meeting a man, shaking hands and exchanging pleasantries can disincline a journalist from publishing information which could destroy his career, or even just make him cross. A reporter who relies on a source for easy information must look the other way when the source is involved in dubious practices. Evan Whitton calls such a journalist 'a prisoner of the source' which is why for example 'investigative reporting into police has got to be done from outside traditional police reporting.'"* <http://www.bmartin.cc/dissent/documents/Jones13.html>

This varies with the journalist, but some journalists are not even loyal to secondary sources. Andrew Hooley warns *"Avoid 'hack' journalists who publish often and without substance as they go after the easy grab story irrespective of the potential damage."* <http://www.bmartin.cc/dissent/documents/Jones13.html>

<sup>431</sup> **Rules for debate adjudicators:**

This is not about pursuit of the truth. It's about winning an argument:

*"Schools Debate: Notes for Adjudicators,"* Christopher Erskine (Australia), Rosemary Dixon, Andrew Stockley (NZ), Elizabeth Virgo (Bermuda), David Pritchard (Wales). *"Some judges are swayed by rebuttal or clash. The more there is, the more they believe the speaker is doing a good job. This is logical until you realise that the government has one less opportunity to rebut the other side than the opposition does. The accelerating rebuttal mark means that opposition teams get a big advantage. Always be sure that you are giving full credit to the way a team has proposed an argument as well as to the way their opponents have attempted to knock it down."* <http://www.schoolsdebate.com/docs/notes.asp>

<sup>432</sup> **Debating is about selling your side's ideas; not about a search for the truth:**

*"School debating in Australia,"* Wikipedia, *"School debating in Australia is primarily organised by The Australian Debating Federation and its eight affiliates. The focus of the debating year is the Australian National Schools Debating Championships, at which the team that is to represent Australia at the World Schools Debating Championships is selected."* [https://en.wikipedia.org/wiki/School\\_debating\\_in\\_Australia](https://en.wikipedia.org/wiki/School_debating_in_Australia)

<sup>433</sup> **Japan has more flower arrangers than lawyers:**

*"Sue-it-yourself or how to live without a lawyer,"* Stewart McBride, The Christian Science Monitor.

*"Lawyers have become operators of the toll bridge that we all cross in search of justice. The cost of legal services now accounts for 2 percent of the nation's gross national product, more than the steel industry. Per capita, the United States now has three times the number of lawyers in Great Britain, 44 times the lawyers in Japan (where flower arrangers outnumber lawyers). Litigious Los Angeles County, has more judges than all of France."* <http://www.csmonitor.com/1983/0901/090158.html>

*"Too many lawyers in Japan, says Ministry of Internal Affairs,"* Majirox News, *"There were 30,516 attorneys registered with the Japan Bar Association as of March 2011. That would be approximately one lawyer for every 4,119 people. By comparison the American Bar Association claimed over 1.2 million active attorneys in the United States. That would be roughly one lawyer for every 250 people."* <http://www.majiroxnews.com/2012/04/23/too-many-lawyers-in-japan-says-ministry-of-internal-affairs/>

<sup>434</sup> US Supreme Court Justice Louis Brandeis: "... that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government."

<sup>435</sup> **ICPPR: Article 19: Freedom of Speech:**

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## **“Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.”  
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

### <sup>436</sup> **ICCPR: Freedom of Expression anchored in International Law:**

“Article 19: freedom of expression anchored in international law,” Jeff Howard, Free Speech Debate, “When a state signs the ICCPR, it does not become legally bound by it, but rather declares its intent to become so bound, and it promises to refrain from actions that would defeat the “object and purpose” of the treaty until such a time.”  
<http://freespeechdebate.com/en/discuss/article-19-freedom-of-expression-anchored-in-international-law/>

<sup>437</sup> European Convention on Human Rights. [http://www.hrcr.org/docs/Eur\\_Convention/euroconv3.html](http://www.hrcr.org/docs/Eur_Convention/euroconv3.html)

### <sup>438</sup> **Rights the government can take away are not rights at all:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: “The Victorian Human Rights Charter proclaims you have the right to free speech... except when you don’t.” [http://victimsofdsto.com/hrc/#\\_edn29](http://victimsofdsto.com/hrc/#_edn29)

### <sup>439</sup> **You have the right to free speech... except when the government decides you don’t:**

Similarly the Australian government’s HRC which concludes the many restrictions of free speech in Australia are all compatible with the ICCPR:

“Permissible limitations of the ICCPR right to freedom of expression,” HRC,  
<https://www.humanrights.gov.au/publications/background-paper-human-rights-cyberspace/4-permissible-limitations-icpr-right-freedom>

### <sup>440</sup> **For an Alternate view: George Williams praises the Victorian Human Rights Charter:**

“Critique And Comment: The Victorian Charter Of Human Rights And Responsibilities: Origins And Scope,” George Williams, Melbourne University Law Review 2006, “The Victorian Charter of Rights will not only promote better regard for human rights principles, it will improve the quality of work by Victoria’s public institutions — it is based on the idea that government should be transparent in its treatment of principles like human rights and also accountable to the people by operating fairly and without adverse discrimination. ... In many ways the Victorian Charter of Rights is modest. It does not disturb accepted principles of parliamentary sovereignty and does not confer the powers associated with many bills of rights, like the power of courts to have the final say by striking down inconsistent laws.”

<http://www.austlii.edu.au/au/journals/MelbULawRw/2006/27.html>

### <sup>441</sup> **How the authorities can use the possibility of violence to silence free speech:**

“Remembering the Nazis in Skokie,” Geoffrey R. Stone Become a fan,” Edward H. Levi Distinguished Service Professor of Law, University of Chicago via The Huffington Post, “But is this a reason to suppress speech? Isn’t the obligation of the government to protect the speaker and to control and punish the lawbreakers, rather than to invite those who would silence the speech to use threats of violence to achieve their ends? If the village of Skokie had won on this point, then southern communities who wanted to prosecute civil rights marchers in Selma, Montgomery and Birmingham could equally do so, on the plea that such demonstrations would trigger “uncontrollable violence.” Moreover, once government gives in to such threats of violence it effectively invites a “heckler’s veto,” empowering any group of people who want to silence others to do so simply by threatening to violate the law.”  
[http://www.huffingtonpost.com/geoffrey-r-stone/remembering-the-nazis-in\\_b\\_188739.html](http://www.huffingtonpost.com/geoffrey-r-stone/remembering-the-nazis-in_b_188739.html)

### <sup>442</sup> **Why subjective tests on speech are dangerous:**

2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: “Applying subjective tests such as “harsh and extreme” to free speech is dangerous, as it lets one group of people determine what another group is permitted to say. For example, News Limited’s Judith Sloan called reef protestors “eco-terrorists,” Des Houghton called them “anarchists” and “law breakers.” By their standard, they find that speech to be harsh. If the government agrees (and no doubt they would since it’s their policy), expression of opinion to the contrary is forbidden.”  
<http://victimsofdsto.com/hrc/>

### <sup>443</sup> **Weasel words: Donor vs. Financier.**

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“Donor” is a nicer sounding word than “Financier,” because “Donor” implies they are giving money as a selfless gift of charity with no expectation of receiving anything in return.

<sup>444</sup> **Restrictions on Court Reporting by Journalists:**

“The Whistleblower’s Guide to Journalists,” Brendan Jones, 2013.

How court restrictions on what journalists can say hinder free speech, and do not make the court system “fair.”

[http://www.bmartin.cc/dissent/documents/Jones13.html#\\_edn14](http://www.bmartin.cc/dissent/documents/Jones13.html#_edn14)

**Criticising the court: Contempt of Court: Jail and/or a fine.**

“Contempt & court reporting in Australia”, The News Manual. “*Scandalising the court ...*

*However, great care must always be taken in the way in which the courts' decisions are criticised.*

**Anything reported which is likely to lower the authority of the court or bring it into public derision and contempt may be held to scandalise the court . . . the suggestion that a judge deliberately made an unjust decision, or that he was biased, or drunk, or incapable of carrying out his job, would be held to scandalise the court.”**

[http://www.thenewsmanual.net/Resources/medialaw\\_in\\_australia\\_03.html](http://www.thenewsmanual.net/Resources/medialaw_in_australia_03.html)

<sup>445</sup> **Criticising the court: Defamation: Damages and legal costs.**

“The rising culture of suppression,” Michael Stutchbury, Crikey, 2002-06-09.

*“I’ve spent some time reading the two lengthy judgements by Victorian Supreme Court judge Bongiorno which ruled against Herald Sun columnist Andrew Bolt for suggestions that a Victorian magistrate was soft or lenient on criminals, surely a matter of public interest. The case is too tortured to cover in detail. But the jury was instructed to say yes or no to a series of questions. It said yes, the Bolt article was ‘defamatory’ of the magistrate plaintiff. No, the article was not ‘true’. No, it was not a ‘faithful and accurate’ report of a certain proceedings in the Magistrate’s Court. No, the article was not fair comment on a matter of public interest. But yes, the conduct of the newspaper in publishing the article was ‘reasonable in the circumstances’. And no, the newspaper was not inspired by ‘malice’.*

*But the jury did not indicate what exactly was not ‘true’ about the article and the judge’s decision casts no light on the matter. The case against Bolt took 15 days of court hearings. In finding that Bolt, or his employer, should be punished for defaming the Magistrate, Judge Bongiorno made much of the Magistrate’s hurt ‘feelings’. In his final decision, Judge Bongiorno ruled that the Magistrate was entitled to compensatory damages of \$210,000 - but gave no explanation of how he came up with that monetary assessment of the Magistrate’s loss of reputation or hurt feelings.*

***He added another \$25,000 in exemplary or punitive damages, again with no justification of the exact amount, because Bolt had publicly crowed about the jury’s previous finding that publication of his article was reasonable. And then the judge added the suspiciously round number of \$11,500 for interest, again with no calculation provided. That made a total of \$246,500 ordered to be paid to the Magistrate. As a point of comparison, I understand that someone who loses their reproductive organs in a workplace accident has their damages capped at less \$75,000.***

***The costs don’t end there. One report suggested that legal costs for the two sides in the Bolt case amounted to something like \$500,000. And that doesn’t include the cost to the public of paying the judge’s salaries or the costs of running the courtroom.”*** <http://www.crikey.com.au/2002/06/09/the-rising-culture-of-suppression/>

<sup>446</sup> **US journalists are allowed to criticise the courts:**

“Out of Order: Arrogance, Corruption, and Incompetence on the Bench”, Max Boot,

<http://www.nytimes.com/books/first/b/boot-order.html>

<sup>447</sup> **Defamation laws frighten ordinary people:**

“Defamation law fails the test,” Brian Martin, Illawarra Mercury, 2008-08-27, ***“I found out that many people - not just whistleblowers - are frightened by defamation issues. They search the web for information, find the leaflet and then contact me with their stories and their concerns. // Media organisations are quite familiar with the intricacies of defamation law. They have lawyers on tap to check contentious material as well as strategies to deal with legal actions. But the resources wielded by a large organisation are unavailable, indeed unknown, to most individuals. // Defamation law is supposed to protect reputations, but in practice it often serves to suppress free speech. Whatever the virtues and vices of the law for the media, it is an absolute disaster for ordinary individuals. It doesn’t protect reputations and it is regularly used to squelch open discussion.”*** <http://www.bmartin.cc/pubs/08mercury2.html>

<sup>448</sup> **“Adam and Eve, not Adam and Steve”:**

Leviticus 18:22 “You shall not lie with a male as one lies with a female; it is an abomination.”

Leviticus 20:13 “If there is a man who lies with a male as those who lie with a woman, both of them have committed a detestable act; they shall surely be put to death. Their bloodguiltiness is upon them.”

1 Corinthians 6:9-10 “Or do you not know that the unrighteous shall not inherit the kingdom of God? Do not be deceived; neither fornicators, nor idolaters, nor adulterers, nor effeminate, nor homosexuals, nor thieves, nor the covetous, nor drunkards, nor revilers, nor swindlers, shall inherit the kingdom of God.”



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Romans. 1:26-28, "For this reason God gave them over to degrading passions; for their women exchanged the natural function for that which is unnatural, 27 and in the same way also the men abandoned the natural function of the woman and burned in their desire toward one another, men with men committing indecent acts and receiving in their own persons the due penalty of their error. 28 And just as they did not see fit to acknowledge God any longer, God gave them over to a depraved mind, to do those things which are not proper." <http://carm.org/bible-homosexuality>

#### **Debate:**

"Matthew Vines: Bible Does Not Condemn Homosexuality," Stoyan Zaimov, Christian Post Reporter, 2012-09-25. <http://www.christianpost.com/news/matthew-vines-says-most-christians-are-wrong-homosexuality-is-not-a-sin-82026/pageall.html>

"Theologians Find Vines' 'Homosexuality Is Not a Sin' Thesis Not Persuasive," Lillian Kwon, Christian Post Reporter, 2012-09-28. <http://www.christianpost.com/news/theologians-find-vines-homosexuality-is-not-a-sin-thesis-not-persuasive-82341/pageall.html>

<sup>449</sup> **Queensland 'Gay Panic' is a downgrades the charge of murdering a homosexual to manslaughter.**

"'Homosexual advance defence' is a source of shame for Queensland," 2014-03-31. Dr Alan Berman and Sher Campbell, Dr Alan Berman "Two comparatively recent murder trials receiving widespread publicity in Maryborough, Queensland in 2010 and 2011 resulted in convictions for manslaughter rather than murder. In both instances, defendants alleged the victim had made an unwanted homosexual advance. The 'homosexual advance' can be asserted as part of the wider provocation defence which, if successful, means the accused will be acquitted of murder and convicted of the lesser crime of manslaughter." <http://www.brisbanetimes.com.au/queensland/homosexual-advance-defence-is-a-source-of-shame-for-queensland-20140331-35tze.html>

<sup>450</sup> **Gay Samurai:**

"My Dear Boy: Gay Love Letters through the Centuries," Rictor Norton, 1998. "Homosexuality was a fully integrated and non-stigmatized part of seventeenth-century Japanese culture, flourishing primarily within the Buddhist priestly tradition, among samurai (warrior) classes and in kabuki theater, where handsome young men dressed as boys or women (onnagata) onstage and functioned as courtesans offstage." <http://rictornorton.co.uk/samurai.htm>

"Homosexuality in Japan," Wikipedia, "Records of men who have sex with men in Japan date back to ancient times. Western scholars have identified these as evidence of homosexuality in Japan. There were few laws restricting sexual behavior in Japan before the early modern period. Anal sodomy was restricted by legal prohibition in 1872, but the provision was repealed only seven years later by the Penal Code of 1880 in accordance with the Napoleonic Code." [https://en.wikipedia.org/wiki/Homosexuality\\_in\\_Japan](https://en.wikipedia.org/wiki/Homosexuality_in_Japan)

<sup>451</sup> **Thai Ladyboys:**

"Gender identities in Thailand," Wikipedia. [https://en.wikipedia.org/wiki/Gender\\_identities\\_in\\_Thailand](https://en.wikipedia.org/wiki/Gender_identities_in_Thailand)

"New Thai campaign ad appeals to transgender voters," Patrick Winn, GlobalPost, Salon, 2013-02-07.

"Bangkok's leading candidate for governor believes they constitute an untapped voting bloc" [http://www.salon.com/2013/02/06/tk\\_5\\_partner\\_2/](http://www.salon.com/2013/02/06/tk_5_partner_2/)

"Thailand's transsexual flight attendants," Patrick Smith, Salon, 2011-02-18. "PC Air hires "ladyboys" to do the job." [http://www.salon.com/2011/02/17/thailand\\_transsexuals\\_airline/](http://www.salon.com/2011/02/17/thailand_transsexuals_airline/)

<sup>452</sup> Because if they're not that would make them sophists. ;-)

<sup>453</sup> **Bjelkemand:**

"Bjelkemand," Wikipedia, "The Bjelkemand was the term given to a system of malapportionment in the Australian state of Queensland in the 1970s and 1980s. Under the system, electorates were allocated to zones such as rural or metropolitan and electoral boundaries drawn so that rural electorates had about half as many voters as metropolitan ones. The Country Party (later National Party), a rural-based party led by Joh Bjelke-Petersen, was able to govern uninhibited during this period due to the 'Bjelkemand'." <https://en.wikipedia.org/wiki/Bjelkemand>

<sup>454</sup> **Censorship in Joh Bjelke-Petersen's Queensland: Playboy avoided showing pubic hair.**

"Australian men's magazines are tired and dying," Damien Murphy, SMH, 2014-08-23. "For years, Queensland's unique censorship laws kept the men's magazines extraordinarily profitable. Metres south of the Queensland border with NSW, the side streets of Tweed Heads were littered with shops selling pornography that attracted heavy patronage from visiting Queenslanders, mostly male. Some publishers put out special Queensland editions." <http://www.smh.com.au/lifestyle/life/australian-mens-magazines-are-tired-and-dying-20140822-106z8d.html>

<sup>455</sup> Insert Brazilian joke here.

<sup>456</sup> **Censorship in Joh Bjelke-Petersen's Queensland: Penthouse was banned in Queensland**

"Developments in Australian Politics", edited by Judith Brett, James Gillespie and Murray Goot, Macmillan Education, 1994. "Because of the dominance of conservative approaches among members of all political parties in Queensland, the

state's Literature Board of Review, Film Board of Review (established in 1974) and obscenity laws maintained a pressure of prohibition. In the face of significant commercial pressures and changes in type of publications available in Australia, the number of prohibition orders issued by the Literature Board of Review increased from an average of less than four per year in the 1960s to an average of 46 in the 1970s. Most of these were issued against hard-core sex magazines, freely available to adults in other states, The upmarket and (at that time) soft-core Australian Penthouse was, however, also subject to prohibition in Queensland during the 1970s, as were nudist, horror, crime/detective and martial arts publications (Sullivan 1993: 165-71)"

<sup>457</sup> **ICPPR: Article 20: Freedom of Hatred:**

"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." <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>458</sup> **Report by UN SR Heiner Bielefeldt: (Recommended Reading)**

"Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development," Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Human Rights Council, General Assembly, 2013-12-26.

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58_en.doc)

<sup>459</sup> **"Freedom of expression...can never be circumvented by invoking Article 20 [of the ICCPR]":**

"UN Officials Warn Against Misuse of Article 20 ICCPR to Thwart Free Speech", Freedom Rights Project, 2014-03-15. "The UN Special Rapporteur (SR) on freedom of religion or belief, Heiner Bielefeldt, reported to the UN Human Rights Council on 11 March 2014, presenting a report dated 26 December 2013, which concerns how States should deal with "collective religious hatred."

The report discusses the "root causes" of this problem, which the SR said include **"political authoritarianism which discourages people from communicating openly and participating actively in public debates....Governments may also instrumentalize religion as a means of shaping and reinforcing narrow concepts of national identity, tapping into feelings of religious belonging for the purpose of strengthening political loyalty."**

The SR recommended "trust-building" through public institutions and communication.

A section of the report concerned "advocacy for national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence," and the application of ICCPR Article 20 para 2.

The SR stressed: **"It cannot be emphasized enough that this provision does not demand a prohibition of sharp or even hostile speech in general: instead it concentrates on such forms of hatred advocacy that constitute 'incitement' to real acts of discrimination, hostility or violence."**

He further stated that the "Rabat Plan of Action explicitly endorses what the Human Rights Committee has clarified in its general comment Number 34, namely that prohibitions enacted under article 20 para 2...must comply with the strict requirements of Article 19" as well as other articles in the Covenant, such as 2, 5, 17, 18, and 26.

He stated in the report that **"freedom of expression...can never be circumvented by invoking Article 20."**

<http://www.freedomrights.info/activities/un-officials-warn-against-misuse-of-article-20-iccpr-to-thwart-free-speech/>

**Yet Australian government HCR endorses that circumvention:**

**"Permissible limitations of the ICCPR right to freedom of expression,"** HRC,

"In order to avoid impermissible limitations of the right to freedom of expression and information, particular caution would be required in the design and administration of any provisions addressing vilification on the basis of religion or belief. The Human Rights Committee has indicated: "Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, **except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.**"" <https://www.humanrights.gov.au/publications/background-paper-human-rights-cyberspace/4-permissible-limitations-iccpr-right-freedom>

That's a pretty big exception. 20(1) covers propaganda for war. 20(2) covers everything else:

"Article 20.

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." <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

**That is, the Australian government HCR is using Article 20 to circumvent Article 19.**

<sup>460</sup> **UN SCR on Political authoritarianism:**

Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Human Rights Council, General Assembly, 2013-12-26. **"Political authoritarianism. Another aggravating factor is a climate of political**



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authoritarianism which discourages people from communicating openly and participating actively in public debates. Indeed, the most important antidote to existing, or emerging, mistrust between groups of people is the reality check facilitated by frank intergroup communication and open public discourse. Without an encouraging communicative atmosphere in society, there is always the danger that negative anecdotal evidence associated with unfamiliar religious communities, minorities or dissenting individuals will remain exclusively within closed circles, including Internet chat rooms, while never being exposed to any open communication and public critical discussions. Rumours and gossip which remain unchecked by any counter-evidence and counterarguments can easily escalate into fully fledged conspiracy theories against unwelcome religious competitors or other religious groups. This increases the likelihood of religious hatred becoming an influential factor in social and political life. Moreover, when attempting to curb public criticism of their own political performance, authoritarian Governments may easily succumb to the temptation to blame existing problems and obvious political failures on religious or belief minorities, thus further contributing to an atmosphere of paranoia and scapegoating.”

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58_en.doc)

<sup>461</sup> Ibid. That is, ‘incitement to commit crimes,’ which is not protected speech in the US either.

<sup>462</sup> **Freedom of expression can never be circumvented by invoking Article 20 in the ICCPR:**

“Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development,” Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Human Rights Council, General Assembly, 2013-12-26. “Accordingly, the guarantees of freedom of expression as enshrined in article 19 of the Covenant can never be circumvented by invoking article 20.”

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58_en.doc)

<sup>463</sup> **Inalienable Rights cannot be taken away by the government:**

“**Inalienable.** Not subject to sale or transfer; inseparable. That which is inalienable cannot be bought, sold, or transferred from one individual to another. The personal rights to life and liberty guaranteed by the Constitution of the United States are inalienable. Similarly, various types of property are inalienable, such as rivers, streams, and highways.” West’s Encyclopaedia of American Law, 2<sup>nd</sup> Edition, 2008.

<http://legal-dictionary.thefreedictionary.com/Inalienable+rights>

<sup>464</sup> **Mark Dreyfus condemns Abbott Government attempts to silence environmental activists:**

2014-08-07 Speech by ALP Shadow A-G Mark Dreyfus MP to Free Speech Symposium 2014:

“Even more chillingly, members of the Abbott Government have now indicated that they plan to use competition law to silence environmental activists.

The Parliamentary Secretary for Agriculture Richard Colbeck has told the press that there is an ‘appetite’ within the Government to remove the current exemption to the prohibition on secondary boycotts provided for environmental activism.

This Government, which holds itself out as a champion of free markets and free speech, wants to prohibit Australian citizens from speaking out in the marketplace in defence of environmental causes they disapprove of.”

“**Freedom of speech means freedom to boycott,**” Chris Berg, 2013-11-24, “Consumer boycotts are a completely legitimate way to express political views. Secondary boycotts in the age of social media can be arbitrary, capricious and poorly thought-through, but that doesn’t mean they should be stopped, writes Chris Berg.”

<http://www.abc.net.au/news/2013-09-24/berg-freedom-of-speech-means-freedom-to-boycott/4977410>

“**Ag-Gag’ Laws Backed To Hide Animal Cruelty,**” Ben Latham, New Matilda, 2014-06-03, “A push for new legislation that will force animal rights activists to hand over footage to police rather than media is aimed at keeping the public in the dark ... <https://newmatilda.com/2014/06/03/ag-gag-laws-backed-hide-animal-cruelty>

<sup>465</sup> **Human Rights Commissioner Tim Wilson’s salary: \$389K + \$56K expense package:**

“New Human Rights Commissioner Tim Wilson gets expenses package of \$56,000 on top of salary,” The Australian, 2014-04-21, “Tony Abbott’s hand-picked human rights adviser has been given a \$56,000 expenses package to top up his six-figure salary. Human Rights Commissioner Tim Wilson now has a total salary of \$389,000 plus vehicle and telephone expenses following a recent decision by the Remuneration Tribunal.”

<http://www.news.com.au/finance/money/new-human-rights-commissioner-tim-wilson-gets-expenses-package-of-56000-on-top-of-salary/story-e6frfmci-1226891151479>

<sup>466</sup> For which I offer as evidence my 2014-04-14 Letter to Human Rights Commissioner Tim Wilson.

<sup>467</sup> For which I offer as evidence this letter to you.

<sup>468</sup> Of the many NGOs and CLCs contacted by myself, other whistleblowers, victims government abuse and victims’ advocates, we found despite their public rhetoric, they were completely disinterested.

<sup>469</sup> Personal Communication with whistleblower.

<sup>470</sup> **How NGOs can be used to advance the founder’s political interests:**

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I couldn't understand why NGOs who claimed to be committed to rights and liberties were showing no interest in government abuse of individual rights or only a fleeting interest in free speech. So I took the time to examine their web sites and concluded they were promoting their own political beliefs; rights for certain groups (e.g. criminals, refugees), but not for others. Of course they're quite entitled to promote their own political beliefs, as are we all (except, apparently, public servants). But it's unfair that some people should be paid to do it out of the public purse, while others (notably non-lawyers) must do it out of their own pockets.

<sup>471</sup> **How NGOs can be used to advance the founder's professional interests:**

A victims' advocate explained to me that these NGOs can get Legal Aid for their cases (and are thus paid), and described how one lawyer substantially advanced his career by defending one such case; he went from a nobody to a highly-sought after lawyer.

Andrew Bolt alleges that Liberty Victoria is a stepping stone to the Judges' bench:

"Judged by their politics," Andrew Bolt, Herald Sun. 2009-08-20. *"Liberty Victoria has become an unusually productive judge's factory for our crusading Attorney-General Rob Hulls. Still, where else could he find so many activists who share his Leftist views? This week, Greg Connellan became the third Liberty Victoria president—and its fourth senior official—to be appointed to the bench by Hulls. ... That's quite some coincidence, so many judges being drawn from a small civil libertarian lobby group. (I am not saying these judges are not competent, fair-minded, paragons of virtue and the salt of their profession. That's not the point, so can we discuss this without writs flying?)"* [http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/judged\\_by\\_their\\_politics/P0/?nk=8086ce8db51a823ddbe9c57d158c241](http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/judged_by_their_politics/P0/?nk=8086ce8db51a823ddbe9c57d158c241)

<sup>472</sup> **The Legal Aid Rort:**

Public perception is when we see lawyers on the streets protesting for Legal Aid funding they're wonderful people who want justice for all. But this overlooks that Legal Aid funding ends up in lawyers' pockets, and that lawyers are paid more money to protect criminals than the government pays its own lawyers to prosecute them:

"Our Corrupt Legal System," Evan Whitton, *"Legal Aid. A British (Labour) Attorney-General, Sir Hartley ('We are the masters [now]') Shawcross (1902 -2003) invented legal aid in 1949. Arthur Marriott QC, of London, told a Sydney audience in October 2005: 'Perhaps the main impact of the [Legal Aid] Act was the extraordinary growth in the numbers of practising lawyers.'*

*Legal aid is effectively a fraud on the public and taxpayers in almost all criminal cases because the accused are guilty. Accused are entitled to a defence, but legal aid lawyers should not be allowed to use public moneys to defeat truth and pervert justice. At least in two Australian states, there is a gulf between the budgets for legal aid and the Director of Public Prosecutions (DPP). Tony Koch reported in The Australian (17 May, 2008) that the Queensland DPP's budget was less than a third of legal aid from state and federal sources: the DPP got about \$30 million to try to put criminals in prison; trial lawyers got \$101.3 million a year to try to keep them out.*

*In New South Wales, the DPP's budget for 2007-08 was \$96 million; the legal aid budget was \$214 million. In 2009, DPP Nicholas Cowdery QC was obliged to drop some prosecutions, and could not provide lawyers for some courts."* <http://netk.net.au/Whitton/OCLS.pdf>

<sup>473</sup> **Kevin Rudd doesn't protect Australians with a Bill of Rights, bankrolls NGOs with taxpayer funds instead:**

"Rudd to bankroll human rights activists," Peter Westmore, News Weekly, 2010-05-15. *"The Rudd Government has rejected the establishment of a human rights act in Australia, in its official response to the 2009 report of the National Human Rights Consultation chaired by Father Frank Brennan. Instead, the Rudd Government has proposed a large expansion of government spending on the human rights "industry", in both the government and non-government sectors. The effect of this will be to provide more government funds for what are effectively political campaigns undertaken by both non-government organisations and the Australian Human Rights Commission."* <http://newsweekly.com.au/article.php?id=4311>

<sup>474</sup> **Why did Australian Human Rights lawyers refuse to assist Michaela Banerji?**

One victim's advocate explained to me they suspected the reason the NGOs and CLCs were uninterested was the lawyers running those organisations didn't believe she did have a right to free speech. That is, that Australian "human rights" lawyers believe as a public servant she has no right to criticise the government. (This is a very different position from that of US civil rights lawyers.)

