CRIMINALISING JOURNALISM

THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018
here's almost universal acceptance of the maxim "journalism is not a crime". One exception is Australia's parliament – it begs to differ.

Legislatively for Australia's national security has drifted a long way from the fight against terrorism. Increasingly, the Parliament passes laws that are about suppressing the public's right to know and criminalising anyone who reveals information the Government would prefer was locked up.

The draft law that heralded this appalling new assault on press freedom in Australia, the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017 and the Foreign Influence Transparency Scheme Bill 2017, was rightly met with a storm of protest, not least from MEAA but also from media outlets, the Law Council of Australia and human rights organisations. Even the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security were quick to identify and condemn adverse consequences of the legislation.

When four United Nations' special rapporteurs (privacy; human rights defenders; freedom of opinion and expression; and protecting human rights while countering terrorism) made submissions protesting aspects of the Bills it was clear the Government had stepped far beyond Australia's obligations under international law and human rights standards.

In an even more egregious example of legislative overreach, under the guise of combating "espionage" and "foreign interference", journalists, editorial production staff, media outlets' legal advisers and even the office receptionist could be locked up for merely handling that information.

The pushback against the Bills has culminated in journalists and media groups insisting on a media exemption – a move supported by the chair of Transparency International Australia, former NSW Supreme Court judge Anthony Wheally QC.

Sadly, the head of ASIO Duncan Lewis rejected the idea, saying exemptions would leave the door wide open for foreign spies to exploit, adding that it may also increase "the threat to journalists" – a startling claim from the spymaster, given that the Bill seeks to allow the Australian Government to be the one that imprisons journalists, muzzle their journalism and hound their sources.

It is also concerning that the new Attorney-General Christian Porter insisted that the government never intended to jail journalists for simply "receiving documents" – even though that is precisely what the Bill said. Potter added prosecutions of journalists would "not proceed without the sign-off. But we've heard such an offer before – his predecessor George Brandis said he wouldn't lock up journalists convicted under the Brandis-designed section 31F

MEAA thanks all the contributors to this report.

MEAA's press freedom survey
Mark Phillips

The year in Australian media law
Peter Bartlett, Dean Levitan and Adelaide Rosenthal

Bills were overseen by the then Attorney-General George Brandis, approved by the Prime Minister Malcolm Turnbull, himself a former journalist.

Approved by Paul Murphy - chief executive, Media, Entertainment & Arts Alliance

245 Chalmers Street, Redfern, NSW 2016

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For the record, it isn’t - journalists are not criminals. The line about public interest journalism was accepted because the reality is that journalists are under freedom of information legislation, and there is also a strong public interest in what the Government does.

The spade of concern about freedom of information, the nature of work undertaken by the Government, and the nature of a state that would systematically try to hide its actions is an inherent concern with the Bills. It is also the concern that MEAA, the Press Gallery and Australian newspapers have with the Bills. When the Bills were introduced it was clear that the Government had stepped far beyond Australia's obligations under international law and human rights standards.

In the face of such a spectacular own goal, it is reasonable to ask how the Government could draft laws that could attract such opprobrium. After all, the Bills were overseen by the then Attorney-General George Brandis, approved by the Cabinet, and introduced to the House of Representatives by the Prime Minister Malcolm Turnbull, himself a former journalist.

The pushback against the Bills has culminated in journalists and media groups insisting on a media exemption – a move supported by the chair of Transparency International Australia, former NSW Supreme Court judge Anthony Whealy QC.

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of the ASIO Act. And yet, SSP and its penalty of up to 10 years in jail, remains on the statute books.

It must be remembered that these latest "national security amendments" that criminalise legitimate public interest journalism are simply the most recent of an emerging pattern of government attacks on press freedom and freedom of expression, attacks that were initially triggered by 9/11 but which dramatically escalated with the WikiLeaks and Edward Snowden revelations about the levels of government surveillance and scrutiny of their citizens’ telecommunications data.

With governments around the world having been embarrassed by these disclosures about what they secretly get up to in the name of their citizens, there has come a response to keep these activities hidden and to tighten control over government information. Simply by declaring something is "secret" government can hide from legitimate scrutiny, intimidate whistleblowers, punish disclosure and muzzle legitimate public interest journalism.

With legislation being drafted offering 20 years jail for journalists, Australia has consciously wandered into the arena populated by serial press freedom abusers. Countries like Egypt, Turkey, China, Myanmar and Cambodia that lock-up journalists who disclose what their governments are up to.

Australia has done so, in part, because media organisations and the community have let it happen. Governments have used the "war on terror" as an excuse for declaring something is "secret" and criminalising those journalists and their employers who do not cooperate with the steady drip of attacks on press freedom, distracted and complacent about the steady drip of assaults on press freedom, distracted by other issues besetting the media industry.

Thankfully though, in the past 12 months there has been some good news on the press freedom front. The Northern Territory Parliament passed shield laws recognising journalist privilege, with the new South Australian Government to follow. That will leave just Queensland as the only jurisdiction still demanding journalists disobey their ethical obligation to never reveal the identity of a confidential source thus facing the threat of a jail term or fine or contempt if they fail to do so.

There has also been a recognition that the courts, particularly those in Victoria, need to address the use of suppression and non-publication orders if the judicial system is to operate openly and transparently. Sadly, the highly politicised attacks unleashed on the ABC have continued. The ABC has been flaccidly hurt to the extent that it is now struggling to meet its charter obligations, particularly in rural and regional Australia. But in the past 12 months, the political attacks have become more desperate and unhinged, resulting in lengthy inquiries that waste public money that could be spent on adequately funding the increasingly crucial role being played by public broadcasters in providing vital public interest journalism.

Crucial because, as we have also seen, the heavy hand of redundancies has continued at the leading media houses – not least at Fairfax which triggered a snap seven-day strike by its journalists when it slashed 125 jobs – that's one in four editorial staff – from its metro newspaper on UNESCO World Press Freedom Day in 2017.

But looking at the long-term, there is still plenty more to be done. A Senate Select Committee inquired into the future of public interest journalism and adopted most of MEAA's recommendations, including the need for reform of Australia's uniform national defamation law regime.

The digital platforms, whose power has done much to cripple media outlets while riding the coat-tails of latter's editorial content, needs to be addressed. So too the other MEAA recommendations for government support for the media industry. There is much work to be done to ensure the media can meet the challenges ahead but, at last, government being forced to listen.

Encouragingly, the combined response by media organisations including MEAA and the courts, particularly those in Victoria, require the use of suppression and non-publication orders if the judicial system is to operate openly and transparently.

Prime Minister Malcolm Turnbull introducing the Espionage Bill
"I give personal thanks to my Attorney-General, Senator George Brandis, who has applied his Queen’s Counsel’s mind methodically and creatively to tailor our legislative framework." 3

MEAA – “The Bill would make it a crime for anyone to ‘receive’ and ‘handle’ certain national security information. A journalist in possession of a document classified ‘top secret’ could face 20 years in jail – even if they never broadcast or publish a story.”

Law Council of Australia – “The basic difficulty with the Bill is that many of the offence provisions are broadly drafted to capture a range of benign conduct that may not necessarily amount to harm or prejudice to Australia’s interests.”

Paul Murphy chief executive MEAA

Commonwealth officials that leak classified information, but also criminalises all the steps that go into reporting such information to the public.” 4

Transparency International Australia chairman Anthony Whealy – “The law is sufficiently wide to get you and if they’re not intending to get you, why not exempt you? Journalists should not have this sort of a law hanging over their head, because when Christian Porter is not the Attorney-General, and it is someone else, he or she might take a very different view… The bigger point is why should a journalist have to go through a criminal trial? There should be an exemption for journalists acting in the public interest, not a defence.”

Prime Minister, in his discussions with me, has made clear the absolute need for this legislation to protect Australia, but also his concerns that the drafting of could be captured. Even reporting on domestic or international politics could contravene the provisions, depending on how the courts interpreted them… What is even more concerning is that this adds yet another layer on existing legislation that can protect the government from embarrassment, rather than from genuine threats.”

United Nations rapporteurs’ joint communiqué – “Such extensive criminal prohibitions, coupled with the threat of lengthy custodial sentences and the lack of meaningful defences, are likely to have a disproportionate chilling effect on the work of journalists, whistleblowers, and activists seeking to hold the government accountable to the public.”

Attorney-General Christian Porter – “The Prime Minister, in his discussions with me, has made clear the absolute need for this legislation to protect Australia, but also his concerns that the drafting of

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"THERE CAN BE NO PRESS FREEDOM IF JOURNALISTS EXIST IN CONDITIONS OF CORRUPTION, POVERTY OR FEAR.” – INTERNATIONAL FEDERATION OF JOURNALISTS
this legislation must clearly match the government’s intent not to unnecessarily restrict freedom of communication. There is not, nor has there been any, plan... by the government to see journalists going to jail simply for receiving documents and that would not occur under this bill as currently drafted.6

Porter - “There has been no intention to unnecessarily restrict appropriate freedoms of the media. Where drafting improvements are identified that strike a better balance, the Government will promote those changes.”

Joint Media Organisations’ second supplementary submission on the Espionage Bill - “Notwithstanding the amendments, it remains the case that journalists and their support staff continue to risk jail time for simply doing their jobs. This is why we believe that the way in which to deal with this appropriately is to provide an exemption for public interest reporting.”

Joint Media Organisations - “The right to free speech, a free media and access to information are fundamental to Australia’s modern democratic society, a society that prides itself on openness, responsibility and accountability. However, unlike some comparable modern democracies, Australia has no laws enshrining these rights... Therefore we do not reside from our long-held recommendation for exemptions for public interest reporting in response to legislation that criminalises journalists for going about their jobs. The lack of such a protection – and the ever-increasing offences that criminalise journalists for doing their jobs – stops the light being shone on issues that the Australian public has a right to know.”

ASIO director-general Duncan Lewis - “I’ve contacted (Finance Minister) Mathias Cormann and said One Nation wants the ABC funding reduced by $600 million over the forward estimates. If they’re not forthcoming in... reducing funding to the ABC as part of their budget repair... we’ll have to seriously consider what budget repair options (we support) that the Liberal Party puts forward. It’s about time we apply a little bit of pressure on the government to do something about the left-wing, Marxist ABC.”

(Then) Senator Malcolm Roberts – “Their ABC put our diggers’ lives at risk so as to execute a political hit on Senator Hanson. The ABC have declared jihad on Aussie diggers. They have a fatwa on Pauline Hanson. Our diggers who were to protect Pauline are the ones who would have shielded the Senators when the bullets and mortar started to fly. It was their lives the ABC recklessly put on the line. The ABC are warped and dangerous. Terrible. Horrible. Sad. The ABC’s actions in revealing the Anzac Day visit to diggers shows their willingness to collude with ISIS and other terrorists in identifying Australian targets, including troops. The ABC has for a long time been harbinger of terror apologists. This proves their Jihad sympathy. Just like an ISIS attack, the cowards make their hit and then scuttle away into the sand. Like snakes.”

Roger Franklin, online editor, Quadrant - “Life isn’t fair and death less so. Had there been a shred of justice that blast would have detonated in an Ultimo TV studio. Unlike those young girls in Manchester, their lives snuffed out before they could begin, none of the panel’s likely casualties would have represented the slightest reduction in humanity’s intelligence, decency, empathy or honesty.”

Home Affairs Minister Peter Dutton - “It’s a cultural problem at the ABC and the board needs to deal with it... I actually think there is a fundamental problem with the ABC, particularly around QA4... I don’t want it. It is a waste of taxpayers’ money...”

Senator Brian Burston - “It’s about time we took a stand against the ABC because if it’s us and they destroy us, what is it next, the government? They’re showing total bias against One Nation.”

Senator Pauline Hanson - “Some of the television and radio personalities... wouldn’t cut it in the real-world of media and would likely end up throwing pots in Ninimbin without the ABC providing a safe haven for their pathetic talent.”

The Australian - “The change to the ABC Act – yet to be brought to parliament – is part of a deal the government did with One Nation in exchange for passing its overhaul of media laws... The One Nation senators have previously offered up examples of topics where they think ABC coverage hasn’t been appropriately balanced, including climate change and giving equal time to the views of anti-vaxers.”

Communications Minister Mitch Fifield - “We’re simply reinforcing, through legislation, that which is already in the ABC’s own editorial policies. It will operate exactly as it does now...”

Fifield - “It would reflect better on the ABC, secure in its more than $1bn of annual funding, if it showed a greater understanding of the challenges faced by its commercial counterparts who earn their revenue rather than receive it from the Treasury.”

MEAA – “This Bill is a calculated insult directed at the ABC and its employees. The proposed addition to the ABC Act borders on comical, but is unfortunately rooted in a transgressive campaign to undermine the performance and reputation of the nation’s most esteemed (and scrutinised) broadcaster. MEAA believes this misleading and dangerous Bill should be withdrawn without further debate.”

Craig Kelly MP – “I don’t think the national broadcaster is acting in the national interest.”

The final blog post of Maltese investigative journalist Daphne Caruana Galizia was killed by a car bomb...
ATTITUDES ABOUT PRESS FREEDOM

BY MARK PHILLIPS

The state of press freedom in Australia has deteriorated over the past decade, with the impact of national security laws on journalism the biggest concern, according to a survey of more than 1200 people conducted by MEAA.

But few journalists say their employer is keeping them informed about changes to national security laws which may have an impact on their work, and more than half have no confidence that they could protect sources from being identified through their metadata.

Almost 90 per cent of the 1292 people who completed the online survey believe that press freedom has worsened over the past decade, with just 1.5 per cent saying it had got better.

Overall, there are negative perceptions about the health of press freedom among both journalists and non-journalists, with a greater level of concern among non-journalists (72.5 per cent compared to 60.4 per cent). Working journalists had a slightly more positive view of changes to press freedom over the past decade; with 11.8 per cent saying it was the same, compared to 6.2 per cent of non-journalists.

When asked to rate the health of press freedom in Australia in 2018, 70 per cent of respondents rated it as poor or very poor, and just 1.5 per cent rated it as very good.

The survey was conducted online by MEAA between February and April this year. The aim was to collect data on the main concerns about press freedom to help inform MEAA’s campaigning on press freedom issues.

It was open to all members of the public, with 270, or a fifth of the respondents (20.9 per cent), identifying as currently working as a journalist or other form of media professional. Another 141 respondents were either retired or unemployed journalists, or studying for a career in journalism.

Of those working in the media, 75.6 per cent had careers of at least 10 years.

Both journalists and non-journalists identified national security laws as the most important press freedom issue, with roughly one in five of both respondent groups ranking it the top issue.

Second for both groups was funding of public broadcasting, followed by government secrecy.

A separate set of questions only for journalists sought to explore their personal experiences of press freedom issues in recent years.

Seventy-two per cent of journalists said Australia’s defamation laws made reporting more difficult and, while only 6.5 per cent had received a defamation writ in the past two years, almost a quarter of journalists (24.4 per cent) said they had had a news story spiked within the past 12 months because of fears of defamation action by a person mentioned in the story.

Almost two in five journalists – 36.7 per cent – said information from a confidential source whose identity they had protected had led to the publication or broadcasting of a news story, but only 10 per cent believed legislation was adequate to protect public sector and private sector whistleblowers.

Despite more than two years of laws which allow government agencies to access journalists’ computers, mobile phones and other metadata, fewer than half (45.7 per cent) said they or their employer took steps to ensure they did not generate metadata that could identify a confidential source. Close to two-thirds (63.7 per cent) said they were not confident that their sources could be protected from being identified from their metadata.

Similarly, only 26.6 per cent of journalists said their employer kept them informed of changes to national security laws and how they may affect their journalism, although only 16.3 per cent said their reporting had been hindered by national security laws.

Concerns about restrictions on court reporting are highest in Victoria, where 25.8 per cent of respondents said they had been impacted by the issue of a suppression or non-publication order by a judge and magistrate, compared to 14.2 per cent in other jurisdictions.

In Victoria, 72.7 per cent of journalists believed judges were actively discouraging reporting of open courts, compared to 52 per cent in other states; and 92.4 per cent of those impacted in Victoria believed the court’s decision was excessive, compared to 69 per cent in other states.

Mark Phillips is the MEAA communications director.
The media landscape is fast-changing. Dramatic cultural and social change has provided further impetus for assessing our media laws and how they respond in a changing environment. Several important and high-profile cases, in addition to wide-scale legislative review in the last 12 months, indicate that we are possibly on the cusp of transformative media law change. Below are some of the key changes that have occurred in the past year and how we can expect it to re-shape the media law landscape in the near future.

**DEFAMATION LAW REVIEW: TOWARD A FAIRER AND MORE EFFICIENT DEFAMATION REGIME**

A parliamentary committee report on the National Uniform Defamation Law (NUDL) has revealed that the Council of Australian Governments (COAG) undertook a national review to reform the laws to ensure they do not thwart public-interest journalism. Attorney-General Christian Porter has conceded that he does not believe that “the balance [is] perfect” in trying to promote responsible journalism and the protection of individuals from reputational harm.

At present, the NUDL is complex, incoherent and substantially stacked against media defendants, thereby stifling public-interest journalism. The Rebel Wilson decision (see below) is a striking reminder of the need for vital defamation law reform in the near future.

Among the reforms, legislators should consider:

- Reversing the onus of proof in relation to the truth defence. This would require publishers to prove that the information they have published has been published about them is false, rather than defendants fighting to establish that it was unequivocally true. This would provide the space for journalists to more confidently and coherently tell the stories that it is in the public interest to tell.
- Give force to the qualified privilege defence. At present, the defence is available in theory only and very rarely succeeds at trial.
- Set a time bar on individuals suing over online publications. At present, any material available online is not subject to any time limitations.
- A UK-style “serious harm” test should be introduced.

The NSW Attorney-General Mark Speakman recently said that he was “committed to ensuring that defamation law is reviewed in light of technological change” and the government “intends to complete a review of defamation law”.

**REVIEW OF THE OPEN COURTS ACT: WHAT CAN BE DONE TO REVERSE SUPPRESSION ORDER NUMBERS?**

The Andrews Victorian Government called for submissions to the review of the state’s suppression order laws. The Open Courts Act 2013 (Vic) was introduced to remedy the perceived over-issuing of suppression orders by Victorian courts. By limiting media reporting, this trend of suppression was seen to threaten the “open justice” rule. However, the legislation has not caused a notable reduction in suppression orders and now subsequently requires further review.

The Open Courts Act made several significant changes to the law.

Firstly, it abrogated the common law powers of inferior courts to make suppression orders so that they now rely exclusively upon statutory powers of suppression.

Secondly, it raised the bar or clarified the grounds on which a suppression order could be made.

Thirdly, it limited the power of inferior courts to make broad suppression orders (relating to material extraneous to a proceeding rather than information derived from proceedings).

Fourthly, it abolished the power of inferior courts to make “proceedings-plus” orders – those orders that went beyond preceding suppression orders or broad suppression orders.

Finally, the Act sought to introduce a statutory presumption of openness as a means of curbing the making of suppression orders.

However, the above reforms were ineffective in reducing suppression numbers. Victoria, in fact has more than double the number of suppression orders made in every other state and territories combined.

To address this issue, the following options may be considered:

- Greater education on existing provisions. The over-issuing of suppression orders can largely be blamed on judges not adhering to the current regime. For example, section 13 of the Act requires that an order not apply to any more information than is necessary to achieve the purpose for which it is made. This provision should mean “blanket bans” are rarely issued – but in reality they make up 57 per cent of suppression orders. Further, the time requirements on suppression orders are still not being adhered to in 7 per cent of cases. Greater professional education on the requirements of the Open Courts Act would likely address this issue.

- Creation of an Office of Open Courts Advocate. Given the high volume of suppression order applications, it would be unreasonable to require the media to turn up and oppose every order. However, having a “contradictor” in the court may greatly reduce the number of orders granted. The creation of an Open Courts Advocate to argue the public interest in suppression order considerations could limit the number of orders.

- Tailor-made model orders. There is a trend of judges uncritically adopting past orders as templates for their own. Often these templates are inherently problematic because they are ambiguous, too broad or go beyond the powers of the court. Therefore, it may be beneficial to devise a range of model orders, specially tailored to circumstances where suppression orders can be granted.

The Victorian government is currently working on the review of the Open Courts Act.”

**REBEL WILSON: A LANDMARK DEFAMATION CASE**

The past 12 months has seen a number of defining defamation cases in Australia, yet none more so than Wilson v Bauer Media Pty Ltd (Rebel Wilson case).

On September 13, 2017 Justice Dixon handed down the judgement in the Rebel Wilson case in the Supreme Court of Victoria. The plaintiff, actor Rebel Wilson, was awarded more than $4.5 million in damages over a series of articles in 2015 that were found to be defamatory. This represents the largest payout for a defamation case in Australian legal history.

Wilson sued Bauer Media over one print edition article in Woman’s Day magazine and seven articles on the websites. The articles broadly alleged that Wilson was a serial liar and had lied in relation to her age, her real name and her upbringing.

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

Ultimately, the jury of six established that each of the defendant’s publications conveyed defamatory imputations in the terms alleged by the plaintiff and they rejected the defences of justification, triviality and qualified privilege raised by the defendants.

Dixon J concluded that special damages amounted to approximately $3.9 million in the form of the loss of a chance of a new screen role in the period following the release of Pitch Perfect 2. Further and perhaps most critically, Dixon J assessed general damages, including aggravated damages, at $650,000. In doing so, Dixon J prepared to lift the statutory cap of $389,500 that ordinarily applies for non-economic loss.

Dixon J’s view is that the cap may be circumvented in circumstances of aggravated damage, which he deemed to exist on three main grounds:

- Bauer Media paid an anonymous source $80,000 for information without properly investigating the allegations, which was evident from emails sent between the Bauer Media journalist and the source of information.
- it knew the imputations being conveyed to be false and proceeded to publish nonetheless; and
- it then also repeated the offending imputations by repeatedly publishing similar articles with similar imputations in an attempt to keep the information circulating, current and to neutralise Wilson’s response to the articles.

Bauer Media’s conduct was considered to be malevolent, spiteful, lacking in bona fides, unjustifiable and improper.

In rejecting the ordinary statutory cap on general damages, Dixon J said: “...only a substantial sum of damages would be adequate to convince the public that Wilson is not a dishonest person and bring home the gravity of the reputational injury...[and] unless substantial damages are awarded there is a real risk that the public...will wrongly conclude that the articles were trivial...”

The decision in the Rebel Wilson case has profound implications for freedom of speech. The decision on the media fraternity had come to rely on the certainty provided by the $389,500 cap on damages for non-economic losses. The Foyes’ willingness to subvert the cap sends a concerning warning to all media publishers; they joined forces in an attempt to keep the information circulating, current and to neutralise Wilson’s response to the articles. The media fraternity has profound implications for freedom of speech. The decision on the media fraternity had come to rely on the certainty provided by the $389,500 cap on damages for non-economic losses.
The robustness of the Northern Territory law is yet to be tested. Whether this exception will be broadly applied to silence government whistle blowers remains to be seen.

Given the uncertainty of how this new law will be applied and the lack of consistency across states, calls for a uniform commonwealth regime are compelling. This would clarify confusion surrounding which journalists are protected.