That's consistent with this opinion by a legal academic:

"Bureaucracy's Twitter and Facebook policy is no Brave New World," Richard Mulgan, Canberra Times, 2014-05-06. Richard Mulgan: *"A considered legal judgment would probably find that the Public Service Act and its associated code of conduct do allow public service employers to discipline their employees in relation to public utterances. In this respect, public servants who wish to continue in their employment do not enjoy the same rights of political speech as other citizens."* <http://www.canberratimes.com.au/national/public-service/bureaucracys-twitter-and-facebook-policy-is-no-brave-new-world-20140504-37q50.html>

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I looked around NGOs and CLCs web sites. Only one had an article about her case, which was neutral. The others (even from those purporting they 'promote free speech') had no comment on her sacking at all.

**It was clearly an important human rights question which needed an answer:**

Slater and Gordon's Carita Kazakoff on the Law Report: *"I think it's the type of case that might go all the way to the High Court, not only because of the applicant's strength of conviction but also because of the nature of the issues raised, [T]he question that it really raises about the implied freedom of political communication, albeit not a personal right—to what extent is it okay for that to limit a public servant's comments in their own time?"*

<http://www.abc.net.au/radionational/programs/lawreport/4918054>

**But due to the lack of interest by these Human Rights NGOs and CLCs, the question was never answered.**

<sup>475</sup> **Yet Australian Human Rights Lawyers were quick to defend Bikies:**

**"Human rights lawyers slam Queensland bikie laws,"** Brisbane Times, 2013-10-28, *"Human rights have been tossed out the window on a whim under Queensland's new anti-bikie legislation, Australian Lawyers for Human Rights say."*

<http://www.brisbanetimes.com.au/queensland/human-rights-lawyers-slam-queensland-bikie-laws-20131027-2w9c6.html>

**"Are Queensland's new bikie laws too harsh to survive in other states and territories?"**, ABC, 2013-11-15, *"Former NSW director of public prosecutions Nicholas Cowdery is among the lawyers, civil libertarians and human rights advocates who have spoken out against the laws.."* <http://www.abc.net.au/news/2013-11-08/queensland-bikie-laws-nicholas-cowdery/5068448>

Aussie Human Rights Lawyer: ***'It's not about whether bikies are nice guys. It's about the importance of some basic democratic principles:...'***

<sup>476</sup> *"Why Hate Speech Laws Have More In Common With Fascism Than Democracy,"* Joshua Goldberg, Thought Catalog, 2014-08-11. <http://thoughtcatalog.com/joshua-goldberg/2014/08/why-hate-speech-laws-have-more-in-common-with-fascism-than-democracy/>

<sup>477</sup> **The greatest threat to human rights has always been from government:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians",* Brendan Jones, *"Lack of interest by the Human Rights Commission"* <http://victimsofdsto.com/dsubcom/#lackhrcc>

<sup>478</sup> I won't name the NGO publicly, but will be clear it is not any NGO discussed in the body of this letter.

<sup>479</sup> **Alleged links between an NGO and a political party:**

*"Judged by their politics,"* Andrew Bolt, Herald Sun. 2009-08-20.

*"A former judge says the Labor Government in particular is picking new judges more for their politics than their talent: John Dee, QC, said some judges were not up to the job and were making costly mistakes. He claimed the judges don't have the background or skills and were appointed for political reasons by Attorney-General Rob Hulls and his Liberal predecessor Jan Wade. "These particular appointments have been classic jobs for the boys and girls," he said. "There are, unfortunately, a lot of people there that Hulls has appointed, and to a lesser extent that Wade appointed, who just aren't up to it..." "They have been mainly to the County Court and judges and the legal profession know who they are."*

*I do not know which judges Dee means, and it's unfortunately too dangerous for him - and me - to even speculate. But I have also worried about the way Hulls is stacking the courts with people who share his political views:*

*Liberty Victoria has become an unusually productive judge's factory for our crusading Attorney-General Rob Hulls. Still, where else could he find so many activists who share his Leftist views? This week, Greg Connellan became the third Liberty Victoria president—and its fourth senior official—to be appointed to the bench by Hulls.*

*Connellan, who has campaigned against increases in police powers and once warned that even police sniffer dogs on Russell St violated people's rights, is now a magistrate... Chris Maxwell ... now heads our influential Court of Appeal, where he's been joined by Marcia Neave, who was an academic lawyer with no judging experience before her promotion. And Felicity Hampel is now a judge of the County Court.*

*That's quite some coincidence, so many judges being drawn from a small civil libertarian lobby group. (I am not saying these judges are not competent, fair-minded, paragons of virtue and the salt of their profession. That's not the point, so can we discuss this without writs flying?) "*

[http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/judged\\_by\\_their\\_politics/P0/?nk=8086ce8db51a823ddbe9c57d158c241](http://blogs.news.com.au/heraldsun/andrewbolt/index.php/heraldsun/comments/judged_by_their_politics/P0/?nk=8086ce8db51a823ddbe9c57d158c241)

<sup>480</sup> **NGO HRLC supports the civil rights of some people, but not others:**

I generally respect the HRLC for the work they do, but I am not comfortable with them defending some people's rights but not others.

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“How Do We Draw The Line On Free Speech?”, Rachel Ball and Anna Brown, New Matilda, 2014-04-14.

*“In one case, in which street preachers were prevented from leafleting in Adelaide’s Rundle Mall, we challenged the excessiveness of council by-laws that stifle political expression in public spaces. Recently we’ve taken legal action against the Melbourne City Council for not acting to ensure women can safely access an abortion clinic without being harassed or intimidated.”* <https://newmatilda.com/2014/04/14/how-do-we-draw-line-free-speech>

**But told Michaela Banerji:**

HumanRightsLawCentre @rightsagenda Aug 5 “@LaLegale others better placed to help on that one.”

HumanRightsLawCentre @rightsagenda Aug 5 “@VictimsofDSTO @LaLegale we need to pick out fights given strategically given ltd resources Here’s some eggs <https://newmatilda.com/2014/04/14/how-do-we-draw-line-free-speech>.” <https://twitter.com/rightsagenda/status/496625303393796096>

HumanRightsLawCentre @rightsagenda Aug 5 “@LaLegale - ... - we’ve looked at the legality of the public servant gag. Happy to talk. Call us.” <https://twitter.com/rightsagenda/status/496852645009555459>

HumanRightsLawCentre @rightsagenda Aug 6 “@LaLegale There is a very poor strike rate at the High Court in these cases, and the protection is only for political speech.” <https://twitter.com/rightsagenda/status/497225292008538112>

[2014-09-06 Michaela Banerji responds: ‘It’s typical ... to say that only political speech was protected while at the same time as implying that mine was not. It’s a common practice in argument. My tweets were entirely political.’]

And in the above article “How Do We Draw The Line On Free Speech?” argued against free speech for 18c.

**Note:** The HRLC is just one of many NGOs. Although if the HRLC didn’t help Ms. Banerji, at least they engaged with her on Twitter. The other NGOs wouldn’t help her at all.

<sup>481</sup> 2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson: <http://victimsofdsto.com/hrc/>

<sup>482</sup> Ibid.

<sup>483</sup> Clive Hamilton: “Despite its refusal to divulge, we can make a good guess at where a large part of its recent funding has come from - right-wing mining billionaire Gina Rinehart.” <http://www.abc.net.au/news/2012-02-24/hamilton-the-shadowy-world-of-ipa-finance/3849006>

<sup>484</sup> **“National Security” as a bogus excuse:**

“Richard Ackland: Term ‘in national interest’ misused as cover for spooky behaviour,” Richard Ackland, SMH, 2013-12-06, “I am still trying to work out how impeding an international dispute resolution process in The Hague fits into protecting our “national interest” and our “national security”. Where, in Timor-Leste’s case for renegotiation of the Timor Sea agreements, is there a threat to the security of this country’s citizens? **These terms are bandied about to cover situations in which the government or its agencies are caught up in some cack-handed operation that cannot be publicly justified.**” <http://www.smh.com.au/comment/richard-ackland-term-in-national-interest-misused-as-cover-for-spooky-behaviour-20131205-2ytr7.html>

<sup>485</sup> **The Department of Defence treats “National Security” as a joke:**

“The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians”, Brendan Jones, “Defence itself treats “National Security” as a joke.” <http://victimsofdsto.com/dsubcom/#natsecjoke>

<sup>486</sup> **Woodside:**

2014-07-22 Royal Petition concerning Federal Government Corruption: “**The provision of ASIO intelligence to financially benefit LNP donor Woodside.**” <http://victimsofdsto.com/royal-cosgrove-2/#case12>

<sup>487</sup> **Manildra:**

2014-07-22 Royal Petition concerning Federal Government Corruption: “**The LNP introduced an excise which financially advantaged LNP donor Manildra, while severely disadvantaging a rival challenging Manildra’s near monopoly of ethanol.**” <http://victimsofdsto.com/royal-cosgrove-2/#case11>

<sup>488</sup> **How journalists can be jailed for identifying whistleblowers:**

PUBLIC INTEREST DISCLOSURE ACT 2013 (NO. 133, 2013) - SECT 20

“Use or disclosure of identifying information

*Disclosure of identifying information (1) A person (the first person ) commits an offence if: (a) another person (the second person ) has made a public interest disclosure; and (b) the first person discloses information ( identifying information ) that: (i) was obtained by any person in that person’s capacity as a public official; and (ii) is likely to enable the identification of the second person as a person who has made a public interest disclosure; and (c) the disclosure is to a person other than the second person. Penalty: Imprisonment for 6 months or 30 penalty units, or both.*



Use of identifying information (2) A person (the first person ) commits an offence if the person uses identifying information. Penalty: Imprisonment for 6 months or 30 penalty units, or both. Exceptions (3) Subsections (1) and (2) do not apply if one or more of the following applies: (a) the disclosure or use of the identifying information is for the purposes of this Act; (b) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the Ombudsman by section 5A of the Ombudsman Act 1976 ; (c) the disclosure or use of the identifying information is in connection with the performance of a function conferred on the IGIS by section 8A of the Inspector-General of Intelligence and Security Act 1986 ; (d) the disclosure or use of the identifying information is for the purposes of: (i) a law of the Commonwealth; or (ii) a prescribed law of a State or a Territory; (e) the person who is the second person in relation to the identifying information has consented to the disclosure or use of the identifying information; (f) the identifying information has previously been lawfully published. Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the Criminal Code ).”

<sup>489</sup> **Criminal penalties for journalists under the Public Interest Disclosure Act:**

“Australian Broadcasting Corporation submission to the House Standing Committee on Social Policy and Legal Affairs and to the Senate Legal and Constitutional Affairs Committee on their respective inquiries into the Public Interest Disclosure Bill 2013,” 2013-04, (ABC. e.g. “The media should not be presumed criminally liable for using or disclosing confidential source information during the course of responsible news gathering where that use or disclosure does not adversely affect a person’s safety or create a risk of their being victimised” pp. 6) <http://about.abc.net.au/wp-content/uploads/2013/04/ABC-Submission-Public-Interest-Disclosure-Bill-2013.pdf>

<sup>490</sup> **Exchange between Peter Goon and Rob Oakeshott regarding DTCA as ALP+LNP “bipartisan overreach”:**

Peter Goon @Horde\_ Sep 6: “@RobOakeshott1 just curious as to why you supported the Dept of Defence inspired DTCA 2012 legislation?”

Rob Oakeshott @RobOakeshott1 Sep 6: “@Horde\_ I didn't support it. I spoke strongly against it on its impact on higher education research. LNP+ALP were hand in hand on it though”

Rob Oakeshott @RobOakeshott1 Sep 7: “@Horde\_ agree that Defence Control was bipartisan overreach. Disagree on PGPA. I like the concept of earned autonomy in APS.”

<sup>491</sup> **Section 70 of the Crimes Act:**

“**CRIMES ACT 1914 - SECT 70**

**Disclosure of information by Commonwealth officers**

(1) A person who, being a Commonwealth officer, publishes or communicates, except to some person to whom he or she is authorized to publish or communicate it, any fact or document which comes to his or her knowledge, or into his or her possession, by virtue of being a Commonwealth officer, and which it is his or her duty not to disclose, shall be guilty of an offence.

(2) A person who, having been a Commonwealth officer, publishes or communicates, without lawful authority or excuse (proof whereof shall lie upon him or her), any fact or document which came to his or her knowledge, or into his or her possession, by virtue of having been a Commonwealth officer, and which, at the time when he or she ceased to be a Commonwealth officer, it was his or her duty not to disclose, shall be guilty of an offence.

Penalty: Imprisonment for 2 years.” [http://www.austlii.edu.au/au/legis/cth/consol\\_act/ca191482/s70.html](http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s70.html)

<sup>492</sup> **Section 70 used to convict Allan Kessing for revealing ongoing drug smuggling by corrupt public servants:**

Allan Kessing, Wikipedia, “In 2003, Kessing wrote two reports on Sydney airport security, **which included, among other things, information about drug trafficking and airport security passes which had been given to illegal immigrants and people with criminal convictions..**” [https://en.wikipedia.org/wiki/Allan\\_Kessing](https://en.wikipedia.org/wiki/Allan_Kessing)

<sup>493</sup> **Section 70 used to threaten public servants from revealing alleged mismanagement at the National Gallery:**

“Still life with Kennedy”, Joyce Morgan, SMH. 2003-05-26. “[National Gallery of Australia Director Brian] **Kennedy's tenure has been dogged by claims and counter claims of sick building syndrome and damage to art works as a result of the air-conditioning system.** ... The contents of the report, prepared for the Government's workplace safety adviser, Comcare, by an independent Adelaide engineer, Bob Wray, of DLI Safety Services, are being closely guarded. ... But it comes as **the gallery warned staff this month they could face jail terms if they release information to the public.** The head of human resource management, Tony Rhynehart, told staff in a memo that they should not “communicate gallery information or express personal views about gallery operations to members of the media without the express permission of the director”. // **It reminded them that two years' jail was the penalty for breaching section 70 of the Crimes Act 1914 by which Commonwealth officers are bound.**”

<http://www.smh.com.au/articles/2003/05/25/1053801272521.html>

<sup>494</sup> Recall that the AFP never presented any evidence that Allan Kessing had leaked the report to The Australian. Instead they convicted him on circumstantial evidence; he had the report, and it later appeared in the Australian, convincing the jury it must have been him. (The AFP withheld information that others also had access to the report, including Anthony Albanese’s staff.)

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The fact that a public servant can be convicted on circumstantial evidence makes it extremely dangerous for a public servant to have any contact whatsoever with a journalist.

<sup>495</sup> 2014-07-10 E-mail from Whistleblowers Australia: '[Most whistleblowers] don't want to go public, for a variety of reasons.'

<sup>496</sup> **Section 70 of the Crimes Act is draconian legislation that inhibits the flow of information that should be in the public domain:**

Dr Johan Lidberg of the Monash University School of Journalism says: "Section 70 of the federal Crimes Act, and its counterparts in state laws, is **an outdated and draconian piece of legislation that inhibits the flow of information that should be in the public domain** and shoots the messenger." [http://www.crikey.com.au/2011/03/25/expanded-shield-laws-are-fair-but-problems-remain-for-journos/?wpmp\\_switcher=mobile](http://www.crikey.com.au/2011/03/25/expanded-shield-laws-are-fair-but-problems-remain-for-journos/?wpmp_switcher=mobile)

<sup>497</sup> **The US Supreme Court test as to when free speech by public servants is protected:**

"Pickering still rules roost in First Amendment law," John Rukavina, Fire Chief, 2002-06-01.

**"The general legal theory is that the public's interest in how public dollars are spent and public safety decisions are made is very strong, and public employees are in a very good position to address those public interests."**

1. A public employee has a protected right under the First Amendment to comment on "matters of public concern," no matter what the employer thinks.

2. If the employee's comments aren't on a "matter of public concern," those comments are not protected. (Most often when the court determines that speech isn't a matter of public concern, it's because the court has found that the employee has taken a private grievance public.)

3. If the employee's comments are on a matter of public concern, then the employer must demonstrate that the speech would "potentially interfere with or disrupt the government's activities, and can persuade the court that the potential disruptiveness" outweighs the employee's First Amendment rights.

[https://web.archive.org/web/20130412220714/http://firechief.com/mag/firefighting\\_pickering\\_rules\\_roost](https://web.archive.org/web/20130412220714/http://firechief.com/mag/firefighting_pickering_rules_roost)

<sup>498</sup> 2014-07-23 Royal Petition concerning Federal Government Corruption. <http://victimsofdsto.com/royal-cosgrove-2/>

<sup>499</sup> **Julia Gillard's fans: I:**

**"Julia Gillard's courage will be remembered. ... 'Julia Gillard's name won't be associated with the word "fraud". Rather, inspiration, courage and resilience are the words that will illuminate the Gillard legacy.'** Pamela Fitzgerald, Potts Point, Letters to the Editor, SMH, 2014-09-09. <http://www.smh.com.au/comment/smh-letters/julia-gillards-courage-will-be-remembered-20140908-10dtuy.html>

<sup>500</sup> 2014-02-06 Royal Petition concerning Crime and Corruption within the Australian Public Service <http://victimsofdsto.com/royal/>

<sup>501</sup> **Julia Gillard's fans: II:**

The Right Wing is accused of being callous (which they are). So it came as a surprise to me to find there are people on the Left just as callous; This is an exchange with a pro-Gillard blogger:

Victims of DSTO @VictimsofDSTO May 14 "@observationpt Abbott's being dangerous is no reason to lump undeserved praise on Gillard; Stop running between the ALP and LNP. #auspol"

Victims of DSTO @VictimsofDSTO May 14 "@observationpt As PM Gillard had the power to help victims of abuse, but chose to do nothing. #auspol"

Victims of DSTO @VictimsofDSTO May 14 "@observationpt As PM Gillard did nothing while the courts perverted + AFP corrupted <http://ozloop.org/profiles/blogs/aps-legal-firms-sparke-helmores> ... + <http://www.theaustralian.com.au/business/legal-affairs/gillard-government-lashed-for-ignoring-breaches-of-model-litigant-rules/story-e6frg97x-1226325228917> ... #auspol"

Victims of DSTO @VictimsofDSTO May 14 "@observationpt Many lives ruined; Shameful you say "get over it" <http://www.theaustralian.com.au/national-affairs/defence/victims-left-out-of-adf-abuse-probe/story-e6frg8yo-1226611255806> ... <http://www.abc.net.au/7.30/content/2014/s3953975.htm> ... <http://ozloop.org/page/bullying-victimisation> ... #auspol"

Anthony Element @observationpt May 14 "@VictimsofDSTO 2 points 1 a person is something more than they worst thing they ever did 2 Not running between, I detest right wing ideology"

Anthony Element @observationpt May 14 "@VictimsofDSTO Get over it. We have far more serious threats from current govt."

Anthony Element @observationpt May 14 "@VictimsofDSTO See previous tweet. Get over it."

Anthony Element @observationpt May 14 "@VictimsofDSTO Blocked for being boring and irrelevant."



<sup>502</sup> **Threatened by AFP after writing to an ALP minister regarding failure to act on corruption:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians",* Brendan Jones, "AFP failed to act on crime report. Threatened by AFP when followed up. ACLEI, ALP and LNP Justice Ministers failed to act." [http://victimsofdsto.com/dsubcom/#\\_edn409](http://victimsofdsto.com/dsubcom/#_edn409)

<sup>503</sup> At least I got that part right.

<sup>504</sup> As evidenced by the mass of correspondence I sent these politicians, and my attempts to phone them. In response I received three fob offs from one of these politicians, and after contacting another a threatening phone call from an AFP officer.

<sup>505</sup> **The ultimate goal of Marxism-Leninism is full social equality:**

"Marxism-Leninism," Wikipedia, *"The ultimate goal of Marxism-Leninism is the development of socialism into the full realisation of communism, a classless social system with common ownership of the means of production and with full social equality of all members of society."* <https://en.wikipedia.org/wiki/Marxism%E2%80%93Leninism>

<sup>506</sup> **Perks for Ex-Prime Ministers:**

*"Julia Gillard and Kevin Rudd demand bigger perks for former Prime Ministers,"* Samantha Maiden, The Sunday Telegraph, 2013-11-23. <http://www.dailytelegraph.com.au/news/nsw/julia-gillard-and-kevin-rudd-demand-bigger-perks-for-former-prime-ministers/story-fni0cx12-1226766891140>

*"Former Prime Ministers costing us millions,"* Newscorp, 2010-10-31. *"The offices of Australia's former prime ministers are costing more than \$50,000 a week to run on top of an annual pension bill exceeding \$1 million."* <http://www.news.com.au/finance/money/former-prime-ministers-costing-us-millions/story-e6frfmd9-1225945641593>

*"Gillard's gold at the end of a rainbow: big pension, staff and a fly free card,"* Tony Wright, 2013-06-28. *"Julia Gillard was left to contemplate life on a pension of about \$200,000 a year."* <http://www.smh.com.au/federal-politics/political-news/gillards-gold-at-the-end-of-a-rainbow-big-pension-staff-and-a-fly-free-card-20130627-2p06f.html>

*"Retirement is unlikely for Julia Gillard, a relatively young former prime minister,"* Tony Wright, 2013-06-28. *"After being ousted from the top job just three years after she claimed it, Julia Gillard will leave office with a \$200,000 pension and a private driver for life. But at just 51 years old, retirement is hardly looming for the former prime minister. She will have an office, staff, car and free travel for the rest of her life, but rather than becoming the "the most meddlesome great-aunt in Australian history" or investing more time in her knitting, there are plenty of options on the table for Australia's first female PM."* <http://www.news.com.au/finance/work/retirement-is-unlikely-for-julia-gillard-a-relatively-young-former-prime-minster/story-e6frfm9r-1226671453929>

<sup>507</sup> **Liberal Party Values vs. Reality:**

2013-02-19 From Brendan Jones To Liberal National Party. *"Liberal National Party Core Values."*

<sup>508</sup> **Labor Party Values vs. Reality:**

2012-05-16 To the Hon. Julia Gillard from Brendan Jones. *"The Objectives and Principles of the Australian Labor Party"* (No Response)

**"The Government's handling of this case conflicts with the Objectives and Principles of the Australian Labor Party. It conflicts with natural justice and the rule of law.**

*(a) redistribution of political and economic power so that all members of society have the opportunity to participate in the shaping and control of the institutions and relationships which determine their lives*

In pursuing this complaint I have come to learn how powerful, autonomous and unaccountable the Commonwealth Public Service is. The Government may change, but the public service does not. The public servants involved in this case were able to keep Minister Snowdon in the dark until as late as July 28, 2011. To this day I am still not sure the Minister has been honestly briefed about this case.

The public service is unaccountable. Under the Public Service Act only the Agency Head can authorise an investigation into corruption in their Department. If they do not want to, there is no way to compel them.

They can either keep the Minister in the dark or delay telling them so they go along out of embarrassment.

There is not even a requirement for the Agency Head to acknowledge a complaint has been made.

Public perception is that the Commonwealth Ombudsman is a powerful oversight agency, but under the Ombudsman Act they are toothless and in their own words can only "negotiate" with an offender.

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If the offender won't co-operate the Ombudsman closes the complaint. The Public Service Commissioner and Merit Protection Commission also claim they have no statutory authority to act. As documented in my letter of November 1, 2011 the Whistleblower scheme is worthless.

Last year the Media reported that the AFP is reluctant to prosecute crime within the public service. The APF's handling of this case is consistent with those reports.

The Office of Legal Services Coordination (OLSC) is supposed to monitor compliance with the Model Litigant Policy and alert the Attorney-General of breaches. As documented in my letter of May 14, 2012 they have manifestly failed to do this. Failure to enforce the Model Litigant Policy allows the government to take unfair advantage of its considerable size and resources to bludgeon someone trying to seek a remedy to public service misfeasance through the civil courts.

The Freedom of Information Act is supposed to ensure accountability through openness. Yet in the Will Matthews case ASIC stonewalled him down for nine years, with one ASIC lawyer gloating over their ability to bury him in F.O.I charges. The country is in a sad shape when the corporate regulator is allowed to act maliciously, unethically and unlawfully. Defence turned away my own F.O.I. application on grounds I later learned were false.

Which is to say the government is denying victims of public service misconduct lawful remedies under Administrative, Criminal and Civil Law.

Both [Name Removed] and [Name Removed] claimed it would be a waste of taxpayer's money to investigate my complaint. A short time later [the] Defence Audit Fraud Control Division was dishonourably named in the media for excessive spending on alcohol and entertainment.

When they talk about not wasting the taxpayers' money, they really mean 'their' money.

I've worked in the private-sector for nearly 30 years. The misconduct and incompetence I have seen in this case from the public service are not tolerated in the private sector. If we suspect a crime, the police are called immediately. People who are dishonest, lazy or disobedient are dismissed on the spot.

Incompetent people are given an opportunity to improve, but if they don't they're gone within months. Business won't carry people who refuse to pull their own weight. We treat our customers well and are taught to exceed their expectations. If we don't they will leave us and take their money elsewhere. When there is no more work for us, we must move on and face periods of hardship as we try and find something new. As we get older, it becomes harder to find new work.

Compare that to the public service.

*(b) establishment and development of public enterprises, based upon federal, state and other forms of social ownership, in appropriate sectors of the economy*

I used to believe in public enterprises, but after these events I do not. The Labor Party believes in a non-monopolistic private sector. **What about a non-monopolistic public sector?** To quote a program manager at a large defence company who had also been a victim of IP theft: "Australia is a really bad place to do business, because your biggest competitor is the DSTO and they have a monopoly."

The DSTO Probity Board declares the DSTO should not take advantage of its conflict of interest, but the Government's own legal position contradicts this:

*"The reason we believe your claim will fail is because you allege that the Commonwealth owes innovators submitting products or technology for evaluation a duty of care to ensure that the evaluations are either fair, proper and accurate or that the confidential information is respected. There is no such duty of care in Australian law."* Clayton Utz: Motion to Dismiss Jones v. Commonwealth.

*(d) maintenance of and support for a competitive non-monopolistic private sector, including small business and farming, controlled and owned by Australians, operating within clear social guidelines and objectives*

As noted in my letter of May 14, 2012 this case is as anti-small business as a Government can possibly get.

*(e) the right to own private property*

I worked for twelve long hard years researching and developing the technology which made my software possible. The DSTO not only stole my intellectual property, but destroyed my business so I couldn't benefit from my own hard work. This isn't just stealing a man's food, but salting the earth so he can't even feed his family. It is morally reprehensible.

*(i) the restoration and maintenance of full employment*

*(j) the abolition of poverty, and the achievement of greater equality in the distribution of income, wealth and opportunity*

I worked for twelve years to write my software because I wanted to start a company, hire people and create revolutionary software. If I were ever to start another high-tech company it would not be in Australia because here I am not protected by the rule of law.

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(k) social justice and equality for individuals, the family and all social units, and the elimination of exploitation in the home

[Name Removed]'s actions robbed me of my business and left me in debt. His colleagues in the DSTO benefited while I lost everything. We have no house because we invested in the business, and the only money I have is what I have earned in the last two years. I was laid off in December. The Department's mishandling of my Whistleblower complaint has made me unemployable in the Defence sector.