THE JOURNALIST INFORMATION WARRANT REGIME
In 2015, amendments were made to Telecommunications (Interception and Access) Act 1979 which required telecommunications and internet service providers to collect and retain user data. This data is able to be accessed by government agencies in some circumstances.

If a government agency wants to access a journalist’s telecommunications data or their employer’s telecommunications data for the express purpose of identifying a journalist’s source, a Journalist Information Warrant is required. The warrant will be granted where the Minister believes that the public interest in obtaining the data outweighs the public interest in protecting the confidentiality of the source. If this warrant is granted, it remains secret and the journalist is unable to challenge it. Further, the warrant can last up to six months and grants access to data up to two years old.

This regime on its own threatens the privacy and liberty of journalists and their sources. However, coupled with the proposed National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017, this danger is magnified.

Under the Bill, journalists could be jailed just for receiving or handling documents that might harm Australia’s national interests. It is expected that if these laws pass, the ability of government agencies to obtain a Journalist Information Warrant will be made significantly easier. Where a government agency can claim that a warrant is in the public interest due to national security reasons, it likely that the Minister will prioritise this over protecting the source’s identity. The new legislation prescribes that merely receiving documents (as opposed to publishing them) constitutes a threat to national security, the conduct for which a warrant can be granted in response to it is significantly broadened.

METOO: LOOKING FORWARD
The #MeToo movement has brought about an emerging belief of women speaking out about the sexual harassment or sexual misconduct that they have been subjected to. We should be supporting women who have the courage to speak out. Unfortunately, however, Australia’s defamation laws can be used by men to threaten to pursue proceedings against women who make allegations against them and the publishers who disseminate the allegations. This may have the effect of suppressing both the articles exposing the sexual misconduct and thwarting the movement of women who are courageously coming forward to tell their stories.

In December 2017, Geoffrey Rush filed defamation proceedings against The Daily Telegraph, which published allegations that Rush behaved inappropriately towards a female cast member in a Sydney Theatre Company play. Rush stated that he was taking the action “in order to redress the slurs, innuendo and hyperbole that they have created around my standing in the entertainment industry and in the greater community.”

Then, in another high profile defamation case, actor Craig McLachlan invited proceedings in early 2018 against Fairfax Media, the ABC and his former co-star Christie Whelan Brown, who is one of the women who accused McLachlan of sexual harassment. We also saw the Chris Gayle case proceed to trial and allegations against the Melbourne Lord Mayor.

We should all be alert to the risk that high profile cases, such as the ones mentioned, do not serve to silence more women from speaking out if and when they face sexual harassment.

CHOOSING A COURT
Plaintiffs have traditionally done pretty well in Australia’s Supreme Courts, especially NSW. Historically, it has been that, there are an increasing number of defamation cases being issued in the Federal Court (23 last year).

Some think the reason is that these plaintiffs wish to avoid going before a jury. Peter Bartlett is a partner; Dean Levitan is a lawyer and Adelaide Rosenthal in a graduate with law firm Minter Ellison

MEAA believes Victoria’s review being conducted by former Victorian Supreme Court appeal judge Frank Vincent should first consider the changing media environment and the impact that is having on court reporting. Media organisations have been confronted by enormous pressures. Due to the disruption caused by digital technology, media outlets are faced with declining revenues to fund editorial content.

Regular rounds of redundancies and other cost-cutting programs have dramatically reduced editorial resources and staff. While some new and niche media outlets have emerged, they operate with far fewer staff than metropolitan daily newspapers.

This media environment is putting dire pressure on the media as it tries to fulfil its role in a healthy functioning democracy.

Across the board, there are far fewer journalist “boots on the ground” to report on issues in the public interest. Fewer reporters means a coverage of important issues, less time and opportunity to report, and a decline in the ability to properly scrutinize and pursue legitimate issues.

The journalists who remain behind after the redundancy rounds have seen their workload intensify to the point where not only are they having to do more, but new technology means they must also now file stories, conduct background research and collect platform data throughout the day as well as personally promote those stories on social media to push web traffic to their employer’s online news web site.

• The spate of redundancies has also seen the most senior and experienced journalists, who are usually the most highly remunerated, pushed out of media companies by their employers, only to be replaced by less experienced journalists who may not be as highly trained and/or mentored as their predecessors.

• The competitive pressures that arise from digital technology have led to additional problems: the “rush to be first” with the news is a critical commercial imperative, and this, coupled with fewer production staff (sub-editors) to check news stories before they are published, means there are fewer checks and balances available in newsrooms; and

• Media companies have fewer financial resources to fund a legal challenge to ensure a public interest news story is published or to defend themselves should an action be brought against a journalist and the media outlet.

These challenges are expected to exacerbate as the financial pressures continue to erode the way the media has traditionally functioned. Yet the expectation continues that the fourth estate must play its crucial role in a healthy functioning democracy.

There is no doubt that, despite the best intentions, the media’s reporting on the courts has suffered due to the pressures outlined above. Fewer experienced journalists are available; they are working under intense pressure to file stories while needing to be aware of the existence of

Channel Seven, Fairfax Media and the ABC. However, the Victorian Court of Appeal rejected the media’s right to intervene.

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

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

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

SHIELD LAWS INTRODUCED IN THE NORTHERN TERRITORY
The Northern Territory has followed the lead of other Australian states and territories and introduced its own shield law regime.

Shield laws ensure that journalists cannot be forced to reveal the identity of their sources and provide legal protection for those who want to preserve their client’s confidence. These laws are extremely important as journalists rely on sources to keep business, government, courts and individuals accountable. Often information provided by these sources is given on the condition that their identity will be kept secret. Shield laws serve as a guarantee of this and seek to encourage other sources to come forward with stories of public importance without fear of repercussions.

The Northern Territory’s new legislation exists alongside that of the ACT, VIC, NSW, TAS and WA, as well as the overarching Commonwealth statute. In each jurisdiction, there is a presumption that the journalists will not have to give up their sources. This presumption is generally qualified by allowing disclosing of sources where the public interest outweighs any likely adverse effect on the informant. Shield laws have already been successfully relied upon in other states. In WA, journalists Steve Percival and Adaline Vergers were not required to disclose sources relating to the story on Gina Rinehart whilst in Victoria, similar journalists John Gwynne and Richard Baker avoided disclosing sources on alleged mafia boss Antonio Madaferrri and also on Securrency.

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CHOOSING A COURT
Plaintiffs have traditionally done pretty well in Australia’s Supreme Courts, especially NSW. Historically, it has been that, there are an increasing number of defamation cases being issued in the Federal Court (23 last year).

Some think the reason is that these plaintiffs wish to avoid going before a jury. Peter Bartlett is a partner; Dean Levitan is a lawyer and Adelaide Rosenthal in a graduate with law firm Minter Ellison

MEAA believes Victoria’s review being conducted by former Victorian Supreme Court appeal judge Frank Vincent should first consider the changing media environment and the impact that is having on court reporting. Media organisations have been confronted by enormous pressures. Due to the disruption caused by digital technology, media outlets are faced with declining revenues to fund editorial content.

Regular rounds of redundancies and other cost-cutting programs have dramatically reduced editorial resources and staff. While some new and niche media outlets have emerged, they operate with far fewer staff than metropolitan daily newspapers.

This media environment is putting dire pressure on the media as it tries to fulfil its role in a healthy functioning democracy.

Across the board, there are far fewer journalist “boots on the ground” to report on issues in the public interest. Fewer reporters means a coverage of important issues, less time and opportunity to report, and a decline in the ability to properly scrutinize and pursue legitimate issues.

The journalists who remain behind after the redundancy rounds have seen their workload intensify to the point where not only are they having to do more, but new technology means they must also now file stories, conduct background research and collect platform data throughout the day as well as personally promote those stories on social media to push web traffic to their employer’s online news web site.

• The spate of redundancies has also seen the most senior and experienced journalists, who are usually the most highly remunerated, pushed out of media companies by their employers, only to be replaced by less experienced journalists who may not be as highly trained and/or mentored as their predecessors.

• The competitive pressures that arise from digital technology have led to additional problems: the “rush to be first” with the news is a critical commercial imperative, and this, coupled with fewer production staff (sub-editors) to check news stories before they are published, means there are fewer checks and balances available in newsrooms; and

• Media companies have fewer financial resources to fund a legal challenge to ensure a public interest news story is published or to defend themselves should an action be brought against a journalist and the media outlet.

These challenges are expected to exacerbate as the financial pressures continue to erode the way the media has traditionally functioned. Yet the expectation continues that the fourth estate must play its crucial role in a healthy functioning democracy.

There is no doubt that, despite the best intentions, the media’s reporting on the courts has suffered due to the pressures outlined above. Fewer experienced journalists are available; they are working under intense pressure to file stories while needing to be aware of the existence of
court orders and, at times, operating under the intimidation of defamation actions and subpoenas that threaten their journalism and their sources.

MEAA believes that given this media environment will not necessarily ease, it is important that the courts and the media seek ways to work together in the public interest, to improve the ability to report on the courts, and for the court system to function with the public interest in mind.

**CONFLICT BETWEEN THE MEDIA AND COURTS**

As recently as October 2015, Victorian Chief Justice Betty King boasted that she was “probably responsible for the majority of suppression orders issued by Victorian courts in the last three years” and that for every media report there were equally reports that were “inaccurate, salacious, malicious towards the indefensible and just plain pruriens.”

As recently as October 2015, Victorian Chief Justice Marilyn Warren (who left office in October 2017) wrote about the media’s suppression orders system. It is also apparent that many judicial officers operate under a presumption that it is the courts that should determine what is in the public interest.

In a speech delivered to the Melbourne Club on Friday November 15, 2009 (prior to the present Court Act) former Victorian Supreme Court Justice Betty King boasted that she was “probably responsible for the majority of suppression orders issued in Victoria in the last three years” and that for every media report there were equally reports that were “inaccurate, salacious, malicious towards the indefensible and just plain pruriens.”

The newspaper went on to say: “On top of this, the Victorian Civil and Administrative Tribunal and the Coroners’ Court also use suppression orders regularly “in the public interest” to stop publication of evidence.

And having lawyers appear in court on our behalf is not cheap. We do challenge some, but expecting to challenge the daily procession of suppression orders is increasingly unrealistic.”

**MEAA’s recommendations**

In response, Chief Justice Warren noted in the article cited above: “The data on the scope of the orders of the courts is significant. It indicates that the OC Act has had no overall effect whatsoever in narrowing the scope of orders made by the courts…” Furthermore given the extreme nature of such orders… it must be pointed out that it is highly improbable… that such a large proportion of blanket-ban orders in the dataset could be justified.”

It should also be noted that the Act operates on a presumption that there is no reason to make order here against other Australian jurisdictions.

Despite this, the Chief Justice went on to claim: “The Victorian Supreme Court figures are certainly on par with our New South Wales counterpart, however.”

MEAA also recommended that ways be sought to allow the notification system to provide initial necessary information that allows the media to readily identify persons and issues surrounding each suppression order, with the media “stopping a television current affairs news story because: ‘The educational content of this program is in, my view, equally non-existent.’”

Section 15 of the Act requires that “a suppression order must specify the purpose for which the order is made; and the order does not to act any more suppression order to stop a news program on the grounds that they consider its content is not educational and not in the public interest.”

Section 4 of the Act says there is “a presumption in favour of disclosure of information to which a court or tribunal must have regard in determining whether to make a suppression order.”

Under s12(3b) only the Coroners Court may make a proceeding suppression order or under s12(5) may make a closed court order if disclosure would be contrary to the public interest “in my view, equally non-existent.”

It is clear that orders are being made that do not meet the requirements of section 15. The Age editorial cited earlier also examined the scope of the suppression orders being issued in such copious numbers:

> “...many of the orders – 37 per cent on our files alone – were reported as pending or issued in response to any aspect of a case at all. As well, 9 per cent were still being issued without end dates (contrary to the terms of the Open Courts Act) and 3 per cent did not specify on what grounds they were granted.”

MEAA believes that some orders are excessive in their scope and are unclear as to why they were made. MEAA recommended that ways be sought to allow the notification system to provide initial necessary information that allows the media to readily identify persons and issues surrounding each suppression order, with the media “stopping a television current affairs news story because: ‘The educational content of this program is in, my view, equally non-existent.’”

Section 15 of the Act requires that “a suppression order must specify the purpose for which the order is made; and the order does not to act any more suppression order to stop a news program on the grounds that they consider its content is not educational and not in the public interest.”

section 2(3b) of the Act states: “If and when a suppression order is made by a court, the judge must have regard in determining whether to make a suppression order.”

The narrow view expressed by the Chief Justice may go some way to explain some of the difficulties the media confronts with the suppression orders issued by Victorian courts.

**TOO MANY ORDERS**

The media’s major concerns with suppression orders have been their prevlance in Victoria. It was hoped that the Act would remedy this propensity of the Victorian courts to make suppression orders so readily. However, a news story in The Age in October 2015 stated: “Victoria’s media is increasingly issuing suppression orders in a year, including blanket bans on information [that] prevent media organisations from even reporting that an issue is underway, despite new legislation in 2013 called the “Open Courts Act”.

The findings have prompted calls for a government-funded “Office of the Open Courts Advocate” to argue in court against the suppression of information.

In the financially straitened times that media organisations now find themselves, it is unreasonable to expect them to constantly and consistently present themselves to the court in order to challenge each and every suppression order which are currently (as at February 2017) averaging “almost one a day for the court year.”

In November 2016 The Age editorialised: “...simply challenging suppression orders is not as easy as it sounds. One is the sheer number of such orders issued – 254 across the Supreme Court, the County Court and the Magistrates Court in the year following the passage of the Open Courts Act in November 2013, which was supposed to limit the number.”

The MEAA also argued that the courts are presuming they are the sole determinants of what is in the public interest. This is not so, and the Act does not say it is a role for the courts (except for matters before the Coroners Court – see below).

Indeed, the comments of former Justice Betty King cited earlier include her suggestion that media must have the right to “television current affairs news story because: ‘The educational content of this program is in, my view, equally non-existent.’”

That this appears that it came only be attributed to the Act because in terms of necessity of duration, particularly those issued in the County and Coroners Court – see below).

Indeed, the comments of former Justice Betty King cited earlier include her suggestion that media must have the right to “television current affairs news story because: ‘The educational content of this program is in, my view, equally non-existent.’”

That this appears that it came only be attributed to the Act because in terms of necessity of duration, particularly those issued in the County and Coroners Court – see below).

MEAA also noted the situation that arose in the Melbourne Magistrate’s Court in 2013 where a suppression order was made that prohibited the publication of any information about “a particular witness ”in any media outlet, newspaper, radio, television or internet or any other publication for a period of 999 months.”

As MEAA’s annual report into the state of press freedom in Australia noted: “Towards the end of the 21st century, one of our main challenges is to apply to the court to lift that order.”

Section 2(3) of the Act, states: “If and when a suppression order is made by a court, the judge must have regard in determining whether to make a suppression order.”

This appears to have led to courts lazily making orders to last for five years without justifying why that time frame has been chosen.

Boland noted that a significant number of orders “did not contain an appropriate temporal limitation.” Several orders, particularly at the County and Supreme Courts, were made to operate for a period of exactly five years.

Boland says: “This is a curious result because in terms of the onion of with the opposite of the onion being designed for the onion of operation that would explain the prevalence of such orders…”

It appears that it came only be attributed to the wording in s12.”
MEAA recommended that suppression orders should be made for narrower time frames, not utilising timeframes of months or years (this to be determined by what the court determines as being practical). A narrower time frame should be the default and these terms can only be extended by a subsequent application to the court, so that the emphasis is always on the disclosure of information at the earliest opportunity rather than ongoing suppression of information with little or no regard to the requirement to inform the public.

THE NEED FOR AN INDEPENDENT CONTRADICTOR

As the then attorney-general said during the second reading of the Open Courts Bill in June 2015: “Free reporting by the media of what is happening in Victoria’s court is still to the community’s right to know.”

Specifically, section 11 of the Bill: “Requires the court or tribunal to take reasonable steps to ensure that relevant news media organisations are notified of an application for a suppression order where notice is given under clause 10.”

MEAA believes the second paragraph exposes a flaw in the thinking behind the Act.

The belief that “news media organisations are more likely to act as a contradictor to such applications, that this will provide the role of contradictor along with the benefit of a contradictor making arguments in favour of the principle of open justice and disclosure of information both in relation to whether the order should be made and, if made, its scope and duration.”[1] MEAA emphasised.

MEAA has said newsworthiness and worth reporting. It should not be up to the news media alone to play the role of contradictor. This responsibility assured by the Act to be imposed on the media deducts required all news media organisation to not only be mindful of all applications for suppression order but to also have legal advice “on tap” to be able to assess and advise on whether a review of an order should be sought, and for news media to then fund legal actions to seek a review of an order.

In essence, the underlying belief of the Act is that the news media should be expected to act on suppression orders at every opportunity.

This is unreasonable. It is not a role that news media organisations should be expected to perform, particularly as their resources are already stretched in running their day-to-day business operations in the current tough environment for media businesses. The media should not be considered a judicial functionary – which is the underlying intention of the Act.

There is also a clear failing of the Act in its expectation that media organisations can litigate every order they oppose. The changed media environment means such resources are not available. And that means that the public’s right to know is being eroded.

The attitude of judges outlined in their unhelpful remarks cited above also suggests that even the courts themselves believe the media should always present itself before a court to oppose an order without understanding that the media is being swamped with suppression orders and is incapable of mounting expensive legal challenges to them. The judge’s own perspective is that the media is the contradictor.

It is interesting to note that the Chief Justice indirectly acknowledged this problem, when she said: “To further strengthen public confidence in the process, the Supreme Court will soon utilise a generous service of the Victorian Bar, with barristers will appear – for free – when requested by a judge, to make submissions on public interest grounds, in the absence of other contradictors such as the media. This is an initiative of the courts themselves together with the Victorian Bar, one of the state’s most highly respected independent legal bodies.

This “service” amply demonstrates the confused perspective: if the media doesn’t turn up as a contradictor, a barrier will appear when requested by a judge. The Chief Justice’s point again demonstrates that this is about trying to create a stop-gap remedy rather than deal with the media’s legitimate concerns about the number of suppression orders being issued and the inability of the media to cope with challenging every one.

A wiser course would be the creation of an Office of the Open Courts Advocate to argue the public interest during the making of an order.

MEAA recommended the creation of an Office of the Open Courts Advocate to argue the public interest in suppression order considerations – in advance of the issuing of the order and at any subsequent review of an order. The Advocate should play the role of contradictor and fill the gap formerly occupied by media lawyers representing media outlets – to argue for the public interest. This does not mean that media outlets will be frozen out from such debate. The media should always be afforded the opportunity to argue its position.

MEAA also suggested training in the role of the media and how professional journalists work as well as consideration of public interest matters from the media’s perspective may assist the courts and tribunals to better manage the consideration of suppression order applications.

MEAA also believed it was important to have a round table of representatives of the state government, the courts and the media to examine ways to improve relations for the best outcomes for the operation and reporting of the courts.

There is also scope for a national discussion of the suppression order issue. MEAA recommended the Law, Crime and Community Safety Council of the Council of Australian Governments for a way to develop a uniform national approach to suppression orders so that the current massive imbalance in the issuing of orders can be addressed.

On March 28, 2018, the Victorian Attorney-General,李先生， publicly released the Viscrapt report and the Government’s response to its recommendations.

In the wake of the Senate Select Committee report into the Future of Public Interest Journalism, there are some encouraging indicators that Australian legislators are finally realising that Australia’s defamation law is in need of reform.

In its submission to the Committee’s inquiry, MEAA said defamation actions require media companies to “lawyer up” at enormous expense with the potential for costly damages and costs to be awarded against them. Defamation has evolved into an immense threat to media businesses, and to press freedom itself.

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

The immense cost burden not only has a dire economic effect on media organisations already struggling with profitability in the wake of digital disruption but there is also a considerable “chilling effect” on public interest journalism that intimidates journalists and media organisations from reporting legitimate news stories in the public interest and applying scrutiny to the rich and powerful because they fear their journalism may result in costly, lengthy litigation. When the law can be used to muzzle the media in such a way, both democracy and press freedom have been suppressed.

Leading media lawyer Peter Bartlett, writing in MEAA’s 2017 annual report into the state of press freedom in Australia, quoted leading media QC Matt Collins who said “as soon as a publisher is found to have made a factual error and no matter how minor, in practical terms, the plaintiff succeeds”. He added that it is relatively easy for a defamation plaintiff to establish that he has been defamed. It is then up to the defendant to establish that even though the plaintiff has been defamed and has suffered loss, the plaintiff should not be awarded damages. That is a huge hurdle for a defendant, and one that is rarely achieved.”

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

The regime does not have a review clause. However, in 2011, after five years of operation the NSW Department of Justice undertook a review of the defamation laws. That review was not concluded and not presented to the NSW Government.

MEAA, as a member of the Australia’s Right To Know (ARTK) industry lobbying group, supports an ARTK campaign for a review of the operation of Australia’s uniform defamation law regime. In July 2015 ARTK called for the law to be updated so that it could rectify problems that had become evident after almost 10 years of operation and also to reflect changes made in Britain when that country’s law was updated to reflect the impact of digital publishing. ARTK’s aim was to bring the law in line with international best practice and remove areas where the uniform laws have not proved successful or where they are inconsistent or do not work as intended.

Another aim was to ensure that criminal defamation is repealed and removed from the statutes.

At the end of 2015, the meeting of the various attorneys-general that makes up COAG’s Law Crime and Community Safety Council (LCCSC) the issue of a uniform defamation law review and update was being discussed “below the line”. 

Defamation law is in need of reform

Defamation law is in need of reform
The NSW Government was tasked with finalising its 2011 review; NSW would be used a template for a broader discussion among all the jurisdictions so that the uniform defamation legislation could be updated. The aim was for the review to be presented to the NSW Attorney-General which would then result in a cabinet paper being presented to the NSW Cabinet sometime in 2016. The paper would be expected to recommend issues to be further considered from the Defamation Working Group (DWG) which consists of officials from all jurisdictions. The DWG would then make recommendations to the LCCSC. It was anticipated that the LCCSC would then create a mechanism of public consultations. There appears to have been no further progress.

MEAA believes it is high time the defamation law regime in Australia was updated. In its submission to the Senate select committee, MEAA urged that the Standing Committee on Law, Crime and Community Safety move swiftly to review and reform the national uniform defamation law regime.

The Senate select committee subsequently reported, noting that:

"Some submitters suggested that some elements of Australia’s legal framework had a ‘chilling’ effect on journalists reporting freely in the public interest. These included: recent reforms to national security legislation; defamation and libel provisions, as well as inconsistency across jurisdictions; shield protection and whistleblower provisions covering journalists and their sources; as well as copyright provisions…"

"A significant number of witnesses and submitters stated that Australia’s defamation and libel laws played a significant part in curtailting journalists’ efforts to pursue public interest stories. This was not necessarily due to the damages awarded for publication of material found to be libellous, but the legal costs of defending defamation cases.”

In its recommendations, the committee notes that “the Commonwealth worked closely with the states and territories to develop a uniform set of defamation laws in 2005. The committee notes indications that there appears to be an appetite for COAG [Council of Australian Governments] to review the framework of existing defamation laws, especially considering this framework has been implemented for more than a decade without assessing potential areas that could be improved.