I am now in my late forties with a wife and young son and an uncertain future.

[Name Removed] on the other hand is protected by a ring of public servants who have broken administrative and criminal law to ensure he doesn't get so much as a slap on the wrist. [Ref: Letter of November 1, 2011]

Where is the social justice in that?

(n) recognition and protection of fundamental political and civil rights, including freedom of expression, the press, assembly, association, conscience and religion; the right to privacy; the protection of the individual from oppression by the state; and democratic reform of the Australian legal system."

(No response nor action from Ms. Gillard)

<sup>509</sup> **The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians:**

"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones, <http://victimsofdsto.com/dsubcom/#rights>

<sup>510</sup> **Debunking DMO CEO Warren King's claim the DMO is a well-run organisation:**

"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones, "DMO CEO Warren King claims "Very few DMO projects overrun their budgets"

But he bases that claim on research by the DMO themselves and a firm they hired.

The Australian National Audit Office (ANAO) and Commission of Audit tell a very different story. ...

A 2011 submission from the Defence Teaming Centre (canvassing 230 defence companies) warned: "The DMO: LACKS any capacity to learn from its mistakes; CANNOT attract the right staff to project manage its projects; SCARES companies into thinking there will be repercussions if they complain; HAS no drive or motivation; TAKES an adversarial approach to companies; MAKES false allegations against companies."

**The DMO is in effect a (government-run) company, except with the monopoly advantages of being both buyer and seller, and the inherent waste and market inefficiency which that brings.**

Instead of the Department of Defence regulating Australian science and business to its detriment, Parliament should have followed the advice of the Commission of Audit and abolished the DMO; Sound, economically-rational advice which the Liberal party ignored." <http://victimsofdsto.com/dsubcom/#debunkdmo>

<sup>511</sup> As evidenced by his initial failure to correspond, his refusal to act before the statute of limitations expired, his message via Senator Hogg 'so sue us,' Clayton Utz starting court proceedings against me the day after I asked him for alternate dispute resolution, and his final letter to Tony Windsor refusing to act on my complaint, and Mr. Snowden's supplying false and misleading information about my complaint in a letter to Rob Oakeshott.

<sup>512</sup> "Warren Snowden," Wikipedia, [http://en.wikipedia.org/wiki/Warren\\_Snowdon](http://en.wikipedia.org/wiki/Warren_Snowdon)

<sup>513</sup> **Letter to ALP Attorney-General Mark Dreyfus regarding conduct of ALP Defence Science Minister Warren Snowden:**

2013-04-04 Letter to ALP Attorney-General Mark Dreyfus: "I expect a hard-left socialist would believe that such work should be kept within government institutions rather than done by free-enterprise. Indeed I note since these events Mr. Snowden has frequently spoken out to promote that government institution, claiming they are unappreciated. (Perhaps by the ADF, who would much rather the DSTO had focused on technology to protect their troops in Afghanistan from mortar attacks than say doing research into sewerage. The ADF Officer who first warned me about the DSTO said DSTO researchers put their own personal research interests ahead of the needs of the ADF.) If Mr. Snowden thinks he is living out some socialist ideal he is misguided: Although the DSTO does receive royalty-payments from sales of the stolen technology, the greatest beneficiaries were a private company owned by DSTO contractors sold for \$5M. If Mr. Snowden thinks he has been advancing socialism, he's been had."

<sup>514</sup> **Although we have a new challenger...**

"Government wants East Timor spy charged," Tom Allard, SMH, 2014-08-31 "The Australian government has asked the federal police to investigate if lawyer Bernard Collaery and a former spy can be charged with disclosing classified information after revelations Australia spied on East Timor during sensitive oil and gas treaty talks." <http://m.smh.com.au/federal-politics/political-news/government-wants-east-timor-spy-charged-20140831-10aoad.html>

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***“Frances Abbott leak reveals legal blackhole for whistleblowers,”*** Myriam Robin, Crikey, 2014-08-08.

*“A 20-year-old university student faces up to two years in jail for allegedly accessing confidential computer records of 500 students at the Whitehouse Institute of Design, a private design school that’s been in the media spotlight lately for allegedly giving Tony Abbott’s daughter Frances a secret scholarship. UTS student and former Whitehouse librarian Freya Newman is accused of breaching Section 308H of the NSW Crimes Act, which bans “unauthorised access to or modification of restricted data held in a computer”. It’s not clear whether Newman was the leaker who outed Frances Abbott’s scholarship to the media. In June, New Matilda, as well as The Guardian, revealed the Prime Minister’s daughter had received a \$60,000 scholarship to study at the institute. The scholarship was kept secret from Frances Abbott’s teachers and fellow students, had only been given once before, and was allegedly offered after only one meeting between Frances Abbott and the institute’s founder and managing director, Leanne Whitehouse.”*

<http://www.crikey.com.au/2014/08/08/frances-abbott-leak-reveals-legal-blackhole-for-whistleblowers/>

<sup>515</sup> **Comments by Mark Dreyfus at the Free Speech Symposium apparently not in the Transcript:**

*“Free Speech 2014: Dreyfus calls Brandis 'walking disaster' as attorney general – the day's events,” Adam Brereton, The Guardian, 2014-08-07. ““We’ve seen yesterday, the prime minister and the attorney-general not even able to agree from one day to the next on what they have said they had agreed in principle about their mandatory data regime,” Dreyfus said. “The Australian people deserve a great deal better than this.” Dreyfus said he would not be drawn on Labor’s stance on data retention until the government produced details of their own plan, including oversight and safeguards. He said “a national discussion, a national debate and proper scrutiny” was needed, and said that discussion should involve the existing powers that permit warrantless metadata collection by organisations like Bankstown council and the RSPCA.”* <http://www.theguardian.com/world/live/2014/aug/07/free-speech-2014-george-brandis-tim-wilson-to-speak-at-conference-live-updates>

<sup>516</sup> **Corruption in Bankstown and Strathfield councils:**

*“Bankstown and Strathfield councils - corrupt manipulation of contract procurement (Operation Torrens),” ICAC, “The ICAC investigated the conduct of Scott Freeman, a former council officer at Bankstown and Strathfield councils, and contractor Terence Stepto. The investigation focused on a scheme where Mr Freeman favoured a contractor by forging quotes and arranging for Mr Stepto to submit dummy quotes to falsely demonstrate he had followed council procurement procedures. In its report on this investigation, made public on 15 November 2007, the ICAC made findings of corrupt conduct against Mr Freeman and Mr Stepto but stated its opinion that, due to the lack of available admissible evidence, consideration should not be given to obtaining the advice of the Director of Public Prosecutions with respect to their prosecution for any criminal offence. Four corruption prevention recommendations were made to Bankstown and Strathfield councils.”* <http://www.icac.nsw.gov.au/investigations/past-investigations/investigationdetail/8>

<sup>517</sup> **Local councils snooping on phone use:**

*“Local councils snooping on phone use,” Jared Owens, The Australian, 2013-02-18. “Local councils are seizing data from residents’ mobile phones without warrants to chase unregistered pets, illegal rubbish dumping and unauthorised advertising. Federal surveillance laws enable enforcement agencies -- such as police, corruption watchdogs and the Australian Taxation Office -- to seize telecommunications data to conduct criminal investigations, enforce fines or protect public revenue. But the laws are increasingly being used by other public bodies, such as local governments and Australia Post, which have collectively made more than 800 self-authorisations for personal data in the past three financial years.”* <http://www.theaustralian.com.au/technology/councils-snooping-on-phone-use/story-e6frgax-1226579848017?nk=c1f5c0ba595cefa3cfada04cf56e3c79#>

<sup>518</sup> **Mark Dreyfus promises to protect our online privacy:**

*“Online privacy breaches a concern for us all,” Mark Dreyfus via SMH, 2013-07-078, “Nobody wants to find out in a news story that their personal information has been exposed, says the Attorney-General. As Australia’s digital economy grows, government agencies and private-sector organisations are collecting and storing more and more personal information online. But for the digital economy to continue to thrive, it is essential that the personal information of Australians is held securely and that their privacy is respected.*

*Long before the recent leaks in the US, the Gillard government had a bill before the Parliament aimed at improving privacy and better protecting personal information. This bill is now before the Senate and, if supported by the Greens Party and the Coalition, will help Australians respond as quickly as possible when their privacy is compromised.”* <http://www.smh.com.au/it-pro/it-opinion/online-privacy-breaches-a-concern-for-us-all-20130708-2ohxt.html>

<sup>519</sup> **Kevin Rudd distanced himself from Father Frank Brennan’s recommendation of a Bill of Rights:**

*“Anti-discrimination laws: an act of confusion,” Chris Berg, IPA via The Drum, 2013-01-22. “Way back in 2008, Kevin Rudd and his Attorney-General Robert McClelland announced a broad inquiry into Australian human rights protection. They put Father Frank Brennan in charge of this National Human Rights Consultation. That year was the 60th anniversary of the United Nations Universal Declaration of Human Rights - a document which Labor’s HV Evatt helped draft. McClelland used the Evatt Foundation as his platform to kick it all off. There was a big song and dance about the whole thing. The committee received tens of thousands of submissions. But the ambitions of 2008 disappeared. Kevin Rudd’s hyperactivity became nervousness and uncertainty. In 2010 the government rejected the*

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committee's major proposal - to implement a national charter of rights. Rudd was dumped. McClelland was jettisoned from the Attorney-General position in 2011." <http://ipa.org.au/news/2827/anti-discrimination-laws-an-act-of-confusion>

<sup>520</sup> **Father Frank Brennan's Human Rights report:**

"National Human Rights Consultation Report," Father Frank Brennan,  
"The National Human Rights Consultation aimed to seek a range of views from across Australia about the protection and promotion of human rights. The consultation process included sixty-six community roundtables, three days of public hearings and comments taken from more than 35 000 submissions. The National Human Rights Consultation Committee handed its report to the former Attorney-General on 30 September 2009."  
<http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Pages/HumanRightsconsultationreport.aspx>

Comment by victims' advocate: "Father Frank Brennan's report was delivered following his travels around Australia. Father Brennan found a great deal of evidence of human rights abuse. Apparently people who live on the east coast of the country have it easy. Once you cross the Great Dividing Range things get very tough. Mr Rudd backed away from the Report very quickly."

<sup>521</sup> Personal Communication with a Victim's advocate. Others have since agreed with their hypothesis.

<sup>522</sup> **Australia's Constitutional Democracy has been unable to deal with corruption:**

2014-07-22 Royal Petition concerning Federal Government Corruption. "Why the Governor-General must be a participant in the political process" <http://victimsofdsto.com/royal-cosgrove-2/#ggduty>

<sup>523</sup> **The Separation of Powers has broken down:**

2014-07-22 Royal Petition concerning Federal Government Corruption. "However both systems have a further protection; the separation of powers; Government is divided into branches, to operate in competition with each other, providing oversight over one another. **In Australia this separation of powers is weak.** Both the Executive and Legislature are controlled by the Prime Minister. The separation between these and the Judiciary has also weak; Many politicians are also lawyers, moving back and forth between government and the legal firms who make political donations and profit from government contracts. Judges are lawyers appointed by politicians. Recently we had former politician, now a federal court judge and President of the Administrative Appeals Tribunal, making a ruling to keep government files secret. And leading up to the dismissal, we had a High Court justice secretly advising then-Governor General Sir John Kerr. The police (AFP) report to the Executive. There is no independent anti-corruption authority to report corruption to. Which brings us to Your Excellency's role. ..." <http://victimsofdsto.com/royal-cosgrove-2/>

In theory the Governor-General acts as a check on the absolute power of the government, has reserve powers to intervene (albeit in exceptional circumstances), and any subject has the right to petition him without fear of retribution.

But it appears that the public servants who run the Office of the Governor-General have subsumed his functions. Thus public servants now reject petitions concerning public service corruption (and even allegations of corruption within their own office).

**"But I am aware of another possibility: That the public servants who run the Office of the Governor General dismissed the royal petition without consulting her.** That being the case, it would represent the complete collapse of the separation of powers, with public servants dismissing royal petitions, [esp. those regarding corruption by fellow public servants], and seizing the control of the last check on abuse of power by the government that the Australian Constitution offers." <http://victimsofdsto.com/royal-cosgrove-2/>

In exchanges with the Office of the Governor-General, they have continued to reject petitions, and failed to give assurances that it is the Governor-General dismissing the petitions, and not in fact them:

2014-08-20: E-mail to journalists, MPs concerning Office of Governor-General rejection of corruption petition: "The GG's Office doesn't say if Cosgrove ever saw it. ... (I dealt with Cosgrove when he was CDF and personally found him to be a very decent man, so this would be out-of-character.)" <http://victimsofdsto.com/lib/e-mail/2014-08-18-Office-of-GG-refuses-to-act-on-endemic-federal-government-corruption.html>

<sup>524</sup> Ibid.

<sup>525</sup> **Bicameralism:**

"Bicameralism," Wikipedia, "A bicameral legislature is one in which the legislators are divided into two separate assemblies, chambers or houses." <http://en.wikipedia.org/wiki/Bicameralism>

<sup>526</sup> **The Senate Legal and Constitutional Affairs Committee excluded whistleblowers from contributing to whistleblowing legislation on specious grounds:**

Whistleblower Dr. Kim Sawyer: "Real whistleblowers, that is, people who have blown the whistle and paid the price, are very disappointed with the legislation. We were not listened to."

2013-05-02 E-mail from Legal and Constitutional, Committee (SEN) LegCon.Sen@aph.gov.au: "Dear Mr Jones // It is for the committee – not those who provide material to it – to determine relevance and to make decisions about



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*whether material will be accepted. As previously advised, the committee has considered your material and has determined that it is not relevant to its inquiry and will not be accepted. // Accordingly, I advise that no further correspondence or discussion will be entered into regarding this matter."*

2013-08-29 An Open Letter to the Public Service Commissioner concerning Systemic Corruption in the Australian Public Service **"Failure to consult whistleblowers"** [http://victimsofdsto.com/psc/#fail\\_consult](http://victimsofdsto.com/psc/#fail_consult)

The legislation was deeply-flawed as a result of their failure to engage whistleblowers.

<sup>527</sup> **Parliamentary submissions by others regarding the DTCA:**

Parliament received many submissions regarding the DTCA. These were ignored by the government; rammed into law anyway. In opposition the LNP called the laws *"a disgrace,"* but when they were elected to government, they left it in place anyway.

[http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Trade\\_Implementation/Submissions](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Trade_Implementation/Submissions)

<sup>528</sup> **A brief history of freedom of the speech (or lack thereof) in Australia:**

*"Freedom Of The Press And Freedom Of Speech In Australia,"* Robin Speed, Rule of Law Institute, 2012.  
<http://www.ruleoflaw.org.au/wp-content/uploads/2012/08/Media-1-9-11-Freedom-of-the-Press-and-Freedom-of-Speech-in-Australia-Robin-Speed.pdf>

<sup>529</sup> Ibid.

<sup>530</sup> This is of course true of disadvantaged minorities groups; notably indigenous Australians. Without in any way downplaying on their plight, it is also true of individuals; the smallest minority and so the most vulnerable.

<sup>531</sup> **Father Frank Brennan's Human Rights report:**

*"National Human Rights Consultation Report,"* Father Frank Brennan, *"The National Human Rights Consultation aimed to seek a range of views from across Australia about the protection and promotion of human rights. The consultation process included sixty-six community roundtables, three days of public hearings and comments taken from more than 35 000 submissions. The National Human Rights Consultation Committee handed its report to the former Attorney-General on 30 September 2009."*

<http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Pages/HumanRightsconsultationreport.aspx>

Personal Communication with victims' advocate: *"Father Frank Brennan's report was delivered following his travels around Australia. Father Brennan found a great deal of evidence of human rights abuse. Apparently people who live on the east coast of the country have it easy. Once you cross the Great Dividing Range things get very tough. Mr Rudd backed away from the Report very quickly."*

<sup>532</sup> **Senator Brandis made a pre-election promise to uphold civil rights:**

*"Shadow AG Brandis v 'ideologues'",* CLA, 2013-09-04, *"With Australians heading to the polls this weekend, the HRLC asked the three people contending to be the next Commonwealth Attorney-General to outline their visions and priorities for human rights and justice in Australia. Here's what the Liberal Party's George Brandis had to say..."*  
<http://www.cla.asn.au/News/shadow-ag-brandis-v-ideologues/>

<sup>533</sup> 2013-12-03 *Multijurisdictional State & Federal Crime Report: DSTO (CONFIDENTIAL - Qualified Privilege)*, To: Australian Commission for Law Enforcement Integrity, VIC Office of Public Prosecutions, VIC Police Force, NSW Police Force, NSW Office of the Director of Public Prosecutions cc: Prime Minister Tony Abbott, Senator the Hon George Brandis QC, The Hon Joe Hockey MP - Treasurer, Senator the Hon David Johnston - Defence Minister, The Hon Stuart Robert MP - Assistant Defence Minister, The Hon Michael Keenan MP - Justice Minister.

<sup>534</sup> **One example of Social Injustice under the Gillard Prime ministership:**

*"I wrote to Julia Gillard: "Dr. [REDACTED]'s actions robbed me of my business and left me in debt. His colleagues in the DSTO benefited while I lost everything. We have no house because we invested in the business, and the only money I have is what I have earned in the last two years. I was laid off in December. The Department's mishandling of my Whistleblower complaint has made me unemployable in the Defence sector. I am now in my late forties with a wife and young son and an uncertain future. Dr. [REDACTED] on the other hand is protected by a ring of public servants who have broken administrative and criminal law to ensure he doesn't get so much as a slap on the wrist."*

*Meanwhile the Secretary of Defence is now paid \$825,000 per year out of the public purse.*

*By then he had been promoted to become Secretary of Julia Gillard's own Department. She did not respond to the above letter, and so today I cringe when I hear of her preaching about social justice. Defined thus: "Social justice is about equality and fairness between human beings."*

<http://victimsofdsto.com/dsubcom/#earnliving>

<sup>535</sup> **Tim Soutphommasane on the government's hypocrisy on defamation:**



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Tim Soutphommasane: “*And, if as a society, we were to identify areas of the law that may seriously impinge on our freedom of speech, why do the champions of absolutist free speech appear not to be troubled by the impact of the law of defamation? One recent defamation case resulted in \$280 000 damages to a woman who was described as a ‘grub’, ‘you silly silly woman’ on the 2GB radio station. Another recent case involved \$160 000 damages for each of the three plaintiffs – a total of \$480 000 – in relation to a restaurant review in a newspaper, where the reviewer described a number of dishes as ‘simply unpalatable’ and restaurant as ‘a bleak spot on the culinary landscape’. ... I think we are entitled to ask why it is, exactly, that laws concerning racial vilification have been singled out for such disproportionate attention.*” <https://www.humanrights.gov.au/news/speeches/two-freedoms-freedom-expression-and-freedom-racial-vilification>

<sup>536</sup> **The People retain the Supreme Right to Overthrow the Government:**

Two Treatises of Government, John Locke: “*Thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject.*”

Two Treatises of Government, John Locke: “*Whenever the Legislators endeavor to take away, and destroy the Property of the People, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence. Whosoever therefore the Legislative shall transgress this fundamental Rule of Society; and either by Ambition, Fear, Folly or Corruption, endeavor to grasp themselves, or put into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power, the People had put into their hands, for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty.*”

“Right of Revolution,” Wikipedia, “*Written by the philosopher John Locke, the right to revolution formed an integral part of his social contract theory, in which he tried to define the origins and basis for social conditions and relationships. Locke declared that under natural law, all people have the right to life, liberty, and estate; under the social contract, the people could instigate a revolution against the government when it acted against the interests of citizens, to replace the government with one that served the interests of citizens. In some cases, Locke deemed revolution an obligation. The right of revolution thus essentially acted as a safeguard against tyranny.*” [https://en.wikipedia.org/wiki/Right\\_of\\_revolution](https://en.wikipedia.org/wiki/Right_of_revolution)

“John Locke: Two Treatises of Government”, Sparks, “*Locke supports the right of the people to overthrow rulers who betray them. The executive and the legislature coexist independently to keep each other in check. Further, Locke asserts that if a leader violates the community’s trust, the people can and should replace him immediately. Similarly, if the legislative body does not fulfil the needs of the people, it should be dissolved and replaced with whatever form of government the people think best.*” <http://www.sparknotes.com/philosophy/johnlocke/section2.rhtml>

<sup>537</sup> **The political philosophy of John Locke; the founder of Liberal Democratic government:**

PHIL 41150: Political Philosophy, Lecture Notes, Dr. Robert Lane, University of West Georgia, 2003-03-28. [http://www.westga.edu/~rlane/political/lecture\\_Locke6.html](http://www.westga.edu/~rlane/political/lecture_Locke6.html)

<sup>538</sup> **Successive Labor and Liberal governments have failed to act against federal government crime and corruption:**

2014-02-06 Royal Petition concerning Crime and Corruption within the Australian Public Service <http://victimsofdsto.com/royal/>

2014-07-23 Royal Petition concerning Federal Government Corruption. <http://victimsofdsto.com/royal-cosgrove-2/>

<sup>539</sup> **Absolutely none of the avenues for reporting government abuse are working:**

“*The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians*”, Brendan Jones, “*I am aware that Parliament routinely refuses to accept submissions discussing individual cases, claiming Parliament has no role in ‘examining or resolving personal cases or grievances’.* But what then are victims to do when the government’s own ministers, the opposition’s shadow ministers, their MP, their senators, the agency heads, the Public Service Commissioner, the Merit Protection Commissioner, the police, the Commonwealth Ombudsman, the police watchdog, Attorney-Generals, the Prime Minister, the Governor General, and all of the public service’s oversight agencies ignore their plight, and violate the Model Litigant Policy to keep them out of the courts?” [http://victimsofdsto.com/dsubcom/#\\_edn169](http://victimsofdsto.com/dsubcom/#_edn169)

<sup>540</sup> 2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received) <https://tinyurl.com/kymge9z>

<sup>541</sup> **Labor claims it won’t rubber stamp Liberal’s push for metadata surveillance:**

“*Mark Dreyfus says Labor won’t rubber stamp expanded surveillance powers,*” Katharine Murphy, The Guardian, 2014-06-30. “*One of the reforms being sought most vigorously by ASIO and federal and state police – a highly controversial recommendation to create a two year mandatory data retention regime to assist intelligence and police with their investigations – has been pushed back until later in the year.*” <http://www.theguardian.com/world/2014/jun/30/labor-rubber-stamp-expanded-surveillance-powers>

<sup>542</sup> **But the Labor and Liberal parties have both promoted Metadata surveillance:**

*"We're all caught up in the drama of metadata,"* Simon Benson, The Daily Telegraph, 2014-08-08.

*"The government may have completely bugged up its attempts to explain the issue this week but an **equally disingenuous campaign is now being run by Labor leader Bill Shorten and shadow attorney-general Mark Dreyfus.***

Chapter 5 of the Parliamentary Joint Committee on Intelligence and Security tabled in June last year runs to 192 pages. It is entirely devoted to data retention, which was first flagged by Labor attorney-general Nicola Roxon in 2012, and took thousands of submissions, including from telcos.

***It was a bipartisan and unanimous report. Current Attorney-General George Brandis was a member of that committee. And Dreyfus was attorney-general at the time it was tabled.***

*The opposition's claim that the committee failed to recommend in favour of data retention is dishonest characterisation.*

*None of what is being proposed by the government is new. What is new, however, is the unravelling of what was previously a bipartisan approach to the issue."* <http://www.dailytelegraph.com.au/news/opinion/were-all-caught-up-in-the-drama-of-metadata/story-fni0cwl5-1227017149315?nk=9e3a909f31843747eaced7dc204babe6>

<sup>543</sup> **Labor's forced mass surveillance of the public when they were in power:**

**"Roxon edges towards keeping online data for two years,"** 2012-09-04, Dylan Welch, Ben Grubb, Bianca Hall, Lucy Battersby. *"The data retention plan - which would force all Australian telcos and internet service providers to store the online data of all Australians for up to two years."* EFA said *"The proposal that ASIO would be permitted to 'add, delete or alter data or interfere with, interrupt, or obstruct the lawful use of a computer' could lead to some very serious consequences ... It could also provide the means for evidence to be 'planted' on innocent parties."* *"Victoria's Acting Privacy Commissioner, Anthony Bendall, dubbed the proposals 'characteristic of a police state', arguing that data retention in particular was 'premised on the assumption that all citizens should be monitored'."* <http://www.smh.com.au/technology/technology-news/roxon-edges-towards-keeping-online-data-for-two-years-20120903-25amz.html>

**"Roxon puts web surveillance plans on ice,"** 2012-08-10, Philip Dorling, SMH, *"A controversial internet security plan to store the web history of all Australians for up to two years has been stalled by the federal government until after the next election."* <http://www.smh.com.au/technology/technology-news/roxon-puts-web-surveillance-plans-on-ice-20120809-23x9l.html>

But then two weeks later, she passed a 'lite' version anyway:

**"Senate passes 'lite' data retention laws",** 2012-08-22, Darren Pauli, IT News, [http://www.itnews.com.au/News/312771\\_senate-passes-lite-data-retention-laws.aspx](http://www.itnews.com.au/News/312771_senate-passes-lite-data-retention-laws.aspx)

**"Be careful, She might hear you."** Philip Dorling, 2012-09-25, The Age. *"Attorney-General Nicola Roxon wants unprecedented access to the private lives of Australians",* <http://www.theage.com.au/technology/technology-news/be-careful-she-might-hear-you-20120924-26h6r.html>

<sup>544</sup> **Metadata surveillance of the Australian public since KEVIN07.**

**"The Australian Government Snoop Patrol: Once Every Two Minutes, 24/7, Anyone's Data,"** Powerhouse, 2013-06-19. *"It happens all the time – roughly 800 times a day, on last year's records. Somewhere in Australia, a government bureaucrat – no-one especially senior; say, a Centrelink agent – fills in a form, gets a signature from someone else in the department, and becomes authorised to check out a member of the public's phone records (which numbers that person has called, how long they spoke, and where they were when they placed the call), and then their email history (who they've emailed, and when, and the IP addresses used). No warrant required, no notice given. It's all legal – and has been happening since 2007. In fact it happened more than 300,000 times in 2011-12. It may have happened to you – and in most cases, you wouldn't know."* <http://powerhouse.theglobalmail.org/the-australian-government-snoop-patrol-once-every-two-minutes-247-anyones-data/>

<sup>545</sup> **Examples of public officials abusing government surveillance powers:**

**Australia:**

*"63 investigations found to be in breach of Australian Public Service Code of Conduct,"* Patricia Karvelas, The Australian, 2013-07-31. ***"Bureaucrats in the Department of Human Services are using their high-level access to pry on private files, with 170 cases of potential unauthorised entries in the past financial year."*** <http://www.theaustralian.com.au/national-affairs/investigations-found-to-be-in-breach-of-australian-public-service-code-of-conduct/story-fn59niix-1226688378866?nk=9e3a909f31843747eaced7dc204babe6#>

***"Hundreds of police members caught abusing confidential information on operational intelligence database,"*** Jon Kaila, Herald Sun, 2013-05-08 <http://www.heraldsun.com.au/news/law-order/hundreds-of-police-members-caught-abusing-confidential-information-on-operational-intelligence-database/story-fnat79vb-1226637132957>

***"Rookie Cop Checks on 'Potential Girlfriends': 6,900 Database Searches in Only Two Months. An Australian constable new to the beat used the police database to check on potential girlfriends. In just over two months***

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the then 20-year-old policeman performed an unprecedented 6,900 searches on the police database. The counsel assisting the case says that of those 6,900 searches at least 300 weren't connected to official duties."

<http://rense.com/general26/top10list.htm>

**"Cop Uses Database to Find Woman's Unlisted Phone Number. A Brisbane, Australia, police officer admitted to giving a local businessman the personal details of his ex-girlfriend.** The investigator told the court how the woman, whose name has been suppressed, complained earlier that an ex-boyfriend had called her unlisted home phone number. The senior police constable admitted to providing the woman's personal details. Despite twice denying in previous CJC interviews to handing over the silent number, Constable Crawford changed his evidence."