"Given the National Uniform Defamation Law 2005 was agreed in the COAG context and given that it covers the majority of defamation law in Australia, it would be appropriate for the Commonwealth to investigate how it can work through this forum to assist the states and territories to review and reform our defamation laws, or to reinvigorate efforts already underway to do so, to ensure those laws are consistent with a viable, independent public interest journalism sector, work appropriately with whistleblower protection regimes, and generally operate effectively in the digital age.

In recommendation 7, the committee said "the Commonwealth work with state and territory jurisdictions through the Council of Australian Governments to complete a review of Australian defamation laws, and subsequently develop and implement any recommendations for harmonisation and reform, with a view to promoting appropriate balance between public interest journalism and protection of individuals from reputational harm."
up thousands of lawyers, academics and journalists – anybody who dared question the president’s legitimacy – as a threat to national security.

In April this year, an Istanbul court issued an arrest warrant for independent journalist Can Dündar on espionage charges, and asked Interpol to issue a warrant of its own. The charges stem from a report Dündar published in the newspaper Cumhuriyet while he was editor-in-chief of the Muslim Brotherhood, and we were editors of Al Jazeera colleagues and I were charged with aiding a terrorist organisation, being members of a terrorist organisation, and broadcasting false news with intent to undermine national security (I was also charged with financing a terrorist organisation). We were convicted and sentenced to seven years hard labour, though the sentences were later reduced to three years. Our appeals were and we were once again convicted in a retrial.

The closest the prosecution came to providing “evidence” was alleging that because Al Jazeera interviewed members of the Muslim Brotherhood, and we were employees of Al Jazeera, we were therefore part of a conspiracy to support a terrorist movement trying to overthrow the state by force.

Since then, Egypt has tweaked its laws to define terrorism so loosely that anything deemed to be a threat to national stability could be considered as an act of terror. Even “preventing or impeding the public authorities in the performance of their work”.

Between January and May last year, Egyptian courts sentenced at least 15 journalists to prison terms ranging from three months to five years on charges related solely to their writing, including defamation and the publication of the metadata of any Australian without a warrant. The only exception is journalists; those agencies that want to look into a journalist’s metadata have to apply to a special magistrate who holds secret hearings to decide whether or not to issue the warrant. With no such protection for a journalist’s sources though, it is hard to see why any of the agencies would bother when they can dig around the data of anybody who they think might have been in contact with a reporter.

At least 10 impose criminal sanctions for journalists, and at least 12 pieces of legislation curb freedom of speech. Others give the authorities extraordinary powers that might be considered legitimate in a time of war, but in a conflict as open ended as the War on Terror, we seem to be stuck with it.

There is the Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015, which gives a host of government agencies the power to examine the metadata of any Australian without a warrant. The only exception is journalists; those agencies that want to look into a journalist’s metadata have to apply to a special magistrate who holds secret hearings to decide whether or not to issue the warrant. With no such protection for a journalist’s sources though, it is hard to see why any of the agencies would bother when they can dig around the data of anybody who they think might have been in contact with a reporter.

Most recently, parliament in Malaysia passed a law against “fake news” punishable with fines of almost $170,000 and up to six years in prison. It has not been used yet, but to the government to define what counts as “fake”. As disturbing as the stories of Turkey, Egypt and Malaysia are, they are consistent with a much wider trend. Around the world, the CPI reckons about two-thirds of all journalists in prison are on charges that could generally be described as “anti-state” such as terrorism, sedition, treason and so on, quite deliberately echoing the national security rhetoric – and sometimes the tactics – from more liberal democracies.

Take the United States, and President Barack Obama.

Yes – Obama. For all his claims to championing human rights and democracy, in the opinion of James C. Goodale, Obama was “worse than (President Richard) Nixon” for press freedom. (Though to be fair, Obama was personally and actively involved in the campaign for our release in Egypt.)

Goodale should know. He was The New York Times counsel in the paper’s 1971 fight with Nixon to publish the Pentagon Papers – the leak of documents showing that previous administrations had lied about the Vietnam War.

In an article published in 2015, Goodale complained about Obama’s tendency to use national security legislation to shut down what Goodale regarded as legitimate reporting. In particular, the Obama administration relied on the Espionage Act passed in 1917 to prosecute journalists or their sources over stories that were more politically embarrassing than they were damaging to national security.

All together Obama put the Espionage Act to work eight times – more than all his predecessors combined – with investigators often trawling through digital communications to find the evidence they needed.

“Until President Obama came into office, news organizations had been protected under the Espionage Act from the warrant process and potential punitive consequences. But those days are now over. The Espionage Act has been expanded to the point where it can be used to prosecute journalists in much the same way as a federal prosecutor might be used to prosecute a military suspect.”

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Note that phrase: “criminalize the reporting of national security information”. In the innocent days before 9/11, it would have been hard to imagine anybody applying it to the United States, much less a seasoned lawyer. But 9/11 has radically changed the landscape, and where the US leads, Australia tends to follow.

More troubling is the offence of “promoting terrorist ideology” – a crime disturbingly similar to what we were accused of in Egypt. So, interviewing extremists in an attempt to understand what drivers young men to join militant groups could break the law.

Earlier this year, the attorney-general’s office forced News Corporation website news.com.au to pull a story headlined “Islamic State terror guide encourages luring victims via Gumtree, eBay”. The AC’s office cited section 99A of the Classification (Publications, Films and Computer Games) Act arguing that the story “directly or indirectly” advocated terrorist acts. The Australian Press Council eventually said the story had legitimate public interest and ruled in favour of publishing, but not before it had vanished from the News Corp website.

Most recently, we have seen the government try to pass a raft of laws that claim to protect Australia from foreign interference. At the time of writing, the legislation has still been debated, but media critics complained they had been so widely cast that they seemed to assume any “unauthorised” communication of classified information between a Commonwealth civil servant and a journalist was tantamount to espionage.

Together, the laws have led to what Liberal Democrat senator David Leyonhjelm describes as the greatest clampdown on freedom of speech in decades. “Bit by bit they have been chipping away at freedoms. The cumulative effect had been the most significant erosion of rights in recent memory.”

This is not to suggest that Australia is about to become “Turkey or nothing” time, but the trend toward press freedom is largely the same.

It is worth reminding Australians that one of the reasons we live in one of the most stable, prosperous and peaceful nations on the planet, and we are lucky that includes a robust and largely unfettered press fiercely capable of holding the powerful to account.

Professor Peter Grene is the UNESCO chair in journalism and communication - school of communication and arts at the University of Queensland.
Even before the Espionage Bill was introduced to parliament, Australia was already well down the path of legislating prison terms for journalists reporting in the public interest, as Andrew Fowler explains in this edited extract from his book SHOOTING THE MESSENGER: CRIMINALISING JOURNALISM.

In 2015, the Telecommunications (interception and Access) Amendment (Data Retention Act (2015) passed through the Australian Parliament. Telecommunications companies would be forced to store metadata on all Australians for two years. Through Australia's Parliamentary system is based on that of the UK, for Australian journalists there were none of the protections afforded by the European Court of Human Rights.

In an attempt to assuage journalists’ fears that their sources were vulnerable to exposure, the government offered what it suggested was a compromise: to get access to journalists’ data, security and police agencies would need a Journalist Information Warrant, signed off by a judge. But it would be no normal court: any hearing would be held in secret and the journalist would be kept unaware of the request to look through their metadata. They would be represented, without their knowledge, in the secret court by an advocate appointed by the government. In the event that the journalist became aware they were under investigation, there was another twist to the law. Public disclosure of the existence of a warrant would be punishable by two years’ imprisonment.

Without the US guarantee of freedom of speech and publication, or the European Court of Human Rights rulings supporting the right to protect the identity of sources, Australia is marooned mid-way in a legal version of a choppy Atlantic Ocean. The country might have produced some of the most outspoken proponents of libertarian free speech in Rupert Murdoch and Julian Assange but Australian laws restricting expression are some of the most draconian in the world.

In September 2012 the then attorney-general, Labor’s Nicola Roxon, proposed the introduction of a data retention law. In 2015, the Telecommunications companies were forced to store metadata on all Australians for two years. Though Australia’s Parliamentary system is based on that of the UK, for Australian journalists there were none of the protections afforded by the European Court of Human Rights.

The all-encompassing nature of the law placed journalists in an impossible legal position. If they reported, even inadvertently, on an SIO, they could be charged. If they tried to check with ASIO, they would also potentially run into trouble: even discussing an SIO would itself be illegal. There was no defence that the public had a right to know about botched ASIO operations. ASIO would only be answerable to the Inspector General of Intelligence, a government-appointed official.

After a strong campaign by newspapers and the electronic media, MEAA and the Walkley Foundation, the government eventually amended the law, introducing a defence of “prior publication”. That meant that if another publication had already reported the event, the journalist might be in the clear. In other words the best legal defence was to get beaten to the story.

In early 2017 the Australian government began examining the possibility of including the covert of SIOs to the Australian Federal Police. Already a journalist could be imprisoned for between six months and seven years for "revealing" any "sketch, plan, photograph, model, cipher, note, document article or information" covered by the Official Secrets section of the Crimes Act (1914).

Coupled with the Data Retention Act and the ASIO Amendment Act it would make reporting on significant matters of national security, that much more difficult for journalists, and make whistleblowers that much more wary of speaking out.

Australia, the nation that had passed more counter-terrorism legislation than any other place on earth, now had specific laws targeting journalists, a knee-jerk reaction to the Snowden disclosures which had done so much to make the world aware of the dangers of mass surveillance.

Andrew Fowler is an award-winning investigative journalist and a former reporter with the ABC’s Foreign Correspondent and its premier investigative TV documentary program Four Corners.

The US National Security Agency
MEAA has campaigned strongly against the ability of government agencies to access journalists’ and media companies’ telecommunications data in order to hunt down and identify confidential sources. MEAA chief executive Paul Murphy said:

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

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

On Thursday April 13, 2017 all telecommunications companies were required to retain the metadata for two years. The regime is a particular concern for journalists who are ethically obliged to protect the identity of confidential sources, Clause 5 of MEAA’s Journalist Code of Ethics requires confidence to be respected in all circumstances.¹⁰

The new regime secretly circumvents the ethical obligations and allows 21 government agencies to identify and pursue a journalist’s sources (without the journalist’s knowledge); including whistleblowers who seek to expose instances of fraud, dishonesty, corruption and threats to public health and safety.

On February 28, 2017 the director-general of ASIO told a Senate Estimates hearing that ASIO had been granted “a small number” of Journalist Information Warrants. MEAA and media organisations have repeatedly warned politicians of the threat to press freedom in these laws. At the last minute, parliament created a so-called “safeguard” – the Journalist Information Warrant scheme and, as part of the scheme, a new office was created: the Public Interest Advocate. However, the scheme is inadequate: it is merely cosmetic dressing that demonstrates a failure to understand or deal with the press freedom threat contained in the legislation.

The Journalist Information Warrant scheme was introduced without consultation. It operates entirely in secret with the threat of a two-year jail term for reporting the existence of a Journalist Information Warrant. Public Interest Advocates will be appointed by the Prime Minister. Advocates will not even represent the specific interests of journalists and media groups but must protect the confidentiality of sources.

There is no reporting or monitoring of how the warrants will operate. Journalists and media organisations will never know how much of their data has been accessed nor how many sources and news stories have been compromised.

The new scheme, for the most part, is warrantless (the exception are the Journalist Information Warrants). Access is currently limited to 21 government agencies but this can be expanded. This is what they can get access to:

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

Journalist Information Warrants will be required if a government agency wants to access a journalist’s telecommunications data or their employer’s telecommunications data for the express purpose of identifying a journalist’s source.

The 21 government agencies include the anti-corruption bodies that already have powers, as well as Border Force, the Australian Securities and Investments Commission and the Australian Crime Commission, and state and federal law police forces. ASIO doesn’t have to front a court or tribunal; it can apply for a Journalist Information Warrant directly to the attorney-general.

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

In short, journalists and their media employers will never know if a warrant has been sought for their telecommunications data and will never know if a warrant has been granted or refused or how many of their news stories and their confidential sources’ identities have been compromised.

Subsequent to the revelation of the access to a journalist’s metadata without a warrant, an audit by the Commonwealth Ombudsman found that Australian Federal Police did not destroy all copies of phone records it obtained unlawfully, without a warrant, for the purpose of identifying the journalist’s source.²⁹

The ombudsman contradicted AFP commissioner Andrew Colvin’s statement in April 2017 that confirmed a breach had occurred within the professional standards unit and that the accessed metadata had been destroyed. An audit of the AFP’s records carried out by the ombudsman on May 5, 2017 “identified that not all copies of records containing the unlawfully accessed data had been destroyed by the AFP.”³⁰

Of particular concern is this statement from the ombudsman’s report: “With regards to how the breach was identified, based on our understanding of the events leading up to the voluntary disclosure to our Office, it appears that an external agency initially prompted the AFP to review the relevant investigation, resulting in consideration of the relevant legislative requirements.”³¹ For the AFP to need an external agency to remind it to comply with the law is disturbing.

The ombudsman found that there were four major contributing factors of the breach:

- At the time of the breach, there was insufficient awareness surrounding journalist Information Warrant requirements within the Professional Standards Unit (PSU).
- Within PSU, a number of officers did not appear to fully appreciate their responsibilities when exercising metadata powers;
- The AFP relied heavily on manual checks and corporate knowledge as it did not have in place strong systems commonly for preventing applications that did not meet relevant thresholds from being progressed; and
- Although guidance documents were updated prior to the commencement of the Journalist Information Warrant provisions, they were not effective as a control to prevent this breach.

The failure to destroy the accessed data came down to a lack of technical knowledge. The Ombudsman suggested that in future cases, the “AFP when destroying information, seek assistance from its technical officers to ensure that the information is destroyed from all locations on its systems.”³²

The ombudsman’s report states that: “At the time of drafting this report, 190 authorised officers were delegated to issue metadata authorisations. Fifty-four of them could issue metadata authorisations under a Journalist Information Warrant.”³³

The ombudsman recommended: “The AFP should consider the relevant training and experience of officers who may temporarily act in higher positions which have been delegated to issue metadata authorisations. These officers are not subject to mandatory metadata training and would have infrequently, if at all, issued metadata authorisations.”³⁴

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

The use of legislation in this attack on press freedom is both unnecessary and unacceptable. The Parliament with bipartisan support, should be deeply troubling for any advocates of freedom of expression and press freedom.

The bungling application of the law by the Commonwealth Ombudsman into how that breach occurred is a secret under the Telecommunications (Interception and Access) Act,” he said.

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

“There is real concern that government agencies could once again misuse their powers to go after whistleblowers, to silence the media,” Murphy said. The government must take immediate steps to protect human rights and press freedom before it induces more anti-terror powers. There will be appalling consequences if extreme powers such as those sought by the Prime Minister and Attorney-General are used to persecute journalists and their sources. After all, that’s what happened just three months ago,” Murphy said.
CRIMINALISING JOURNALISM
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

A Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has concluded that national security considerations should be “limited in application to situations in which the interest of the whole of society is at stake, which would thereby exclude restrictions in the sole interest of a Government, regime, or power group.”

Additionally, the special rapporteur said “the risk that specific expression poses to a definite interest in national security or public order, that the measure chosen complies with necessity and proportionality and is the least restrictive means to protect the interest, and that any restriction is subject to independent oversight.”

In summary, the communique stated: “We are particularly concerned that these restrictions will disproportionately chill the work of media outlets and journalists, particularly those focused on reporting or investigating government affairs. The lack of clarity concerning these restrictions, coupled with the extreme penalties, may also create an environment that unduly deters and penalises whistleblowers and the reporting of government wrongdoing more generally.”

MEAA together with Joint Media Organisations that form Australia’s Right to Know industry lobbying group, quickly responded with a submission to the Parliamentary Joint Committee on Intelligence and Security inquiry into the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017. The organisations and MEAA also appeared at the inquiry’s public hearings.

The submission said: “We note at the outset of this submission that national security amendment laws continue to undermine the ability of the news media to report in the public interest and keep Australians informed about their environment and communities. This Bill is the latest national security Bill that does this and we again bring these important issues to the attention of the Committee.”

The proposed legislation criminalises all steps of news reporting, from gathering and researching of information to publication, and applies criminal risk to journalists, other editorial staff and support staff that knows of the information that is “offensive to the need to promote and protect freedom of opinion and expression.” In this regard, the

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others about the information – with or without being in possession of a document.

The Bill also expands on the forms of information more broadly than previous legislation, and acts as a barrier to public interest reporting. Existing law applies to disclosure by a Commonwealth official of "a fact or document" that is subject to a pre-existing duty of confidence. But the new Bill applies to "Information of any kind, whether true or false and whether in a material form or not, and includes (a) an opinion; and (b) a report of a conversation of a journalist." The Bill applies strict liability for communicating or dealing with "security classified information." The submission argues this means the prosecution does not have to prove the information was "inherently harmful".

Section 122.2 of the Bill relates to conduct "causing harm to Australia's interest." The submission responded that these matters include interfering with any process concerning breaking of a Commonwealth law that has a civil penalty, interfering or prejudicing the work of the AFP, and harming or prejudicing relations between the Commonwealth and a State or territory. The ability of the media to report on what may be classified information and/or national security concerns will be more difficult – particularly under the catch-all phrase of "harm to Australia's interests." The submission said, adding that even reporting on international trade or Goods and Services Tax distribution could be viewed as adverse under the broad scope of the Bill.

The Bill offered some defences but these were limited to information that is already public and information covered under the Public Interest Disclosure Act. The submission found that the defence of the new reporting conditions was narrow and subjective, particularly because of its definitions of "public interest" and "fair and accurate reporting" as well as narrow and dated definitions of "journalist" and "news medium".

The Bill also contained an evidentiary burden on identifying sources where journalists would have expected how they came to possess and deal with and hold the information. It is quite possible the powers under the "Bill would not work to find and attempt to mount and prove a defence might reveal information about personal matters.

A blanket defence or exemption was still needed because the concept of the "public interest" was vague, the classification of documents as "secret" or "top secret" was an administrative decision that could trigger a criminal prosecution and attempts to mount and prove a defence might reveal information about journalists’ sources.

The Bill contains provisions to "improve the clarity of offences that apply to Commonwealth officers, most particularly by narrowing the definition of 'conduct that would cause harm to Australia's interests' and the definition of 'inherently harmful information' – which are the two definitions that would give rise to a Commonwealth officers’ liability."

"Separate out the offence that would apply to non-Commonwealth officers including journalists and ensure that the offence to apply to non-Commonwealth officers is appropriately narrowed in scope to only apply to the most serious and dangerous conduct; and strengthen the defences for journalists by removing any requirement for journalists to demonstrate that their reporting was 'fair and accurate', ensuring that the defence is available where a journalist reasonably believes that their conduct was in the public interest, and clarifying that the defence is available for editorial and support staff as well as journalists themselves.

These amendments, in combination with the extension of the definition of computer to computer network, and the ability to add, delete, alter, and now copy data that is not relevant to the security matter (albeit for the purpose of accessing data that is relevant to the security matter and the target) amplifies the risk to the fundamental building blocks of journalism including undermining confidentiality of sources and therefore news gathering.

The supplementary submission also noted that the Bill amended the sections of the ASIO Act to:

- Authorise a class of persons able to execute warrants (sections 25A and 25B and new section 25D); and
- Authorise the use of reasonable force at any time during the execution of a warrant, not just on entry (sections 25A, 25B, 26A, 26B and 271).

The expansion of these aspects of the ASIO Act, in aggregate, and in addition to matters raised previously in this submission, are of major concern. These amendments increase the risk to all that media organisations encompass, including all employers, information and intellectual property which in turn curtails freedom of speech.

We urge the Parliament to consider this impact of the proposed amendments before proceeding with the Bill.

The supplementary submission noted Porter’s comments, saying that they were "an encouraging sign that the Government is willing to examine the Bill – and the others in the package – more closely. However at this time we make no comments on the proposed amendments. Given our initial submission on the Bill it is clear that there are serious flaws in the drafting and the Bill significantly overreaches. We note that other submitters have raised serious concerns with the Bill.

On March 5, 2018 Porter subsequently introduced amendments to the Espionage and Foreign Interference Bill that would give journalists a defence for the offence of dealing with protected information where they "reasonably believe" it is in the public interest to do so. He also created separate offences for non-commonwealth officers, such as journalists, decreasing the prison sentences for them to 10 years and three years (reduced from 15 years and five years).

Porter said: "There has been no intention to unnecessarily restrict appropriate freedoms of the media. Where drafting improvements are identified that strike a better balance, the government will promote those changes."

MEAA chief executive Paul Murphy, responded that while the defence was a "significant improvement" on the earlier version, which required journalists to demonstrate their work was "fair and accurate" it was still "not clear" the defence of "reasonable belief" was available for both dealing with and communication of information, meaning journalists could still be exposed to 10 years’ prison for publication of stories relating to national security.

MEAA and other media organisations continued to call for a proper exemption. The overriding concern we still have is that media organisations have asked for general media exemption and it’s certainly not here in these changes. He said: "The fact that there is a requirement to mount a defence for legitimate reporting is a very serious concern."
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The submission went on to recommend that "persons engaged in public interest reporting be exempted from offences in the bill, including 'to deal' with information. If this is not accepted, then an alternative to a proper exemption... should only apply to a limited range of activities rather than the full list of activities currently listed under 'deal'..." This change would ensure that more passive activities, such as the mere receipt and internal copying of information or an article would not trigger a relevant offence provision under the Act.

The submission also recommended changes to the proposed amendment to the news media defence but reiterated that a proper exemption, rather than a trigger a relevant offence provision under the Act.

The latest suggested addition is the Turnbull government's crackdown on foreign interference. The bill has been heavily criticised by Australian Lawyers for Human Rights, Human Rights Watch, and major media organisations for being too heavy-handed and far-reaching in the limits it would place on freedom of expression and several other civil liberties.

The government's own intelligence watchdog, the Inspector-General of Intelligence and Security, called the bill so widely worded that its own staff could break the law for handling documents they need to access to do their job.

The ABC staff would be in breach of the provisions suggested in the bill.

Furthermore, this makes an already heavy-handed whistleblower regime from an international perspective even more draconian. It is sure to lose Australia several places on the Press Freedom Index if implemented as suggested.

The Bill is an overreach in many respects. But one of the worst aspects, from a transparency and accountability point of view, is that it seeks to extend the draconian Section 70 of the Commonwealth Crimes Act.

Add to this the truly awesome powers of mass surveillance making it increasingly difficult for investigative journalists to independently acquire information from anyone outside government without permission. The ABC's publication of the cabinet files clearly illustrates that media organisations with ethical and thorough editorial policies are perfectly capable of assessing what to publish.

The bigger picture is that the current Bill is part of a pattern that started after the terrorist attacks in the US on September 11, 2001.

The Senate Select Committee into the Future of Public Interest Journalism received evidence that the fragmented nature of current legal provisions concerning whistleblowers and journalistic sources can lead to a great deal of uncertainty.

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WHAT THE BILL WOULD MEAN

The Foreign Influences Bill, in its current form, suggests it should be criminal for anyone to "receive" and "handle" certain national security information. It would seem that by just receiving the filing cabinets and assessing what to publish, the Bill establishes new secrecy provisions, new definitions and new offences.