<http://rense.com/general26/top10list.htm>

**"Secrets, lies and perils of a whistleblower,"** Phil Dorling, The Age, 2012-02-18. "A massive data crunching exercise followed, involving access to the telephone call records of nearly 14,000 telephone services totalling more than 77,000 phone calls. Most of these numbers were the phones of Defence personnel with access to the leaked documents. However, the fishing expedition, using information obtained without warrant from telecommunication service providers, included call records of more than 130 private subscribers and in some cases internet usage and mobile phone location data. Eventually, using new Watson analytic software, the investigation team targeted "a small group of individuals". Other than myself, the names of "persons of interest" have been redacted from the AFP report..."

<http://www.theage.com.au/national/secrets-lies-and-perils-of-a-whistleblower-20120217-1texx.html>

**The AFP and Defence – both corrupt agencies – wanted to illegally tap Phil Dorling's phone.** To his credit, the (then) Director-General of ASIO, Dennis Richardson refused: "The ASIO representatives said no and sent a report to ASIO Director-General Dennis Richardson who wrote: "It is important that the AFP and Defence understand that, unless there is relevance to our functions under the [ASIO] Act, we cannot engage in such activity."

<http://www.theage.com.au/national/secrets-lies-and-perils-of-a-whistleblower-20120217-1texx.html> Unfortunately ASIO's industrial espionage and the failure of the IGIS to act on those shows there is no guarantee an ethical public official will be present to stop less-ethical public officials from abusing their surveillance powers.

**"ASIO caught phone tapping ordinary Australians,"** Jessica Marszalek, Herald Sun, 2013-10-31. "ASIO has been caught tapping the phones of ordinary and unsuspecting Australians. The watchdog for Australia's most secret agencies has revealed ASIO's special telecommunications interception powers have been hitting the wrong targets. The Inspector-General of Intelligence and Security, Vivienne Thom, exposed the alarming bungles in her annual report. She found "human error" was to blame and ASIO had promised it had destroyed the information. But neither Dr Thom or ASIO will detail the exact number of cases, how the information was intercepted and whether those inadvertently spied upon were ever told." <http://www.heraldsun.com.au/news/law-order/asio-caught-phone-tapping-ordinary-australians/story-fni0fee2-1226750798013> Vivienne Thom's doesn't say how many abuses there are, or what they were, and we're expected to believe they were all "human error." Given her agencies failure to act on the ASIO Woodside espionage, she's asking us to take a lot on faith.

**Improper Accesses are not followed up.** "Australia's Real Surveillance Scandal," Ross Coulthart, The Global Mail, 2013-12-13. "I have seen how this happens; some years ago I was investigating a story involving alleged impropriety by a senior government official in a major federal government department. The multiple sources I was talking to (mercifully, off the phone) were providing me with leaked documents and information that raised serious questions of possible impropriety, if not corruption, which we subsequently broadcast. One source, it turned out, was tech-savvier than I am. He worked in the internal investigations unit of the department and knew what could be done to investigate any public servant who leaked information to the media. He told me it was likely there would be an inquiry into the source of the leak for my story, and that the minister would most likely order a Federal Police investigation into whom the leak had come from – and that the first thing the AFP would then do is access my phone records. We agreed never to call or email each other because that would lead investigators straight to him as my source. Surveillance of my phone and email data was all but inevitable, he said. "Surely they'd need a warrant to do that?" I asked.

**Within hours of this conversation my savvy source – no doubt improperly – obtained a copy of my mobile-phone call data, showing the numbers I had called and which of those numbers belonged to a federal government public servant. He told me no one had ever questioned him or any of his colleagues about the requests they made for phone-call data; if there was any kind of oversight, he'd never seen evidence of it."**

<http://www.theglobalmail.org/feature/australias-real-surveillance-scandal/777/>

**The AFP - a corrupt agency - accessing politicians communications records with a warrant or any judicial oversight.** "Australia's Real Surveillance Scandal," Ross Coulthart, The Global Mail, 2013-12-13. "In November, Federal Police Commissioner Tony Negus admitted his force had accessed the call data of "up to five" members of parliament. Negus made much of the judicial oversight, through the issuing of a warrant, for any interception of the contents of phone calls, emails or SMS messages – but the elephant in the room was his admission that up to five MPs had been the subjects of warrantless data-surveillance, and that no judge had any input at all regarding the propriety of this access." <http://www.theglobalmail.org/feature/australias-real-surveillance-scandal/777/>

"Australia, US accessing Indonesian telephone data, leaked documents show," Philip Dorling, SMH, 2014-02-16.

**"The New York Times further reports that the Australia Signals Directorate specifically monitored communications between the Indonesian Government and a US law firm that was representing Jakarta in trade disputes with the**



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**United States.”** <http://www.smh.com.au/national/australia-us-accessing-indonesian-telephone-data-leaked-documents-show-20140216-32td8.html>

“Marty Natalegawa takes swipe at Tony Abbott over prawn spying claim,” Michael Bachelard, SMH, 2014-02-17. **“[I]n early 2013, the Australian Signals Directorate had spied on trade talks between the United States and Indonesia. The talks were over a dispute involving Indonesian exports of prawns and clove cigarettes to the United States.”** <http://www.smh.com.au/federal-politics/political-news/the-raw-prawn-marty-natalegawa-takes-swipe-at-tony-abbott-over-prawn-spying-claim-20140217-32wgq.html>

**“Australian spy agency helped BHP negotiate trade deals,”** Philip Dorling, 2013-11-07. *“BHP was among the companies helped by Australian spy agencies as they negotiated trade deals with Japan, a former Australian Secret Intelligence Service officer says.”* <http://www.smh.com.au/national/australian-spy-agency-helped-bhp-negotiate-trade-deals-20131106-2x1sw.html>

**“East Timor spying scandal: Tony Abbott defends ASIO raids on lawyer Bernard Collaery's offices,”** ABC, 2013-12-04. *“East Timor claims ASIS used the cover of Australia's aid program to install listening bugs inside the East Timorese cabinet room so it could spy on sensitive information during oil and gas negotiations in 2004. The two countries were working on a deal to share revenue from the oil and gas deposits under the Timor Sea, called The Greater Sunrise fields. Woodside Petroleum, which wanted to exploit the field, was working hand in glove with the Australian government and senior ministers to score the best possible deal. He says the former ASIS operator decided to blow the whistle after learning Mr Downer had become an adviser to Woodside Petroleum in his years. In a statement to the ABC, Mr Downer says the allegations are old and he will not comment on matters regarding national security. The whistleblower's affidavit is understood to refer to the alleged 2004 bugging operation as "immoral and wrong" because it served not the national interest, but the interests of big oil and gas. Mr Collaery says ASIS's alleged spying amounts to "insider trading". ”* <http://www.abc.net.au/news/2013-12-04/asio-arrests-key-witness-in-east-timor-spying-scandal/5132954>

Some Australians have naïvely told me they don't mind the government conducting industrial espionage to advantage big business, believing the benefits will trickle down to them. That overlooks that the government has also advantaged big business to *harm* the average Australian (e.g. the Manildra case), and that (those people who approve of the abuse of government power to help big business) might themselves be targeted to advantage a government business enterprise (e.g. to gain an unfair business advantage; e.g. sales leads, or steal intellectual property.)

**UK:**

**“Police database abuse ‘hugely intrusive’,”** Tom Brewster, IT Pro, 2011-07-08. <http://www.itpro.co.uk/634774/police-database-abuse-hugely-intrusive>

**“Peterborough PCSO illegally checked files over five years,”** Peterborough Telegraph, 2014-02-20 *“Police have launched an internal investigation after a PCSO made 900 unauthorised checks on Cambridgeshire police records.”* <http://cambridgeshire-news.co.uk/2014/02/20/peterborough-pcso-illegally-checked-files-over-five-years/>

**“GCHQ intercepted foreign politicians' communications at G20 summits,”** Ewen MacAskill, Nick Davies, Nick Hopkins, Julian Borger and James Ball, The Guardian, 2014-06-17. *“Foreign politicians and officials who took part in two G20 summit meetings in London in 2009 had their computers monitored and their phone calls intercepted on the instructions of their British government hosts, according to documents seen by the Guardian. Some delegates were tricked into using internet cafes which had been set up by British intelligence agencies to read their email traffic.”* <http://www.theguardian.com/uk/2013/jun/16/gchq-intercepted-communications-g20-summits>

**US:**

**“Inside Account of U.S. Eavesdropping on Americans,”** Brian Ross, Vic Walter, Anna Schecter. ABC Nightline, 2008-10-09 *““Calling home to the United States, talking to their spouses, sometimes their girlfriends, sometimes one phone call following another,” said Faulk. ... Faulk says he and others in his section of the NSA facility at Fort Gordon routinely shared salacious or tantalizing phone calls that had been intercepted, alerting office mates to certain time codes of “cuts” that were available on each operator's computer. ... “Hey, check this out,” Faulk says he would be told, “there's good phone sex or there's some pillow talk, pull up this call, it's really funny, go check it out. It would be some colonel making pillow talk and we would say, ‘Wow, this was crazy,’” Faulk told ABC News.”* <http://abcnews.go.com/Blotter/exclusive-inside-account-us-eavesdropping-americans/story?id=5987804>

**“Cop Suspected of Using Database to Plan Murder of Ex-wife.”** <http://rense.com/general26/top10list.htm>

**“FBI Files Sold to Mob and International Criminals by Nevada Attorney General's Office Employee and Former FBI Agent.”** <http://rense.com/general26/top10list.htm>

**“The Highland, Indiana, police department had its access to the state's FBI database suspended due to misuse. ... State police auditors claim that local investigators had been using the system to run checks on contractors and door-to-door solicitors in direct violation of IDACS policy, and continued to do so even after being warned.”** <http://rense.com/general26/top10list.htm>

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**'Political Candidates Probed by Police Chief in Eastpointe, Michigan.'** <http://rense.com/general26/top10list.htm>

**"Police Investigated for Using Database to Target Organizers of Sheriff-Recall Campaign"**  
<http://rense.com/general26/top10list.htm>

**"Butler County Prosecutor's Office Uses Database to Smear Prosecutor's Political Opponent"**  
<http://rense.com/general26/top10list.htm>

**"Police Lieutenant Charged With Abusing Database to Influence Elections"** <http://rense.com/general26/top10list.htm>

**"Cop Fired for Abusing Database, Chief Accused as Well."** <http://rense.com/general26/top10list.htm>

**"Amid Concerns, FBI Lapses Went On."** Jeffrey Smith and John Solomon, Washington Post, 2007-03-18.

*"FBI counterterrorism officials continued to use flawed procedures to obtain thousands of U.S. telephone records during a two-year period when bureau lawyers and managers were expressing escalating concerns about the practice"*  
<http://www.washingtonpost.com/wp-dyn/content/article/2007/03/17/AR2007031701451.html>

*"School Spies on Students at Home With Webcams: Suit,"* Teresa Masterson, NBC, 2010-02-18. **"A Philadelphia-area school official confronted a student with photographic evidence that he was doing bad things at home. She got her evidence by activating the webcam on the laptop in his house, a lawsuit claims. Lower Merion School District officials are spying on students and their families inside their homes with Web cameras installed in pupil laptops, claims Blake J. Robbins in a lawsuit against the district."** <http://www.nbcphiladelphia.com/news/local/School-Spies-on-Students-at-Home-with-Webcams-Suit-84712852.html>

*"School settles laptop spying case to "protect taxpayers,""* Jacqui Cheng, Ars Technica, 2010-10-31. *"Following a court order to preserve the webcam images from the district's 2,300 student-issued laptops, the Robbins' updated their claims, saying that the school took more than 400 photos of Blake in his room (some while he was "partially undressed"). Additionally, they said the school took "thousands" more pictures of other students in their homes, or in some case screenshots of private IM conversations. ... Even worse, the IT staff responsible for monitoring the student laptops seemingly viewed the whole thing as entertainment, with one admin telling another via e-mail that the photos were "like a little [Lower Merion School District] soap opera." Another responded with, "I know. I love it!"*" <http://www.nbcphiladelphia.com/news/local/School-Spies-on-Students-at-Home-with-Webcams-Suit-84712852.html>

<sup>546</sup> **"Why surveillance information will always be abused by governments,"** Bernard Keane, Crikey, 2013-07-25.

*"The value of mass surveillance data inevitably means it will be abused unless it is treated like other government resources and strictly — and publicly — monitored."* [http://www.crikey.com.au/2013/07/25/why-surveillance-information-will-always-be-abused-by-governments/?wmp\\_switcher=mobile](http://www.crikey.com.au/2013/07/25/why-surveillance-information-will-always-be-abused-by-governments/?wmp_switcher=mobile)

<sup>547</sup> **"What could turn these farmers into unlikely activists?"**, GetUp, "What turned a 92 year Kokoda Veteran into an activist? ... The tiny community of Maules Creek is in the agricultural heartland of Northern NSW - home to a small number of quiet farmers who were once content leading their own lives supplying food for the nation.

*Yet when their home became the location of the biggest coal mine under construction in Australia, these farmers had to give up the quiet life. Whitehaven Coal's open-pit coal mine will degrade their farms, pollute their air and drain their water table to dangerously low levels.*

*Politicians and corporations have ignored them, so these everyday Australians have turned to the only thing they have left - people power. For 800 days and 800 nights they have bravely protected their land and their forests from Whitehaven's machines."* <https://www.getup.org.au/campaigns/climate-action-now/maules-creek/what-could-turn-these-farmers-into-unlikely-activists>

<sup>548</sup> **The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians",* Brendan Jones, <http://victimsofdsto.com/dsubcom/#rights>

<sup>549</sup> **The universities lost their fight with Defence over the DTCA:**

*"Many before me have already argued soundly against the DTCA with reason and logic. But the government ignored them; wouldn't engage in a dialogue; wouldn't justify its position, and just rammed the DTCA straight into law. If government is a benevolent institution, that's completely irrational."* <http://victimsofdsto.com/dsubcom/#sub>

**"Tighter Defence ties will bind academics and stifle innovation,"** Jill Trehwella, Deputy Vice Chancellor of Research, University of Sydney via SMH, 2012-10-10, *"The legislation gives unprecedented authority to one department to decide what research can be communicated and to whom and given the bill covers technologies with military and civilian applications, Defence is alarmingly unqualified for the task."* <http://www.smh.com.au/federal-politics/political-opinion/tighter-defence-ties-will-bind-academics-and-stifle-innovation-20121009-27b4n.html>

**"Science and the Slammer: the consequences of Australia's new export regime,"** Michael J. Biercuk, University of Sydney, *"At this moment, Australian Parliament is considering a Bill with far-reaching consequences for Australian research aimed at improving health, and fostering innovation in communications, mining, agriculture, manufacture and trade. Its potential implications are shocking, and at odds with existing Australian legislation protecting academic freedom – potentially disrupting and even criminalising common activities undertaken in the course of university*

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research.” <http://theconversation.com/science-and-the-slammer-the-consequences-of-australias-new-export-control-regime-10127>

<sup>550</sup> **Having lost their fight against Defence over the DTCA, the universities are now signing partnership deals with Defence:**

“New program to strengthen Defence research,” Defence, 2014-07-23, “*Chief Defence Scientist Dr Alex Zelinsky speaking at the launch of new the Defence Science Partnerships program. A new partnership program between the Department of Defence and the innovation sector launched today will strengthen and enhance the impact of Defence science research in Australia. The Defence Science Partnerships program, led by the Defence Science and Technology Organisation (DSTO), will enable Australian universities to work in a coordinated way with Defence and national security agencies on collaborative research projects. The program complements DSTO’s Industry Alliance program which forges closer collaborative research and development activity with industry.*

*The program was developed in consultation with a working group from the University of Adelaide, RMIT, Australian National University, University of Queensland, University of New South Wales, Monash University, Charles Darwin University and the University of Tasmania. Involvement in the program will enable universities to leverage funding from DSTO and other sources, and share research infrastructure.”*

<http://www.dsto.defence.gov.au/news/2014/07/26/new-program-strengthen-defence-research#sthash.rYAoH9Tc.dpuf>

<sup>551</sup> **The Department of Defence’s business partnerships:**

One executive warned: “*Australia is a really bad place to do business because your biggest competitor is the DSTO, and they have a monopoly.*”

Many tenders awarded by Defence are “partnerships” between the DMO (the Defence Materiel Organisation) and their business partners known as “*Team Australia*.”

“*Team Australia*,” Department of Defence, “*Team Australia combines Australian Government and industry in promoting Australia’s innovative defence and security technologies. This partnership indicates Defence support of Australian industry to supply high quality, sustainable solutions to the capability requirements of valued overseas customers. Team Australia is a collaborative initiative of the Australian Government and the Australian defence industry sector. It utilises the complementary strengths of government and industry to provide Australian defence capability solutions to global customers.*” [http://www.defence.gov.au/teamaustralia/Team\\_Australia.htm](http://www.defence.gov.au/teamaustralia/Team_Australia.htm)

“*The Department of Defence ... has entered into business partnerships with companies such as IBM, Raytheon, BAe, Tenix and CAE (formerly KESEM), and sees its own DSTO has having a “wealth creation role.” The DSTO has exploited its conflict of interest to advance its own business interests, advantage its business partners, and steal intellectual property from the private sector. The DMO (Defence Materiel Office) has many business partners too.*” <http://victimsofdsto.com/dsubcom/#privacy>

<sup>552</sup> **But if the Department of Defence is a wasteful, unaccountable, poorly-run, corrupt agency with commercial ambitions seeking a monopoly on science through the DTCA, then suddenly its behaviour is entirely rational:**

“*The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians*”, Brendan Jones, <http://victimsofdsto.com/dsubcom/>

<sup>553</sup> “**Mandatory Detention in Australia**,” Wikipedia, @2014-08-12, “*Keating Government*,” “**Mandatory detention laws were introduced in Australia by the Keating Labor government, with bipartisan support, in 1992.** The legislation was proposed as a result of an influx of Vietnamese, Chinese, and Cambodian refugees over the previous few years. The legislation specifically disallowed judicial review, but did impose a 273-day limit on detention. Minister for Immigration Gerry Hand told Parliament in his Second Reading Speech: ‘The Government is determined that a clear signal be sent that migration to Australia may not be achieved by simply arriving in this country and expecting to be allowed into the community ... this legislation is only intended to be an interim measure.’” [https://en.wikipedia.org/wiki/Mandatory\\_detention\\_in\\_Australia](https://en.wikipedia.org/wiki/Mandatory_detention_in_Australia)

<sup>554</sup> **Labor imprisoned refugee children, as the Liberal Party does today:**

“*Keeping these innocent kids locked up is simply wrong*,” Suzy Freeman-greene, The Age, 2013-07-20. “*About 1700 children are locked up in Australia today. They haven’t committed a crime. They’re seeking asylum. But amid so much shrill talk of turning back boats, economic migrants and national emergencies, their voices are barely heard.*” <http://www.theage.com.au/comment/keeping-these-innocent-kids-locked-up-is-simply-wrong-20130719-2q9vb.html>

<sup>555</sup> “**FactCheck: are asylum seekers really economic refugees?**,” Sara Davies, International Relations at Griffith University via SMH, 2013-07-02. “*“People are coming here, not now as a result of persecution, but because they’re economic refugees who’ve have paid money to people smugglers.” – Foreign minister Bob Carr, Meet the Press, June 9. ... Verdict: Based on the available information, the foreign minister’s statement is incorrect.*” <http://www.smh.com.au/national/factcheck-are-asylum-seekers-really-economic-refugees-20130702-2p96i.html>

<sup>556</sup> “**Economic migrants coming by boat: Carr**,” News Ltd, 2013-06-27. “*New Prime Minister Kevin Rudd has promised to implement asylum-seeker policies that work. ... Australia needs a tougher assessment regime for asylum*



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seekers to stem the growing number of economic migrants coming by boat, Foreign Minister Bob Carr says. Senator Carr, who switched his support from Julia Gillard to Kevin Rudd in Wednesday's leadership ballot, said the make up of people arriving by boat had changed in recent years. There was evidence a growing number of boat arrivals were economic refugees, and not asylum seekers, from countries like Iran, he said. "These are increasingly not people fleeing persecution," Senator Carr told the Senate during question time on Thursday. "They are paying for passage with people smugglers." <http://www.news.com.au/national/breaking-news/carr-flags-tougher-boat-policy-under-rudd/story-e6frku9-1226670716464>

Using that logic a Jew paying money to escape Nazi Germany is an economic refugee.

<sup>557</sup> **Conflicts of Interest by Public Officials:**

Peter Goon: "The protection of the reputations of public officials (past as well as present) and their vested, often conflicted, self interests, is now dominant over everything else, including the rights and well being of fellow Australians, as seen by the defence abuses matters, and, even, the National Interest as evidenced by the many flawed and failed defence acquisition projects over the past decade or so.

Even the cultural review entitled "Personal Conduct of ADF Personnel" by MajGen Craig Orme confirms this behaviour in the definition of "Conduct" -

Conduct:

Appropriate conduct: Behaviour that conforms to prevailing norms, standards or laws (military and civilian), that at a minimum does not bring the reputation of an individual, a group or organisation into disrepute, and ideally enhances that reputation.

Misconduct/unacceptable behaviour: Behaviour that does not conform to prevailing norms, standards or laws (military and civilian), and which brings the reputation of an individual, a group or organisation into disrepute.

Cultural Review by MajGen Craig Orme, 03 August 2011"

<sup>558</sup> "The security breach Defence tried to hide", Des Houghton, The Courier-Mail, March 03, 2012.

<http://www.couriermail.com.au/ipad/the-security-breach-defence-tried-to-hide/story-fn6ck620-1226287784790>

<sup>559</sup> Steve Davies, Media Briefing, Ozloop, 2014-03-17, "Decent Australians are being bullied and destroyed by the predatory abuse of power by Australian Public Service agencies. ... The Australian Government needs to compel public service agencies to obey the law, follow their own code of conduct and stop using taxpayers money to fund abusive practices.." <http://goo.gl/zCwlhQ>

<sup>560</sup> **Defence Audit Fraud Control Division amongst biggest spenders on alcohol and entertainment:**

"Defence's hospitality not cheap," Linda Simalis, The Sunday Telegraph, 2012-05-13.

"Defence officials are spending over \$100,000 a month in entertaining overseas intelligence chiefs and dignitaries at venues ranging from an American micro-brewery in Tokyo to an exclusive cricket club.

Department of Defence documents obtained by the Opposition reveal the total liquor and hospitality spend by defence agency officials in the six months to December was \$658,977 - over \$25,000 a week. The bill includes hospitality costs for VIP dinners, spouse lunches and "meetings".

The release of the expenses follows revelations by The Sunday Telegraph last week of the rapidly expanding public relations arm of the department, which now rivals the size of eight Australian army platoons.

It comes as the federal government prepares to slash the Defence budget by \$5.45 billion over four years, with defence equipment spending to be cut from \$11.5 million to \$9.6 million next year. **The documents show the biggest entertainment costs was \$191,522 from officials at the Office of the Secretary and Chief of the Department of Defence, which includes the Audit Fraud Control Division and Military Justice units.**

Two officials from the department spent \$207 on a "meeting" at the exclusive Singapore Cricket Club while more than \$1000 was spent on liquor at a "representational function" in Hanoi, Vietnam.

Another \$1787 was spent on a meeting for 18 people in Tokyo at the TY Harbour Brewery, which is famous for its beer and crabcakes.

Air Force officials spent \$74,105 on wining and dining, including \$2137 on talks for Japan and Australian air staff at L'estasi Restaurant Italiano in Tokyo.

Defence Minister Stephen Smith spent just \$7000 entertaining his international counterparts.

Intelligence and Security chiefs were the most frugal with their per-head expenditure. The total bill for the division was \$49,080.

In August, an official met an analyst for a \$44 lunch at D'Arcy McGees in Ottawa, Canada.

The unit spent just \$18 per person at a \$513 conference dinner for 28 people at the Tongue and Groove Pub in Civic.

Opposition Defence spokesman David Johnston said the proposed cuts should have focused on public relations and hospitality, rather than to areas such as defence equipment.

"In what has been a black week for Defence I would have thought that it would have been some of these areas that the Minister could have focused on when announcing his draconian cuts to the Defence budget," he said."

<http://www.dailytelegraph.com.au/defences-hospitality-not-cheap/story-e6freuy9-1226353606789?nk=65eab2ad66eff8885fd23691cbc148d>

<sup>561</sup> "Australia: The world's fattest fat cats," Author unknown, 2014. <http://victimsofdsto.com/memo/fatcats.html>

<sup>562</sup> **Public servants paid more than private-sector workers; Canberra the highest paid in the country:**

"Time to take the scalpel to fat cats," Miranda Devine, The Sunday Telegraph, 2014-06-22. "Full-time pay in the private sector is \$1410.50 a week (\$73,000 a year), according to last year's ABS figures. In the public service, it's \$1538.70 (\$80,000) — not to mention superannuation and perks, - including a generous paid parental leave scheme. Considering people in the private sector work at least four hours more a week, and one in six people work at least 24 hours more, the hourly rate of the average government employee looks pretty cushy."

<http://www.dailytelegraph.com.au/news/opinion/time-to-take-the-scalpel-to-fat-cats/story-fni0cw15-1226962356577?nk=8930197affed93c56d780cbbb4552c21>

"ACT earns reputation for highest wages," David McLennan, 2010-05-21. "Canberra workers are extending their lead as the nation's highest wage earners, with their average pay packet now more than \$75,000 a year."

<https://web.archive.org/web/20100524102648/http://www.canberratimes.com.au/news/local/news/general/act-earns-reputation-for-highest-wages/1836452.aspx>

<sup>563</sup> **Australian public servants pay themselves much more than those of comparable positions in the UK and US:**

"Are Our Taxes Paying For The World's Fattest Fat Cats?" Tim Andrews, 2014-05-04, "Adam Creighton, writing in today's Australian, reports on the obscene amounts of hard earned taxpayer funds paying for public service bureaucrats:

"The head of the Department of Climate Change — one of many departments of dubious value — is set to earn at least \$700,000 a year by 2014, a 39 per cent pay rise in two years...The secretary of the Prime Minister's department will get \$825,000 a year, more than any other and a 50 per cent pay rise.

These increases are preposterous. For instance, the head of the US Treasury earns less than \$200,000 a year and the Bank of England governor is paid about pound sterling. 310,000 (\$487,000). These are roles where the need to attract talent is surely at least as pressing...

The profusion of senior executive service personnel, the 2790 bureaucrats in Canberra who typically earn between \$200,000 and \$360,000 a year, is even starker. Their number remained broadly flat between 1984 and 2001, but since then their ranks have almost doubled. Entire suburbs of Sydney and Melbourne are paying tax to support these jobs."

We decided to do a quick google search to compare the most recent salaries from some other politicians and bureaucrats in the US and UK to what is being proposed for our bureaucrats in 2014. Here are the results:

Name	Job	Country	Salary (\$AUD)
Bill Daley	White House Chief of Staff	USA	<a href="#">\$167,000</a>
Tim Geithner	Secretary of the Treasury	USA	<a href="#">\$186,000</a>
Ben Bernanke	Chairman, Federal Reserve Bank	USA	<a href="#">\$194,000</a>
Gen. Martin Dempsey	Chairman of the Joint Chiefs of Staff	USA	<a href="#">\$215,000</a>
David Cameron	Prime Minister of the United Kingdom	UK	<a href="#">\$224,000</a>
Jeremy Heywood	Permanent Secretary, Prime Minister's Office	UK	<a href="#">\$244,000</a>
Sir John Sawers	Chief of the Secret Intelligence Service	UK	<a href="#">\$268,000</a>
Sir Gus O'Donnell	Cabinet Secretary	UK	<a href="#">\$376,000</a>
Barack Obama	President of the United States	USA	<a href="#">\$390,000</a>
Mervyn King	Governor of the Bank of England	UK	<a href="#">\$487,000</a>
Blair Comley	Secretary, Department of Climate Change	Australia	<a href="#">\$700,000</a>
Dr Paul Grimes	Secretary Department of Sustainability, Environment, Water, Population	Australia	<a href="#">\$700,000</a>
Dr Martin Parkinson	Secretary of the Treasury	Australia	<a href="#">\$805,000</a>
Dr Ian Watt	Secretary, Department of Prime Minister & Cabinet	Australia	<a href="#">\$825,000</a>

<https://www.taxpayers.org.au/are-our-taxes-pay-for-the-worlds-fattest-fat-cats/>

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<sup>564</sup> **Future Fund is speciously portrayed as a sovereign wealth fund. It's really the public service pension fund:**

In media coverage of the future fund it is seldom mentioned it is in fact the public service pension fund. I suspect many Australians, like myself, assume it is an investment fund for the entire nation.