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WHISTLEBLOWER PROTECTION

During the year there were some advances in whistleblower protections however, as seen with the expansion of severe penalties in the latest tranche of national security law amendments, there was also a concerted effort by Government to pursue, prosecute and punish whistleblowers who seek to make public examples of illegal activity, fraud, harassment, dishonesty and threats to public health and safety.

The report of the Senate Select Committee into the Future of Public Interest Journalism said the committee had received evidence that the fragmented nature of current legal provisions concerning whistleblowers and journalistic sources, both across sectors and jurisdictions, can lead to a great deal of uncertainty for some journalists pursuing stories. The committee considers that the Commonwealth should look to harmonising these laws, in part to make it easier for journalists to pursue legitimate stories in the public interest.

The committee noted that the Parliamentary Joint Committee on Corporations and Financial Services (JCFS) inquiry into whistleblower protections had reported in September 2017. The Senate committee noted that although the JCFS report did not consider the effects of current provisions on journalists in great depth, this committee notes and endorses that committee’s recommendation that the Commonwealth should look to harmonising these laws.

The Senate committee also noted that the 2009 report by the House of Representatives Standing Committee on Legal and Constitutional Affairs reported the findings of its inquiry into the Whistleblower Protection Bill 2017 which was introduced to the Senate on December 7, 2017.83

MEAA said that "in providing protection to disclosures to a journalist working in professional capacity, the amendments make clear that disclosure to any "journalist" or "media enterprise" is not sufficient. This is intended to ensure that public disclosures on social media or through the provision of material to self-defined journalists are not covered by the protection."

MEAA was concerned that the Bill defines a journalist as: (a) a person who is working in a professional capacity as a journalist for any of the following: (i) a newspaper or magazine; (ii) a radio or television broadcasting service; (iii) an electronic service (including a service provided through the Internet) that: (i) is operated on a commercial basis; and (ii) is similar to a newspaper, magazine or radio or television broadcast.

"The Bill's definition above appears to exclude electronic services that are not operated on a commercial basis. Many independent freelance journalists self-publish legitimate news stories on the internet without a commercial transaction taking place," MEAA said.

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MEAA explained that the nature of the digital disruption that has transformed the media industry is that an increasing number of journalists are operating in this fashion and to apply the requirement that a web site must operate commercially fails to account for the reality of the way the media has changed.

MEAA called on the committee to note that it had already addressed this issue in its submission to the Parliamentary Joint Committee on Intelligence and Security regarding the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017.

"[T]here are various definitions of 'journalist' in Commonwealth legislation including s.124 of the Evidence Act 1992; "journalist" means a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium; and "news medium" means any medium for the dissemination to the public or a section of the public of news and observations on news.

In its submission, MEAA recommended legislation use a consistent definition of "journalist" and "news medium", and MEAA supports the definitions in the Evidence Act as being more suitable to be used in the Whistleblower Protections Bill. MEAA also said that it supported the removal of the requirement that an electronic service would have to operate on a commercial basis. And MEAA expected that the Bill will be rerafted to ensure that "although the Bill recognises that anonymous sources are more available to whistleblowers and journalists with the certain aim of ensuring that whistleblower concerns are brought to light without negative repercussions for either party."

MEAA added that "in providing protection to disclosures to a journalist working in professional capacity, the amendments make clear that disclosure to any "journalist" or "media enterprise" is not sufficient. This is intended to ensure that public disclosures on social media or through the provision of material to self-defined journalists are not covered by the protection."

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MEAA also noted that a court or tribunal would be required to consider:

1. "Any likely adverse effect of requiring disclosure on the informant (and others); and"

2. "The public interest in the communication of facts and opinion to the public and the ability of journalists to access sources of information."

The Bill also provided safeguards against purported misuse of the privilege in cases where, inter alia, the reportage contained unfair and untrue information and/or whether the journalist took reasonable steps to verify the information and use it in a manner that minimized personal harm. "This is, in essence, a good faith provision," MEAA said.

In MEAA's view, the Bill dealt fairly with the definition of "journalist" by not adopting the definition used in other jurisdictions, such as New South Wales, where a journalist is "a person engaged in the profession or occupation of journalism." MEAA believe the formulation used in the territory's Bill is more practical and better accords with modern day practices. MEAA summed up its submission by saying: "Notwithstanding our concerns opposed to information which the public may simply find interesting (for example, because it is salacious)."

MEAA also noted that a court or tribunal would be required to consider:

1. "Any likely adverse effect of requiring disclosure on the informant (and others); and"

2. "The public interest in the communication of facts and opinion to the public and the ability of journalists to access sources of information."

The Bill also provided safeguards against purported misuse of the privilege in cases where, inter alia, the reportage contained unfair and untrue information and/or whether the journalist took reasonable steps to verify the information and use it in a manner that minimized personal harm. "This is, in essence, a good faith provision," MEAA said.

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over a court or tribunal’s ability to displace the privilege, MEAA strongly supports the passage of this Bill into law. The Australian legal system remains something of a patchwork when it comes to journalist shield laws."

MEAA commended the Northern Territory Government for advancing this Bill and doing so in a way that provides sound protections for journalists’ professional and confidential use of confidential sources.

MEAA also urge the Northern Territory Government to promote its efforts in all relevant national forums, not least the Standing Committee of Attorneys General (SCAG). “By doing so, your Government can assist in securing nation-wide protection for journalists and improve the content of existing laws, which, in our opinion, too readily permit the displacement of a journalist’s privilege.”

The Northern Territory’s move to enact a journalist shield law leaves Queensland and South Australia as the only jurisdictions refusing to implement a journalist shield law.

This situation has a chilling effect on journalism because borderless digital publishing allows for “jurisdiction shopping” – effectively creating a situation where a subpoena demanding a journalist can be compelled by a court to reveal their confidential sources even though the journalist and their media outlet do not operate or reside in that state. The journalist would then face not only the expense of defending themselves in that state, away from their home base, but also would face the full wrath of a court if they were found guilty of contempt for simply having maintained their ethical obligation to not reveal the identity of their confidential sources.

The change of government in South Australia has also led to movement on shield laws in that state. Under the previous Government there was staunch

opposition, most notably from then Attorney-General John Rau, to any attempts to introduce a shield law. Indeed, on October 30, 2014 the South Australian government and government-aligned independents voted down the Evidence (Protection for Journalists) Amendment Bill 2014. In defeating the Bill, Rau had stated: “The Bill before the parliament leans too far towards protecting the interests of journalists and discounts the legitimate public interest in the administration of justice which requires that cases be tried by courts on the relevant admissible evidence.” His comments failed to appreciate that those vulnerable to prosecution included whistleblowers seeking to expose corruption, fraud, dishonesty, harassment, and threats to public health and safety.

There was a change of government at the election on March 17, 2018. As part of his party’s election platform, then Opposition Leader Steven Marshall committed his Government, if elected, would introduce a shield law by promising: “We will provide journalists and their sources with the protection of effective shield laws.”

The policy document stated: “If elected in 2018, a Marshall Liberal Government will ensure shield laws give effective protection to journalists and their sources. Quite simply, people who alert the media to important public issues embody the core values of an open society... If journalists are unable to guarantee privacy to their sources, the public will not reap the benefits of openness, and the public debate will be restricted. The public and journalists are being left behind in South Australia, without consistent protection to both journalists and their sources. A Marshall Government’s shield laws will provide protection to journalistic sources by enabling suppression of their identities. Our shield laws will encourage an open discussion with and accountability to the public. They will require a source to be identified in court only if the public interest in revealing such information outweighs the potential detriment to the source. This is an important transparency measure.

“Our shield laws will not limit protections to only those in professional media. They will be opened to all contractors or freelancers working to promote debate in the public interest. Our media need our support to comply with their ethical guidelines to protect sources of information which is in the public interest to have revealed. A Marshall Liberal Government will continue to advance the interests of transparency, openness and informed debate through shield laws and other initiatives.”

Within two and a half weeks of the election, the new Marshall Government had issued an exposure draft of a shield law Bill. MEAA and other media organisations are examining the exposure draft.

However, even if the every jurisdiction in Australia does, finally, possess a shield law, MEAA notes that there are wide discrepancies and variances in each jurisdiction’s shield law.

MEAA again calls for harmonisation of the laws to account for the realities of borderless digital publishing by creating a uniform national shield law regime, along similar lines to the uniform national defamation law regime.

Until that happens, journalists remain vulnerable.

PUBLIC INTEREST JOURNALISM

On World Press Freedom Day, May 5, 2017 Fairfax Media announced it would cut one in four journalists from its metropolitan newsrooms in Sydney, Melbourne and Canberra - a loss of 125 journalists. Fairfax journalists across the country decided to go on strike for seven days.

On May 10, as a result of the Fairfax announcement, a Senate select committee was established to inquire and report on the future of public interest journalism.

The committee received 75 submissions including one from MEAA, and MEAA also participated in the committee’s extensive public hearings which took place in May, July, August and November in Sydney, Melbourne and Canberra.

At the inquiry’s first public hearing MEAA said: “We really are at a crossroads for public interest journalism in this country. That has been underlined by the recent announcement from Fairfax Media of yet more savage cuts. The prospect of a foreign private equity takeover of our oldest, and one of our most respected, media organisations should fill anyone who is concerned about the future of public interest journalism in this country with dread.

“MEAA believes the important starting point in this process is one that has been absent from all recent efforts by governments of various persuasions to pursue media reform. That is the essential public policy goal that we should be looking at here, which, surely, is the public interest of having a strong and diverse media landscape in Australia to provide a wide range of reporting, analysis and opinion. That is the starting point.”

MEAA went on to say that there should be a debate about what government can and should do to support public interest journalism. “What are the appropriate regulatory settings to achieve that? And, frankly, as we have said before, tinkering around the edges of current media ownership rules is going to do absolutely nothing to achieve that outcome. Today we would like to set out some of our observations of the effects of disruption in the industry over the last six years and the impacts on journalists on their ability to do their job, and offer some preliminary views to you about what the problem is and the types of things the committee might want to look at in the course of its deliberations.”

MEAA explained that through its monitoring of redundancy rounds at media organisations since 2011, at least 2500 journalist positions have disappeared at newspapers and broadcasters across the country – probably more. That followed on from about 700 job losses that can be attributed to the impact of the 2008 global financial crisis.

“It is impossible to guess what that number would be in total if you also took into account people who have simply left the industry and not been replaced. That would make the figure even higher.
"The losses initially came in great waves, commencing with subsidiaries. Subeditors were expropriated. Journalists were no longer in full control of their profession and was really heavily targeted in redundancy rounds, but since then we virtually have seen annual redundancy rounds in major organisations across the country,” MEAA said. “And it is important to remember that, as a result of the budget cuts, many public broadcasters, whose work has also been seen significant redundancies taking place there as well.

MEAA went on to explain that the scale of redundancies has an enormous impact on the ability of the media to continue doing their job. Departing staff are not being replaced. Remaining staff have to work harder. Previously core activities are being abandoned. ‘Everyone just appears to be trying to keep their heads above water and, as we have seen in recent weeks, they are not always succeeding at that.’

There has been a concomitant increase in editorial outsourcing to third parties. ‘Previous employers are now working as independent contractors on lower pay rates, with no job security and fixed-term contracts. These redundancies have increased, the marketplace of these freelance workers has become more crowded and, as costs have been cut, the editorial budgets for outsourcing have been sliced into smaller and smaller pieces, meaning that freelancers are competing among themselves for increasingly declining rates of pay.”

MEAA said that in an increasing number of cases the arrangements we are seeing being put in place amount are little more than sham contracting. ‘These people are in a very exposed position. As so-called independent contractors they do not have the benefit under our legal framework of being able to collectively bargain. They are heavily exposed in an increasingly crowded marketplace, and it is a major issue for us as a union and a professional association,’ MEAA told the committee.

MEAA added that the spate of redundancies have been particularly devastating for young journalists. ‘Specialisation has been replaced by multitasking. Research, investigation, depth and accuracy are all being short-changed, the media industry is creating at the seams, trying to fulfil its important public role as part of a healthy, functioning democracy.”

MEAA acknowledged that the while the

The media plays an essential role as the ‘fourth estate’. It ensures ‘good government’. It has an important public interest function, essential for the prevention of corruption and abuse of power, and for ensuring that the public interest is served. It is a public service, much as it is a public necessity. The Committee has clearly acknowledged the vital role a healthy media industry plays in a strong democracy. The public broadcasters have a crucial role to play – they must be given the funding to ensure they can fulfil their duty under their charters. Commercial media is being adversely affected by digital disruption arising from digital disruption.

The media industry was encouraged that the committee should look at, although MEAA was pleased to note that the system of indirect and direct subsidies that operate in different parts of the country is being taken seriously. The committee should look at, although MEAA also pointed out that the issue of digital disruption has become an increasing concern and oil was also added a major ethical concern.

MEAA’s accompanying submission to the inquiry was written with many contributions from MEAA journalists and members of the public. It was endorsed by MEAA’s elected National Media Section committee. In the submission MEAA noted: “The digital disruption that has transformed the media has shaken everything we knew about our industry. There is no certainty. The audience is fragmented. That fragmentation has saved advertising revenue that will continue coming from advertising revenue, subscriptions, circulation or any

In summary, MEAA said: “There is no magic bullet to restoring the media to its position as a public service. Digital disruption has and will continue to reshape the industry. There is no going back.

‘But it is true that, unless something urgent and comprehensive is done, digital disruption will have an increasing impact on the media. Digital disruption will have an increasing impact on the media. It is time for government to foster, encourage, promote and support the media so that it can continue to function for all Australians.”

The Senate select committee, which was beset by numerous personnel changes due in part to circulation difficulties, submitted its final report on February 5, 2018. MEAA was encouraged that committee inquiry endorsed many of the recommendations made to it by MEAA. Among the committee’s recommendations recommended and supported by MEAA are:

• Ensuring adequate funding for the ABC and SBS to ensure they meet their charter obligations – particularly in rural and regional services and fact-checking capacity;
• Providing surety for funding to the media industry, including for training and education and the rollout of digital;
• The development and implementation of a framework for tax deductibility status for not-for-profit media outlets;
• Treasury to model providing tax deductibility for media subscriptions;
• An Australian Law Reform Commission audit of laws that adversely affects the work of journalists;
• A Council of Australian Governments’ review of Australia’s defamation law regime;

MEAA chief executive Paul Murphy said: ‘This is a clear vindication of what MEAA has been saying for many years: government can and should do more to support the media industry, which is really what the impact by the impact of digital disruption and draconian laws that muzzle legitimate reporting in the public interest. The Committee has clearly acknowledged the vital role a healthy media industry plays in a strong democracy. The public broadcasters have a crucial role to play – they must be given the funding to ensure they can fulfil their duty under their charters. Commercial media is being adversely affected by digital disruption arising from digital disruption.

In the past six years, thousands of journalist jobs have been lost. The result is that public interest journalism has been dislocated. In this regard, this report brings

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n December 4, 2017, arising from the Senate Select Committee’s inquiry into the Future of Public Interest Journalism, the Australian Communications and Consumer Commission was directed to conduct an inquiry into digital platforms. The inquiry is examining “the effect that digital search engines, social media platforms and other digital content aggregation platforms have on the media and advertising services markets. In particular, the inquiry will look at the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers.”

Specifically, the inquiry’s terms of reference noted that it would examine how “platform service providers are exercising market power in commercial dealings with creators of journalistic content and advertisers; the effect of platform service providers on the level of choice available to news and journalistic content to consumers; the impact of platform service providers on media and advertising markets; the impact of longer-term trends, including impact of platform service providers on the content and advertisers; the impact of platform service providers on competition in media and advertising services markets. In particular, the inquiry will look at the impact of digital platforms on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers.”

MEAA said that many of the job losses at Australian media companies came through redundancies, which appeals to more senior journalists who have worked with an employer for many years. This loss of positions and knowledge has had quantitative and qualitative consequences, MEAA said. Newspaper content, whether the number of pages and volume of journalistic content contained therein, is significantly down on five and 10 years ago – a product of the inability of proprietors to cover all areas of consumer interest. The fragmentation of the sector has also pushed an increasing number of journalists into freelance work, which is far less secure and where earnings troughs can be more common than peaks.

“MEAA believes that rampant revenue displacement from media companies to digital providers should lead to an acknowledgement that digital platforms are modern public goods – discussed further on in this submission; it follows that they... must pay for the news and current affairs content.”

MEAA also warned that the use of algorithms by digital platforms is compromising media diversity. “Compartmentalising media consumers instead of valuing their potential breadth of interests is inherently harmful. The result of this mechanised ‘tailoring’ of content to a user can lead to what has been labelled a ‘hivelike’ way of living. In a democracy, the risks of confining sources of news information should be clear.”

MEAA noted that a key manifestation of errant algorithms is the critical inability of algorithms to discern fake content from confirmed news information. “Whether this is due to inadequate human attention and/or a misplaced reliance on technology, it is damaging. It creates confusion and fractures public trust with all news media, not just the disseminators,” MEAA said.

The submission also noted that the platforms were making efforts to address the concerns of news media companies. MEAA said that it remains hopeful that the changes embraced by Google and Facebook will see growth in digital subscriptions, but we do not believe that they will restore the abundant losses suffered by media organisations in the last decade. Subscription fees cannot make up for the flight of advertising dollars to digital platforms.

Digital platforms plainly benefit from their carriage of news content. It is disingenuous to assert that the ability of users to access media content on their platforms does not aid their viability and revenue streams. The viability of Australian media companies is unknown – even the best performing companies can only eek out modest profits after the now serial write-downs in machinery, job shedding and the systematic culling of expensive public interest journalistic efforts.

The submission concluded by saying: “The greatest risk of doing nothing is that those who invest in producing public interest and other journalism will not have the means to continue covering the news that impacts public information and discourse. The displacement of conventional media organisations (other than public broadcasters, which face funding challenges of their own) will lead to a dearth of content to upload and draw consumers in. "Perversely, the last people standing will be those who decimated pre-existing media companies. We have also presented evidence from Europe and elsewhere concerning arms’ length direct and indirect government assistance to media companies via contestable funding rounds. We are however wary of how Government funding could itself be manipulated in favour of some, but not all media outlets.

MEAA’s strong preference is for Australian media companies to be provided with a merit-based, free market. This can only be restored if the major digital platforms’ distorted and unfair dissemination of news content is curtailed or commercially appropriate terms are agreed between publisher/broadcaster and digital platform(s).

We do not say that advertising revenues should be redirected from digital platforms to news media companies; this would constitute punishment of the digital platforms for providing what in many instances are superior advertising mechanism and audience reach.

MEAA’s view is that the fruits of these platforms’ carriage of news media content they do not produce should be paid for on an access-per-user or levy basis.

Finally, MEAA said that without regulatory effort and major operational changes by digital platforms, the media sector will be further diminished beyond the already very low levels of media diversity and quality content.

The MEAA submission concluded by saying: “The gravest risk of doing nothing is that those who invest in producing public interest and other journalism will not have the means to continue covering the news that impacts public information and discourse. The displacement of conventional media organisations (other than public broadcasters, which face funding challenges of their own) will lead to a dearth of content to upload and draw consumers in. "Perversely, the last people standing will be those who decimated pre-existing media companies. We have also presented evidence from Europe and elsewhere concerning arms’ length direct and indirect government assistance to media companies via contestable funding rounds. We are however wary of how Government funding could itself be manipulated in favour of some, but not all media outlets.

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Newsrooms – a loss of 125 jobs out of 500.

On May 3, 2017 that it would cut one in four editorial staff from its metropolitan newsrooms – a loss of 125 jobs out of 500.

The announcement sparked industrial action by Fairfax journalists that included a seven-day strike, in turn generating enormous community support for the journalists and triggering a Senate select committee to be established to inquire into the future of public interest journalism.

Fairfax Media journalists also wrote to the company’s board and shareholders about management’s plan. The journalists set out the journalists’ case for the company to act smarter by investing in quality journalism rather than undermining the company’s products by making yet more radical cost-savings cuts by forcing redundancies on editorial staff.

The letter said the Fairfax board of directors’ strategy of “cutting the way to profitability” was flawed, adding that Fairfax businesses flourish because of the company’s journalism and that, because of this, Fairfax should invest in its journalism because it makes sound business sense. The letter cites the plan to float the Domain business as an example.

“We believe it’s demonstrably the case that these businesses will succeed largely because of, not despite, their association with the tremendous journalism at such great titles as The Age, Australian Financial Review and The Sydney Morning Herald.

“It thus makes sense to reinvest a portion of that success in our newsrooms, not necessarily out of a sense of civic duty (though that counts too) but because it makes sound business sense. Fairfax will only prosper in the 21st century if it nourishes the journalism that delivers its valuable audiences and sustains its storied mastheads.”

Around the world, journalists expressed their support for the Fairfax journalists. In a particularly poignant gesture, the courageous journalists’ Union of Turkey, which is confronting a government purge of the media that includes the arrest and detention of more than 100 journalists and the closure of dozens of media outlets, throwing hundreds of journalists out of work, has offered its support and solidarity to Fairfax journalists.

The global journalists association, the International Federation of Journalists, which represents more than 600,000 journalists in 199 countries, strongly criticised Fairfax management’s decision to cut 125 of its journalists to save money. “The FI stands in solidarity with the Fairfax staff,” the Brussels-based organisation said in a statement. The FI general secretary, Anthony Bellanger, said: “On the day that we stand together and celebrate the brave work of journalists across the world, we are now standing in solidarity with our Fairfax colleagues and their continued fight for their jobs. We call on Fairfax management to take immediate steps to remedy the situation, without losing more jobs.”

Messages of support from around the world came flooding in. Shireen Burrow, general secretary of the International Trade Union Confederation in Brussels, said: “We were shocked to hear of the Fairfax Management’s plans to cut 125 full-time equivalent jobs, at a time when the world is crying out for quality journalism to combat the lies, distortions and fake news which are driving xenophobic, nationalistic and extremely dangerous political narratives. On behalf of the International Trade Union Confederation, representing 18 million trade union members worldwide, I wish to join the International Federation of Journalists in expressing our solidarity with the Fairfax journalists in expressing our total solidarity with your action. We are witnessing a closing of democratic space around the world, an erosion of our hard-earned freedoms of speech and good journalism are vital to democracy itself. The decision of Fairfax management to cut 125 journalists is a violation of these hard-won rights and privileges for these journalists. We urge you to refuse to accept this demeaning and damaging decision.

Messages of support came from journalists’ unions in Spain, Belgium, Ukraine, Turkey, Germany, Canada, Tunisia, Switzerland, Russia, Nepal, Thailand, Palestine, Vanuatu, Afghanistan, Sri Lanka, Indonesia, Somalia, France, Italy, India, Malaysia, Pakistan, Ecuador and Morocco.

In April 2017 News Corp announced redundancies at its metropolitan and community titles around the country. Photographic staff and production roles were targeted in the cuts. In some cities, up to two-thirds of the photographic staff would be cut, although exact numbers have not yet been confirmed by the company at all sites. Staff were told redundant photographers would be able to freelance back for News Corp, and provide content as freelancers via photographic contractors Getty and AAP.