**"Future Fund tops \$100 billion,"** Mark Mulligan, SMH, 2014-08-04. *"The value of Australia's Future Fund has surpassed \$100 billion for the first time since it was set up by then-Treasurer Peter Costello in 2006.... "These returns show the value of long-term and patient investment," said Mr Costello, who is chairman of the Future Fund.*

*"In the fund's early days, in a challenging investment climate, the returns were below the target range. "But disciplined adherence to clear objectives has delivered good results over the medium term." Mr Costello said the fund was now focused on performance to "2020 and beyond". In an interview with The Australian Financial Review, he also said the Future Fund was readying for a period in which US equities were no longer the main drivers of growth.*

*Instead, he said, allocators were looking more at the relative weight of private equity, infrastructure and alternative investments. He said diversification would help the fund "ride out the different cycles".*

*Asset allocations had changed little since 31 December, he said, when private equity, infrastructure and alternative investments accounted for a total 30.3 per cent of total fund assets, up from 29.5 per cent a year earlier. Equities represented 43.2 per cent of assets, up from 34.5 per cent a year earlier.*

*Australian equities made up 10.1 per cent of the Future Fund's investments at 31 December.*

*Although passing \$100 billion in value, the Future Fund is still small beside well-established sovereign wealth funds such as Norway's, which is worth US\$878 billion (\$942 billion)."*

<http://www.smh.com.au/business/markets/future-fund-tops-100-billion-20140804-100d0k.html>

<sup>565</sup> **Public Service Pensions (what really happens to budget surpluses):**

*"You've no doubt heard of Australia's "Future Fund." It sounds like a Sovereign Wealth Fund, much like Norway's or Kuwait's which will pay the nation's way even after its natural resources are exhausted. Peter Costello called the fund "our children's future." <http://www.theaustralian.com.au/opinion/peter-costello-rudd-will-mortgage-future-leaving-kids-to-foot/story-e6frg6zo-111113241419>*

*In fact, the "Future Fund" is the public service's pension fund. Effectively when the government privatised Telstra, a publicly-owned asset owned by \*you\*, they gave the proceeds to the public service to fund their own oversubscribed retirement plans.*

*Effectively, when the government privatised Telstra, a publicly-owned asset, they gave the proceeds to the public service to fund their own oversubscribed retirement plans.*

*"Wealth fund design up for grabs," Clancy Yeates, SMH, 2011-04-23.*

*"Australia's Future Fund is a public servants' pension fund that neither smooths the boom-and-bust cycle nor saves for the nation - and many economists say this is a major gap in our policy settings."*

<http://www.smh.com.au/business/wealth-fund-design-up-for-grabs-20110422-1dri4.html>

*"The Future Fund," Wikipedia, 2014-07-10: "The Australian Government Future Fund is an independently managed investment fund into which the Australian Government deposits its budget surplus. The purpose of the fund is to meet the government's future liabilities for the payment of superannuation to retired civil servants of the Australian Public Service. ... History. On 11 September 2004, the Federal Treasurer, Peter Costello, announces that the Future Fund will be established following the 2004 federal election. [from] from government surpluses and income from the sale of a third of Telstra in its ongoing privatisation, was deposited into the fund."*

[https://en.wikipedia.org/wiki/Australian\\_Government\\_Future\\_Fund](https://en.wikipedia.org/wiki/Australian_Government_Future_Fund)

*"Costello promotes Future Fund's Neal," Newscorp, 2014-06-13. "The Future Fund's David Neal has been promoted to the position of managing director. MR Neal has been the fund's chief investment officer since July 2007 and will take over his new role in August. Chairman of the fund's board of guardians Peter Costello said the appointment follows a comprehensive international and Australian search process. "David is a world class investor and leader," Mr Costello said in a statement on Friday. Mr Neal had played a pivotal role in establishing the fund, building its credibility and delivering strong returns for Australia, he said. Mr Costello was instrumental in setting up the fund as federal Liberal treasurer in 2006 and aims to pay for future superannuation liabilities of public servants. Acting managing director Paul Mann will continue in the role for now, while the fund is now searching for a new chief investment officer."*

<http://www.news.com.au/national/breaking-news/costello-promotes-future-funds-neal/story-e6frfku9-122695323323>

*"Canberra's great superannuation rort," Robert Gottliebsen, Business Spectator, 2012-10-01, "Former superannuation minister Nick Sherry has blown the lid on Australia's greatest rort – the \$210 billion unfunded public sector defined benefit superannuation schemes. // The Canberra public service beneficiaries of this rort are often the very people who are attacking legitimate savers in the private sectors who put money aside to pay for their retirement. // As we all know the public servant rorters are mounting another attack on legitimate private savers. ... Now in The Australian, Nick Sherry advocates scrapping the generous super scheme enjoyed by public servants and politicians, pointing out it will raise billions of dollars in budget savings. // Defined benefit superannuation – particularly pensions*

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– is a huge burden on the community because returns are now much lower than expected (the looming interest rate reductions will make returns even worse) and in the case of unfunded pensions people are living much longer. // State and federal public servants until the last decade enjoyed one of the greatest superannuation schemes ever devised. While they put money into a conventional fund there was a much larger benefit provided by future taxpayers which promised benefits irrespective of returns. [Where as] In the private sector, savers take the return risks.”

<http://www.businessspectator.com.au/article/2012/10/1/interest-rates/canberras-great-superannuation-rort>

When the government budget turns a surplus (collecting more in taxes than they spend providing services to the community), instead of that money being banked for a rainy day, it's deposited into the “Future Fund”... for the benefit of public servants:

<http://victimsofdsto.com/memo/fatcats.html>

Q: But how would a private-sector company handle out-of-control pension obligations?

A: By not letting their organisation bloat in the first place:

<sup>566</sup> **1824-09-06 Letter from Thomas Jefferson to William Ludlow Monticello:**

*“I am eighty-one years of age, born where I now live, in the first range of mountains in the interior of our country. And I have observed this march of civilization advancing from the sea coast, passing over us like a cloud of light, increasing our knowledge and improving our condition, insomuch as that we are at this time more advanced in civilization here than the seaports were when I was a boy. And where this progress will stop no one can say. Barbarism has, in the meantime, been receding before the steady step of amelioration; and will in time, I trust, disappear from the earth. You seem to think that this advance has brought on too complicated a state of society, and that we should gain in happiness by treading back our steps a little way. I think, myself, that we have more machinery of government than is necessary, too many parasites living on the labor of the industrious. I believe it might be much simplified to the relief of those who maintain it.”* <http://www.let.rug.nl/usa/presidents/thomas-jefferson/letters-of-thomas-jefferson/jefl279.php>

<sup>567</sup> **The Public Service keeps getting bigger and bigger:**

Empire building is a long-established problem within the public service:

**“M.P. attacks public service growth – ‘Empire building continuing;”** The Age, 1957-09-19, “During the past 20 years there had been increasing alarm at the mounting total of persons supported from public funds – employees of Federal and State departments, local governments and statutory authorities...”

<http://news.google.com/newspapers?nid=1300&dat=19570919&id=CIIRAAAAIAJ&sjid=UZUDAAAAIAJ&pg=6979,2427532>

**“Empire building is the public service game under Labor,”** The Age, 1973-08-27, “... Canberra ... Before Labor’s political paratroopers stormed in to reform the public service last December, six men sitting in a couple of small offices in Canberra ran the Federal government’s tourism programme. ... Instead of eight on the payroll there are now about 25, and the department plans eventually to bloat to 90 full-time civil servants. From a budget so small it does not show in the Government’s estimates, the department has been built up in 10 months to a \$9million-a-year enterprise.”

<http://news.google.com/newspapers?nid=1300&dat=19730827&id=s9tUAAAAIAJ&sjid=zADAAAAIAJ&pg=66936766708>

**Even though the Liberals claim to be pro-small government, the public service’s numbers increased under John Howard:** Graph: <http://www.abc.net.au/news/2013-10-02/jericho-graph-size-of-the-australian-public-service/4991036>  
Article: <http://www.abc.net.au/news/2013-10-02/jericho-abbott-public-service-cuts/4991120>”

<http://victimsofdsto.com/memo/fatcats.html>

<sup>568</sup> **A Duopoly on Power:**

Between them, the Labor and Liberal Party have ruled Australia for 70 years.

ALP, Wikipedia, “The present Australian Labor Party has its origins in the Labour parties founded in the 1890s in the Australian colonies prior to federation.” [https://en.wikipedia.org/wiki/Australian\\_Labor\\_Party](https://en.wikipedia.org/wiki/Australian_Labor_Party)

LNP, Wikipedia, “The Liberal Party of Australia is one of the two major Australian political parties. Founded in 1945 to replace the United Australia Party (UAP) and its predecessors, the centre-right Liberal Party competes with the centre-left Labor Party.” [https://en.wikipedia.org/wiki/Liberal\\_Party\\_of\\_Australia](https://en.wikipedia.org/wiki/Liberal_Party_of_Australia)

2014-07-22 Royal Petition concerning Federal Government Corruption: “The vast majority of Australians cast their votes between two major parties. When they are dissatisfied with one, they run back to the other. Australia’s democracy is a flock of sheep continually running back and forth between two packs of wolves, all the while wondering why they are growing thinner and fewer as the wolves grow fatter.” <http://victimsofdsto.com/royal-cosgrove-2/>

<sup>569</sup> **Between them the Labor and Liberal parties hold 76% of the vote:**

“Coalition improves but Labor in front,” Mark Kenny, SMH, 2014-06-23.

[http://victimsofdsto.com/royal-cosgrove-2/#\\_edn155](http://victimsofdsto.com/royal-cosgrove-2/#_edn155)

**Latest figures: Labor and Liberal Parties hold 74% of the vote:**



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“Coalition vote drops again,” Sky News, 2014-09-09.

<http://www.skynews.com.au/news/top-stories/2014/09/09/coalition-vote-drops-again.html>

<sup>570</sup> **Major parties unite to remove threat from minor parties:**

**“Major political parties agree on voting changes targeting micro-parties,”** Katharine Murphy and Daniel Hurst, The Guardian, 2014-05-09. <http://www.theguardian.com/world/2014/may/09/major-political-parties-agree-on-voting-changes-targeting-micro-parties>

**“Senate voting reform to ‘finish’ minor parties,”** Stefanie Balogh, The Australian, 2014-05-10.

<http://www.theaustralian.com.au/national-affairs/senate-voting-reform-to-finish-minor-parties/story-fn59niix-1226912357031#>

**“Coalition, Labor, Greens agree on Senate voting changes to stop ‘gaming’ of system,”** Matthew Knott and Lisa Cox, SMH, 2014-05-09. <http://www.smh.com.au/federal-politics/political-news/coalition-labor-greens-agree-on-senate-voting-changes-to-stop-gaming-of-system-20140509-zr7m7.html>

Accusing minor parties of “gaming the system” is hypocritical. The major parties ignore safe seats, concentrate on marginal seats, and pork barrel, to get *just* enough to win. The don’t aim to win the support of the most of the population to win; they don’t need to. Anything north of 50% wins. Tony Abbott won the last election with a *“Two-party preferred vote 53.5 to 46.5, a swing of 3.6 per cent to the Coalition.”* <http://www.abc.net.au/news/2013-09-07/tony-abbott-claims-election-victory/4943606>

Any absolute monarch who only had a 53.5% approval rating would be looking nervously over their shoulder. Yet under “Democracy” we’re meant to suck this down.

More incredibly, Tony Abbott lied to the electorate to get elected. Now, without recall elections, he can pursue a different agenda for another 3 years and there is nothing anyone can do about it (except the Governor-General, appointed by him, who declared at the outset he wouldn’t play politics). If that isn’t gaming the system, what is?

<sup>571</sup> **“The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians”**, Brendan Jones, 2014. <http://victimsofdsto.com/dsubcom/>

<sup>572</sup> **Medical whistleblowers have benefited the public; suffered great harm as a result of their whistleblowing, yet not received any meaningful public support.**

**“Jayant Patel whistleblower ‘treated like a leper’ by Queensland Health,”** Hedley Thomas, The Australian, 2011-12-16. *“The senior nurse who put her career on the line to expose killer surgeon Jayant Patel in one of Australia’s worst medical disasters revealed yesterday how Queensland Health and the Bligh government had treated her ‘like a leper’ since she blew the whistle. // Toni Hoffman told The Australian that her career, health and psychiatric wellbeing were now severely affected because bureaucrats and successive ministers caused her to be increasingly shunned and ostracised in the six years since the debacle was exposed.”* <http://www.theaustralian.com.au/news/investigations/patel-whistleblower-treated-like-a-leper-by-queensland-health/story-fn6tcs23-1226223423898>

**“The Mobbing of Lynette Downe at Nepean Hospital,”** Westmead Hospital Whistleblowers, @2014-04-12, *“There appears to be an ongoing lack of accountability, transparency and governance at Sydney West Area Health Authority as shown by the bullying and reprisals against Dr Downe, the one doctor who was willing to speak out for the her patients.”* <http://www.westmeadhospitalwhistleblowers.com/the-mobbing-of-lyn-downe.html>

**“Nurses involved in whistleblowing incidents: Sequelae for their families,”** Lesley M. Wilkes, Kath Peters, Roslyn Weaver, Debra Jackson. 2010-11-18 *“Nurses involved in whistleblowing often face economic and emotional retaliation, victimization and abuse. Yet for many nurses, one major part of their whistleblowing experience is the negative impact it has on their families. This paper reports findings from a qualitative study pertaining to the effects of whistleblowing on family life from the perspective of the nurses. Using a narrative inquiry approach, fourteen nurses were interviewed who were directly involved in whistleblowing complaints. Data analysis drew out three themes: strained relationships with family members, dislocation of family life, and exposing family to public scrutiny. The harm caused to the nurses involved in a whistleblowing event is not restricted to one party but to all those involved, as the harrowing experience and its consequences are echoed in the family life as well. It is important for organizations to seek strategies that will minimize the harmful effects on nurses’ families during whistleblowing events.”*

<http://www.collegianjournal.com/article/S1322-7696%2811%2900025-4/abstract>

**If these nurses and doctors kept silent, patients would still be dying. Yet these nurses and doctors would have clearly been better off if they had remained silent.** Their abuse will surely discourage other nurses and doctors from coming forward in the future. In theory they can use formal complaints channels, but in practice Brian Martin has found *‘Formal channels [including the courts] don’t work when challenging a more powerful person or organisation.’* <http://www.bmartin.cc/dissent/documents/ss/ssall.html> In those few cases where the complaint is ultimately acted on, the whistleblower and their family suffers abuse. **Thus the only safe way for a whistleblower to report corruption is to do so anonymously.**

**Members of the public who remain politically disengaged and do not actively support medical whistleblowers are putting the health and safety of themselves and their family in mortal danger everytime they enter a hospital.**

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In theory the public can delegate their civic responsibilities to politicians, but in practice politicians (except for independents) look after their own interests, and those of their party and donors. Their constituents come a distant fourth, if they come anywhere at all. Victims of government abuse who approach politicians are shocked to discover most representatives have absolutely no interest in them at all. Citizens must accept the best person to fight for their own rights are themselves. US Supreme Court Justice Brandeis: “[T]he greatest menace to freedom is an inert people”

<sup>573</sup> **Citizens advocating for other causes:**

“Defeated, sickened and ‘scared it’s too late’: Australian scientists unleash their anger over inaction and ignorance of climate change, which they warn will cause severe water shortages and war,” Amy Ziniak, Daily Mail Australia, 2014-08-27. “Group of Australian scientists write out their honest feelings about climate change The letters are part of an independent project, published on the Is This How You feel website Personal, humorous and some scathing about the issue ‘I hate feeling helpless,’ said one scientist” <http://www.dailymail.co.uk/news/article-2735538/Australian-scientists-unleash-anger-inaction-ignorance-climate-change-handwritten-letters.html>

<sup>574</sup> **Australia’s Bystander Democracy, and our culture of Silence:**

“Australia’s Bystander Democracy,” Steve Davies, Ozloop, 2014-08-28.  
<http://ozloop.org/profiles/blogs/australia-s-bystander-democracy>

c.f. US Supreme Court Justice Louis Brandeis: “[T]he greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American Government.”

It’s tragic that Australians mock Americans for being loud-mouthed, as if there’s something wrong with it; It’s because Americans aren’t afraid to speak. c.f. Australia where Chris Masters says ‘Australia is a very secret society and the defamation laws are a big contributor to this culture. Self-censorship is all about self-preservation and it is everywhere.’

c.f. Thomas Jefferson: “Let those who fear flatter. It is not the American way.”

**Why are Americans so loud:**

“Why Americans Are Loud,” Maureen Shaaw, Blog, 2013-01-12. “I know you’ve heard it said heaps of times and maybe you’ve even said it yourself, “Good Lord, those Americans are loud!” Okay, I’ve said it too and well... I’m an American as well as an Australian. I know it’s fun to slam Americans when they’re silly and I do a fair amount of that myself. ... At a recent dinner party, the host said something about meeting an American the day before and without thinking I said, “How loud was he?” Andrew looked at me and said, “He wasn’t loud, he was American.””  
<http://www.maureenshaw.com/why-americans-are-loud/>

<sup>575</sup> Personal Communication. Although hardly anyone knows it, this person has benefited nearly every single Australian, yet didn’t receive a word of thanks and lost their job as a result of their whistleblowing. They are now alienated and have also decided to leave Australia.

<sup>576</sup> **The smallest minority is an individual:**

Ayn Rand: “The smallest minority on earth is the individual. Those who deny individual rights cannot claim to be defenders of minorities.”

<sup>577</sup> **The US Bill of Rights as a limit on the power of the federal government; a condition of federation:**

“United States Bill of Rights”, Wikipedia, “The Bill of Rights is the collective name for the first ten amendments to the United States Constitution. Proposed to assuage the fears of Anti-Federalists who had opposed Constitutional ratification, **these amendments guarantee a number of personal freedoms, limit the government's power in judicial and other proceedings, and reserve some powers to the states and the public. ... Many were concerned that a strong national government was a threat to individual rights and that the President would become a king. ... The impasse was resolved only when revolutionary heroes and leading Anti-Federalists Samuel Adams and John Hancock agreed to ratification on the condition that the convention also propose amendments.**”  
[https://en.wikipedia.org/wiki/United\\_States\\_Bill\\_of\\_Rights](https://en.wikipedia.org/wiki/United_States_Bill_of_Rights)

<sup>578</sup> **Australians with few rights, are totally at the mercy of public officials; elected and un-elected:**

“The Defence Trade Controls Act is an Attack on the Rights and Freedom of Australians,” Brendan Jones, “**Unfortunately Australia has a weak constitution which does little to protect the rights and freedoms of Australians.** Most Australians don’t realise our right to freedom of speech is “implied,” and so weak it cannot reliably used. Our constitution does grant us freedom of association, but without freedom of speech that’s pretty useless. We don’t have a right to silence. We don’t have a right against unreasonable search and seizure. Nor do we have a right to privacy.

Australia’s founding fathers did not grant us these rights. When William Charles Wentworth sent his draft constitution to London he said: ‘I want a constitution that will be a lasting one - a conservative one - a British, not a Yankee constitution. ... I see no reason why the city of Sydney has any right or claim to be represented at all, except that there is a large mass of people congregated together in it. There is really nothing to represent here except a large mass of labour.’



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***Under Australia's weak constitution our government certainly has the power to take these common law rights from us. But their attack on freedom of speech, property rights, the right to privacy and the right to justice turn Australia away from a weak democracy (the Athenians had recall elections; why don't we?) towards a state where the people are at the total mercy of the government.*** <http://victimsofdsto.com/dsubcom/#rights>

<sup>579</sup> **Democracy cannot exist as a permanent form of government:**

Quote usually misattributed to Alexander Fraser Tytler or Alexis de Tocqueville. First cited in an op-ed piece by Elmer T. Peterson in *The Daily Oklahoman* on December 9, 1951 misattributing to Tytler.

<sup>580</sup> **Democracies are as prone to criminality as any other form of government.**

Memoirs of a Superfluous Man, Albert Jay Nock, 1943: *"Furthermore, the idea that the procedure of the "democratic" State is any less criminal than that of the State under any other fancy name, is rubbish. The [USA in 1939] is now being surfeited with journalistic garbage about our great sister-democracy, England, its fine democratic government, its vast beneficent gift for ruling subject peoples, and so on; but does anyone ever look up the criminal record of the British State? The bombardment of Copenhagen; the Boer War; the Sepoy Rebellion; the starvation of Germans by the post-Armistice blockade; the massacre of natives in India, Afghanistan, Jamaica; the employment of Hessians to kill off American colonists. What is the difference, moral or actual, between Kichener's democratic concentration camps and the totalitarian concentration camps maintained by Herr Hitler?"* <http://blog.mises.org/5800/nocks-memoirs-of-a-superfluous-m-an/>

Note: 27,927 Boers (of whom 22,074 were children under 16) and 14,154 black Africans had died of starvation, disease and exposure in Lord Kichener's concentration camps.

[https://en.wikipedia.org/wiki/Second\\_Boer\\_War#Concentration\\_camps\\_.281900.E2.80.931902.29](https://en.wikipedia.org/wiki/Second_Boer_War#Concentration_camps_.281900.E2.80.931902.29)

<sup>581</sup> **Democracy is on the nose:**

**"Democracy on trial,"** Leigh Sales, *The Saturday Paper*, 2014-08-16, *"They shaped how the West was won, but according to leading thinker on liberalism John Micklethwait, democratic systems are in the midst of unprecedented turmoil. When even democracy's staunchest defenders fear for its future as a system of government, you know it's time to worry. John Micklethwait, the editor-in-chief of the pro-market, classically liberal news magazine The Economist, believes the war on terror, the credit crunch, the euro crisis and the Washington shutdown have all thrown democracy into its gravest crisis in decades, if not centuries. In The Fourth Revolution, a new book co-authored with his colleague Adrian Wooldridge, Micklethwait argues that Western governments are sinking under the burden of excessive spending, dysfunctional management and self-entitled populations. The current crisis in the Ukraine and the strongarm tactics of the Russian president Vladimir Putin offer a stark example of what's at stake. According to Micklethwait, developing nations are scrutinising the competing models of government around the world and questioning if democracy is worth the hassle."*

<http://www.thesaturdaypaper.com.au/news/politics/2014/08/16/democracy-trial/1408111200>

<sup>582</sup> **NAB Chairman praises China:**

"Coalition's budget cuts will not go far enough, NAB chairman warns," *The Guardian*, 2014-07-24.

*"Michael Chaney says Australia could learn from China's efficient way of making decisions about the economy. ... The chairman of National Australian Bank, Michael Chaney, has warned the Abbott government's welfare cuts will not go far enough and suggested that China had a more efficient way of making decisions about the economy. ... Australia could learn something from China's centrally planned economy. "When I go to China, the Chinese shake their heads," he said. "They can't believe how inefficient you guys are in your economy. "We all know we don't want their system, but they do marvel at the fact that as soon as a government comes out with a proposal the opposition comes out and condemns it and it does lead to great inefficiencies and compromises in the economy."*

<http://www.theguardian.com/world/2014/jul/24/coalitions-budget-cuts-will-not-go-far-enough-nab-chairman-warns>

<sup>583</sup> **Democracy vs. Republic:**

John Micklethwait compares autocratic China to democratic India: *"If you're a poor person in India, if you're a business person in India, you might well have done a lot better being in the autocracy of China. On any measure, autocratic China has done better. But ... It's much easier to bulldoze a tenement block in order to build a factory if you don't have democracy. But once you have people who have rights, they object to it, probably quite rightly."*

<http://www.thesaturdaypaper.com.au/news/politics/2014/08/16/democracy-trial/1408111200>

A Republic is a superior form of government: *"The key difference between a democracy and a republic lies in the limits placed on government by the law, which has implications on minority rights. Both forms of government use a representational system where citizens vote to elect politicians to represent their interests and form the government. However, in a republic, a constitution or charter of rights protects certain inalienable rights that cannot be taken away by the government, even if it has been elected by a majority of voters. In a pure democracy, the majority is not restrained and can impose its will on the minority."* [http://www.diffen.com/difference/Democracy\\_vs\\_Republic](http://www.diffen.com/difference/Democracy_vs_Republic)

Winston Churchill: *"Many forms of Government have been tried and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time."*

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This quote is disingenuous, because it doesn't recognise the difference between a republic in which the citizens have inalienable rights, and a democracy.

<sup>584</sup> **Unlike Australia, China's state media does not self-censor federal corruption:**

"China's warmaking ability eroded by graft, warn generals," Ben Blanchard and Megha Rajagopalan, SMH, 2014-08-19, "***A slew of articles in official media in recent months have drawn parallels with the rampant graft in the People's Liberation Army and how a corrupt military contributed to China's defeat in the Sino-Japan War 120 years ago.***" <http://www.smh.com.au/world/chinas-warmaking-ability-eroded-by-graft-warn-generals-20140819-105qam.html>

<sup>585</sup> **Sometimes people overseas know more about what the Australian government is doing than Australians:**

"The rising culture of suppression," Michael Stutchbury, Editor of The Australian via Crikey, 2002-06-09.  
"The khaki-tinged period since the Tampa and September 11 has produced an alarming rise in official misinformation and censorship. One result of this culture of secrecy imposed by Canberra is that **Indonesians can be better informed about boatpeople who get washed up in Indonesia than Australians are about boatpeople who make it to Australia.** There have been instances where the Americans have provided basic information about the Australian military contribution to the war against terror that Australian officials have refused to provide. In the pre-election heat of the controversy over the boatchildren overboard claim, the press secretary for the then Defence Minister was asked if he himself had sought to clarify the discrepancies in the government's position to his own satisfaction. His answer: "That's an inappropriate question." <http://www.crikey.com.au/2002/06/09/the-rising-culture-of-suppression/>

"Aust must clear air on corruption case : SBY," Yahoo7, 2014-08-01, "***Australian media organisations cannot legally publish the contents of the order, which was made to prevent damage to the country's international relations.***" <https://au.news.yahoo.com/world/a/24605019/aust-must-clear-air-on-corruption-case-sby/>

"Bribery case for overseas eyes only," Rowan Callick, The Australian, 2014-08-01. "***Malaysia's biggest online news site, Malaysiakini, has posted details that cannot be published in Australia of a suppression order preventing Australians from learning about the first ever case to have been brought over foreign bribery..***" <http://www.theaustralian.com.au/business/legal-affairs/bribery-case-for-overseas-eyes-only/story-e6frg97x-1227009200119>

<sup>586</sup> **Unlike Australia, Chinese public interests are allowed to speak out on matter of public interest:**

"China's warmaking ability eroded by graft, warn generals," Ben Blanchard and Megha Rajagopalan, SMH, 2014-08-19, "***As tensions spike between China and other countries in Asia's disputed waters, serving and retired Chinese military officers as well as state media are questioning whether China's armed forces are too corrupt to fight and win a war.***" <http://www.smh.com.au/world/chinas-warmaking-ability-eroded-by-graft-warn-generals-20140819-105qam.html>

An Australian military officer saying this would be charged under Section 70 of the Crimes Act, punishable by two years imprisonment.