Management also flagged significant changes to work practices with earlier deadlines, greater copy sharing across cities and mastheads, and journalists taking up more responsibility for production elements and proofing their own work, which has journalists concerned about already stretched news gathering resources and maintaining the editorial standards of their mastheads.

MEAA’s Media section director Katelin McInerney said: “The job redundancies that will result will only serve to strip vital editorial talent from the company’s mastheads, harm the very products that News Corp’s audiences value and end up being self-defeating because of the damage they do. These are mastheads that pride themselves on being newspapers of the people and a voice for the communities they serve – these cuts serve no one.

“News Corp readers and the communities that these journalists serve deserve better. Once again it is front line editorial staff in already stretched newsrooms – the very people audiences rely on to tell their stories – who are bearing the brunt of these short-sighted cuts for short-term shareholder gains,” McInerney said.

“Time and time again we have seen that cuts to front line media staff ultimately do not deliver the kinds of savings for media companies that get them out of the woods,” she said.

“Cutting the very staff who tell the stories of our society’s marginalised and vulnerable – particularly those photojournalists who create the images we, as audiences, rely on to cut to the heart of an issue in a powerful, compelling and instantaneous way – has proved an ultimately futile stop-gap measure for news companies,” McInerney said.

MEAA called on News Corp not to abandon the long-term investment it has made in photographic journalism, and to work with their staff and the unions to build a robust and sustainable news business for News Corp, which invests in the people telling the stories.

In May 2017, the ABC announced the axing of its Fact Check unit (subsequently recreated as a joint venture with RMIT University) and 14 positions to be cut from the Perth, Brisbane, Sydney, and Melbourne newsrooms has been made more painful by yet another deplorable use of targeted redundancies.

We are shocked to hear of the plan to cut 125 jobs at a time when the world is crying out for quality journalism.
The cuts were the result of the ABC’s enhanced newspapering budget being cut by $18.6 million over the next three years.

"As we had warned, these cuts – on top of the more than $250 million which was cut in 2014 and 2015 – will place news services at the ABC under extreme pressure," said MEAA CEO Paul Murphy. "The timing for this decision could not be worse – in the lead-up to the federal election, when strong journalism is independently scrutinise politicians’ claims and counter-claims is needed." It is disturbing that even after these cuts, the director of ABC News Gaven Morris has warned of more challenges to continue delivering original and investigative journalism and local and regional newspapering."

In June 2017 Seven West’s division Pacific Magazines announced 11 redundancies and flagged the outsourcing of sub-editing to Pagemasters. MEAA’s McInerney said: “Cutting in-house expertise is a short-sighted move that seeks to cut costs while ultimately undermining quality. Sub-editing is a highly developed skill and removing that capability from within your publishing business inevitably comes at a cost. MEAA calls on Pacific Magazines to find smarter solutions that achieve the company’s aims while maintaining jobs and upholding quality.”

The company announced 11 redundancies as well as other changes that will affect advertising, digital and production staff. MEAA provided assistance and advice to its members at Pacific Magazines during this period.

In November 2017, Isentia announced 30 jobs would be lost as it moved its broadcast monitoring service to the Philippines. Isentia said all 22 full-time, part-time and casual staff in its Melbourne broadcast monitoring arm redundant.

McInerney said workers shouldn’t have to pay the price of poor decisions. “The media monitoring service is relied on by politicians, corporations and those in power," she said.

“The continued drive of media companies like Isentia to pursue profits at the cost of local jobs is short-sighted and emblematic of poor business practice. Culling local people who have essential knowledge and expertise only serves to harm the business further, eroding growth opportunities and causing immense damage to the brand. Workers shouldn’t have to pay the price of poor decisions that have been made since the company listed on the ASX.**

In early November 2017 dozens of suburban newspaper journalists in Sydney and Melbourne were told they would find themselves jobless just weeks before Christmas in yet another round of cost-cutting by the two largest publishers.**

MEAA condemned the announcements by Fairfax Media and News Corporation of the axing of up to 51 jobs as yet another example of the companies’ failed cost-cutting without any serious consideration of how communities will access local news, information and entertainment if their suburban newspapers are so dramatically savaged.

On November 9 Fairfax announced it was closing six community newspapers in Sydney with the loss of 11 jobs, seven in editorial, and making seven staff redundant at The Weekly Review in Melbourne – removing virtually all the employed staff on that masthead in favour of freelance contributors. On November 8, News announced a 20 per cent reduction in editorial staff from its Leader community newspaper group in Melbourne – a loss of 13 positions.

McInerney said: “These decisions are a cruel blow to loyal and hard-working staff in the last few weeks before Christmas. The subsequent massive reduction in resources also means that for those staff that remain behind, their already massive workload will most likely increase to unrealistic levels.

“The move to switch from employed staff to freelance contributors suggests Fairfax will once again use a failed model to firm to farm out work to freelancers in exchange for poor word rates while the firm earns a fee from Fairfax,” McInerney said.

"Nobody wins when editorial is under-appreciated in this way. Communities lose a vital public service and the right to be informed of the news and information in their local area. And journalists, both employed and freelance, are left to try to work harder while often earning less. Australia’s two largest media companies are failing to invest for the future and are simply falling back on failed cost-cutting formulas that simply do not work,” McInerney said.

MEAA assisted staff and worked with members to ensure that the company’s obligations towards staff under the respective enterprise agreements are fully met.

"This was certainly the case in the matter involving a now former Seven Network cadet journalist in Adelaide, whose case highlights the timely need for senior media executives – who are predominantly men – to take direct responsibility for ensuring the toxic culture that allows sexual harassment to be perpetuated, that protects perpetrators and that fails to protect the most vulnerable employees, is stamped out for good.”

A survey conducted by Women in Media - an initiative developed by MEAA - and reported in Mates over Merit, found that of 1000 participants some 48 per cent of women respondents have experienced intimidation, abuse or sexual harassment in the workplace. One in three women (34 per cent) did not feel confident to speak up about discrimination. The incidence of harassment has been eroded in recent years. But Seven shows we are a long way off seeing the old days of the 1980s and ‘90s. But our Women in Media research shows that simply isn’t the case. Professional women face sexual harassment and discrimination in their workplaces every day, and it is time media executives take direct ownership of the stamping out of this toxic culture that allows harassment to continue and that ensures senior, predominantly male perpetrators continue to be protected.

"It has to end, now. This destroys the lives and livelihoods of hard-working women doing great work and it has to end now,” Spicer said.

MEAA said that while there would be some variation in workplace policies, the basic principle is that procedural fairness has to apply. McInerney said: “This is an area of workplace and industrial
knowledge that is generally not well known or understood by employees, and employers often ensure it stays that way in their own interests. Subsequently any policies relating to raising complaints are either hard to find or not enforced.

"If an employee makes a formal complaint to their employer, the employer has an obligation to investigate because there is a work health and safety issue and a duty of care on the employer to ensure the employee works in a safe and healthy environment. If a complaint is made against a member of staff, procedural fairness must also be afforded to them. An employer has the right during this process to be represented by their union to have a support person present with them when making the complaint and during any subsequent investigations conducted by the employer,” McInerney said.

If a formal complaint has been made, the employer is obligated to investigate. Under workplace health and safety legislation, if a hazard is identified the employer is obligated to assess the risk and take measures to mitigate and if the employer does not, then it is potentially negligent so any injury that might result from that exposure employer to prosecution and other litigation.

If the employer fails to investigate a complaint, union members can contact their union to seek further advice and representation in the matter.

If a colleague makes a complaint against an employee, procedural fairness should apply. If there is an enterprise agreement in place there may be an additional entitlement to representation during disputes or disciplinary meetings.

MEAA has written directly to the Seven Network about various issues relating to employer investigations and sexual harassment in the workplace.

"MEAA believes in order to be afforded procedural fairness you should be notified of the meeting 24 hours in advance; you should be notified about the nature and agenda of the meeting will be and that you should be informed of your right to have a support person or a representative from your union present at that meeting. You should be afforded the opportunity to provide a considered response, particularly if the matter is disciplinary in nature."

Regarding the question of electronically recording the meeting, the relevant legislation varies from state to state. In South Australia you are entitled to record a conversation to protect your legal rights, however in NSW a conversation can only be recorded where the other party consents.

Regarding the employer accessing an employee’s emails, McInerney says: "It is difficult to know how prevalent this is. However, your contract of employment and likely various workplace policies will often state that work emails are accessible by your employer at any time – and certainly MEAA’s approach – particularly in the media realm – is to assume that: if you are operating on the employer’s system, unless there are provisions in place that explicitly prevent your employer accessing your emails set out in your contract or enterprise agreement, the employer has unrestrained access to your work emails."

Sexual harassment in the media has been reported on a number of times in recent years – Louise North’s 2012 study reported in The Australian on February 27, 2012 found that 57 per cent of the 577 female journalists surveyed had experienced sexual harassment.

An earlier MEAA survey through International Federation of Journalists in 1996 found that fewer than 52 per cent of respondents reported experiencing harassment. "While the media often shine a light on gender inequality in other occupations, it has refused to act on its own dirty little secret,” North said.

In March 2018 Tracey Spicer announced a cross-industry initiative to combat sexual harassment in workplaces across the spectrum.

NOW is a not-for-profit non-partisan organisation, led by the media and entertainment sector, devoted to ending sexual harassment in all Australian workplaces. It aims to connect survivors of workplace sexual harassment and assault with the right counselling and legal support, as well as fund research and education programs, work with government, business, statutory authorities, unions, community and legal sectors to develop solutions for the future."

On Equal Pay Day, Monday, September 4, MEAA encouraged members to "do your bit to end the gender pay gap in our industry" by taking action and calling on all media employers to take action to close the gender pay gap."

The media industry’s gender pay gap is 23.5 per cent for people working in print and publishing and 22.2 per cent (for people in broadcasting). That places the media industry far beyond the national average of 15.6 per cent.

MEAA called on employers to take immediate steps to improve their organisation’s action on closing the gender pay and opportunity gap:

1. Implement tracking and transparency about the gender pay relationship;
2. Create family-friendly workplaces; and
3. Dedicate their annual merit budget to fixing the problem of unfair pay.

MEAA said it believed the corralling of several government agencies with poor records for observing and respecting press freedom and transparency into one giant bureaucracy, raises profound concerns.

The “Super” Ministry

n July 19, 2017 MEAA issued a statement about its concerns with the Government’s proposal to create a super Home Affairs ministry. Of particular concern was the anticipated concentration of surveillance powers in the new ministry without any adequate external oversight. 105

MEAA chief executive Paul Murphy said: "Yesterday’s announcement of a super ministry is deeply troubling for press freedom in Australia. Coming on the back of last week’s announcement on encryption, the government’s appetite for discovering all manner of inconvenient information including that which is plainly in the public interest, shows no signs of being whetted.

The new Home Affairs ministry doesn’t even appear to have the support of a range of national security specialists and key members of the Cabinet. Their concerns have been overridden in the interests of creating a one-stop shop for oppression of public discourse.

We now have a situation where the militarised Australian Border Force, with its extreme powers to imprison whistleblowers now sits alongside ASIO, with its ability to imprison journalists and their sources for up to 10 years. These two agencies will now sit together with the Australian Federal Police which in April admitted it had illegally accessed a journalist’s telecommunications data without a warrant,” Murphy said.

"It seems the only law reform the Government is interested in is re-doubling its efforts to punish those who dare speak out in the public interest. The Government seeks utter transparency from its citizens, but is not prepared to demonstrate some if its own,” he said. MEAA’s annual reports into the state of press freedom in Australia have catalogued the numerous attacks and threats against journalists and their sources by Australian governments since 2001. "There is completely inadequate oversight of our security agencies. The previous Independent National Security Legislation Monitor (INSLM) resigned less than two years into the three-year position, citing an ongoing lack of resources. It’s unclear when the new Monitor will be able to take up the post or whether the resources available to the Monitor will improve,” Murphy said.

"As we have said before: there is real concern that government agencies could once again misuse their powers to go after whistleblowers, to go after journalism. There will be appalling consequences if extreme powers such as those being sought are again misused to persecute journalists and their sources.”
Public broadcasters increasingly have to fill the gaps left when commercial media outlets withdraw their editorial coverage of key areas. Reducing funding not only has an impact on the editorial resources the broadcasters can bring to bear; it also undermines their charter responsibilities to the Australian community and cripples their ability to meet the demands of technological innovation and development.

Clearly, as the current media environment continues to put pressure on media outlets, the ABC is going to have to play an increased role in the provision of news, information and entertainment as commercial media companies cut back on editorial staff. Funding needs to be restored to the ABC and new funds should be provided to ensure the ABC can provide local news as well as fill the gaps in the provision of regional and remote news where commercial providers have cut back or ceased to exist.

MEAA urged consideration be given to exploring what is a proper funding level to restore public broadcasting to its previous levels and to ensure that it can at least be one of the all too few voices available to Australian audiences should commercial media continue to contract and abandon traditional reporting areas.

If an agreed funding formula could be found, MEAA stated, funding should be guaranteed from cuts in future budgets and instead guaranteed and regularly reviewed.

The situation is similar at SBS where there seems to be an assumption that, because it is able to attract some advertising through its hybrid funding model, its needs are now satisfied. But the funding cuts imposed on that broadcaster have also led to dramatic cuts to its resources, capabilities and program offerings.

“Yet there continue to be short-sighted, mainly political, demands that the ABC and SBS should merge - usually a vision that seeks to derive some fiduciary benefit rather than a thorough understanding of what a merger would mean,” MEAA said.

MEAA also noted that talk of an ABC-SBS merger is “a distraction from serious issues of underfunding faced by both public broadcasters. MEAA is skeptical that an effective argument could be mounted to bring the two institutions together. Merger efforts tend to have more to do with saving the silverware” than improving operations and content offerings.”

The rationale for a merger seems to be only about making savings. But this simple papers over the real issue that public broadcasting in this country is underfunded for the digital age. This must be addressed as a matter of priority.

MEAA acknowledged that discussions about transmission costs and platform sharing are good and worthwhile but any savings won’t address the underlying funding issue. Plus, what happens when the modest savings from a merger are absorbed? It would be extremely hard to believe that savings could be reinvested into programming and content rather than taken by the government of the day.

Any financial benefits from a merger would need to be balanced against the likely negative impact on the audiences of the ABC and SBS. Also, staff at the ABC and SBS are still going through a painful period of cost-cutting, programming changes and redundancies, and what is needed is funding restoration, not more uncertainty.

Furthermore, it is clear that the funding cutbacks are having a deleterious effect on how both broadcasters present themselves through their programming to the whole of the nation. The cutbacks have increasingly required management to centralise operations in the Sydney corporate headquarters. State-based programming opportunities have been slashed, the regional presence has been reduced and services for indigenous and multicultural communities have suffered as a result.

The two public broadcasters have become Sydney-centric in the extreme, particularly when compared with their commercial counterparts in TV and radio programming. Both ABC and SBS have a legislated obligation to tell Australian stories, to provide relevant and local coverage to all communities, to enrich our national cultural life, and to provide balance, accuracy and independence to our national debate – regardless of geographic location. Their funding must be increased to allow them to do that.

In the same submission, MEAA also addressed the role public broadcasting has in regional and rural Australia.

RURAL AND REGIONAL AUSTRALIA

The submission also looked at the role of public broadcasting in the regions. It noted that the structural decline in privately funded media has been felt at least as harshly in regional as well as metropolitan areas. Regional television newsrooms have closed or been scaled back as never before. To exacerbate the decline in regional news delivery, the ABC’s budget was cut by $254 million from 2014 to 2019.

MEAA said the ABC is a core regional media organisation in Australia – it serves as both a quality and trustworthy news source and as a safety net. “A potent blend of funding cuts and misdirected organisational priorities has seen the ABC’s ability to deliver news and services to regional communities severely hampered.”
Inconsistent and reduced regional funding makes it extremely difficult to attract and retain journalists in regional and rural locations and for them to develop familiarity with an area. It follows that the organisation’s ability to cover and report stories of regional and significant interest and severity is severely compromised.

The submission said: “There is some opacity to the true number of ABC’s editorial policy, concepts and indicators of impartiality and accuracy, but they do have an obligation to ‘report and disclose all essential facts.’”

MEAA rejected the inference contained in the Bill that balance and fairness are not present in the ABC’s editorial operations.

MEAA also concurs with the ABC’s head of editorial policy Alan Sunderland’s commentary on the merits of the Bill. Sunderland told a Senate estimates hearing: “Notions of fairness and balance need to be carefully unpacked and explained in order to avoid some of the pernicious issues that can affect journalism around false balance. So I think putting them in the charter in the duties of the board is a combination of unnecessary and potentially misleading. I think that, while those notions can and do exist, they exist in a very carefully described and contextualised way already in our policies, and that’s where they belong.”

In commenting the ABC as the recipient of additional funds, the Finkelstein inquiry noted that “the additional funding could be tied to specifically designated functions and conditional upon specific undertakings on its use.”

MEAA said it would strongly support such an initiative.

■ FAIR AND BALANCED

On November 16, 2017, the Senate referred the Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017 to the Senate Environment and Communications Legislation Committee for inquiry.119 The Bill was introduced by the Turnbull Government to satisfy Pauline Hanson’s One Nation Party in exchange for the latter’s support for the Coalition’s package of media reforms.120

On December 15, 2017, MEAA made a submission to the inquiry. MEAA stated that the Bill was misleading and dangerous, and should be withdrawn without further debate.121

MEAA noted that the corporation’s detailed editorial policies already recognise all necessary professional journalistic standards and that the policies exceed, in scope and length, any other known editorial policies covering Australian media organisations.

MEAA also noted the Bill’s introduction came six months after the Fox News Network in the United States abandoned its provocative “fair and balanced” motto, which was surely the inspiration for the attack on the ABC’s independence.

The Bill seeks to amend section 8(1)(c) of the Australian Broadcasting Corporation Act 1983. The redundancy of the proposed amendment is self-evident: section 8(1)(c) already requires accuracy and impartiality “according to the recognised standards of objective journalism”. Elsewhere in the ABC’s editorial policies, concepts and duties related to independence, integrity, objectivity, impartiality, together with the need for “fair and honest dealing” are acknowledged and articulated.

ABC managing director Michelle Guthrie has expressed mystification with the purpose of the Bill. She stated at an Estimates hearing held in October 2017 that: “So I query, again, what problem are we trying to solve to add those words into the charter. Frankly, we are concerned about how these words will be read, certainly, by people who choose to take an aggressive view towards achieving a false balance, I guess, not based on the weight of evidence.”

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In his commentary for ABC Online on 2 November, 2017, Sunderland noted that: “When it comes to ‘balance’, we explain very carefully that ‘impartiality does not require that every perspective receives equal time’, but that one of the hallmarks of good journalism is balance that follows the weight of evidence.”

In short, “fairness” and ‘balance’ are not and never have been recognised standards of objective journalism. They can be helpful indicators of impartiality and accuracy, but only if they are put in the right context and used wisely. In other words, if something is ‘accurate and impartial’ it will always meet the recognised standards of objective journalism, if it is fair and balanced, it might not.”

MEAA also noted that the Communications Minister Mitch Fifield has sought to justify the Bill by reference to MEAA’s Journalist Code of Ethics, which he said refers to ‘fairness’ less than six times.”

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MEAA’s first Code of Ethics was introduced in 1944 by MEAA media’s forerunner, the Australian Journalists Association. Neither at that time nor at any point has the Code ever mentioned “balance” as an ethical requirement.

In Clause 1 the Code states, “Do your utmost to give a fair opportunity for reply”122. This was added to clause 1 in the late 1990s. The report of the Ethics Review Committee that informed this amendment said about a “right of reply”: “The standard does not go so far as making the giving an opportunity an absolute requirement, because there will be occasions when, despite reasonable efforts made in good faith, the subject of the report cannot be contacted. Or… the subject may have ’gone to ground’.”

MEAA noted in its submission that a “right of reply” is not the same as “balance”. Balance assumes that multi-faceted discussion is taking place and that, despite the merits of some parts of the discussion and the unworthiness of other parts, each and every side must be given equal measure. “The practice of journalism, through newsgathering and news reporting, does not work that way because facts are not elastic.”

MEAA added that the MEAA Journalist Code of Ethics makes it clear in that same first clause that MEAA Media’s members have an obligation to “report and interpret honestly, striving for accuracy, fairness, and disclosure of all essential facts.”

Importantly, MEAA contended that requiring journalists to apply the ABC’s notion of balance may compel them to apply a distorting emphasis to irrelevant, non-newsworthy material that is not factually based.

Indeed, a fair and contextual reading of the MEAA Journalist Code of Ethics undermines the Minister’s observations about the Code’s contents, MEAA said in its submission. “In each case where the word ‘fairness’ appears on the Code of Ethics, it has power and certainty. Out of context, as expressed in the proposed legislation – ‘fair and balanced’ – it is at best meaningless and at worst dangerous. It could too easily be interpreted as a demand that every piece of journalism contain equal amounts of coverage from or about opposing views. That is not objectivity (what is which we all demand of quality journalism). Real objectivity entails presenting, without the best of one’s capacity, impartiality rather than artificially determined word counts, sound bites or images.”

The government has told the panel to inquire into the:

• Application of competitive neutrality principles to the business activities of the ABC and SBS, including in operational decision-making and risk management;
• Regulatory qualifications for the ABC and SBS compared to those for private sector operators, insofar as this relates to competitive neutrality principles;
• Adequacy of current compliance and reporting arrangements; and
• Complaints and accountability mechanisms operated by the broadcasters, insofar as they relate to competitive neutrality principles.123

SBS said it would fully cooperate with the inquiry. Managing director Michael Ebeid noted that “it is difficult to contemplate how a broadcaster the size of SBS that has its commercial operations limited by government business activities should not have an obligation to compete with its commercial counterparts, including in operational decision-making and risk management.” It also noted that SBS compared to those for private sector operators, insofar as this relates to competitive neutrality principles.124
It is perhaps a reflection of the parties’ assumed strength in the Australian media that such a bold endeavour, plainly aimed at pressuring regulators – would be advanced. We are not aware of a precedent for acquisitions being sought when the law is plainly against such endeavours,” MEAA said.

MEAA added that Ten employees, who were anxious to learn of their professional future, may be being compelled into supporting (or not opposing) the first potential takeover offer. “Our members at Ten Network have received no undertakings as to their employment security or the maintenance of quality news media content. This potential deal also does a disservice to the public interest in maintaining plurality in media ownership. Any changes to the two-out-of-three rule would undoubtedly usher in further consolidation.”

On August 24, 2017, the ACCC announced it would not oppose the joint bid. However, subsequent to that decision, the CBS Network of the United States made a $41 million takeover offer for the network which was successful.

In a statement, MEAA welcomed the positive intent from CBS and noted that CBS had a pre-existing relationship with Ten. As an investor in Eleven (CBS owns one-third and long-term program supplier, CBS appeared well-placed to provide continuity and certainty for staff.

MEAA also noted that removing the two-out of three ownership rule was not required to ensure the survival of Ten. “Media diversity is vital to the health of our democracy and the national conversation. Ten has endured significant sweeping cuts to its newsgathering capability in recent years. MEAA hopes the prospect of stability at the network will lead to greater investment in news production and editorial staff.”