<sup>587</sup> **China prosecutes corrupt public officials:**

"China executes corrupt Hangzhou and Suzhou officials," BBC, 2011-07-19, "***China has executed two officials from eastern cities after convicting them of corruption. Xu Maiyong, a former vice-mayor of Hangzhou, and Jiang Renjie, who was vice-mayor of Suzhou, were put to death after their appeals were rejected. Officials said Xu and Jiang took almost 300m yuan (\$46m; £29m) by embezzling and taking bribes. Corruption is one of the main causes of public discontent in China. Hundreds of officials are convicted every year. But only a handful are executed, and it is extremely rare for two officials to be put to death on the same day. Xu was said to be well known for his extravagant lifestyle - reports said investigators found gold bullion and expensive jewellery at his home. State-run Xinhua news agency reported that he used his power to interfere with project contracts and to help companies and people obtain land, promotions and tax breaks. The 52-year-old was sentenced to death in May for taking almost 200m yuan in bribes and embezzled funds. Jiang, 62, was given the death penalty in 2008 for taking more than 100m yuan in bribes.***" <http://www.bbc.com/news/world-asia-pacific-14197485>

"Liu Zhijun, China's ex-railway minister, sentenced to death for corruption," The Guardian, 2013-07-08, "***Sentence suspended for two years, but Liu will spend at least 10 years in jail as Xi Jinping's corruption crackdown bites.***" <http://www.theguardian.com/world/2013/jul/08/liu-zhijun-sentenced-death-corruption>

"China's military calls for unity after purge of ex-officer," SMH, 2014-07-01, "***China's military called on Tuesday for unity and loyalty to the ruling Communist Party after one of its most senior former officers was accused of corruption, the highest-ranking official to date felled in a battle against pervasive graft. Xu Caihou, who retired as vice chairman of the powerful Central Military Commission last year and from the Communist Party's decision-making Politburo in 2012, was also expelled from the party and will be court-martialled.***" <http://www.smh.com.au/world/chinas-military-calls-for-unity-after-purge-of-exofficer-20140701-zss3h.html>

<sup>588</sup> **Corruption in the AFP:**

2014-02-06 Royal Petition concerning Crime and Corruption by the Australian Public Service.  
[http://victimsofdsto.com/royal/#fail\\_afp](http://victimsofdsto.com/royal/#fail_afp)

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<sup>589</sup> **Debunking Transparency International's claim that Australia is "clean."**

Every year Transparency International release their corruption survey claiming Australia is one of the least corrupt countries in the world. Every year the mainstream media repeats their claim unchallenged.

But Calvin Tucker writing for The Guardian points out *"The international corporate media considers TI to be a reliable source, despite the fact that almost all their funding comes from western governments and big business."*

But Transparency International's claim that Australia is "clean" just doesn't stack up:

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians"*, Brendan Jones, **"Debunking Transparency International's claim that Australia is "clean.""**

[http://victimsofdsto.com/dsubcom/#\\_edn322](http://victimsofdsto.com/dsubcom/#_edn322)

<sup>590</sup> **Australia's democracy is so corrupt it corrupts government officials in other Asian countries:**

**"Allegations of corruption regarding the BHP in China** being investigated by the United States, the AFP having failed to act" <http://victimsofdsto.com/royal-cosgrove-2/#case08>

**"Allegations of corruption regarding Australian casino interests in China**, which the AFP have also failed to act on." <http://victimsofdsto.com/royal-cosgrove-2/#case09>

*"Aust must clear air on corruption case : SBY,"* Yahoo7, 2014-08-01, *"Australian media organisations cannot legally publish the contents of the order, which was made to prevent damage to the country's international relations. It relates to an ongoing investigation into allegations that Asian officials and their families were bribed to secure contracts to print their currencies by a company – Securrency – linked to Australia's central bank."*

<https://au.news.yahoo.com/world/a/24605019/aust-must-clear-air-on-corruption-case-sby/>

*"Bribery case for overseas eyes only,"* Rowan Callick, The Australian, 2014-08-01. **"Malaysia's biggest online news site, Malaysiakini, has posted details that cannot be published in Australia of a suppression order preventing Australians from learning about the first ever case to have been brought over foreign bribery. The Australian Federal Police is pursuing this large-scale bribery case concerning how contracts were obtained by Australian firm Securrency to print plastic bank notes for foreign countries."** <http://www.theaustralian.com.au/business/legal-affairs/bribery-case-for-overseas-eyes-only/story-e6frg97x-1227009200119#>

**"Australia 'failing' to tackle bribery by multinational companies: OECD,"** Greg Hoy, 7.30, ABC, 2014-01-07.

*"Australia stands accused of failing to tackle bribery by its multinational companies, with just one of 28 cases referred to the Federal Police for action ending in prosecution."* <http://www.abc.net.au/news/2014-01-06/australia-accused-of-failing-to-tackle-bribery-among-multinatio/5187070>

**"Thiess payments at Indonesian mines raise bribe concerns,"** Richard Baker and Nick McKenzie, The Age, 2014-03-29. *"Infrastructure and mining giant Thiess may have breached Australian bribery laws by paying Indonesian police and military officials in return for security at its mines."* <http://www.theage.com.au/national/thiess-payments-at-indonesian-mines-raise-bribe-concerns-20140328-35on8.html>

<sup>591</sup> **ASIO and AFP claim metadata is being used to fight crime:**

*"Get A Warrant: Here's How ASIO And The AFP Want To Use Your Metadata To Fight Terrorism,"*

Luke Hopewell, Gizmodo, 2014-08-08, **"According to the pair, metadata is currently used to solve crimes."**

<http://www.gizmodo.com.au/2014/08/get-a-warrant-heres-how-asio-and-the-afp-want-to-use-your-metadata-to-fight-terrorism/>

<sup>592</sup> **Londoners resisted formation a police force, fearing it would abuse them as standing armies had:**

*"Rise of the Warrior Cop: The Militarization of America's Police Forces",* Radley Balko, 2013-07-09, *"The first modern police force as we know it today was created in 1829 in London by Sir Robert Peel. He and his father had been pushing the idea for decades, but British concerns over the nation's civil liberties tradition had repeatedly killed the idea. Concerned about the worsening conditions in the city, Parliament finally gave its approval in 1829, but only after Peel put in place assurances and checks to retain some local control over the force and ensure that police officers' responsibilities were limited to fighting crime and protecting individual rights—his task was to convince the city that a police force would not be an army enforcing the will of a centralized power."*

<https://booko.com.au/9781610392112/Rise-of-the-Warrior-Cop>

<sup>593</sup> **Police as the government's gang:**

*"What do I know about corrupt cops? My Family owned a few."* J.D. Tuccille, Reason, 2014-02-18.

Comment: **"People ought to understand that the police is just the government's gang."**

<http://reason.com/archives/2014/02/18/what-do-i-know-about-corrupt-cops-my-fam#comment>

<sup>594</sup> **The AFP is politicised:**



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“Good Cop, Bad Cop,” Sally Neighbour, ABC, 2008-10-27, *“The once-lionised AFP is now ridiculed for apparent bungling, excessive secrecy and cosyng up to political masters.”*  
<http://www.abc.net.au/4corners/content/2008/s2400214.htm>

<sup>595</sup> **The AFP has been politicised since its inception:**

The AFP owes its existence to Billy Hughes because a couple of men threw eggs at him, and Hughes wanted to take personal control of their prosecution:

“Warwick incident anniversary,” Jason Byrnes, Duty Coordinator Intelligence, AFP, *“from the Warwick egg was hatched the Commonwealth Police Force”* <http://www.afp.gov.au/~media/afp/pdf/3/33-37-warwick-incident.ashx>

**Bill Hughes’ disagreement with the anti-conscriptionist Queensland Premier T. J. Ryan lead to Hughes creating the AFP (then Commonwealth Police Force) to suppress dissent.** “Commonwealth Police Force”, Wikipedia, @2004-04-09, *“During the latter stages of World War I, there was considerable tension within Australian society, particularly over the issue of introducing military conscription. On 29 November 1917, at a public rally over the conscription issue in the rural Queensland township of Warwick, an egg was thrown at Australian Prime Minister Billy Hughes. The offender was charged under Queensland state law, whereas Hughes wanted a Commonwealth charge preferred. The incident, and the perceived lack of action on the part of the Queensland Police, was the last straw for Hughes, who had spent months arguing and fighting with the government of Queensland, led by its anti-conscriptionist Premier T. J. Ryan, over a range of issues. Hughes doubted the loyalty of several prominent Queensland politicians and public servants, and felt that it was necessary to create a Commonwealth Police Force to ensure that Commonwealth law was adhered to in what he regarded as a "rogue" state.”*  
[https://en.wikipedia.org/wiki/Commonwealth\\_Police#Commonwealth\\_Police\\_Force\\_.281917.E2.80.931919.29](https://en.wikipedia.org/wiki/Commonwealth_Police#Commonwealth_Police_Force_.281917.E2.80.931919.29)

**Hughes then used the Commonwealth Police force to target his political enemies:**

“Commonwealth Police Force”, Wikipedia, @2004-04-09, *“At its peak the Commonwealth Police Force numbered about 50 men, almost all of whom were based in Queensland, despite the force notionally being a national one. Commonwealth Police had full police powers for federal offences, but their main task was to report on subversive activities of those opposed to the war and/or the Commonwealth government. Tensions between the Queensland and federal governments flared up a number of times, including during and after a federal police raid on the Queensland Government Printer's Office.”* <https://tinyurl.com/ouyqtht>

<sup>596</sup> **The AFP were quick to charge the alleged whistleblower of Frances Abbott’s scholarship:**

**“Student Charged Over Whitehouse Scholarship Leak,”** Max Chalmers, New Matilda, *“A young woman has been charged with illegally accessing files at the design institute which awarded the Prime Minister’s daughter a secret \$60,000 scholarship, according to reports. The Australian newspaper is this morning reporting that the woman charged is a 21-year-old communications student at the University of Technology Sydney who was a part time librarian at the Whitehouse Design Institute. The woman is alleged to have breached Section 308H of the Crimes Act which prohibits “unauthorised access to or modification of restricted data held in a computer”. The offence carries a maximum prison sentence of two years.”* <https://newmatilda.com/2014/08/06/student-charged-over-whitehouse-scholarship-leak>

“Frances Abbott’s teacher says she didn’t deserve scholarship,” Rachel Nickless, SMH, 2014-08-08.

*“Speaking in an interview with afr.com for the first time since the affair broke, he said he was “morally outraged” by the waiving of Ms Abbott’s tuition fees, particularly given the government’s plans to increase the cost of degrees.// “If you are going to put a budget out there and say you all have to do it tough, you have to lead by example,” Mr Kyriakidis said. He taught Ms Abbott over three years. // He questioned whether Mr Abbott’s daughter was worthy of a merit scholarship, saying while she was a hard-working “high achiever” who got a distinction for portfolio design, “there were a lot more people more deserving [of a scholarship]”. // “Even from her class I could name 10 people more deserving either for merit or financial need or both,” he said. He added that he knew of other “more deserving” students who tried to get a scholarship and were rebuffed. // He also expressed his sadness at Ms Abbott being caught up in the affair. // “Frances is a lovely person. I don’t want this to be about her but I want this to be about fairness.” Mr Kyriakidis said he leaked to the press because he believed he was a whistle-blower. // MPs must disclose gifts above \$750 that go to dependent children. // Mr Abbott has resolutely said his daughter’s scholarship was awarded on grounds of merit and did not need to be disclosed.”* <http://www.smh.com.au/federal-politics/political-news/frances-abbotts-teacher-says-she-didnt-deserve-scholarship-20140808-102329.html>

<sup>597</sup> **The AFP has still not acted on the AWB:**

**“AFP keeps legal advice on AWB secret,”** Richard Baker and Nick McKenzie, The Age, 2012-06-08. *“The Australian Federal Police is keeping secret the advice it relied on to shut down a criminal inquiry into AWB’s payment of kickbacks to Iraq, claiming legal professional privilege.”* <http://www.smh.com.au/federal-politics/political-news/afp-keeps-legal-advice-on-awb-secret-20120607-1zyxz.html>

**“Cop told ‘make AWB probe go away’,”** Richard Baker and Nick McKenzie, The Age, 2012-06-07, *“Former AFP senior officer Ross Fusca alleges the police inquiry into the AWB’s oil-for-food scandal was never given enough resources and was shut down prematurely. In an explosive statement lodged with the Federal Court, the former AFP agent Ross Fusca said another senior officer told him that if he could “make the oil-for-food taskforce go away, he*

would be appointed as next co-ordinator". " <http://www.smh.com.au/federal-politics/political-news/cop-told-make-awb-probe-go-away-20120606-1zwqk.html>

<sup>598</sup> **Corruption within the AFP:**

**"A long history of police corruption,"** Geesche Jacobsen, SMH, 2011-08-12. *"[A] former AFP internal investigator, Ray Cooper, said the federal body had suffered from a culture of cover-up and was rife with corruption. But, despite decades of allegations, it seems beyond public criticism and scrutiny. ... One of Standen's former fellow officers claims to know colleagues were involved in drug deals. 'We didn't know who you could trust. You were looking over your shoulders all the time,' the colleague said, suggesting while some were caught, many still worked in law enforcement. ... Alan Taciak, rolled over in the NSW Police royal commission and alleged 78 AFP officers - 15 per cent of the force - were corrupt. ... Taciak's allegations sparked the Harrison inquiry in 1996. Its final report, which is understood to have alleged widespread corruption in the AFP, has also not been released. The head of the inquiry, Ian Harrison, now a Supreme Court judge, said many agents escaped investigation by quitting the AFP."* <http://www.smh.com.au/nsw/a-long-history-of-police-corruption-20110811-1iosn.html>

In theory the 15% of corrupt officers would be turned in by the 85% of honest ones. The problem is there is a code amongst police that they will not report corrupt colleagues. [https://en.wikipedia.org/wiki/Blue\\_Code\\_of\\_Silence](https://en.wikipedia.org/wiki/Blue_Code_of_Silence)

"Arrest-Proof Yourself", Dale Carson [Former cop, FBI law man, criminal lawyer], 2007.

*"Even cops who hate each other will stand shoulder to shoulder against outsiders."*

<http://booko.com.au/9781556526374>

"Police Unbound: Corruption, Abuse and Heroism by the Boys in Blue," Tony Bouza [New York City Police Department and police chief of Minneapolis], 2001. *"Stand-up guys," who protect the brethren, keep quiet, and back you up are proudly pointed out. 'Rats' are scorned, shunned, excluded, condemned, harassed, and almost invariably, cast out. No back-up for them. They will literally find cheese in their lockers. Unwanted items are delivered to their homes. The phone rings at all hours followed by menacing silences, anonymous imprecations or surprisingly inventive epithets. Remarkably, the brass joins in. The Mafia never enforced its code of blood-sworn omerta with the ferocity, efficacy and enthusiasm the police bring to the Blue Code of Silence.*" <https://booko.com.au/9781573928779/Police-Unbound>

<sup>599</sup> **The ACLEI are ineffective:**

Having submitted a complaint about the AFP on 2013-12-03, in nine months they have failed to act.

On 2014-01-22 I informed Public Service Minister Eric Abetz. He failed to act.

I contacted other Abbott Cabinet ministers, who have also failed to act.

<sup>600</sup> **Government trusts AFP to pursue corruption:**

"AFP to lead government corruption pursuit," Dan Box, Crime Reporter, The Australian, 2014-07-31. *"A new command centre has been established within the Australian Federal Police's Canberra headquarters targeting the hundreds of cases of commonwealth government corruption reported every year. The Fraud and Anti-Corruption Centre, to be announced today, involves officials from government agencies including the tax office, Customs, Defence and the Department of Foreign -Affairs and Trade working alongside federal police officers."* <http://www.theaustralian.com.au/national-affairs/afp-to-lead-government-corruption-pursuit/story-fn59niix-1227007932216#>

<sup>601</sup> **The AFP do not pursue government corruption:**

"Public service keeps fraud cases private", Linton Besser, 2011-09-24, SMH, *"Then there are questions about the AFP's capacity to take up the cudgels. That it does so already is a myth, says Professor A.J. Brown, one of the country's most recognised public law experts. Unless the matter touches on criminality at the top end of the spectrum, the AFP has other priorities. 'There is currently no expectation [among Commonwealth agencies] that the AFP would ever help deal with other types of alleged official misconduct, such as conflicts of interest, even in complex or serious cases."* <http://www.smh.com.au/national/public-service-keeps-fraud-cases-private-20110923-1kpdr.html>

<sup>602</sup> USMC Major General Smedley Butler, Wikipedia, *"Smedley Darlington Butler (July 30, 1881 – June 21, 1940) was a United States Marine Corps major general, the highest rank authorized at that time, and at the time of his death the most decorated Marine in U.S. history."* [https://en.wikipedia.org/wiki/Smedley\\_Butler](https://en.wikipedia.org/wiki/Smedley_Butler)

<sup>603</sup> **War is a racket:**

**"Smedley Butler on Interventionism"**, Excerpt from a 1933 speech by Major General Smedley Butler, USMC.

*"War is just a racket. A racket is best described, I believe, as something that is not what it seems to the majority of people. Only a small inside group knows what it is about. It is conducted for the benefit of the very few at the expense of the masses.*



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*I believe in adequate defense at the coastline and nothing else. If a nation comes over here to fight, then we'll fight. The trouble with America is that when the dollar only earns 6 percent over here, then it gets restless and goes overseas to get 100 percent. Then the flag follows the dollar and the soldiers follow the flag.*

*I wouldn't go to war again as I have done to protect some lousy investment of the bankers. There are only two things we should fight for. One is the defense of our homes and the other is the Bill of Rights. War for any other reason is simply a racket.*

*There isn't a trick in the racketeering bag that the military gang is blind to. It has its "finger men" to point out enemies, its "muscle men" to destroy enemies, its "brain men" to plan war preparations, and a "Big Boss" Super-Nationalistic-Capitalism.*

*It may seem odd for me, a military man to adopt such a comparison. Truthfulness compels me to. I spent thirty- three years and four months in active military service as a member of this country's most agile military force, the Marine Corps. I served in all commissioned ranks from Second Lieutenant to Major-General. And during that period, I spent most of my time being a high class muscle- man for Big Business, for Wall Street and for the Bankers. In short, I was a racketeer, a gangster for capitalism.*

*I suspected I was just part of a racket at the time. Now I am sure of it. Like all the members of the military profession, I never had a thought of my own until I left the service. My mental faculties remained in suspended animation while I obeyed the orders of higher-ups. This is typical with everyone in the military service.*

*I helped make Mexico, especially Tampico, safe for American oil interests in 1914. I helped make Haiti and Cuba a decent place for the National City Bank boys to collect revenues in. I helped in the raping of half a dozen Central American republics for the benefits of Wall Street. The record of racketeering is long. I helped purify Nicaragua for the international banking house of Brown Brothers in 1909-1912 (where have I heard that name before?). I brought light to the Dominican Republic for American sugar interests in 1916. In China I helped to see to it that Standard Oil went its way unmolested.*

*During those years, I had, as the boys in the back room would say, a swell racket. Looking back on it, I feel that I could have given Al Capone a few hints. The best he could do was to operate his racket in three districts. I operated on three continents."*

<https://www.fas.org/man/smedley.htm> [speech] + <http://www.ratical.org/ratville/CAH/warisaracket.html> [book]

<sup>604</sup> **Taliban Human Rights Abuses:**

Numerous: <https://www.google.com.au/search?q=taliban+abuses>

<sup>605</sup> **ISIS Human Rights Abuses:**

"ISIS militants take control of Iraq and exterminate everything that isn't Islamic," Newscorp, 2014-07-29.

<http://www.news.com.au/world/middle-east/isis-militants-take-control-of-iraq-and-exterminate-everything-that-isnt-islamic/story-fnh81ifq-1227005917565>

<sup>606</sup> **ISIS beheads journalist James Foley:**

"ISIS: More Journalists Beheading To Come After James Foley and Steven Sotloff," Athena Yenke, IB Times, 2014-08-20. "More beheading of journalists are feared to be happening following threat from the Islamic State militant of drowning all Americans in blood as an estimated number of 20 journalists are still missing in Syria."

<http://au.ibtimes.com/articles/563298/20140820/isis-beheading-video-james-foley-steven-sotloff.htm>

<sup>607</sup> **ISIS beheads journalist Steven Sotloff:**

"ISIS video shows beheading of American journalist Steven Sotloff," Chelsea Carter and Ashley Fantz, CNN, 2014-09-03. <http://www.cnn.com/2014/09/02/world/meast/isis-american-journalist-sotloff/index.html>

<sup>608</sup> **Threats to "National Security" caused by recklessness of Australian public officials:**

Of course if Indonesia was to ever undergo similar economic growth as China, and they were to stop showing the incredible restraint they have in the face of provocations by successive Australian government's (e.g. listening to the Indonesian President's wife's phone conversations, the Australian Navy illegally entering Indonesian waters, etc.) then God help us.

Likewise after the way successive Australian government's have treated East Timor (e.g. conducting commercial espionage to benefit Woodside), if China ever wanted a southern naval port, I know the first people they would ask.

Although the public service claims that scientists and high-tech researchers are a threat to "National Security," the truth is the public service's continued recklessness put us all in danger.

[http://victimsofdsto.com/dsubcom/#\\_edn405](http://victimsofdsto.com/dsubcom/#_edn405)

<sup>609</sup> **Profligate waste by the Australian Department of Defence:**

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*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones, "Every dollar that the Department of Defence wastes costs the lives of soldiers, and robs the Australian people their health and education. I calculate the AWD cost over-runs alone to have cost the Australian people 500 million GP co-payments, 14 new hospitals, or 29,000 university places."* <http://victimsofdsto.com/dsubcom/#waste>

<sup>610</sup> **Apathy over forged security clearances:**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones, "When the [whistleblowers] reported the forged security clearances to the Commonwealth Ombudsman, despite the National Security implications, they were told 'no one wins against Defence; they are too big and too powerful.' Further, the whistleblowers were members of the public. Despite the threat to "National Security," Department of Defence public servants and military officers aware of the forgeries had kept quiet. ..."* <http://victimsofdsto.com/dsubcom/#natsecjoke>

<sup>611</sup> **The government's faux cry of "National Security":**

*"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones,* <http://victimsofdsto.com/dsubcom/#natsec>

<sup>612</sup> **Inspector General of Intelligence and Security failed to act on ASIO spying for commercial advantage of LNP Donor Woodside:**

*"Intelligence agency failed to investigate spying claims, lawyer Bernard Collaery claims" Tom Allard, SMH, 2013-12-05. "The former senior spy who blew the whistle on alleged Australian bugging of East Timor's government took his case to the intelligence watchdog but it did not investigate and advised him to get a lawyer if he wanted to take the matter further. ... The current IGIS, Vivienne Thom, told Fairfax Media: "I won't comment on any approach taken by any particular person to my office, or my predecessor."'"* <http://www.smh.com.au/federal-politics/political-news/intelligence-agency-failed-to-investigate-spying-claims-lawyer-bernard-collaery-claims-20131204-2yr3m.html>

*"George Brandis' security clean-up leaves out messy questions," Richard Ackland, SMH, 2014-01-03. "After the raids and claims by Collaery, the current Inspector General, Vivienne Thom, issued a rare and highly prized statement. She wasn't aware, to the best of her knowledge, of any current or former ASIS officer raising concerns with her office "about any alleged Australian government activity with respect to East Timor". She checked with Carnell and he didn't have any recollection about this. Further, there were "no discussions with any former or current ASIS officer about any such concerns". Maybe a bit too cute for words."* <http://www.theage.com.au/comment/george-brandis-security-cleanup-leaves-out-messy-questions-20140102-307rp.html>

<sup>613</sup> **LNP Public Service Minister Eric Abetz suggests reporting felony computer hacking by Department of Defence public servants to the IGIS, but IGIS's failure to act on ASIO's commercial espionage for LNP Donor Woodside undermines public confidence in IGIS:**

2014-01-21 From Assisting Chief of Staff of LNP Public Service Minister Eric Abetz: *"In addition, the Inspector-General of Intelligence and Security is a separate statutory office that reviews the activities of Australia's intelligence and security agencies, including investigating complaints from members of the public. It is possible that your concerns about surveillance come within the jurisdiction of the Inspector-General ..."*

2014-01-22 Responding to Senator Abetz claim no power to intervene: *"In the alternative Mr. Abetz suggests I make a complaint to Inspector-General of Intelligence and Security Vivienne Thom. // Firstly it's obvious that the felony hacking by the Department of Defence public servants was not a genuine intelligence surveillance operation, and so after wasting another 6-8 months I would no doubt receive a response from Ms. Thom saying the matter is outside her jurisdiction. // Secondly, the media reports that Ms. Thom's agency failed to act on a whistleblower's complaint that ASIO was conducting industrial espionage for the Woodside corporation. This and Ms. Thom's refusal to comment on the matter hardly gives the public confidence in her agency's ability to perform oversight."*

<sup>614</sup> **Australian Department of Defence public servants violate US Computer Fraud and Abuse Act:**

2013-12-03 *Multijurisdictional State & Federal Crime Report: DSTO (CONFIDENTIAL - Qualified Privilege)*, To: Australian Commission for Law Enforcement Integrity, VIC Office of Public Prosecutions, VIC Police Force, NSW Police Force, NSW Office of the Director of Public Prosecutions cc: Prime Minister Tony Abbott, Senator the Hon George Brandis QC, The Hon Joe Hockey MP - Treasurer, Senator the Hon David Johnston - Defence Minister, The Hon Stuart Robert MP - Assistant Defence Minister, The Hon Michael Keenan MP - Justice Minister.

**"US Computer Fraud and Abuse Act**

*Jones' web site <http://victimsofdsto.com> is to the best of his knowledge located in the United States, hosted by a United States company Namecheap.*

*On September 26, 2013 persons from within the Australian Department of Defence circumvented a block on access to the web site <http://victimsofdsto.com> using web surveillance company Blue Coat Systems.*

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The technique they used, IP Address circumvention, is illegal under the US Computer Fraud and Abuse Act [18 U.S.C. § 1030] [No. CV 12-03816 CRB]

Jones alleges that persons within the Australian Department of Defence have breached the:

i. US Computer Fraud and Abuse Act [18 U.S.C. § 1030]

Jones alleges that any employees of Blue Coat Systems whom they conspired with to circumvent the block also breached

ii. US Computer Fraud and Abuse Act [18 U.S.C. § 1030]"

Log files: [http://victimsofdsto.com/doc/Blue\\_Coat\\_Systems/](http://victimsofdsto.com/doc/Blue_Coat_Systems/)

<sup>615</sup> "Official Committee Hansard - JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY - Reference: Operation of the Law Enforcement Integrity Commissioner Act 2006 - MONDAY, 21 MARCH 2011 – CANBERRA" Mr Howard Whitton: **"Systemic corruption for me is corrupt conduct which undermines a system which is put in place to ensure integrity. ... Systemic corruption is real in Australia, and I think that ICAC has demonstrated that it is very widespread."**

<sup>616</sup> **The Australian government has its own business enterprises and partnerships:**

Many tenders awarded by Defence are "partnerships" between the DMO (the Defence Materiel Organisation) and their business partners known as "Team Australia:"

"Team Australia," Department of Defence, *"Team Australia combines Australian Government and industry in promoting Australia's innovative defence and security technologies. This partnership indicates Defence support of Australian industry to supply high quality, sustainable solutions to the capability requirements of valued overseas customers. Team Australia is a collaborative initiative of the Australian Government and the Australian defence industry sector. It utilises the complementary strengths of government and industry to provide Australian defence capability solutions to global customers."* [http://www.defence.gov.au/teamaustralia/Team\\_Australia.htm](http://www.defence.gov.au/teamaustralia/Team_Australia.htm)

In practice many of these projects have been disasters: <http://victimsofdsto.com/dsubcom/#waste>

**"Empire-building in the public service...** One might wonder why government, which is in theory non-profit, would want to "win" its own tenders. Winning gives public servants job security, opportunities for promotion, and the prestige and benefits that come with having more people working under them. This makes government just like any other company (albeit in Defence with the monopoly advantage of being both buyer and seller). Unlike a company, a public official can't be given share options, but they can get very high-levels of pay (Up to \$825,000 p.a. in Defence) and benefits. Likewise the DMO's desire to "Australianise" each bid, creating additional work by customising what would otherwise be low-risk, off-the-shelf purchases. Empire building is a long-established problem within the public service..." [http://victimsofdsto.com/dsubcom/#\\_edn264](http://victimsofdsto.com/dsubcom/#_edn264)

Another example of the government advancing its own business interests to the detriment of the public was government-owned Air Services Australia pressuring the US to cancel the public domain worldwide DAFIF aviation database, so Air Services Australia could sell their own:

"Is air traffic control a saleable government service?" Ben Sandilands, Crikey Aviation Blog, 2014-01-13, "[Comment by Brendan Jones:] *It's the largely untold story of how Air Services Australia stopped the US from distributing an immensely valuable public domain resource DAFIF \*for free\* because some greedy Australian public servants wanted to cash in: DAFIF was publicly available until October 2006 through the Internet, however it was closed to public access because 'increased numbers of foreign source providers are claiming intellectual property rights or are forewarning NGA that they intend to copyright their source'. Currently only Federal and State government agencies, authorized government contractors and Department of Defense customers are able to access the DAFIF data. At the time of the announcement, the NGA did not say who the 'foreign source providers' were. It was subsequently revealed that the Australian Government was behind the move. The Australian Government Corporation Air Services Australia in September 2003 started charging for access to Australian data. Rather than exclude the Australian data, the NGA opted to stop making the data available to the public.* <https://en.wikipedia.org/wiki/DAFIF> <http://www.pprune.org/archive/index.php/t-357430.html> "

Geoscience Australia and UK Royal Ordnance had likewise complained when the US government distributed a public domain worldwide digital map called *Digital Chart of the World*. The successor VMAP had usage restrictions, and the US government has since discontinued the project.