MEAA supported the removal of the two-out-of-three rule, which was a necessary and desirable outcome of the situation outlined in the ACCC’s request. The ACCC request as stated that the potential bid would not be satisfactory for Illyria, in particular, to be successful in acquiring a 50 per cent stake in Ten given the extent of the existing media interests of Illyria and Murdoch. MEAA noted that the parties to the potential transaction had sought consideration of their positions in circumstances where two existing media ownership laws – two-out-of-three and the reach rule – barred such a transaction occurring.

In its submission MEAA noted that there was an understanding and acceptance that the concentration of media ownership in Australia is one of the highest in the world.127

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The companies that were being reviewed are owned by Bruce Gordon and Lachlan Murdoch respectively.

The ACCC’s request for submissions outlined that Murdoch is a key player in US media conglomerate News Corporation. He is an investor through the Murdoch family’s 39 per cent investment in News Corp and 21st Century Fox. The ACCC request also recorded his personal links with Ten – he is a former acting chairman; he already owned 7.44 per cent of Ten through Illyria and his family has an interest through News Corporation’s stake in Fostel which is 13.9 per cent of Ten. Murdoch also owns a substantial radio network and 21st Century Fox has a programming deal with Ten. There are other Murdoch investments that also have programming arrangements or opportunities with Ten. Similarly, the ACCC’s request for submissions made clear Gordon’s existing investment in Ten, his ownership of the WIN Network and his stake in the Nine Network.

In its submission MEAA stated that the situation outlined in the ACCC’s request amply demonstrated that the two potential bidders already enjoy substantial media interests and it would not be satisfactory for Illyria, in particular, to be successful in acquiring a 50 per cent stake in Ten given the extent of the existing media interests of Illyria and Murdoch. MEAA noted that the parties to the potential transaction had sought consideration of their positions in circumstances where two existing media ownership laws – two-out-of-three and the reach rule – barred such a transaction occurring.

MEAA supports a broader approach to media reform that draws on the observations and recommendations of the Convergence Review. In particular, MEAA supports a single, platform-neutral “converged” regulator overseeing a common regulatory regime. MEAA recalled that the Convergence Review had proposed a targeted and refined approach to reforming media ownership rules. This approach was based on a “minimum number of owners” rule and also included a public interest test replacing the current test. Ten Network has now earmarked for termination by the Bill.

MEAA was concerned that the government has not fully considered how diversity will be fostered under a partially-reformed media system. “It is well and good to assert that the internet will deliver more media content and the ease with which digital content can be delivered, but no real contemplation has occurred concerning the type and scale of these new entrants and whether they will compete...
with major organizations or occupy ruche interest areas,” MEAA said.

The Department of Communications’ June 2014 Policy Background Paper on Media Control and Ownership acknowledged that digital technologies would enable “the historic delineations between traditional and new media”. It nonetheless made the important qualification that: More broadly, the proliferation of online sources of news content does not necessarily equate to a proliferation of independent sources of news, current affairs and analysis. Indeed, the internet has, to date at least, tended to give existing players a vehicle to maintain or actually increase their influence. This pattern can be seen in Australia where to date, the established media outlets have tended to dominate the online news space.”

This observation gives MEAA considerable pause for thought when assessing the need to dispense with regulations in their entirety. MEAA said it believed the other rules governed media ownership and regional media diversity are also being compromised. The Department of Communications’ June 2014 Policy Background paper also reported that 72 licence areas in regional Australia were “at or below the minimum floor in terms of voices”.

MEAA did not agree with Communications Minister Fifield’s assertion that “even with two out of three removed and consolidation occurring, there would still be significant ownership diversity amongst sources of news.”

MEAA supported comprehensive media reform over a process that simply relaxes conditions for long-standing media companies. Some minimum conditions based on reasonable thresholds of media economic activity or revenue must be established for all players – old and new – to ensure market equality. MEAA is also wary that leaving a regulatory vacuum for any length of time may condition media companies to resist the future implementation of new arrangements.

Media diversity requires policing to ensure the public interest is met. It is not necessarily a natural consequence of technological advancement.

MEAA said it believed the Turnbull Government should defer abolition of the two-out-of-three rule until plausible laws are drafted to encourage media diversity in the digital age. The effect of doing otherwise will be greater consolidation and fewer voices in media organisations of scale.

As debate about the media reform package continued in the Parliament, MEAA issued a statement expressing its concerns. MEAA reiterated its belief that the removal of the two-out-of-three ownership rule will mean an inevitable loss of diversity in the Australian media, says the union for Australian journalists and media workers.

“Our concern is that removing the rule will not of itself guarantee an increase in diversity or a decrease in concentration in the media landscape. “Any initiative to support new investment in journalism is welcome, but it should not come at the price of existing safeguards being removed,” he said.

“Australia, which already has one of the highest concentrations of media ownership in the world, is now saying that a plurality of ownership voices doesn’t matter. And history shows that once diversity is lost, you cannot get it back. The structural challenges faced by the Australian media sector will only be slightly staved by these reforms. As companies amalgamate, more media jobs will be lost and with their loss, public scrutiny will be further reduced.”

On October 16, 2017 the media reform package was finally passed in the Parliament with the support of crossbenchers including Pauline Hanson’s One Nation Party which successfully won Government support for its plan to impose policed restraint on the Australian Broadcasting Corporation in return for its vote.

“The Government’s grudgy deal with One Nation is beneath contempt. Facilitating baseless attacks on our public broadcasters is disgraceful and we will be lobbying Senators to reject any legislation when it is presented,” Murphy said.

The measures in the final package include: • The abolition of broadcast licence fees and replacement with a more modest spectrum charge, providing close to $90 million per annum in ongoing financial relief to metropolitan and regional television and radio broadcasters. • A substantial reduction in gambling advertising during live sport broadcasts, representing a strong community dividend with the establishment of a clear “safe zone” for families to enjoy live sport. • Abolition of redundant ownership rules that shackle local media companies and inhibit their ability to achieve the scale necessary to compete with foreign tech giants. • Removal of diversity protections that ensure multiple controllers of television and radio licences as well as minimum numbers of media voices in all markets. These are the two-to-a-market rule for commercial radio, the one-to-a-market rule for commercial television, the requirement for a minimum of five independent media voices in metropolitan markets and a minimum of four independent media voices in regional markets, and the competition assessment tests made by the ACCC. • Higher minimum local content requirements for regional television following large events, including introducing minimum requirements in markets across South Australia, Victoria, New South Wales, Western Australia and the Northern Territory for the first time. (on October 18, 2017, the Senate referred this issue to the Environment and Communications Legislation Committee for inquiry) – MEAA made a submission to the inquiry on February 21, 2018.
• Reforms to anti-siphoning to strengthen local subscription television providers. The Government said it would also implement a $60 million Regional and Small Publishers Jobs and Innovation package (see below) including: • A $50 Million Regional and Small Publishers Innovation fund; • A Regional and Small Publishers Cadetship program to support 200 cadetships; and • 60 regional journalism scholarships.

The proposed fund will provide $16.7 million in grants per year over three years (totalling $50 million) to support eligible publishers to transition and compete more successfully, through in part, better enabling businesses to develop new business models and practices. MEAA understands that grant funds may not be allocated towards salaries, but will be available for initiatives that support the continuation, development, growth and innovation of Australian civic journalism. In the submission, MEAA strongly supported the emphasis on such journalism.

The Government has advised that the types of projects that may receive funding include: enhancing/upgrading new or existing software, software development, business activities to drive revenue and readership, and training.

The eligibility criteria for these projects are:
• Annual turnover of not less than $300,000 revenue and not more than $30 million in revenue
• A primary purpose test of publishing civic and public interest journalism with an Australian perspective
• An Australian content test (being incorporated under Australian law and having central management in Australia)
• An independence test (not affiliated with a political party, union, superannuation fund, financial institution, non-government organisation or policy lobby group)

MEAA acknowledged the potential benefits of these programs, but maintain our view that these developments are insufficient “compensation” for abandoning the two-out-of-three media diversity rule.

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Grants would be capped at a maximum of $1 million per year for any media group, and at least two thirds of total funding must go to regional publishers and not less than 25 per cent for non-regional publishers.

MEAA supported the fund’s administration by the Australian Communications and Media Authority (ACMA) and broadly supported ACMA seeking input on the distribution of grants from an external advisory committee comprised of the Australian Press Council, The Walkley Foundation and the Country Press Association. The engagement of independent stakeholders is vital to the effective distribution of these funds.

But regarding the proposed independence test, MEAA said the Bill’s use of the word “unions” among other entities by the Bill’s sponsors. MEAA stated that if this element of the independence test is maintained, it is essential that the word “union” be replaced with “registered industrial organisation”.

MEAA would strongly queried the utility of requiring an entity be “majority controlled by Australian residents”. This criterion seems selective and designed to isolate...
potential applicants who otherwise fit squarely within the program’s objectives.

In the submission MEAA said it strongly believe that the key determinant for grant eligibility should be an entity’s capacity to cover and deliver bona fide Australian public interest journalism. “We also query why the term ‘Australian residents’ was chosen ahead of ‘Australian citizen’.

MEAA added that “although we generally support the requirement for recipients being a member of the Australian Press Council, we query who will judge whether non-APC members have ‘robust and transparent complaints processes’.

MEAA also commented on the proposed cadetship program. The Government had advised “to assist the creation of employment opportunities in regional media and ensure that journalists continue to provide informative and compelling regional news, the Government will support 200 cadetships over two years through the Regional and Small Publishers Cadetship Program”.

Over 100 cadetship places will be available each year (from 2018-19), between 80 and 90 will be for regional publications”.

MEAA noted that an employer’s eligibility to engage cadets is not subject to the revenue thresholds that apply for the Innovation Fund. “We further note that regional media organisations – as compared with (undefined) ‘small metropolitan publish’ers’ – will not have to meet the control test, which concerns majority control of a media entity by Australian residents. The absence of this requirement jars with the obligations concerning the Innovation Fund. The reasons for excluding regional employers from this requirement are unclear. It may be that the inconsistency between the programs’ eligibility criteria illustrates the undesirability of mandating Australian residency (as a stand-alone concept) in any of these initiatives.”

Cadetships under the program would be provided via a wage subsidy of up to $40,000 (GST inclusive) per cadet. MEAA support the principle that employers should provide matched funding as a safeguard for the approved cadets. Cadetships will be offered for 12 months and would give recent graduates the opportunity to train in multi-platform reporting, as well as workplace-based learning, as the basis for professional (on-the-job) mentoring.

MEAA questioned why the cadetships were of only 12 months’ duration. “This departure from the longstanding media industry practice of two- to three-year cadetships (other than for graduates), as acknowledged in numerous industry agreements that MEAA is a party to. MEAA believes the 12 month cadetship must be reviewed and converted to two years.”

MEAA also noted the eligibility criteria are the same for cadetships and restated its concerns about the proposed independence test and the use of the word “union”.

MEAA also sought information about how increasing journalism resources, rather than replace existing jobs, would be safeguarded and proposed an ongoing audit and the public dissemination of journalists’ headscounts at entities receiving program funding through the ACMA annual report.

“It is vital that these initiatives be administered in a manner consistent with national employment laws and standards. To be clear, MEAA assert that cadetships awarded under this program must be of no lesser benefit – in terms of both salary and conditions – than otherwise provided in an employment agreement covering the employer receiving government assistance. Under no circumstances should cadets be engaged as independent contractors,” MEAA said.

The package’s 60 regional journalism scholarships would be made available over a two year period commencing in 2018–2019, with each scholarship valued at $40,000. The funds will be able to be used by recipients to cover for course related expenses, including tuition fees, accommodation and living costs. Scholarships would be allocated to institutions across the country so that students in every state and territory have an opportunity to apply.

However, MEAA said it was not clear whether the $40,000 per scholarship funding assistance is meant to cover one year, two years or an entire course/ period of study or a lesser term. Communications Minister Mitch Fifield’s media statement had referred to “$3.4 million over three years” MEAA said, whereas his department’s advisory note refers to scholarships being “made available over a two year period”.

MEAA said it welcomed that emphasis would be placed on journalism courses capable of providing students with the skills and knowledge necessary to work in multi-platform media environments and data analytical abilities. “This support is, however, tempered by the capacity for scholarship recipients to run into an employment ‘dead-end’ (i.e. no available jobs) at the end of their scholarship. In several respects, this is the most risk-intense of the three programs in terms of sustainable employment outcomes.”

MEAA also noted that students would be expected to be either located in regional areas or to have (and be able to demonstrate) a strong connection to a regional area. “We query whether this requirement may distort which applicants receive scholarships and/or curb attraction to journalism programmes. By this, we mean that many communications and journalism students study at regional universities, but then either return or relocate to metropolitan areas. In addition, a student from a regional area (thereby satisfying the ‘connection to a regional area’ criterion) may be studying at, for example, the University of Technology Sydney and have little or no connection to practising journalism in their home (or other regional) location(s).”

“We believe that the core criteria should be a student’s commitment to undertake editorial work (either as an adjacent to their studies or as a clear undertaking) in a regional area immediately after their studies are completed,” MEAA said.

Although MEAA was supportive of the general approach of the three strands of Government action, it expressed a concern that short-term assistance programs may, without follow-up, do not much more than temporarily prop up the media. The role of the media is to hold the powerful to account and to scrutinise what they do. Behrouz Boochani is a former magazine editor and publisher. His reports for various Australian media outlets have finally given us a glimpse into the conditions on Manus faced by refugees. His reporting has been exemplary and has been recognised as Australia’s media of the year by several major Australian journalism awards.

If, as the case appears to be, he has been targeted and arrested because of his profile and his role as a journalist in an attempt to silence him, this is an egregious attack on press freedom that cannot be let stand.

“We call on the Australian and PNG governments to release him from custody, assure his safety, and not to hinder him from continuing to perform his role as a journalist. We will also be bringing this to the immediate attention of the International Federation of Journalists, the global body for journalists,” MEAA said.

Three weeks earlier, Boochani had been awarded the Amnesty International Australian Media Award for his journalism from Manus Island. Earlier in 2017, he had been shortlisted in the journalism category for the 2017 Index on Censorship’s Freedom of Expression Awards. Boochani’s work has been published in Guardian Australia, and The Saturday Paper, among other publications, while his film about life inside the Manus detention centre, Chauka, Please Tell Us the Time was screened at the Sydney and London film festivals.

On December 20 2017, Boochani was being deliberately targeted for his journalism and his detention in handcuffs amounted to an outrage attack on press freedom.

In its letter, MEAA has called on the two prime ministers to ensure that those engaged in the outrageous assault on press freedom on Manus Island be reminded of their obligations to protect journalists and working media covering important news stories on Manus Island, and observe their obligations to respect freedom of expression and press freedom.

On November 24, MEAA reiterated its support for Boochani. MEAA Chief Executive Paul Murphy said Boochani appeared to have been deliberately targeted by Papua New Guinea police in another crackdown because of his high profile as a journalist reporting from inside the detention centre.

"Behrouz has been one of the main sources of factual information about conditions inside the Manus Island detention centre for the past few years, and this reporting has been published in Australia and internationally," Murphy said.

"His reporting in the finest traditions of journalism has been critical when the Australian and PNG governments have done everything they can to prevent media from having access to the asylum seekers on Manus Island. "Without Behrouz’s courageous reporting at great personal risk, the world would be less informed about the crisis on Manus Island."
In September 2017 the Senate asked the Legal and Constitutional Affairs References Committee to inquire into the adequacy of existing offences in the Commonwealth Criminal Code and of state and territory criminal laws to capture cyberbullying. MEAA made a submission to the inquiry on 21 December 2017 and appeared at a public hearing in Melbourne on March 7, 2018.

Women in Media, a MEAA networking and mentoring initiative, also made a submission and appeared at a public hearing.

MEAA’s submission began by noting its concern at the rise of hate speech in Australia. “For example, when Part IIA was introduced into the Racial Discrimination Act in 1995 it was long before the widespread use of digital technology. Now there are a multitude of platforms available for the widespread dissemination of opinions and messages of all kinds.”

The development of social media platforms has enabled those engaging in hate speech to spread their message, call others together who share their views and to use these platforms to target and discriminate against individuals and groups.

MEAA believes that there is a great need for education in the broad community for the harm associated with cyberbullying.

The dissemination of news through publishing or broadcasting story is a second method of engagement. In the past, this sometimes gave rise to follow up contact with the audience responding to stories via mail or telephone. It could even be as simple as talkback radio or letters to the editor. But the development of digital social media platforms has introduced a new significant way for journalists and the audience to interact. Social media has allowed individuals to speak directly to journalists.

This change has been embraced by media employers who now insist that their employees use social media platforms to promote and engage with audiences in order to build traffic around digital news stories. Indeed, the number of hits on a news story has become a new and even somewhat oppressive key performance indicator imposed on journalists (on top of demands to file more words, with fewer errors, for immediate publication on the media outlet’s web site in advance or publishing or broadcasting on traditional media).

In many cases, journalists are being compelled by their employers to express opinions regarding news events, the news stories they are working on and other news stories by developed by their media employer – all with the aim of interacting with an online audience, driving engagement and building traffic numbers to impress advertisers.

It is the nature of social media that heated discussion takes place, often without reference to facts or objectivity, and often with too great a willingness to allow debate to become personal, abusive and threatening. The fact that many social media users depend upon and even thrive on such abuse, often within the veil of anonymity, leaves many journalists exposed to quite horrifying cyberbullying.

Journalists are, by their nature and by the requirements of responsible journalism, accessible to the public. They usually engage openly, using their own names, in order to make social media the tool for increasing audience responsiveness – exactly the sort of increase in “eyeballs” on news stories that media employers demand of their journalist employees.

As outlined above, the nature of journalists’ contact with their audience on digital media platforms, including via social media, makes them particularly vulnerable to cyberbullying. As part of their employment they must open up the lines of communication which, in return, may hurl abuse and threats at them – again, often under the protection of anonymity. MEAA welcomes the change has been embraced by media employers who now insist that their employees use social media platforms to promote and engage with audiences in order to build traffic around digital news stories. Indeed, the number of hits on a news story has become a new and even somewhat oppressive key performance

Harassment involves a pattern of behaviour or a course of conduct pursued by an individual with the intention of intimidating and distressing another person…

Harassment involves deliberate conduct. It may be done maliciously, to cause anxiety or distress or other harm, or it may be done for other purposes. Regardless of the intention, harassment will often cause anxiety or distress. Harassment also restricts the ability of an individual to live a free life.

The report recommended the enactment of a harassment tort if a privacy tort is not enacted:

- Generally, a new harassment tort should capture a course of conduct that is genuinely oppressive and vexatious, not merely irritating or annoying. The tort should be confined to conduct that is intentionally designed to harm or demeane another individual.

A harassment tort should also be the same throughout the country. The states and territories should therefore enact uniform legislation, if the Commonwealth does not have the Constitutional power to enact a harassment tort.

The report acknowledged the role of cyberbullying carried out against children:

At present, Australian law does not provide civil redress to the victims of harassment. There is some protection in defamation law, as well as the torts of battery or trespass to the person where conduct becomes physically threatening or harmful. If bullying or harassment, including cyber-bullying, occurs on social property within school hours, a school may be liable under the law of negligence on the basis of a non-delegable duty of care.

The report did not pay particular attention to the impact of cyberbullying by adults and directed at adults although the report did cite a submission from the Guardian media group concerning how cyberbullying affected journalists:

Guardian News and Media Limited and Guardian Australia submitted that it would be preferable to introduce the new privacy tort or modify existing laws relating to harassment. Their submission raises the concern that a harassment tort does not involve a public interest balancing test, unlike the new privacy tort. Given this, they consider that there is “significant potential for an harassment style of action or crime to significantly impact on bona fide journalistic activities”.

With regard to criminal remedies for harassment, the report noted the Commonwealth Criminal Code’s sections 474.15 (cheating to kill or to harm with penalties of imprisonment for 10 or seven years respectively; and proof of actual fear not being necessary) and 474.17 (using a carriage service to menace, harass or cause offence with a penalty of imprisonment for three years). The report noted that there was a general lack of awareness of the relevant provisions and of the penalties that existed and that this had led to very few actions being brought under the Code. It added:

In consultations the ALRC heard concerns raised that state and territory police may be unwilling or unable to enforce criminal offences due to a lack of training and expertise in Commonwealth procedures which often differs significantly from state and territory police procedures.

With reference to cyberbullying per se, the report said: “The Department of Communications outlined three options for reform to s 474.17. First, to retain the existing provision and implement education programs to raise awareness of its potential application. Second, to create a cyber-bullying offence with a civil penalty regime for minors. Third, to create a take-down system and accompanying infringement notice scheme to regulate complaints about online content. The lived experience of many MEAA members working in the media industry is of being regularly subjected to harassment, abuse and threats on social media, where existing laws are not enforced and where there are gaps in the current legislative regime.”

MEAA believes that there is a need for education in the broad community for the harm associated with cyberbullying and the penalties that can arise through section 474.17.

SAFETY

CYBERBULLYING

THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018
MEAA also believes that social media platform providers must take responsibility to ensure that their services are not used in such a way as to breach section 474.17. The proliferation of social media platforms and the manner in which they are co-opted to become tools for the dissemination of hate speech and “fake news” means they have a responsibility to police their products in order to ensure they are not being misused as cyberbullying weapons.

Social Media Platforms

This debate around responsible operation of social media platforms is already somewhat underway as leading social media platforms address the spread of misinformation and “fake news”, and interfere in the 2016 US presidential election.

“What they did is wrong and we are not going to stand for it. You know that when we set our minds to something we’re going to do it.” – Facebook CEO Mark Zuckerberg on the Russian influence on the US presidential campaign.

The acceptance by social media platforms that they have been responsible for spreading untruths and misinformation, and have allowed their products to become tools to hijack and inflame debate through deception and/or abuse, should also lead them to accept that they have a role as the carriers in question that are being harnessed to allow cyberbullies to spread their harassment, menace and abuse.

Facebook said on Wednesday that it was removing 99 per cent of content related to militant groups Islamic State and al Qaeda before being told of it, as it prepared for a meeting with European authorities on tackling extremist content online.

This will require the substantial cooperation of social media platform companies. But as the US example shows, the social media companies can dedicate considerable effort to stamp out deliberate misinformation campaigns on their platforms. They must also be called to account and respond to cyberbullying which is far more prevalent and easier for them to locate and identify.

“Freedom of expression means little if voices are silenced because people are afraid to speak up. We do not tolerate behaviour that harasses, intimidates, or causes fear to silence another person’s voice. If you see something on Twitter that violates these rules, please report it to us. You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability or disease.

“We also do not allow accounts whose primary purpose is inciting harm towards others on the basis of these categories. Examples of what we do not tolerate include, but is not limited to, behaviour that harasses individuals or groups of people with:

• Violent threats;
• Wishes for the physical harm, death, or disease of individuals or groups;
• References to mass murder, violent events, or specific means of violence in which/with which such groups have been the primary targets or victims;
• Behaviour that incites fear about a protected group;
• Repeated and/or non-consensual slurs, epithets, racist and sexist tropes, or other content that degrades someone.” – Twitter’s ‘Hateful Conduct policy’

A great concern is how many cyberbullies hide behind anonymity in order to mount their attacks. Efforts should be made by social media platforms to “block” cyberbullying offenders where they can be identified by the platform provider. Obviously encryption and other masking techniques can be utilised to obstruct attempts to locate and identify cyberbullies but vastly improved efforts should be made to “take down” offensive communications and block those responsible.