In comparison to the Australian government's business enterprises, in the US public policy is that the government should not compete with private enterprise; Consider the inherent unfairness and non-viability of a business having to pay taxes, only to have those taxes used to finance a government business enterprise that competes against them.

<sup>617</sup> **The Department of Defence competes with the private-sector for Defence contracts:**

**Defence bids for its own contracts.** *"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians,"* Brendan Jones, Parliamentary Submission to the Defence Subcommittee. e.g. **"MU-90 torpedo: DMO**

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*allegedly misled government about the risk of its solution so its own consortium would win, and when it didn't work, played double-or-nothing with taxpayers' money."* <http://victimsofdsto.com/dsubcom/#waste>

<sup>618</sup> **Department of Defence employees have used insider information:**

**Defence employees use insider information.** Ibid. e.g. *"The Adagold Aviation scandal where Defence procurement staff allegedly leaked tender insider information to a company who offered them jobs. Similar allegations were also made about Adagold's conduct here and overseas, yet no one has ever been charged. Contrast this with the US where a Defense procurement official who allegedly acted similarly was jailed for nine months."*

<http://victimsofdsto.com/dsubcom/#waste>

<sup>619</sup> **Defence steals IP from private-sector companies to financially benefit their own business partners:**

**"Revealed: the government agency stealing ideas from businesses,"** Chris Seage, Crikey.com.au, 2013-12-02, *"A number of businesses are complaining a Defence Department organisation has stolen their intellectual property, Crikey can reveal. Chris Seage reports new legislation [The Defence Trade Controls Act] makes the problem worse."* <http://www.crikey.com.au/2013/12/02/revealed-the-government-agency-stealing-ideas-from-businesses/>

<sup>620</sup> **How the ABC's Fact Check competed with PolitiFact Australia, now out of business:**

*"Dominant ABC hurting the commercial sector,"* Gay Alcorn, SMH, 2014-02-14. *"The national broadcaster is having a devastating impact on rival media projects because it has the advantage of public funding."*

*"Last year, prominent journalist Peter Fray tried something new. He set up PolitiFact Australia, a fact-checking website to test the accuracy of politicians' claims. He tipped in some of his own money, sought commercial partners, and hired six journalists and a couple of researchers. He took a risk."*

*Then two other fact-checking websites started, both funded by taxpayers. One was at the academic website The Conversation (which I edited until the September election). The other was at the ABC, thanks to a \$10 million grant in February last year from the Labor government - \$1.5 million a year of that was dedicated to fact-checking."*

*As enjoyable as the competition was, I felt some sympathy for Fray who was trying to start a business against rivals who didn't need to make money. Now, only the ABC's Fact Check remains. The Conversation, which still does fact checks occasionally, can't afford a dedicated unit. Fray ran out of money late last year when commercial partners Fairfax Media and the Seven Network pulled out after the election. ...*

*Fray doesn't blame the ABC or The Conversation's fact-checking site for his business's collapse. Rather, he questions the value of spending millions on the site: "If that is \$1.5 million well spent, I haven't seen any evidence of it," he says."* <http://www.theage.com.au/comment/dominant-abc-hurting-the-commercial-sector-20140213-32n3r.html>

To state the bleeding obvious, if Peter Fray's PolitiFact was doing the job, why spend public money to compete with that? Once can understand the ABC spending money if there was nothing there, or of commercial services aren't doing the job, but why spend public money if they are? Likewise one of the benefits of the ABC was that it created "quality content" which was not being offered by commercial TV. But recently the ABC announced it would ditch its older viewers to compete for the younger demographic (currently watching the commercial TV).

<http://www.smh.com.au/entertainment/jobs-to-go-as-abc-tunes-out-older-viewers-20140816-3dtb9.html>

<sup>621</sup> **Public Service Commissioner fails to act on corruption:**

2013-08-29 Open Letter to the Public Service Commissioner: *"Your excuse that you have no statutory authority is debatable: A legal academic who along with a QC reviewed your letter strongly disagreed. ... And even if it were true, you could still have raised the matter with your colleague Dr. Ian Watt or the Minister for Public Service Gary Gray who had said "The Public Service Commissioner can also initiate an investigation into any matter relating to the APS, including at the request of the Public Service Minister."* Even if I had misinterpreted that statement as your letter claimed, he nevertheless sets out clearly what he expects of you. ... It appears to me that every aspect of your job description concerns APS Values and the APS Code of Conduct. This makes your claim you have no authority to act all the harder for me to accept." <http://victimsofdsto.com/psc/> (No Response).

**LNP Public Service Minister Eric Abetz claims he has no power over the Public Service Commissioner:**

2014-01-21 From Eric Abetz via Chief of Staff Ben Davies: *"The Minister does not have the ability to intervene in either of these matters."*

<sup>622</sup> **The castle doctrine:**

English Statesman and Prime Minister Pitt the Elder: *"The poorest man may in his cottage bid defiance to all the forces of the crown. It may be frail - its roof may shake - the wind may blow through it - the storm may enter - the rain may enter - but the King of England cannot enter."*

**Entick v Carrington**

*"On 11 November 1762, the King's Chief Messenger, Nathan Carrington, and three other King's messengers, James Watson, Thomas Ardran, and Robert Blackmore, broke into the home of the Grub-street writer, John Entick (1703-*



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1773) in the parish of St Dunstan, Stepney "with force and arms". Over the course of four hours, they broke open locks and doors and searched all of the rooms before taking away 100 charts and 100 pamphlets, causing £2000 of damage.

The King's messengers were acting on the orders of Lord Halifax, newly appointed Secretary of State for the Northern Department, "to make strict and diligent search for . . . the author, or one concerned in the writing of several weekly very seditious papers intituled, *The Monitor, or British Freeholder*". Entick sued the messengers for trespassing on his land.

The trial took place in Westminster Hall presided over by Lord Camden, the Chief Justice of the Common Pleas. Carrington and his colleagues claimed that they acted on Halifax's warrant, which gave them legal authority to search Entick's home; they therefore could not be liable for the tort. However, Camden held that Halifax had no right under statute or under precedent to issue such a warrant and therefore found in Entick's favour.

[Lord Camden]: "By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show by way of justification, that some positive law has empowered or excused him. The justification is submitted to the judges, who are to look into the books; and if such a justification can be maintained by the text of the statute law, or by the principles of common law. If no excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment."

The judgment established the limits of executive power in English law: the state can only act lawfully in a manner prescribed by statute or common law.

It was also part of the background to the Fourth Amendment to the United States Constitution and was described by the Supreme Court of the United States as a "great judgment, one of the landmarks of English liberty, one of the permanent monuments of the British Constitution, "and a guide to an understanding of the Fourth Amendment."

[https://en.wikipedia.org/wiki/Entick\\_v\\_Carrington](https://en.wikipedia.org/wiki/Entick_v_Carrington)

<sup>623</sup> In 1760 the bogeyman used to violate privacy was smuggling:

**A Good article on Writs of Assistance:**

**"The Writs of Assistance and the NSA,"** Dave Benner, Tenth Amendment Center, "In the 1760s, the situation was just as dire. In order to enforce its coercive means of taxation, **the British Parliament enacted the Writs of Assistance. These were court orders that provided legal sanction for any official of the British government to enter and search the homes of the colonists. Commissioners, members of the military, and customs officials could all utilize the Writs against the will of property owners.**" <https://tenthamentendmentcenter.com/2014/02/18/the-writs-of-assistance-and-the-nsa/>

<sup>624</sup> **Smuggling was cutting into the profits of the corrupt East India Company, which the English Parliament had granted a trade monopoly on America to help them dig their way out of financial trouble:**

"East India Company," "The rise and fall of the British East India Company," UK Tea and Infusions Association.

**"The East India Company was perhaps the most powerful commercial organisation that the world has ever seen. In its heyday it not only had a monopoly on British trade with India and the Far East, but it was also responsible for the government of much of the vast Indian sub-continent.**

**Export to America and trade monopoly**

In the decades leading up to Pitt the Younger's Commutation Act, **tea smuggling had really hit the profits of the East India Company.** Needing to increase profits and offload the surplus tea that the Company had accumulated during the worst years of the smuggling, it asked the British government for permission to export direct to America, which at this time was still a British colony. Permission was granted, and it was decided that the tea would carry a tax of 3d per lb. **The Americans were outraged, many considered such British-imposed taxes illegal. They were doubly angered by the decision that the Company should also have a monopoly on distribution, another move that was intended to help it out of financial trouble.** When the Company's ships arrived in Boston in late 1773, the townspeople resolved that the tea should not be brought ashore nor the duty on it on paid. But the colonial administration would not allow the ships to leave port. The deadlock eventually resulted in the Boston Tea Party, when a mass of townspeople, dressed as Native Americans, boarded the ships and threw all the cargo of tea overboard. This was one of the key events that sparked off the American War of Independence." <http://www.tea.co.uk/east-india-company#export>

American lawyer James Otis Jr said of Writs of Assistance: "**Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient.**" [http://www.constitution.org/bor/otis\\_against\\_writs.htm](http://www.constitution.org/bor/otis_against_writs.htm)

John Adams: "The child independence was then and there born, for every man of an immense crowded audience appeared to me to go away as I did, ready to take arms against writs of assistance." [https://en.wikipedia.org/wiki/James\\_Otis\\_Jr](https://en.wikipedia.org/wiki/James_Otis_Jr)



<sup>625</sup> **Parallels can be drawn in the DTCA which gives the Department of Defence a monopoly on science:**

*“The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians”,* Brendan Jones, *“The Department of Defence is a wasteful, unaccountable, poorly-run, corrupt department with commercial ambitions which seeks a monopoly on science through the DTCA.”* <http://victimsofdsto.com/dsubcom/>

<sup>626</sup> **The “War on Terror” has cost Australia \$30B (as of 2011):**

“Terror fight costs \$30 billion,” Tom Hyland, SMH, 2011-09-11, “As the world commemorates the 10-year anniversary of the September 11 terrorist attacks, Australia's bill for fighting terrorism edges towards \$30 billion, and local analysts are questioning whether we are getting value for money. The \$30 billion figure is an estimate, based on expert analysis of Australian spending on the wars in Iraq and Afghanistan, and the rivers of cash poured into police and intelligence agencies, and other security measures since the September 11 attacks on the US. While the spending has been unquestioned by political leaders, analysts are asking if it is time to re-assess whether the risk warrants the expense.” <http://www.smh.com.au/national/terror-fight-costs-30-billion-20110910-1k3ez.html>

<sup>627</sup> **Comparison of fatalities from 2001 onwards: Death by Shark, Terrorist and Car:**

Most years more people are killed by sharks than terrorists, and a lot of more are killed by cars.

	Sharks	Terrorists	Cars	
2001	0	11	1,737	(September 11)
2002	2	88	1,715	(Bali)
2003	1	0	1,621	
2004	3	0	1,583	
2005	2	4	1,627	(Bali)
2006	1	0	1,602	
2007	0	0	1,603	
2008	2	0	1,437	
2009	0	0	1,488	
2010	1	0	1,352	
2011	4	0	1,291	
2012	2	0	1,310	
2013	2	0	1,193	
<b>Total</b>	20	92	17,822	

An interesting question would be the number of people who die due to lack of access to affordable medical care, and how many will die due to reluctance to see a GP early due to the Abbott government GP co-payment.

#### Sources:

[https://en.wikipedia.org/wiki/List\\_of\\_motor\\_vehicle\\_deaths\\_in\\_Australia\\_by\\_year](https://en.wikipedia.org/wiki/List_of_motor_vehicle_deaths_in_Australia_by_year)  
<http://www.australiangeographic.com.au/topics/science-environment/2014/01/shark-attacks-in-australia-a-timeline/>  
[https://en.wikipedia.org/wiki/Terrorism\\_in\\_Australia](https://en.wikipedia.org/wiki/Terrorism_in_Australia)  
[http://www.amazingaustralia.com.au/animals/shark\\_attacks.htm](http://www.amazingaustralia.com.au/animals/shark_attacks.htm) (2001; no fatalities)

This posted on Twitter recently gives other causes of death:

Causes of death, Australia 2003-2012	Deaths
Suicide	22,824
Car	14,914
Homicide	2,617
Diabetes - Indigenous Australians	1,690
HIV	879
Domestic violence	850
Falls out of bed	417
Falls off ladders	230
Shingles	228
Electrocution	206
Falls off chairs	198
Gastro	168
Tractor accidents	137
Terrorism (1978-2014)	113

Deaths in custody - Indigenous Australians	66
Chicken pox	63
Lightning	10

Cited sources: ABS 3303.0, Australian Institute of Criminology. Cars corrected per [https://en.wikipedia.org/wiki/List\\_of\\_motor\\_vehicle\\_deaths\\_in\\_Australia\\_by\\_year](https://en.wikipedia.org/wiki/List_of_motor_vehicle_deaths_in_Australia_by_year)

<sup>628</sup> **The “Stop the Boats” bogeyman has already cost taxpayers \$10B in payments to private contractors alone:**

“Mandatory immigration detention is a billion-dollar business – analysis,” Nick Evershed, The Guardian, 2009-08-25. “Australia’s asylum seeker policy has delivered up to \$10bn to private contractors, with offshore contracts alone valued at \$859,363 per person” <http://www.theguardian.com/news/datablog/2014/aug/25/-sp-mandatory-immigration-detention-is-a-billion-dollar-business-analysis>

“Dog whistle politics and winning the debate on asylum seekers,” Kellie Tranter, Independent Australia, 2014-06-17. Comparison of costs of Onshore detention, Offshore detention, Community detention and bridging visas. The latter two are significantly cheaper. <http://www.independentaustalia.net/australia/australia-display/winning-the-debate-on-asylum-seekers.6583>

**Yet Malcolm Fraser let Vietnamese Boatpeople resettle in Australia. At the very least we’re no worse off, which is surely better than spending the equivalent of \$10B:**

“Assessing the economic contribution of refugees in Australia”, Richard Parsons, Richard Parsons Pty Ltd Social Research and Consultancy, Multicultural Development Association, 2013-06. “Quantitative studies, meanwhile, adopting a notion of contribution that is limited to fairly standard economic indicators, and applying a shorter time horizon, also suggest that refugees make an economic contribution, but only after a number of years. While there is considerable disparity in the findings between (and within) the two categories of work, no model or study indicates that refugees impose a burden over the long term. While there is considerable disparity in the findings between (and within) the two categories of work, no model or study indicates that refugees impose a burden over the long term.” <http://www.mdainc.org.au/sites/default/files/Assessing-the-economic-contribution-of-refugees-in-Australia-Final.pdf>

“Malcolm Fraser,” “Australia’s Prime Ministers,” National Archives, “But the impact of the Fraser government can best be seen in its revitalised immigration program. From 1975 to 1982, some 200,000 migrants arrived from Asian countries, including nearly 56,000 Vietnamese people who applied as refugees. In addition, policies were put in place to grant entry to 2059 ‘boat people’ – refugees from Vietnam who arrived without documents or official permission after hazardous sea voyages to the northern coast of Australia. The immigration program focused on resettlement and multiculturalism.” <http://primeministers.naa.gov.au/primeministers/fraser/in-office.aspx>

“No, the Fraser era was not a golden age for asylum seekers,” Rachel Stevens, 2012-02-12, “So, the Fraser government did open its arms briefly to the Vietnamese, but it was motivated principally by external factors. The resettlement of the Vietnamese refugees was an unfamiliar challenge for the Fraser government, just a few years after the formal abolition of the White Australia Policy. The government was resistant, ambivalent and at times pragmatic in responding to the Vietnamese refugee crisis.” <http://www.smh.com.au/federal-politics/political-opinion/no-the-fraser-era-was-not-a-golden-age-for-asylum-seekers-20120201-1qtce.html>

“Vietnamese refugees were a boon, not a burden,” Malcolm Fraser, SMH, 2013-07-29.

“This resulted, so far as Australia is concerned, in a dynamic Vietnamese Australian community, energetic, innovative and contributing enormously to the culture and development of this nation.” <http://www.smh.com.au/federal-politics/political-opinion/vietnamese-refugees-were-a-boon-not-a-burden-20130728-2qsh4.html>

<sup>629</sup> It sure as hell isn’t my government.

<sup>630</sup> **Kevin Rudd changed the law so politicians so senior public servants are practically unsackable:**

**Under John Howard, the Prime Minister could sack agency heads directly:**

**“Power Without Responsibility: Ministerial Staffers in Australian Governments from Whitlam to Howard.”**  
Anne Tiernan. UNSW Press, 2007. ISBN 978-0868409818.

“Departmental Secretaries. The new [Public Service] Act introduced important changes to the tenure of departmental secretaries. Under Labor, they had been brought more clearly under ministerial direction and control, through changes to appointment processes, notably the introduction of fixed-term contracts. The Howard reforms went further, giving the prime minister power to appoint and terminate secretaries (Weller 2001, p 34).

Under the old Act this power resided in the governor-general, who acted on the advice of the prime minister. While there is a requirement to consult the secretary of the PM&C over secretary appointments, the new legislation gives the prime minister unfettered power over terminations.

These powers were first tested in 1999, when the government sacked the secretary of the department of defence, Paul Barratt, on the grounds he had lost the confidence of his minister. Recruited by Howard in 1996, Barratt had worked successfully with deputy prime minister John Anderson, and former defence minister Ian McLachlan.

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But he was unable to develop an effective working relationship with the new minister, John Moore.

Barratt had raised concerns over the conduct of Moore's chief of staff, long-time Liberal Party adviser, Brian Loughnane, in a meeting with Moore-Wilton. Barratt believed the ministerial staffer was acting as a *de facto* minister - taking decisions and giving directions without reference to Moore - and that this could become a problem for the government. Moreover, he considered Loughnane was actively cultivating suspicion and distrust between the minister and the department.

After rejecting the government's offer of a diplomatic appointment to New Zealand, the secretary's contract was terminated.

Barratt appealed the decision in the Federal Court.

The court found the prime minister does not require cause to dismiss a secretary. It concluded that while Barratt was entitled to procedural fairness - to be told why his appointment was being terminated - he had no further recourse (Weller 2001). Since the Barratt case, several secretaries have not had their contracts renewed or have resigned because they expected this would be the case. The government's decision not to renew defence secretary, Dr Allan Hawke's contract in September 2002 was because 'the Minister [Robert Hill] would prefer to have somebody else who had different attributes and suited his personal style better'." <http://booko.com.au/9780868409818/Power-without-Responsibility->

**For example:**

AAP General News (Australia). 08-31-1999. "FED: Prime minister announces Barratt sacked." "The federal government has exercised its right - as recently confirmed by court - and sacked Defence Department secretary PAUL BARRATT. Prime Minister JOHN HOWARD says Governor-General Sir WILLIAM DEANE, acting on his advice, has terminated Mr BARRATT's appointment from the end of today." AAP RTV mb/mfh/kbw/wz/kbw

**But Kevin Rudd changed this to make the Public Service 'more independent':**

"Rudd to restore Westminster tradition to the public service," Sabra Lane, ABC, 2008-04-30, "Just before polling day last year, Kevin Rudd said there was a need to take a meat axe to the bloated federal bureaucracy. **But today the Prime Minister was full of praise for public servants, saying he wanted to reinvigorate the Westminster tradition of an independent public service.**" <http://www.abc.net.au/pm/content/2008/s2231978.htm>

**So now a Prime Minister can't sack an agency head, even if he wants to:**

Opinion: "Abbott must trust the public service", Canberra Times, 2013-09-16. "Even if Mr Abbott wanted to take Mr Howard's route, he may find it a little harder than it was in 1996. For example, under the Public Service Act, only the governor-general can sack a departmental secretary, while in Mr Howard's day the prime minister could do it directly. Secretaries now also tend to have the security of five-year terms, rather than three." <http://www.canberratimes.com.au/comment/ct-editorial/abbott-must-trust-the-public-service-20130915-2tsnb.html>

**In theory, giving public servants "independence" prevents them from being politicised.**

**But the flip side is it also makes them unaccountable, to anyone except their fellow public servants.**

Perhaps Rudd naively believed they would do that, but he failed to recognise Lord Acton's dictum that 'Power tends to corrupt, and absolute power corrupts absolutely.'

Thus Rudd replaced a public service executive accountable to democratically-elected politicians with a public service executive accountable only to itself.

**Rudd replaced a democracy with an despotic oligarchy with absolute power.**

Dr. Kim Sawyer wrote: "**What is mateship?** In its most benign form, it is simply friendship. But mateship is often more than benign. Mateship often implies a joint monetary interest. Mates form companies, award contracts to each other, appoint each other, protect each other and honour each other. The corporatisation of mateship is one of the most profound principles of Australia. **Australia is neither a democracy, nor a meritocracy. It is a mateocracy.** // One of the principal returns to mateship is a job. Mates appoint each other for three main reasons. First, a mate can be relied upon to act with fear and with favour; fear of offending their mates and favour towards their mates. Secondly, when a mate is appointed, an obligation is created, an obligation that must be repaid. An appointment of a mate is a contingent future claim on that mate. Thirdly, mates appoint each other because it minimises their risks. Mates are mates because they often think the same. With a mate, there are fewer risks."

**This "Independence" also prevents the elected-government from sacking 'unsuitable' public servants:**

In the private-sector employees get sacked all the time because management believes someone else is better suited to the job. It can be unpleasant, but it's a fact of life. If management were forced to run the company with employees they think are unsuitable, they'd go bankrupt.

Under the Howard government, ministers could replace agency heads for similar reasons:

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“The [Howard] government’s decision not to renew defence secretary, Dr Allan Hawke’s contract in September 2002 because *‘the Minister [Robert Hill] would prefer to have somebody else who had a different attributes and suited his personal style better’*” <http://booko.com.au/9780868409818/Power-without-Responsibility-> + <http://www.abc.net.au/7.30/content/2002/s513330.htm>

But due to Rudd’s changes, once a senior public servant has a job, they’re practically unsackable.

In theory there are still ways to sack an ‘unsuitable’ public servant, In practice, they are so cumbersome and disruptive that the government won’t use them, and instead will leave them in place, despite the damage they are causing.

So why doesn’t the elected government simply change the law? Perhaps because they don’t care. It’s my experience that so long as governments are able to pursue their ideological agenda and keep their donors happy, they don’t give a damn what the public service gets up to.

<sup>631</sup> **Public Service Minister Eric Abetz claims powerless to act against Public Service Commissioner:**

2014-01-21 Letter from Chief of Staff of Public Service Minister Eric Abetz: “As you would be aware, the Public Service Commissioner is an independent statutory office holder. The Minister does not have the power to investigate claims of misconduct against any holder of the office.” <https://tinyurl.com/pq94v49> + <https://tinyurl.com/kevw44>

<sup>632</sup> **Parliament does not hold public servants accountable:**

2014-07-21 Royal Petition concerning Crime and Corruption within the Australian Public Service:

*“The Labor government led by Julia Gillard were aware of this crime and corruption. Not only did they fail to stop it, but certain senior ministers were criminally implicated in covering it up.*

*The Liberal government led by Tony Abbott is also aware of this crime and corruption, but showed no interest in opposition and now in government the Minister Assisting the Prime Minister on the Public Service Senator Eric Abetz claims they are powerless to intervene. Instead he has directed me back to the same oversight agencies who have obstructed my complaint for the past four years.*

*I am not entirely convinced of Senator Abetz’s claims, but I already have raised the matter with his fellow ministers on many occasions without result. Whether genuinely powerless or simply unwilling, the practical reality is that through two governments, one Labor, one Liberal, the Australian Parliament have demonstrated themselves incapable of tackling crime and corruption within the Australian Public Service.”*

[http://victimsofdsto.com/royal-cosgrove-1/#fail\\_parliament](http://victimsofdsto.com/royal-cosgrove-1/#fail_parliament)

<sup>633</sup> **Public servants allow one another to breach the Model Litigant Policy to avoid accountability in the courts:**

[http://victimsofdsto.com/royal-cosgrove-1/#fail\\_mlp](http://victimsofdsto.com/royal-cosgrove-1/#fail_mlp)

<sup>634</sup> **The push for metadata surveillance came from the public service, not politicians:**

“‘Banality of evil’: new documents lift the veil on data retention,” 2013-02-14, “New documents shed light on the enthusiasm of the Attorney-General’s Department to move forward with (and think large on) data retention, and the resistance it encountered from industry.” <http://www.crikey.com.au/2013/02/14/banality-of-evil-new-documents-lift-the-veil-on-data-retention/>

**Recently when George Brandis appeared on TV arguing for metadata, it became apparent he didn’t even know what it is:**

“George Brandis in ‘car crash’ interview over controversial data retention regime,” Ben Grubb, SMH, 2014-08-07. *“It’s been called “excruciating” and “the most embarrassing interview you’ll ever be likely to see”.*

*Attorney-General George Brandis struggled to explain live on Sky News on Wednesday afternoon the details of his government’s controversial “data retention” policy, which would force all telcos to keep logs on what their customers do on the phone and online for up to two years, so law enforcement agencies could access the information without a warrant when investigating crime.*

*Now Senator Brandis has confused matters again, telling Sky News that web addresses would be captured by his proposal to strengthen the powers of law-enforcement and intelligence agencies.*

*After repeated questions over whether the sites people visited would be captured, he conceded they would be, but confusingly contradicted himself by saying his policy wouldn’t extend to web surfing.*

*He then attempted to clarify this by saying that the sites people visited would be captured, but not the individual web pages a person navigated to within a site.*

*Asked if metadata from sites such as Twitter and Facebook would also be captured, Senator Brandis said the extent to which social media would be involved was something that was still “under discussion”.*

*Twitter users immediately mocked the interview.*

*“What an absolutely glorious train wreck of an interview,” wrote one.*

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"Brandis has no idea what he's talking about on data retention," said another."