“The consequences for violating our rules vary depending on the severity of the violation and the person’s previous record of violations. For example, we may ask someone to remove the offending Tweet before they can Tweet again. For other cases, we may suspend an account.” – Twitter’s ‘Hateful Conduct policy’

Enforcement

Consideration must be given to ensure that the Criminal Code is upheld. Moreover, there should be an examination of overseas jurisdictions to best inform a robust approach to the problem. New Zealand, for example, has enacted the Harmful Digital Communications Act 2015. This Act introduced a civil regime as well as criminal offences with regard to cyber abuse. The Act established a statutory body known as NetSafe to administer the civil regime established under the Act. Under this law, where a digital communication breaches 10 communication principles that are set down in the Act, NetSafe, rather than an endorsement of their discrete contexts.

At an Australian State level, many of the current regimes are deficient. For example, in Victoria single incidents of cyberbullying do not constitute a “pattern” of behaviour, and many of the current offences in existing legislation require criminal conduct to occur in a “public space” (which may exclude messages sent by direct message).

State legislative regimes need to be examined so as to ensure existing laws are being enforced and, where there are gaps, these are filled by the introduction of new, more relevant and flexible offences.

Education

There will need to be considerable effort on the part of enforcement agencies. But an accompanying education campaign must also educate the community at large. There is little understanding of the harm that cyberbullying can do by the broader community and most likely little or no knowledge of the substantial penalties that exist.

Cyberbullying must be clearly defined and understood in order to stamp it out.

Education must also include reporting mechanisms so that the victims of cyberbullying can quickly flag an offender to both the social media platform and enforcement agencies for follow-up action. This should be done in cooperation with the Office of the eSafety Commissioner and the Telecommunications Industry Ombudsman.

MEAA believes that our members, as workers in the media industry, should be able to work free from cyberbullying. MEAA will be stepping up efforts with media employers to ensure employers create and operate policies to protect
If journalists are to be compelled to exist as easily identifiable digital individuals on social media platforms in order to perform their job, and have that engagement measured as a key performance indicator for their ongoing employment, then greater care must be taken to protect journalists from cyberbullying. We stress here that if reforms are supported through this inquiry, that special care be taken in defining journalists such that media practitioners not employed by major media outlets are suitably protected.

In an era when threats to journalists are increasing (and not helped by politicians who openly attack journalists and their employers using the phrase “fake news” to describe whatever they do not agree with), and dozens of journalists are murdered, assaulted, imprisoned and harassed because of their journalism, government has a responsibility to uphold, protect and promote press freedom and the vital role of public interest journalism.

The tools to arrest the growth of cyberbullying exist, but additional effort is needed. In this regard, MEAA acknowledges the Law Council of Australia’s submission to the Inquiry at points 9 (as to the range of conduct cyberbullying offences should capture), 10 (the need for proportionality and distinctions between children and adult offenders) and 18(a) (that the law be applied with), and dozens of journalists are harassed because of their journalism, government has a responsibility to uphold, protect and promote press freedom and the vital role of public interest journalism.

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MEAA believes efforts must be increased to identify and report instances of cyberbullying, to educate the community about the threats and penalties associated with cyberbullying, to ensure that the law is upheld and that penalties are adjusted to suit the crime.

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This will require a coordinated effort by:
  • Government,
  • Social media providers, newspapers, and
  • Enforcement and regulatory agencies.

A coordinated response that focuses on education, monitoring, reporting, and enforcing (including penalties as outlined in the Criminal Code) is urgently needed to address this problem.

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A coordinated response that focuses on education, monitoring, reporting, and enforcing (including penalties as outlined in the Criminal Code) is urgently needed to address this problem.
Three stories have been written about deep budget cuts to Queensland’s environment department under the LNP Government in 2011. Now, Queensland Police are seeking to find the source of the leak by raiding a newsroom in the hunt for what are presumably journalists’ confidential sources, he said.

“MEAA calls on Queensland Police to cease this attack on press freedom and pursue its investigations among Queensland’s politicians rather than seek to shoot the messenger and a likely whistle blower that was seeking to reveal important information to the community,” Murphy said.159

**JAMES RICKETSON**

James Ricketson is a 69-year-old documentary maker. On June 2, 2017 he was detained by Cambodian authorities after he was photographed flying a drone over a political rally in Phnom Penh160. He was detained for six days – well beyond the 72-hour rule under Cambodian law – and on June 8 he was subsequently charged with “recording or collecting information, processes, objects, documents, computerised data or files, with a view to supplying them to a foreign state or its agents, which are liable to prejudice the national defence”. Authorities also seized his laptop and translated documents and emails found on it.

He faces up to 10 years in jail if convicted. He has denied the allegations. He has been denied bail. He has been detained in a cell with 140 other prisoners.

Ricketson was known to be making a documentary about Cambodia’s political opposition leader Sam Rainsy. He has previously worked with several child protection bodies in the country as well as blogging about various issues in the region. According to an AIC report, “He has also been a vocal critic of Prime Minister Hun Sen, who has ruled Cambodia for 32 years. In a 2014 blog post, Mr Ricketson compared Mr Sen to the Star Wars villain, Darth Vader. He had also blogged about Australia’s refugee resettlement policy and staged a one-man sit-in protest at Screen Australia that resulted in a restraining order. In 2014 and 2016, he was convicted in Cambodian courts of defaming two separate child protection organisations.”164

Ricketson’s adopted daughter Rosanne Holmes set up a petition165 to put pressure on the Australian government to do more to get him out of jail and MEAA has encouraged members and the public to support the campaign. The petition attracted almost 72,000 signatures.

**REBECCA HENSCHKE**

Rebecca Henschke is an Australian journalist and the bureau chief of BBC Indonesia. She was reportedly expelled from the province of Papua for her social media posts that angered the Indonesian military. The ABC reported: “Authorities said: Henschke was escorted out of the province after her social media posts ‘hurt the feelings of soldiers’.”166

Foreign journalists had been given access to Papua in order to report on the measles and malnutrition crisis near the southern coast town of Agats. Henschke was reportedly detained after she posted several tweets on February 1, 2018. One showed a photo of supplies sitting on a dock and said, “This is the aid coming in for severely malnourished children in Papua – instant noodles, super sweet soft drinks and biscuits.” Another said “children in hospital are eating chocolate biscuits and that’s it.”

An Indonesian military spokesman said: “The tweet is not in line with the truth. Diplomatic officials of the Indonesian government” are in the area.

An Indonesian military spokesman said: “The tweet is not in line with the truth. What was captured in the photo of the speedboat dock is the supplies from merchants who happened to be in that place.”

Henschke was questioned for five hours by immigration officials for a further 24 hours before being escorted out of Papua with her BBC colleagues and returning to Jakarta.

The Pacific Freedom Forum said: “Removing BBC journalists from Papua province over such a tiny detail is proof that Indonesian security forces are still actively outside the law… Papua people have suffered decades of free-speech loss, to tragic result – half a million documented deaths in half a century. We then have a free-speech farce with Indonesia hosting World Press Freedom Day last year – but officially ignoring Papua. This deportation from Papua just adds to the farce.”166

**SOPHIE McNEILL**

On October 5, 2017, MEAA condemned the use of public funds by Labor MP Michael Danby to publish attack ads, that were inaccurate and inappropriate, targeting ABC Jerusalem correspondent Sophie McNeill.

MEAA noted that McNeill is a three-time winner of a Walkley Award for Excellence in Journalism – winning two of those awards in 2016 for her coverage of wars in Syria and Yemen. MEAA CEO Paul Murphy said: “It was clear that I was on a list and that’s it.”

MEAA commented that McNeill’s reporting on two Afghan refugees. Camp officials warned him not to publish them.

The ABC issued a statement that said: “The ABC strongly rejects allegations made by Mr Michael Danby MP in a paid advertisement in the Australian Jewish News that the coverage by ABC Jerusalem correspondent Sophie McNeill of a series of killings of Palestinians and of Jewish Israelis on 21 July was biased and unbalanced.

Contrary to Mr Danby’s assertion, Ms McNeill gave due prominence to the fatal stabbing attack of the three Israelis with stories on television, radio, News Digital and Twitter. The coverage included graphic accounts of the attack from witnesses and first responders.

This advertisement is part of a pattern of inaccurate and highly inappropriate personal attacks on Ms McNeill by Mr Danby. The ABC has complete confidence in the professionalism of Ms McNeill. Despite unprecedented scrutiny and obvious pre-judgement by Mr Danby and others, her work has been demonstrably accurate and impartial.

All ABC News content is produced in accordance with ABC editorial policies and under the supervision of experienced editorial managers.”

**MATTHEW ABBOTT**

On November 3, 2017, photojournalist Matthew Abbott was detained by immigration officials at Port Moresby Airport after they identified him as having published ‘disruptive material’ about Manus Island.

“Was it clear that I was on a list and there was no chance I was getting into the country,” he said.167

He had been attempting to apply for a tourist visa and was intending to go to the decommissioned Manus Island asylum seeker detention centre to report on conditions when the scanning of his passport triggered an alert to an immigration officer.

The “disruptive material” is believed to refer to an incident that occurred at the detention centre in July 2017 when he photographed the aftermath of an attack on two Afghan refugees. Camp officials attempted to delete the photos from his camera, scanned his passport and warned him not to publish them.

He told Guardian Australia “when it was clear last time that they could not get the photos back off me, they said to me: ‘If you publish these photographs you are never going to come back here’. There’s a total double standard being applied… journalists that are doing positive work and non-critical work are being allowed in whereas people who are doing critical work are stopped.”168
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

CRIMINALISING JOURNALISM

impunity

On November 2, 2017 – UNESCO’s International Day to End Impunity for Crimes Against Journalists – the global body reported that between 2006 and 2016, 950 journalists were killed for bringing news and information to the public. Over that time, a conviction had been achieved in less than one in 10 cases.165

“This impunity envelopes the perpetrators of the crimes and at the same time has a chilling effect on society including journalists themselves. Impunity breeds impunity and feeds into a vicious cycle... These figures do not include the many more journalists who on a daily basis suffer from non-fatal attacks, including torture, enforced disappearances, arbitrary detention, intimidation and harassment in both conflict and non-conflict situations. Furthermore, there are specific risks faced by women journalists including sexual attacks.”166

“When attacks on journalists remain unpunished, a very negative message is sent that reporting ‘sensitive’ or ‘embarrassing’ stories or to bring homicide charges against her.

For example, journalist Juanita Nielsen was killed on July 4, 1975, while working in a conflict zone overseas. The coroner found that Nielsen, an Australian citizen, had died during an attack by Indonesian soldiers in East Timor.

Sydney journalist and editor Juanita Nielsen, disappeared on July 4, 1975. Nielsen was the owner and publisher of NOW magazine. She had strongly campaigned against the development of Victoria Street in Potts Point, in the electorate of Wentworth, where she lived and worked.

As recently as August 2014, NSW Police forensics dug up the basement of a former Kings Cross nightclub in an attempt to locate her remains but were unsuccessful. While there have been convictions over the abduction, no formal homicide charges have been brought and her remains have never been found.

In the more than 40 years since this incident Yunus Yusof has not lived in obscurity. He rose to be a major general in the Indonesian army and is reportedly its most decorated soldier. He was commander of the Armed Forces Command and Staff College (with the rank of Major General) and Chief of Staff of the Armed Forces Social and Political (with the rank of Lieutenant General). He was chairman of the Armed Forces Faction in the Indonesian Special Forces, including Christoforus da Silva and Captain Yunus Yusof, in the orders of Captain Yusof, to prevent him from revealing that Indonesian Special Forces had participated in the attack on Balibo.

“Those who commit crimes against journalists, it is said, are often not in the heat of battle, by members of the Indonesian Special Forces, including Christoforus da Silva and Captain Yunus Yusof in the orders of Captain Yusof, to prevent him from revealing that Indonesian Special Forces had participated in the attack on Balibo.”177

On October 13, 2014, three days before the anniversary of the murder of the Balibo Five, an article appeared in the Sydney Morning Herald that the AFP took “six months to advise the Senate that an ‘active investigation’ into the murder of the Balibo Five was ongoing”. The AFP says the investigation has “multiple phases and results are still forthcoming from inquiries overseas.” However, the AFP stated that it had “not sought any co-operation from Indonesia and has not interacted with the Indonesian National Police”.178

Just six days later, on October 21, 2014 the Australian Federal Police announced it was abandoning its five-year investigation due to “insufficient evidence”.179

MEAA said at the time: “Last week, the AFP admitted that over the course of its five-year investigation it had neither sought any co-operation from Indonesia nor had it interacted with the Indonesian National Police. The NSW coroner named the alleged perpetrators involved in murdering the Balibo Five in 2007. Seven years later the AFP has achieved nothing.”

MEAA believes that in light of the evidence uncovered by the Balibo Five inquest that led to the AFP investigating a war crime, there are sufficient grounds for a similar probe into Roger East’s murder and that similarly, despite the passage of time, the individuals who ordered or took part in East’s murder may be found and finally brought to justice.

However, given the unwillingness to pursue the case of the Balibo Five, MEAA does not hold out great hope that Australian authorities will put in the effort to investigate East’s death. Again, it is a case of impunity where, literally, Roger’s killers are getting away with murder.

MEAA continues to call for a full and proper war crimes investigation. MEAA has honoured the memory of the Balibo Five and Roger East with a new fellowship in their name, in conjunction with Union Aid Abroad-APHEDA with MEAA providing the bulk of the funding and additional funds being received from the Fairfax Media More Than Words workplace giving program, and private donations. The fellowship sponsors travel, study expenses and living costs for East Timorese journalists to develop skills and training in Australia.

The 2017 recipients of funding from the fellowship are: Maria Filicia Fonseca Xavier, a journalist and news broadcaster in Timetim and Portuguese at Timor-Leste Television (TVTL): • Augusto Sarmento Deis, senior sports journalist and online co-ordinator at the Timor Post daily newspaper and diariutimorpost.tl website.
Criminalising Journalism

THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

66 67

media workers, to ensure accountability

member states to: ‘do their utmost to

Resolution A/RES/68/163 which urges

Nations General Assembly has adopted

away with murder.

brought to justice then they are getting

those responsible for killing Paul are not

stating: “We are deeply concerned that if

Commissioner Andrew Colvin once more,

On February 20, 2015, in the aftermath of

the massacre in Paris of journalists,

editorial and office staff at the

of the massacre in Paris of journalists,

arrived in Lusaka on November 21, 1979 to

ABC foreign correspondent Tony Joyce

arrived in Lagos on November 21, 1979 to

report on an escalating conflict between

Zambia and Zimbabwe. While travelling by

taxi with cameraman New Zealander

Derek McKendry to film a bridge that had

been destroyed during recent fighting,

Zambian soldiers stopped their vehicle and

arrested the two journalists.

The pair were seated in a police car when a

suspected political officer with the militia

reached in through the car’s open door,

raised a pistol and shot Joyce in the head.

Joyce was evacuated to London, but

never regained consciousness.

He died on February 5, 1980. He was 33 and

survived by his wife Monica and son

Daniel.178

MEAA hopes that, despite the passage

time, efforts can be made to properly

investigate this incident with a view to
determining if the perpetrators can be

brought to justice.

Tony Joyce

New Zealanders are too complacent about

the continuing erosion of their

to know what the
government is doing on their behalf,”
wrote Gavin Ellis in an anguished essay,

Compliant Nation, in 2016.

What was the former editor in chief of

New Zealand’s biggest newspaper - New

New Zealand topped fifth in the world in the

2016 Reporters Without Borders press

freedom index behind only Finland,

Netherlands, Norway and Denmark.

In last year’s press freedom report, I noted

that the most recent matter

worrying New Zealand’s Media

Freedom Committee was a clause in a

proposed law that would make it an offence

to record a rocket or spacecraft that

might crash here. Not exactly on a par with

crash here. Not exactly on a par with

our relatively free media mirror our

corrupt country in the world – again. Eat

International rated New Zealand the least

corruption watchdog Transparency

In February this year, global anti-
corruption watchdog Transparency

International rated New Zealand the least
corrupt country in the world – again. Eat

that Finland, Netherlands, Norway and

Denmark.

Does our relatively free media mirror

our relatively benign, uncorrupted society?

Partly.

But Transparency International’s New

Zealand chair Suzanne Snively echoed

Gavin Ellis when she said “complacency

is our biggest challenge. The prevention

of corruption is too often a low priority”.

Our complacency was jolted this past year

when New Zealand slipped to 15th place in

the Reporters Without Borders press

freedom index, citing government secrecy

and journalists’ struggles with the Official

Information Act (OIA) as the reason for

the plunge. “Political risk has become

a primary consideration in whether official

information requests will be met and

successive governments have allowed

free speech rights to be overridden,” said

Reporters Without Borders.

The chair of New Zealand’s Media

Freedom Committee at the time, Joanna

Norris, agreed. “(There is) consistent and

cynical misuse of official information

laws which are designed to assist the

release of information, but are often used to

withhold it,” she said.

It’s not a new concern.

Using the hashtag #Fix the OIA, Kiwi
journalists routinely vent their

frustration on social media. Sometimes

they share pictures of the heavily

redacted documents dotted with black

blocks they’ve received in response to

their requests. All too often they’ve

had to wait far too long to get them for

reasons that are rarely adequately

explained.

Media management plays a big part in

this. Delays take the sting out politically

sensitive and newsworthy details.

In April 2018, the New Zealand Herald’s

Mart Nippert revealed the New Zealand

Defence Force (NZDF) has spent millions

on controversial spy software produced

by secretive Silicon Valley firm Palantir.

“The Defence Force neither confirms nor

denies the existence or non-existence of the

information you have requested,” it wrote
citing national security, when the

Herald first requested the information

last January.

But the NZDF itself reported the

relationship with Palantir in its own

publication Army News. A December

2015 briefing on its website details use of

Palantir’s analytical tools.

After refusing for more than a year to

reveal the extent of links to the

company, the Herald complained to the

Ombudsmen and the NZDF was forced to

disclose the spending.

Back in 2014, former prime minister John

Key said he’d resign if it was proved he

had presided over the mass surveillance of

New Zealanders.

At an event called The Moment of Truth

in the run-up to the election, the US

National Security Agency whistleblower

Edward Snowden revealed the existence

of Project Speargun – a plan to intercept

internet traffic in and out of New

Zealand. John Key rebuffed the claims.
He said he personally put a stop to this “highest form of protection” in March 2013 because it was “a clear misuse of power.” The Investigative reporter David Fisher eventually acquired official documents showing Speargun actually continued after the time he had ordered a halt. “Speargun wasn’t actually stopped until after key was told in a secret briefing that it was a clear misuse of power because they could be in the trove of secrets taken by NSA whistleblower Edward Snowden,” he reported last December.

It took almost three years to get the information he needed. John Key had left politics by the time his story came out.

Toby Manhire of independent news website The Spinoff, hit the nail squarely on the head: “What a shame it would be if the list of all this was that all you need to do is waste enough time until everyone has something else to worry about.”

Another case in point is the so-called “Saudi sheep scandal” in which former foreign minister Murray McCully was accused of improperly using $NZ11.5 million of taxpayers’ money to curry favour with a well-connected Saudi businessman. The money was for a sheep farm, but eventually sent by air from New Zealand were dead on arrival.

By the time the details finally emerged this past year via the OIA, the story was as dead as the sheep. Again, the former minister had retired from politics in the interim.

Investigative journalist and author Nicky Hager – who has exposed several political scandals in the past – has also had to rely on the OIA to get the OIA to which he had retired in the interim.

In the absence of an upper house New Zealand’s Official Information Act is an essential check on the power of government especially the power wielded by 30 cabinet ministers in its executive branch. The Act was hailed as world-leading in 1982, but journalists say it has suffered with each new administration since it became law. Initially applied with gusto and with principle, the next government did so only reluctantly, the next reluctantly, according to lobbyist and media pundit Matthew Hooton.

Tod Niall revealed a letter to Auckland mayor Phil Goff which said the release of information should be delayed so it could be “managed”. The letter was withheld from RNZ for 15 months despite intervention from the Ombudsman. If the idea is to create “news that is so old it is not news any more” as Tod Niall put it, it works. “And that is why it never works,” he added.

Clare Curran’s position as a minister is already under scrutiny after the revelation of an “informal meeting” with chief. New Zealand executive which raised questions about government interference with the public broadcaster. Not a good look for a minister of open government, the puns point out en masse.

As will be released in 2018 to “provide the public with continuing trust and confidence in the accuracy and veracity of the whole book – which Tim Keating, had cast doubt on the veracity of the whole book – which

The agencies involved are the Ministry for Culture and Heritage, the Ministry for the Environment, the Department of Conservation and Land Information New Zealand.

He says the outcome of the investigations will be released in 2018 to “provide the public with continuing trust and confidence in the accuracy and veracity of the whole book – which Tim Keating, had cast doubt on the veracity of the whole book – which

But when before could get her feet under the table, the new government made a bad start. It is a coalition government formed only after delicate and secret post-election negotiations. Its leaders refused to comply with the OIA – former politician Clare Curran – who says she wants to fix it. With her overlapping responsibilities for media and broadcasting as well as open government and digital services, this is promising.

Worryingly, New Zealand’s watchdog Media Freedom Committee, which represents the country’s major news organisations, was caught out. Its chair Joanna Norris had just left the media and replacement had not yet stepped up when the case arose. After a hasty new appointment, the Committee’s new chair Mirinya Alexander said journalists had a fundamental right to protect their sources and should be free to do their job of informing the public without interference and intimidation from politicians. Peters eventually excluded the journalists from his proceedings, which also targeted several politicians.

But statutory take-down powers for courts to order temporary removal of potentially prejudicial online material are available in both New Zealand and Australia. Legislation was introduced in Australia, which will be released in 2018 “to provide the public with continuing trust and confidence in the accuracy and veracity of the whole book – which Tim Keating, had cast doubt on the veracity of the whole book – which

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In the white heat of election campaigns gone by, politicians have called in the lawyers and ordered the cops on journalists doing their jobs.

Camera operator Bradley Ambrose was investigated by police – and newsrooms were searched by police officers – after his remote microphone recorded a conversation between Prime Minister John Key and another political party leader in 2011. Ambrose and his sources will know that they could be dragged in to a legal battle which could even make them liable for costs.

Investigative reporter and author Nicky Hager had his home raided in the 2014 campaign by police officers wanting the source of the leaked emails at the heart of his lid-lifting book Dirty Politics. Using the recently beamed-up Search and Seizure bill to search accused documents and computers, including those belonging to his daughter. They also asked private companies for details of his phone, online accounts and his travel and banking records. The raids and breaches of his privacy were eventually deemed unlawful and followed by apologies and out-of-court settlements.

During the 2017 election it was New Zealand First Party leader Winston Peters – now the Deputy PM – who went legal. He launched proceedings for a breach of privacy against two journalists who reported that he had been paid too much superannuation. Peters’ tried to get them to hand over several months of their telephone records, documents and notes as part of the proceedings targeting whoever was responsible for leaking the private information at the heart of the story.

A Bill to tidy up the law on contempt of court is now before Parliament and it could introduce heavy fines for breaches. When the New Zealand Law Commission launched a review of the law last August no reporters turned up. Only a handful of stories signalling the changes were published.

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Let’s hope any change to the Protected Disclosures Act 2000 recognises a role for the media and protects people who pass on information to the public. The public interest is in play. Victoria University of Wellington professor Michael Macaulay has noted some Australian state governments already support whistleblowers who contact journalists in such circumstances. For example, the then New South Wales government protects people who contact the media if they have not had success having their “honest concerns” properly investigated by a relevant higher authority.

When asked why New Zealand had slipped from its fifth place on the Freedom of the Press Freedom Index 2017, the chair of New Zealand’s Media Freedom Committee at the time, Joanna Norris, said the accelerating financial woes of the news media were the biggest concern.

*(“A challenge which threatens to undermine media freedom is the actual sustainability of professional journalism, which is costly and becomes increasingly hard to support as revenues decline or shift to offshore giants,” she said.

Her employer Fairfax Media New Zealand (since rebranded as Stuff) was seeking clearance to merge with NZME (New Zealand Media and Entertainment), the only other major newspaper publisher (since rebranded as Stuff) was seeking for Culture and Heritage, the Ministry for the Environment, the Department of Conservation and Land Information New Zealand.

Without a merger, “journalism at its heart is no longer possible and that will not be jeopardised when speaking on information to them where the public will be strengthened to protect whistleblowers.

The NEW GOVERNMENT IS EXPLORING IF THE LAW NEEDS TO BE STRENGTHENED TO PROTECT WHISTLEBLOWERS.
scale” in New Zealand’s regions was at immediate risk, she warned.

Greg Hywood, the chief executive of the Fairfax Media parent company in Australia, was more dramatic. He said it would “become end-game” if the merger was disallowed. “We don’t have the capacity of deep pockets of private money to subsidise journalism,” said Hywood.

But in May 2017 the Commerce Commission, New Zealand’s competition watchdog, declined permission to merge. The Commission said plurality and diversity of opinion would shrink – and that outweighed the economic benefits to the company. The decision was announced on UNESCO World Press Freedom Day, May 3.

The prospective merger partners are challenging the decision – at considerable expense – in the Court of Appeal in June 2018. If they succeed, the two companies may get the extra “runway” they need to establish a profitable digital era business model.

They insist they remain committed to journalism and publishing, but that model would employ fewer journalists than the two companies do now and accelerate the “revenue diversification” strategies: sidelines in insurance, video-on-demand, retailing broadband and events.

In other words, the single slimmed-down company would dominate daily news in print and online, yet journalism would not be its bread and butter. The word “news” no longer features in the current names of either company. And it is conceivable that before long, another owner – possibly from overseas – could acquire this single company, and it may have no commitment to journalism at all.

One worried executive told me this year: “Proper news media companies need to be strong enough to tell governments and other companies to f--- off.”

If they are not, the implications for media freedom are obvious.

Colin Peacock is the presenter of the “Mediawatch” program.

### Press Freedom in the Asia-Pacific

**A Mounting Crisis Across the Region**

**By Alexandra Hearne**

**Asia-Pacific**

**Total Killed:** 39

**Afghanistan:** 22

**India:** 8

**Pakistan:** 6

**Philippines:** 3

While the brutal killing of journalists in the Asia-Pacific remains a dire concern for the International Federation of Journalists (IFJ), it is just one of the tools of repression that are increasingly working in overdrive in the region to silence the media. Governments, state actors and radical groups are increasingly targeting the media and journalists, creating a culture of fear and intimidation and restricting the flow of information.

**Afghanistan**

Impunity is continuing to cripple Afghanistan’s media. Since 1994, 73 journalists and media workers have been killed in Afghanistan. In two years, since the Afghan Ministry of Interior Affairs started investigating 172 cases of violation of journalists’ rights, there has been no practical action for justice.

Over the past 12 months, the situation for the media in Afghanistan has become increasingly precarious with authorities able to do little to protect them. Suicide bombs and attacks are fast becoming a threat to the media as the general safety situation deteriorates.

Rural journalists are also facing growing threats as the Taliban tries to recapture territory in the region, often targeting journalists for their reporting. Since the attack on TOLO News in early 2016, the Taliban has become more brazen, increasing their threats to the media. Radio stations are being attacked and burnt, TV stations have been raided and staff taken hostage, while journalists on assignment have had their vehicles targeted in suicide blasts.

**Cambodia**

The situation in Cambodia over the past 12 months has quickly deteriorated. Hun Sen’s government stepped up its attacks on its political opposition, human rights defenders and the country’s independent media. It closed down radio stations, forced an independent newspaper to shut under threats of a massive tax bill, expelled US-funded democracy advocates, jailed human rights defenders and journalists and used the courts to dissolve the country’s main opposition party.

The ongoing persecution of freedom of expression and the independent media saw at least 18 radio stations forced off the air in August, as local radio stations were forced to stop leasing time to the US-funded Radio Free Asia and Voice of America. It is estimated that as many as 50 jobs were lost immediately.

This was followed up with the closing of The Cambodia Daily after 25 years in production. The Daily was forced to close after the government hit the outlet with a $506.5 million tax bill, and 30 days to pay.

The government-led crackdown culminated when the courts dissolved the opposition party, CNRP, jailed the leader for treason and banned 118 members from politics for five years.

It is estimated that at least 100 dissidents, journalists and political activists have fled Cambodia since the crackdown.

**China**

In 2017, China held the 19th National Congress of the Communist Party, which saw President Xi Jinping re-elected for his second term as leader of the Communist Party and President of China.

In the lead-up to the Congress, the government-orchestrated crackdown on the media, free speech and access to information saw the IFJ record more than 200 media violations, including enforced disappearances, televised confessions, online shutdowns, media directives and self-censorship.

There are currently 29 media workers jailed in China, a further nine are in custody, six are on bail and two are on probation, and the status of a further 12 is unknown. The oldest case that the IFJ recorded is that of Ekberjan Jamal, a Xinjiang blogger who was charged with “splittism” in February 2008, and sentenced to 10 years in jail.

The death of Liu Xiaobo in 2017 sparked international outrage. Liu was in jail for “inciting subversion” when he was diagnosed with stage-four liver cancer. He was granted medical parole, but died only weeks after his diagnosis.

**India**

In the world’s largest democracy, the threat to the media is creating a real cause for concern. In September 2017 alone, two journalists were killed. The brutal murder of Gautam Lankesh in her driveway in 2017 saw the country’s media community come together and demand action. So far, one person has been arrested in connection with the targeted killing.

Since 2005 more than 75 journalists and media workers have been killed in India. Yet in the past 12 months, the situation for the media across the country is on the decline, particularly for journalists in rural areas and small towns. Job insecurity continued to be an issue, with arbitrary firing and lay-offs in major media outlets across the country.

**Malaysia**

Outdated legislation continues to impede press freedom in Malaysia and acts as the biggest threat to the country’s journalists. Political cartoonist Zunar is still facing 43 years in jail under the draconian Sedition Act for cartoons that he drew regarding the ongoing 1MDB corruption scandal.

The government’s control of the media is making it harder for independent media to flourish in Malaysia. The fact that Internet shutdowns, particularly at times of civil strife and in regions of conflict, are becoming the government’s latest tool to suppress the flow of information. In the past 12 months, the internet in India has been shut down more than 50 times. In August, the government ordered the shutdown of 22 social media services in Kashmir for a minimum of one month, in attempts to curb protests and violence in the region.

Online harassment also remains a growing concern for the media, particularly female journalists. Harassment and online trolling are making the online space unsafe, with reports of death and rape threats, intimidation and continued harassment becoming all too regular. For more than two months, Chennai-based freelance journalist Sandhya Ravishankar received threats of violence online and over the phone after the publication of a series of investigative news reports exposing illegal sand mining in the state. After lobbying by the journalist community, she was accorded police protection outside her home.
CRIMINALISING JOURNALISM
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

Since the election of President Rodrigo Duterte in the Philippines, there has been a new wave of repression in the media, particularly of the political and administrative critics of the government. The Duterte administration has passed a number of laws that restrict media freedom, including the Anti-Dummy Law, which has been used to force media companies to sell their shares to government-owned corporations. The administration has also used the Anti-Terrorism Act to arrest journalists and media workers, often without proper charges or trials. The Duterte government has also been accused of retaliating against journalists who criticize it, including by using paramilitary groups to attack journalists.

The investigative article from 2015 looked at a government tender for IT services. The story misidentified the company as the eventual winner of the contract, claiming that Araújo had recommended that company. The Post apologised for its error, corrected the story, published Araújo’s right of reply on its front page and Martins resigned as editor. However, on January 22, 2016, Araújo filed a case with the public prosecutor under article 285 (1) of the Timor Leste Penal Code accusing Oki and the then-editor of the Timor Post of “slanderous denunciation”. The charges were dismissed, the IFJ and MEAA had advocated on behalf of Oki and Martins to have the charges against them withdrawn (in 2017, Oki was named as one of the applicants of the MEAA-APHEDA Union Aid Abroad Balibo Five-Roger East Fellowship recipients).

The battle between Duterte and Rappler continues on many fronts, with Rappler journalist Pia Ronda banned from the Philippines Presidential Palace, Malacanang in February, 2018. Randa, who has covered the presidential beat for many years, is a member of the Malacanang Press Corps, was also banned from the executive office. The ban against Randa was followed up in March when she was blocked from covering the Go Negosyo 10th Filipina Entrepreneurship Summit at World Trade Center, after she told the event was off-limits to Rappler.

The Filipinos have faced threats and attacks for their news about corruption. Many journalists were also arrested for their political opinions ahead of the elections and released without charge.

The biggest challenge to Nepali media, however, was related to laws and regulation. The Chief Justice of the Supreme Court passed an order asking Kantipur national daily not to publish further news regarding controversy related to his age. The High Court declined to issue an order to stop the police from forcing the journalists to reveal their sources of a news story. Agharkar national daily was subject to a strategic lawsuit targeted at stopping them from reporting on a large scale corruption by government appointed head of the state-owned oil corporation.

The new constitution has given the local bodies rights to run small community radios and a few of them have passed regulations that threaten media freedom as the local bodies can suspend the broadcast of the radios over the content.

CRIMINALISING JOURNALISM
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

President Yameen declared a 15-day state of emergency, which was extended for a further 30 days in mid-February. Since then, the media has been harassed and targeted, most notably Raajje TV. Since February 5, at least six Raajje TV journalists have been arrested. Hussain Hassan was injured during his arrest on February 16, and officials tried to block him from leaving the Maldives for medical treatment days later. In mid-March MPs called for Raajje TV to be shut down, although not for the first time had these calls been made.

The arrests of Wa Lone and Kyaw Soe are just part of a wider crackdown against the media. Article 66(d) under the Myanmar Telecommunications Act is another key tool in the government’s arsenal, which has seen journalists sued for criminal defamation.

Religious extremism has also had an impact in the Maldives. He had been receiving death threats from the government and religious intolerance in the country’s media operates within.

The government-led clampdown on reporting on the Rohingya crisis culminated in the abduction and subsequent arrest of two Reuters journalists, Wa Lone and Kyaw Soe. The pair disappeared on December 12, 2017 following a dinner in Yangon. The following day, the Ministry of Information released a statement saying that the two journalists had been arrested for having documents that related to the unrest in Rakhine state.

The statement said that the pair had been arrested for illegally acquiring information with the intention to share it with foreign media. In January they were officially charged under the Official Secrets Act after details emerged that two policemen had been filmed as they handed classified documents linked to the Rohingya refugee crisis. Media reports alleged that sensitive records contained in the Myanmar Police file document included detailing security force numbers and the amount of ammunition used in a wave of attacks in late August. The Official Secrets Act makes it unlawful to acquire and possess classified.

The journalists are still in custody, as two bail applications have been denied. The arrests of Wa Lone and Kyaw Soe are just part of a wider crackdown against the media. Article 66(d) under the Myanmar Telecommunications Act is another key tool in the government’s arsenal, which has seen journalists sued for criminal defamation.

Local media in Myanmar estimate at least 60 journalists have been charged under Article 66(d) since Aung Sung Suu Kyi took office in November 2015.

Since 1990, the IFJ has recorded the murder of 192 journalists in the most dangerous countries for journalists, has recognised as one of the world’s most dangerous countries for journalists, has deteriorated due to the Media Decree of 2010, which limits to Rappler.

Diplomacy and legal action have not been able to stop the government from pursuing its agenda. In February 2016, the government filed a case with the High Court against the media for allegedly violating the Constitution and the Anti-Dummy Law. Rappler has denied the allegations and the case continues to proceed.

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In Vanuatu the next 12 months has seen the country start to implement the newly passed Right to Information law. While the law is a positive step for media development in Vanuatu, the media face challenges particularly in regards to working conditions and pay.

Alex Hearne is the IFJ Asia-Pacific office’s projects and human rights coordinator.
n November 23 2009, on a hilltop in Mindanao in the southern Philippines, 58 people including 52 journalists were murdered in the Ampatuan Massacre.12 This, the largest single atrocity against journalists, has become the focal point for efforts to end impunity over the killing of journalists and increase protection in international law.

In November 2017 journalists’ leaders from around the world backed a call by the International Federation of Journalists (IFJ) for a ground-breaking new United Nations Convention aimed at giving greater protection for journalists and journalism in the face of a tide of violence and threats. (MEAA is an affiliate member union of the IFJ.)

The call comes as figures show the numbers of journalists being violently attacked, threatened, jail and prevented from working free from fear and harassment continue to grow, while impunity for such crimes is running at over 90 per cent.

Journalists’ union leaders representing more than 600,000 media workers across the world endorsed the IFJ’s proposed International Convention on the Safety and Independence of Journalists and Other Media Professionals at a meeting in Tunisia.13

The convention would for the first time establish binding standards creating safeguards specifically for journalists and media workers.

While under international humanitarian and human rights law journalists enjoy the same protections as all other civilians, such laws fail to acknowledge that journalists face greater risks compared to other civilians.

There is a strategic advantage to be gained from targeting the media — those who wish to prevent the dissemination of information and international scrutiny increasingly deliberately target journalists. Journalists’ deliberate proximity to any conflict also makes them especially vulnerable; unlike other civilians, journalists do not avoid conflict areas.

While every individual is entitled to the protection of their right to life, personal liberty, security, freedom of expression and an effective remedy when their rights have been infringed, existing general human rights instruments fail to reflect the systemic effect of attacks against journalists on societies.

Unlike most violations, attacks on journalists’ life or physical integrity have an impact on the public’s right to information, contribute to a decline of democratic control and have a chilling effect on everyone’s freedom of expression. Despite this, there is no independent course of action for members of the public or other media workers in cases of violations of the rights of a journalist to lodge an application for the case to be heard to an international procedure.

The current human rights regime also fails to take into account the risks associated with the journalistic profession. While everyone’s right to free speech is protected, the exercise of freedom of expression by media professionals is distinct: they are involved in the circulation of information and ideas on a regular basis, with a much wider impact on mass audiences, hence providing a greater incentive to target them by those who wish to censor unflavourable speech.

Journalists are targeted on account of their profession, and a dedicated international instrument would enhance their protection and attach particular stigma to violations, increasing pressure on States to both prevent and punish violations, which is at the core of compliance with international law.

The IFJ believes a new binding international instrument dedicated to the safety of journalists, including a specific enforcement mechanism, would improve the effectiveness of the international response.

A MEAA initiative established in 2005, the Media Safety & Solidarity Fund, is supported by donations from Australian journalists and media personnel to assist colleagues in the Asia-Pacific region through times of emergency, war and hardship.

The fund trustees direct the International Federation of Journalists Asia-Pacific to implement projects to be funded by the MSF. The fund’s trustees are Marcus Strom, national MEAA Media section president; the two national MEAA Media vice-presidents, Karen Percy and Michael Janda; two MEAA Media federal councillors, Ben Butler and Alana Schetter; and Brent Edwards representing New Zealand’s journalists’ union, the E Tū, which also supports the fund.

Aside from contributions made by MEAA members as a result of enterprise bargaining agreement negotiations, the other main fundraising activities of the fund are auctions and raffles.

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The Media Safety and Solidarity Fund remains one of the few examples of inter-regional support and cooperation among journalists across the globe. Please support the work of the fund by making a donation.14

The IFJ recorded more than 900 media violations between the years 2008 to 2017, more than 30 per cent recorded in the Beijing Municipality alone. There were 250 incidents of censorship; more than 190 arrests, detentions and/or imprisonments; 90 restrictive orders and 80 incidents of harassment and/or threats. IFJ figures indicate there are 38 media workers currently known to be detained in China, including renowned democracy advocate Liu Xiaobo who died in custody.

The IFJ AP continued its campaign for Oki Raimondos and Lourence Vincente, who were charged with criminal defamation in Timor Leste. On June 2, in a win for press freedom, the charges against the pair were dismissed.
CRIMINALISING JOURNALISM
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

By Mike Dobbie

CRIMINALISING JOURNALISM
THE MEAA REPORT INTO THE STATE OF PRESS FREEDOM IN AUSTRALIA IN 2018

The war on terror has provided the excuse and the opportunity for governments to draft legislation designed to muzzle the media. The media, cowed by allegations of "fake news" from politicians who can't handle the truth and already weakened by the digital disruption that have hammered the industry, have been too slow or too weak to respond.

Of course, having a US president who engages in "Twitter warfare on sections of the media he doesn't like doesn't help. And it doesn't take much for blatant attacks on the media to incubate an environment that can make journalism a deadly occupation. Endless tweets decrying "fake news" made against media outlets will eventually lead to repercussions.

Exhibit three, January 9-10, 2018. In a series of 22 threatening phone calls, Brandon Grieve, a representative of a series of increasingly violent threats to staff at CNN's Atlanta headquarters. The threats included: "Fake news... I'm coming to gun you all down... You are going down... I have a gun and I am coming to Georgia right now... to go to the CNN headquarters to f**king gun every single last one of you."

Exhibit four. October 16, 2017. "Fake news... I'm coming to gun you all down... You are going down... I have a gun and I am coming to Georgia right now... to go to the CNN headquarters to f**king gun every single last one of you."

Exhibit five. February 25, 2018. September 5, 2017: Gauri Lankesh, 55, a respected veteran journalist and outspoken critic of Hindu nationalists, was shot dead outside her home in Rajarajeshwari Nagar in northern Bengaluru, Karnataka, as she returned from work. Three unidentified gunmen on a motorcycle fired at least four shots at her as she entered through the gate of her home. Lankesh died on the spot after receiving gunshot to the head and chest. The gunfire fled the scene.

Exhibit six. February 25, 2018. Slovak investigative journalist Ján Kuciak and his girlfriend Martina Kužníková were found shot to death in his house in Velká Mača, some five kilometres from the capital Bratislava. The journalist was shot in the chest with a single bullet, and his partner in the head, according to reports. Police chief Tibor Galipal said that the murders were 'most likely' linked to the work of the journalist, Reuters reported.

"But perhaps there is no greater proof of how journalists are being targeted for death than the revelations that came in April 2018. A US court was told how renowned Sunday Times journalist Marie Colvin was hunted using her phone signal. The signal was then used to determine the range for the subsequent rocket barrage that killed her, French freelance photographer Remi Ochlik and wounded three others."

Exhibit seven. February 2, 2012. "As part of her reporting, Ms Colvin gave live interviews to the BBC and CNN... The highest levels of the Syrian government, including President Assad's brother, were behind the plan to track the journalist once she entered territory of their journalism. It is almost as if there is no more a brazen attitude to killing journalists now that may have originated back when the culture of impunity that surrounds their murder."

Exhibit eight. December 12, 2017. "Two Reuters journalists, Wa Lone and Kyaw Soe Oo, are arrested in Myanmar's main city, Yangon, after being invited to meet police officials over dinner. Myanmar's government says that the journalists face charges under the colonial-era Official Secrets Act, which carries a maximum prison sentence of 14 years. The Ministry of Information has cited the police as saying they were 'arrested for possession important and secret government documents related to Rakhine State and security forces'. The ministry said they had made life uncomfortable for the powerful, whether in banks or the Prime Minister's office. Investigators later found that a sophisticated device had been planted on the car and remotely detonated."

Exhibit nine. May 3 each year, "is a date which celebrates the fundamental principles of press freedom, to evaluate press freedom, to respect their commitment to press freedom, to write news stories revealing the truth and to celebrate the Prime Minister…"

The disturbance trends overseas, of governments attacking journalists, jailing them and even killing them for their journalism, should outrage us all. But Australia is also a country where nine journalists have been murdered with impunity and Australian Governments have spent decades doing little or nothing to bring those responsible for our colleagues' murders to account.

Now Australia appears to be sending signals that it too, wants to jail journalists for their work. The growing trend for Australian Governments to hide government activities behind a veil of secrecy, increase existing or impose new penalties for disclosing information, and use telecommunications data to secretly hunt and identify journalists' confidential sources, certainly indicates that legitimate scrutiny of what governments do in our name can and will be punished.

And remember, these new laws and penalties, as well as the increased powers of surveillance that go with them, are frequently given bipartisan support as they pass through the Parliament.

The Espionage Bill, if it is allowed to become law without a genuine media exemption, has the potential to make Australia the worst in the western world for criminalising journalism.

The Bill is just the latest in a basket of attacks on press freedom by the current Government, the laws that punish whistleblowers seeking to disclose instances of fraud, dishonesty, corruptions and public health and safety issues, while also threatening journalists with jail for simply doing their job.

With each new tranche of national security laws passed by the Parliament, jail terms for journalists appear to be corrected in five months to up to 20 years for those who write news stories revealing the truth and keeping their communities informed. While Governments profess that it was never their
orders to avoid scrutiny and transparency. Shield laws for journalists have been enacted in the Northern Territory and soon in South Australia leaving Queensland out in the cold as the only jurisdiction that still thinks it’s OK to compel journalists, on threat of contempt of court, to discard their ethical obligations and reveal the identity of their confidential sources. Hopefully, this will soon be remedied and then the jurisdictions can come together to create a uniform national shield law regime.

The Senate Select Committee also called for the restoration and maintenance of proper funding for public broadcasting, not least to ensure all journalists to their rural and regional audiences can be maintained but also to ensure that their fact-checking capability can continue. The thinking behind these moves is welcome. In many cases, they reverse what had been attacks on press freedom.

It’s more difficult to understand why Australian lawmakers continue to be so intent on amending to national security legislation in order to criminalise journalists and journalism. While their efforts continue, and governments are also reluctant to remove laws from the statute books that would lead to a diminution of their powers, press freedom in Australia and the public’s right to know will continue to be hard-pressed. Journalism is not a crime – but in Australia there are many working hard to make it so.

Mike Dobbs is the MEAA Media section’s communication manager and editor of MEAA’s annual press freedom reports.

JOURNALISM IS NOT A CRIME... BUT IN AUSTRALIA THERE ARE MANY WORKING HARD TO MAKE IT SO.
Criminalising Journalism

The MEAA Report into the State of Press Freedom in Australia in 2018


Comment on the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018 in response to the call for comment by the Parliamentary Joint Committee on Intelligence and Security, United Nations Special Rapporteur on the promotion and protection of the right to freedom of expression, the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion of human rights and fundamental freedoms while combating terrorism, February 15 2018, http://www.openlh.com/wp-content/uploads/2017/09/iss.htm


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