<http://www.smh.com.au/digital-life/digital-life-news/george-brandis-in-car-crash-interview-over-controversial-data-retention-regime-20140806-101849.html>

<sup>635</sup> **The push for DTCA surveillance came from the public service, not politicians:**

I am told that the DTCA originated inside the Department of Defence, and that a senior DMO public servant said 'We have to bring the universities under control.' I am told that Defence tried to slide the Bill through without proper consultation or scrutiny, and although they were badly caught out, the politicians simply sided with the public service, completely ignoring the protests of the universities. Defence has never explained why the DTCA was needed for "National Security," or what the problems were with the old law. LNP Defence Minister David Johnston claimed the DTCA was needed for a US trade pact, but academics pointed out this was untrue; that Australian academics were subject to control which US academics were not. Senator Johnston called the legislation "a disgrace," so even conservative commentators expected the LNP to repeal it once in power. They did not, and I am told the DTCA penalties kick in May 17, 2015: "As stated above the implementation date for the application of this Act is 17 May 2015..." <http://madderns.com.au/news/category/important-updates/>

"The Defence Trade Controls Act is an Attack on the Rights and Freedoms of Australians", Brendan Jones, <http://victimsofdsto.com/dsubcom/>

<sup>636</sup> **Public perception is that politicians direct public servants. In practice, it is the other way around:**

"Antony Jay on the new Yes, Prime Minister", Antony Jay, The Telegraph, 2013-01-02, Antony Jay: "*The central anomaly is that civil servants have years of experience, jobs for life, and a budget of hundreds of billions of pounds, while ministers have, usually, little or no experience of the job and could be kicked out tomorrow. After researching and writing 44 episodes and a play, I find government much easier to understand by looking at ministers as public relations consultants to the real government – which is, of course, the Civil Service.*" <http://www.telegraph.co.uk/comment/9774984/Antony-Jay-on-the-new-Yes-Prime-Minister.html>

<sup>637</sup> **Corruption within the Australian Parliament:**

2014-07-23 *Royal Petition concerning Federal Government Corruption.*

To: His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)  
<http://victimsofdsto.com/royal-cosgrove-2/>

2014-08-18 **Notice of rejection by Chandy Paul, Acting Deputy Official Secretary to the Governor-General:**  
<http://victimsofdsto.com/lib/e-mail/2014-08-18-Office-of-GG-refuses-to-act-on-endemic-federal-government-corruption.html>

<sup>638</sup> **Corruption within the Australian Parliament:**

2014-07-23 *Royal Petition concerning Federal Government Corruption.*

To: His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd)  
<http://victimsofdsto.com/royal-cosgrove-2/>

2014-02-06 *Royal Petition concerning Crime and Corruption by the Australian Public Service.*  
To: Her Excellency the Honourable Quentin Bryce AC CVO  
<http://victimsofdsto.com/royal/>

2014-02-21 **Notice of rejection by Mark Fraser, Deputy Official Secretary to the Governor-General:**

2014-02-21 E-mail from Office of the Official Secretary to the Governor-General <gg.donotreply@gg.gov.au>:

"Dear Mr Jones

I refer to your email to the Governor-General. Her Excellency has asked me to reply to you on her behalf.

I regret to advise that the Governor-General cannot become involved in the matter you have raised.

Yours sincerely

Mark Fraser LVO OAM

Deputy Official Secretary to the Governor-General"

<sup>639</sup> **Report by UN SR Heiner Bielefeldt: (Endemic Corruption)**

"Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development," Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, Human Rights Council, General Assembly, 2013-12-26.

"The likelihood of collective manifestations of religious hatred largely depends on the general climate, and the overall context, of a society. One widespread negatively contributing factor is that of endemic corruption, that is, corruption pervading a society to such a degree that it largely shapes social interaction and expectations in general. In a country in which people experience corruption as affecting all sectors of societal life, they can hardly develop a reasonable trust in the fair functioning of public institutions. However, public institutions play an indispensable role in facilitating the peaceful coexistence of people of diverse religious and belief-related orientations. Without reasonable trust in public institutions, a public space to which everyone has equal access and in which religious, philosophical, ethical and



political pluralism may freely unfold cannot be sustained. Moreover, persons living in a society characterized by endemic corruption may not have many alternatives to organizing their lives within their own more or less narrow networks, groups or communities. This can foster an inward-looking mentality, in which people strongly cling to their own groupings while largely avoiding meaningful communication with people outside of their own circles. There are many examples of religion becoming a defining feature of such groupings, thus further contributing to the overall fragmentation of society and the hardening of "us-versus-them" demarcations. By undermining the institutional and legal foundations of society, and providing a sense of a moral and legal vacuum, uncertainty and insecurity, endemic corruption may create a breeding ground for collective religious narrow-mindedness in which religious diversity is generally perceived as threatening the position of one's own group. This may explain some of the extreme hostility that religious communities at times display towards the admission of other religions or beliefs, even minority ones, into the existing infrastructure of their society."

[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-58_en.doc)

<sup>640</sup> This youth joined a neo-Nazi group not because he was a racist, but because they gave him someone to blame:

**"5 Things I Learned as a Neo-Nazi,"** Anonymous interviewee via J.F. Sargent, Cracked, 2014-08-25.

*"The first thing to understand is that it's not about racism. Yes, hatred of other races is what binds a skinhead gang together, but it could just as easily be something else as long as it binds us. If the skinheads hadn't found me, some other gang would have ... Recruitment ... At that point, other people's race was still an afterthought -- I'd never even met a Jew before, let alone developed a deep-seated resentment of their control of Hollywood. It wasn't until I was already in that they explained to me that the reason for everything wrong with my life was other races and Jews, and it suddenly seemed like a good explanation."* [http://www.cracked.com/article\\_21614\\_5-things-i-learned-as-neo-nazi.html](http://www.cracked.com/article_21614_5-things-i-learned-as-neo-nazi.html)

<sup>641</sup> **How Australian politicians, left and right, exploit the community's fear of refugees, similar to Neo-Nazis:**

**"Why Australia hates asylum seekers,"** Christos Tsiolkas, The Saturday Paper, 2013-09. *"The rise of Pauline Hanson's One Nation Party from 1997 was ultimately evidence of the Australian public's resentment and fear of globalisation. The media focused on that party's incendiary rhetoric on race and immigration, but lost in the noise was that One Nation also articulated people's legitimate concerns about the pace of economic change."*

<http://www.themonthly.com.au/issue/2013/sepember/1377957600/christos-tsiolkas/why-australia-hates-asylum-seekers>

**"You're not welcome, town tells refugees,"** SMH, 2006-12-15. *"Cr Treloar told the Herald people were worried that allowing the families to move to Tamworth 'could lead to a Cronulla riots-type situation. Ask the people at Cronulla if they want more refugees.' ... He added that 'of the 12 Sudanese people who live in Tamworth, eight have been before the courts for everything from dangerous driving to rape. These people don't respect authority ... they come from countries where there are outbreaks of TB [tuberculosis] and polio. How can we trust the department to screen those things?' ... The council lacked the health services to support the families, he said. ... [Ed: Doesn't have the health services to accept \*five\* new families into the town? LOLWOT?] At a meeting where the poll was conducted, several residents had said they did 'not want the refugees coming and drinking our water supply, or taking our jobs, that sort of thing', Cr Woodley said. 'I think you would have to say there was a racist element at play there.'"*

<http://www.smh.com.au/news/national/youre-not-welcome-town-tells-refugees/2006/12/14/1165685828180.html>

**"Overheated Carr takes aim at scapegoats in boats,"** Mary Crock, Michelle Foster and Jane McAdam, SMH, 2013-07-02. *"The Foreign Minister calling asylum seekers economic refugees is inflammatory and will not make the problem disappear."* <http://www.smh.com.au/federal-politics/political-opinion/overheated-carr-takes-aim-at-scapegoats-in-boats-20130701-2p7dv.html>

**"Scott Morrison says 157 Tamil asylum seekers are 'economic migrants' not in danger of persecution in India, calls Labor and Greens 'surrender monkeys',"** Karen Barlow, ABC, 2014-07-28. <http://www.abc.net.au/news/2014-07-28/consular-staff-begin-processing-of-tamil-asylum-seekers/5627732>

<sup>642</sup> **Origins of the Sicilian Mafia:**

*"Sicilian Mafia," Wikipedia, "Because the authorities were undermanned and unreliable, property owners turned to extralegal arbitrators and protectors. These extralegal protectors would eventually organize themselves into the first Mafia clans. ... With no police to call upon, local elites in countryside towns recruited young men into "companies-at-arms" to hunt down thieves and negotiate the return of stolen property, in exchange for a pardon for the thieves and a fee from the victims. These companies-at-arms were often made up of former bandits and criminals, usually the most skilled and violent of them. While this saved communities the trouble of training their own policemen, it may have made the companies-at-arms more inclined to collude with their former brethren rather than destroy them."*

[https://en.wikipedia.org/wiki/Sicilian\\_Mafia](https://en.wikipedia.org/wiki/Sicilian_Mafia)

<sup>643</sup> Whistleblowing expert William De Maria: *"It is one thing to say to an agency such as the Australian Federal Police (AFP) 'Look at the wrongdoing over here. Please do something about it.' (primary disclosure). It is entirely different to say, 'You've had my disclosure for five years now, which have you not acted? I am going to report this' (secondary disclosure). Secondary disclosures about investigative probity and competence can be more dangerous to whistleblowers than the original disclosure of wrongdoing because they bring the game right up to those who took the*

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primary disclosures in the first place. In response, agencies often become negative, defensive, and in some cases hostile and even violent.”

<sup>644</sup> **Australian Police forces cannot be trusted to act against government crime:**

Originally I had presumed the AFP were an elite police force, but they ignored my original crime report. When I followed up with them, I was threatened by a particular AFP officer, and so determined it would be unsafe to proceed while Labor was in power: [http://victimsofdsto.com/dsubcom/#\\_edn409](http://victimsofdsto.com/dsubcom/#_edn409)

After Labor lost the election and the media reported our story, I submitted the Multijurisdictional Crime report, it went to DPPs and Police in NSW and VIC, as well as the ACLEI – who are supposedly the AFP watchdog.

The ACLEI ignored it, as did all the LNP ministers copied on it.

The NSW Police ignored it.

The VIC Police initially acted on it, then referred it to the wrong department, then wrote back to me saying it had gone to the wrong department and I had to resubmit it (even though it was they who directed it to the wrong department). By then I had learned of allegations of endemic corruption within the Victorian Police Force, and determined it would be unsafe to proceed.

Aware that police stick together, of how the police have treated other whistleblowers, and that the Abbott government did not want it pursued (as evidenced by LNP Defence Minister David Johnston’s failure to act), I determined it would be unsafe to proceed.

Which is to say, if you are a victim of government abuse, do not go to the police.

<sup>645</sup> **Anonymity is a shield:**

US Supreme Court Justice Stevens: *“Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.”*

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=514&page=334>

<sup>646</sup> **The Benefits of Anonymous Speech:**

*“The importance of anonymous speech: In striking down the law, the court considered some important reasons to allow anonymous speech that weighed in their decision: 1) Enhance authority – “Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.” // 2) Encourage open discourse – “The interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry.” // 3) Safety from retaliation – “The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible.””* [https://en.wikipedia.org/wiki/McIntyre\\_v.\\_Ohio\\_Elections\\_Commission](https://en.wikipedia.org/wiki/McIntyre_v._Ohio_Elections_Commission)

<sup>647</sup> **Governments conducting metadata surveillance try to trivialise it, claiming ‘It’s just metadata’:**

“NSA surveillance: don’t underestimate the extraordinary power of metadata,” John Naughton, The Observer, 2013-06-21. “President Obama has reassured US citizens that ‘nobody is listening to your calls’, but it’s not the content of conversations that intelligence agencies crave. ... The torch was then passed to Dianne Feinstein, chair of the Senate intelligence committee, who was likewise on bromide-dispensing duty. **“This is just metadata,”** she burred, **“there is no content involved.”**” <http://www.theguardian.com/technology/2013/jun/21/nsa-surveillance-metadata-content-obama>

<sup>648</sup> **Bruce Schneier: Why Metadata Equals Surveillance.**

“Metadata Equals Surveillance,” Bruce Schneier, 2013-09-23.

[https://www.schneier.com/blog/archives/2013/09/metadata\\_equals.html](https://www.schneier.com/blog/archives/2013/09/metadata_equals.html)

<sup>649</sup> **Twitter is a “control freak’s nightmare”:**

*“Tony Abbott mocked for tweeting picture of himself on the phone,”* Elena Cresci, The Guardian 2014-04-10.

<http://www.theguardian.com/technology/2014/apr/10/tony-abbott-mocked-for-tweeting-picture-of-himself-on-the-phone>

*“Team Australia trending on Twitter but not everyone wants to be on Tony Abbott’s side,”* Newscorp, 2014-07-06.

“Tony Abbott may want everyone to act as one, big, happy “Team Australia” but it seems not everyone wants to be picked for his side. The Prime Minister is dumping changes to the racial discrimination laws, a move that has been welcomed by many. **But his announcement also included talk of new measures to combat terrorism and resulted in mockery on Twitter**, with the hashtag #TeamAustralia trending.” <http://www.news.com.au/national/team-australia-trending-on-twitter-but-not-everyone-wants-to-be-on-tony-abbotts-side/story-fncynjr2-1227015326526>

*“Twitter, Facebook out of bounds for Coalition staff under strict controls,”* James Massola, SMH, 2014-02-10.

“The Abbott government has quietly introduced a hardline code of conduct for ministerial staff, banning political commentary on social media sites including Twitter and Facebook. A new clause has been added to the Statement of

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Standards for Ministerial Staff, which was introduced by the Rudd government in 2007, restricting public commentary by staff.” <http://www.smh.com.au/federal-politics/political-news/twitter-facebook-out-of-bounds-for-coalition-staff-under-strict-controls-20140210-32b4n.html>

**“Colleagues told: Dob in political web posts,”** Samantha Maiden, The Sunday Telegraph, 2014-04-06, “Public servants will be urged to dob in colleagues posting political criticism of the Abbott government on social media, even if the comments are anonymous, under new Department of Prime Minister and Cabinet guidelines. ... **The new rules include a specific case study illustrating why public servants are not to criticise Prime Minister Tony Abbott stating being “critical or highly critical of the Department, the Minister or the Prime Minister” on social media could prompt sanctions.**” <http://www.dailytelegraph.com.au/news/nsw/colleagues-told-dob-in-political-web-posts/story-fni0cx12-1226875635588?nk=895c0c887ef337cb19aa2d7f808c648e>

**“Nothing to ‘like’ about social media gag,”** Greg Jericho, SBS, 2014-04-09. “Departments now can build up dossiers of tweets and blog posts. Under a new HR policy that could have been borrowed from the Stasi, public servants now have to think twice before clicking “like” on a Facebook post criticising the Federal Government, writes Greg Jericho...” <http://www.abc.net.au/news/2014-04-09/jericho-nothing-to-like-about-social-media-gag/5375322>

On Twitter he was savaged for this, likened to a Nazi: [http://victimsofdsto.com/hrc/#\\_edn102](http://victimsofdsto.com/hrc/#_edn102)

<sup>650</sup> **How the government controls the media by setting the news agenda:**

Marcus Priest: “At that time, the strategy driven from Rudd’s office was very much based on feeding the media beast and trying to control the agenda. In those days — unlike later in the life of the government — control was tight. Stories didn’t get out unless we wanted them to get out. ... Journos — particularly from News Corporation — who had become fat and lazy from the Howard government culture of exclusive “drops” could be overheard down at Aussies Cafe whingeing about how hard it was to get stories out of ministers’ offices.” <http://www.crikey.com.au/2013/12/02/inside-the-canberra-feedback-loop-abbott-and-the-gallery-examined/>

Bob Carr on a Fairfax journalist: “He is way too close to the Rudd Camp. He became so dependent on them for leaks.” <http://www.theguardian.com/books/australia-culture-blog/2014/may/23/bob-carr-political-writing-and-the-sovereignty-of-the-mind>

**“Tony Abbott spends \$4.3m on spin doctors,”** Sarah Whyte, SMH, 2014-07-05. <http://www.smh.com.au/federal-politics/tony-abbott-spends-43m-on-spin-doctors-20140705-zsx1h.html>

**“A reporter who relies on a source for easy information must look the other way when the source is involved in dubious practices.** Evan Whitton calls such a journalist ‘a prisoner of the source’ which is why for example ‘investigative reporting into police has got to be done from outside traditional police reporting.’”

“The Whistleblower’s Guide to Journalists,” Brendan Jones, 2013. [http://www.bmartin.cc/dissent/documents/Jones13.html#\\_edn14](http://www.bmartin.cc/dissent/documents/Jones13.html#_edn14)

**“This has bred a servile press. Today there are perhaps only a dozen investigative journalists in the Australia capable of reporting the corruption. No one else dares. Instead Beat reporters produce news cheaply by peddling spin and PR, some on behalf of powerful interests without balance or challenging their statements. They turn whistleblowers away and print one-sided stories, promoting those powerful interests’ agenda while self-censoring allegations of their corruption.”** 2014-04-14 Open Letter to the Human Rights Commissioner Tim Wilson. <http://victimsofdsto.com/hrc/>

It is however heartening to see in recent months that the government’s grip on the media has loosened.

The media is printing some very damning stories about the conduct of public officials which once you would have only seen in independent news or social media. The government’s attempts to limit criticism of the Prime Minister on social media backfired spectacularly. So too did the government’s super-injunction; It was widely reported on social media, and the mainstream media printed them all bar the names anyway. And Tony Abbott’s \$4.3M army of spin doctors are useless on social media where he is mocked and openly called a liar. Social media has been a rallying point for anti-government rallies.

The game may have fundamentally changed, which explains the government’s desperate attempt to neutralise the effect of social media.

<sup>651</sup> **Social media allows victims of government abuse to unite instead of being isolated and bullied into silence:**

For a long time I thought I was a unique case that slipped through the cracks. I couldn’t understand why the oversight agencies and politicians I approached were fobbing me off. At that time I was a very private person – as I prefer to be – and wasn’t even on social media. Eventually I made contact with another whistleblower, and through social media was introduced to others. Social media unites victims of government abuse and allows them to coordinate. Through it we’ve been pursuing criminal charges against corrupt public officials. I can see why they are so scared of social media.

<sup>652</sup> **Why Ozloop and Twitter is to the Australian Public Service what Perez Hilton is to Hollywood:**

There is an analogue here to the fall of Tom Cruise.

**“How YouTube and Internet Journalism Destroyed Tom Cruise, Our Last Real Movie Star,”** Amy Nicholson, 2014-05-20. <http://www.laweekly.com/2014-05-22/news/the-last-movie-star/?showFullText=true>

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Much like politicians and spin doctors, Tom Cruise's public image used to be carefully stage managed by publicity agent Pat Kingsley. She carefully controlled access by journalists, and managed other big celebrities including Meg Ryan, Sandra Bullock, Al Pacino. Promises of good press were repaid with access and exclusives, but magazines knew that unfavourable press for one celebrity risked losing access to all in the stable.

Enter Mario Lavanderia Jr., who later took the pseudonym 'Perez Hilton.' He knew he wasn't going to be getting any exclusives. Social media was giving him access to material about celebrities that their publicity agent's couldn't control. Running a blog instead of a magazine, he was able to beat the press; getting stories published in minutes instead of days.

Hilton's blogging was far more interesting than the publicity agent's carefully coiffed images and sound bites.

Amy Nicholson: *"With gossip sites mushrooming like a nuclear cloud, Kingsley's fear tactics no longer worked ... When their faster, meaner formula worked, the old guard was forced to follow suit."*

*Similarly I now see the media running stories you would have once only heard about using Ozloop and Twitter. And before the advent of social media, you would have never heard about them at all.*

<sup>653</sup> "Australia: The world's fattest fat cats," Author unknown, 2014. <http://victimsofdsto.com/memo/fatcats.html>

<sup>654</sup> **Cartoon by John Jonik:**

*Cartoons are free to use---except for commercial entities or those who have existing payment policies for graphics.*

John Jonik. 2049 E Dauphin St. Philadelphia PA 19125. 215-739-6614 E-mail: j\_jonik@yahoo.com

<sup>655</sup> **Architects long hard battle with the ATO:**

"Tax Office sued for \$6m after allegedly ruining a man's life," Noel Towell, Canberra Times, 2014-07-17.

*"The former architect's troubles began in 2006 when he and his ex-partner sold two seaside units in Terrigal on the NSW central coast and the Tax Office decided that he was liable for a \$200,000 GST bill on the proceeds of the sale. It took five years and action in the Administrative Appeals Tribunal and other forums for the Tax Office to concede its mistake, that Mr Kurzer's liability should have been just \$8554 and his tax liability had been assessed using "incorrect methodologies" But according to his Federal Court case, years of conflict, appeals, claims and counter-claims had taken an emotional, physical and financial toll on Mr Kurzer, who says his emotional problem are so bad that he can no longer work."* <http://www.smh.com.au/nsw/tax-office-sued-for-6m-after-allegedly-ruining-a-mans-life-20140716-ztlqx.html>

*"What are your rights with the taxman? Call to clean up ATO 'disgrace',"* Chris Seage, Crikey. 2014-07-19.

*"Another disgruntled taxpayer is suing the ATO for \$5.1 million in damages, as taxation experts call for stronger compensation rights and a taxpayers' charter to be enshrined in law."* <http://www.crikey.com.au/2013/07/19/what-are-your-rights-with-the-taxman-call-to-clean-up-ato-disgrace/>

*"The tax office and the expensive muzzle on complainants,"* Chris Seage, Crikey, 2014-01-08.

*"A special investigation finds the tax office is aggressively pushing aggrieved taxpayers into settlements to protect its own people. One investor tells Crikey he's been ruined by fighting big firms hired by the ATO."* <http://www.crikey.com.au/2013/01/08/the-tax-office-and-the-expensive-muzzle-on-complainants/>

<sup>656</sup> **People get the government they deserve:**

Joseph de Maistre said *"Every nation gets the government it deserves."*

But it is hard to blame a people for their poor choice of government when so much information has been kept from them.

But having heard, that excuse evaporates.

US Supreme Court Justice Louis Brandeis said: *'the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of ... government.'*

You can voice your concern to your MPs and senators here: <http://openaustralia.org/>

At the very least, demand a Bill of Rights that gives freedom of speech primacy.

Those Australians who won't stand up for their own freedom don't deserve any.

They deserve to be the prey of corrupt public officials; And when they or their children finally fall in the sights of one – maybe they want their land, their business, or their money – they cannot complain. Because they had a chance to do something, and chose to do nothing.

### **Lack of public support for whistleblowers**

The public benefits from the sacrifices of whistleblowers.

If Toni Hoffman has not spoken up how many more patients would have died unnecessarily at the hands of Dr. Patel?



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If it weren't for Allan Kessing, Senator Xenophon asks *"How many Australians have overdosed on narcotics as a result of corrupt customs officials allowing those drugs to be brought into the country. How many Australians have been injured or killed as a result of weapons being brought into the country as a result of corrupt Customs officials?"*

Whistleblowers and their families suffer terribly, but the vast majority of the public won't lift a finger to support them.

Today my advice to whistleblowers, even medical whistleblowers, is don't do it. Why destroy their lives and their family for a public that won't support them?

If you want to protect family members in hospital, your elderly parents in aged care, or your children from drug overdose, you must start supporting whistleblowers, and stop supporting the politicians who harm them.

At the very least, stop voting for either the Labor or Liberal party. These two parties abuse whistleblowers, and are themselves endemically corrupt: <http://victimsofdsto.com/royal-cosgrove-2/#cases>

Any Australian who knowing this, continues to support either party, is a fool.

<sup>657</sup> **[US] SPEECH Act:**

This is not a new law per se, but rather confirms the 1<sup>st</sup> Amendment protects American's free speech, even when they are heard overseas.

"SPEECH Act," Wikipedia, *"The Securing the Protection of our Enduring and Established Constitutional Heritage (SPEECH) Act is a federal statutory law in the United States that makes foreign libel judgments unenforceable in U.S. courts, unless those judgments are compliant with the U.S. First Amendment. The act was passed by the 111th United States Congress and signed into law by President Barack Obama. ... The act was written as a response to libel tourism. It creates a new cause of action and claim for damages against the foreign libel plaintiff, if they acted to deprive an American of their right to free speech. It was inspired by the legal battle that ensued between Dr. Rachel Ehrenfeld and Saudi businessman Khalid bin Mahfouz over her 2003 book, Funding Evil."*

[https://en.wikipedia.org/wiki/SPEECH\\_Act](https://en.wikipedia.org/wiki/SPEECH_Act)

<sup>658</sup> **US SPEECH Act to stop libel tourists:**

"Obama approves US 'libel tourist' laws," BBC, 2010-08-11. *"President Barack Obama has signed into law new legislation protecting US writers from foreign libel judgements. The Speech Act, recently passed by Congress, makes foreign libel rulings virtually unenforceable in US courts. The act targets "libel tourists" who launch cases in countries whose legal systems are considered far more claimant-friendly, such as the UK. In the UK defendants must prove statements are true, whereas in the US claimants have to prove they are false."* <http://www.bbc.co.uk/news/uk-10940211>

<sup>659</sup> As evidenced by the discussion in this letter.

<sup>660</sup> 2013-04-04 Letter to ALP A-G Mark Dreyfus QC (No response received) <https://tinyurl.com/kymge9z>

<sup>661</sup> Right down to the public monies the major parties receive to run ads at election time; another benefit of incumbency.

<sup>662</sup> **The Australian government has its own business enterprises and partnerships:**

Many tenders awarded by Defence are "partnerships" between the DMO (the Defence Materiel Organisation) and their business partners known as *"Team Australia"*:

"Team Australia," Department of Defence, *"Team Australia combines Australian Government and industry in promoting Australia's innovative defence and security technologies. This partnership indicates Defence support of Australian industry to supply high quality, sustainable solutions to the capability requirements of valued overseas customers. Team Australia is a collaborative initiative of the Australian Government and the Australian defence industry sector. It utilises the complementary strengths of government and industry to provide Australian defence capability solutions to global customers."* [http://www.defence.gov.au/teamaustralia/Team\\_Australia.htm](http://www.defence.gov.au/teamaustralia/Team_Australia.htm)

In practice many of these projects have been disasters: <http://victimsofdsto.com/dsubcom/#waste>

**"Empire-building in the public service...** *One might wonder why government, which is in theory non-profit, would want to "win" its own tenders. Winning gives public servants job security, opportunities for promotion, and the prestige and benefits that come with having more people working under them. This makes government just like any other company (albeit in Defence with the monopoly advantage of being both buyer and seller). Unlike a company, a public official can't be given share options, but they can get very high-levels of pay (Up to \$825,000 p.a. in Defence) and benefits. Likewise the DMO's desire to "Australianise" each bid, creating additional work by customising what would otherwise be low-risk, off-the-shelf purchases. Empire building is a long-established problem within the public service...* [http://victimsofdsto.com/dsubcom/#\\_edn264](http://victimsofdsto.com/dsubcom/#_edn264)

Another example of the government advancing its own business interests to the detriment of the public was government-owned Air Services Australia pressuring the US to cancel the public domain worldwide DAFIF aviation database, so Air Services Australia could sell their own:



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“Is air traffic control a saleable government service?” Ben Sandilands, Crikey Aviation Blog, 2014-01-13, “[Comment by Brendan Jones:] *It’s the largely untold story of how Air Services Australia stopped the US from distributing an immensely valuable public domain resource DAFIF \*for free\* because some greedy Australian public servants wanted to cash in: DAFIF was publicly available until October 2006 through the Internet, however it was closed to public access because ‘increased numbers of foreign source providers are claiming intellectual property rights or are forewarning NGA that they intend to copyright their source’. Currently only Federal and State government agencies, authorized government contractors and Department of Defense customers are able to access the DAFIF data. At the time of the announcement, the NGA did not say who the ‘foreign source providers’ were. It was subsequently revealed that the Australian Government was behind the move. The Australian Government Corporation Air Services Australia in September 2003 started charging for access to Australian data. Rather than exclude the Australian data, the NGA opted to stop making the data available to the public.* <https://en.wikipedia.org/wiki/DAFIF> <http://www.pprune.org/archive/index.php/t-357430.html>”

Geoscience Australia and UK Royal Ordnance had likewise complained when the US government distributed a public domain worldwide digital map called *Digital Chart of the World*. The successor VMAP had usage restrictions, and the US government has since discontinued the project.

In comparison to the Australian government’s business enterprises, in the US public policy is that the government should not compete with private enterprise; Consider the inherent unfairness and non-viability of a business having to pay taxes, only to have those taxes used to finance a government business enterprise that competes against them.

<sup>663</sup> **The inefficiency of government and government contractors is well known:**

“Uncle Sam Can’t Count: A History of Failed Government Investments”, Burton W. & Anita Folsom, 2014-04-15, ***“Much of the problem with the board and the politicians points to a distinct tendency of human nature: People do not spend government funds as wisely as they spend their own.”*** <https://booko.com.au/9780062292698/Uncle-Sam-Can-t-Count>

**On Government spending to ‘create jobs’:**

Dave Barry: “*See, when the GOVERNMENT spends money, it creates jobs; whereas when the money is left in the hands of TAXPAYERS, God only knows what they do with it. Bake it into pies, probably. Anything to avoid creating jobs.*”

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**Disclaimer:** *Nothing in this letter should be construed as threatening nor advocating unlawful acts. Suspects are innocent until the facts against them are proven and convicted in a court of justice. This does not discuss the contents of the current super-injunction.*